

CWP-15174-2023 and connected

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

**(I) CWP-15174-2023
Date of Decision : July 19, 2023**

The Press Employees and Friends Co-operative Group Housing Society Ltd.

-Petitioner

V/S

State of Haryana and others

-Respondents

(II) CWP-15182-2023

The Tribune Employees & Friends Co-Operative Group Housing Society Ltd.

-Petitioner

V/S

State of Haryana and Others

-Respondents

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

Present : Mr. R. Kartikeya, Advocate
for the petitioner.

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

Mr. Ankur Mittal, Advocate with
Ms. Khushaldeep Kaur, Advocate
for respondent- HSVP.

KULDEEP TIWARI, J.

1. Since the relief(s) claimed, besides the questions of law, as involved in both these writ petitions are identical, thus thereby both are amenable for a common decision being made thereon. For brevity, the facts are being extracted from CWP-15174-2023.

2. Through the instant writ petition, the petitioner-Society seeks issuance of a mandamus upon the respondent(s) concerned, to consider its claim, as made in the representation (Annexure P-21), qua release of the

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acquired lands, in accordance with the provisions of Section 101-A of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the 'Act of 2013'), as well as, the policy dated 14.9.2018 (Annexure P-17), titled as "The Policy for Return of Un-utilized Land'. The petitioner-Society asks for the relief (supra), inter alia, on the ground of the acquired lands being rendered unviable and non-essential for the relevant public purpose, as a major portion of the acquired lands remains yet unutilized.

3. As an alternative, the petitioner-Society seeks issuance of a mandamus upon the respondent(s) concerned, to consider its proposal for exchange of land, as asked for in the representation/proposal (Annexure P-21), wherethrough, the acquiring authority/State may retain the yet unutilized acquired lands, but may make allotment, to the petitioner-Society, of an alternative site/land reserved for residential purpose. The reason behind assertion of this alternative relief emerges on the ground of parity, as a similar relief is purportedly granted in the case of Samar Estates, arising out of the very same acquisition proceedings.

4. Furthermore, the petitioner-Society seeks another alternate relief, as a measure of last resort, qua making of a mandamus upon the respondent(s) concerned to consider its case, under the Haryana Land Pooling Policy 2022 (Annexure P-27).

5. Before embarking upon the process of examining the controversy at hand and evincing any opinion thereon, it would be apt to record here, as erupts from the record available before us, that through the present writ petition, the petitioner-Society has engaged itself into a third round of litigation, thereby seeking de-notification of the acquired lands from

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acquisition, whose proceedings were terminated way back in the year 2003. Therefore, it is deemed imperative to first acquaint ourselves with the factual backdrop of the present controversy, as surges forth from the record, which would enable us to give a conclusive quietus to the litigation.

FACTUAL BACKGROUND

6. The lands of the petitioner-Society, along with some other lands, were brought to acquisition by the respondent-State, for the development and utilization of such lands as residential, commercial, institutional, recreational etc. at Sectors 1, 2, 3, 5B, 5C and 6 for Panchkula extension (Mansa Devi Complex). The acquisition of the petitioner-Society's land was done through issuance of a notification, on 16.03.1999, under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act of 1894'), which was succeeded by a declaration issued under Section 6 of the Act of 1894, on 15.03.2000. Thereafter, an award, in terms of Section 11 of the Act of 1894, was pronounced on 09.10.2003. Indisputably, upon pronouncement of the award (supra), the possession of the acquired lands was assumed by the acquiring authority concerned, through the drawing of a Rapat bearing No.67 on 09.10.2003. Also, the tendering of the compensation amount is not under dispute.

7. Fetching grievance from the acquisition proceedings (supra), the petitioner-Society raised a challenge thereto, through its instituting before this Court a writ petition bearing No. CWP-7204-2000. The said writ petition was disposed of, vide order dated 12.08.2011, with the hereinafter extracted directions:-

“.....Under the circumstances, we dispose of this writ petition and other connected writ petitions with a direction to the State to constitute a High Powered Committee within 15 days from today, to which no

objection has been raised by Mr. Sehgal. It is further agreed between the parties that after constitution of the High Powered Committee, the petitioners will appear before that Committee on 12th October, 2011 in the office of Financial Commissioner and Principal Secretary to Government of Haryana, Urban Estates Department, Sector-17, Chandigarh at 10.30 a.m. In the meantime, if any of the petitioners wish to file a representation before the abovesaid Officer, he may do so. The landowners are supposed to give detail of land owned by them and objections filed by them against acquisition. It is further agreed between the parties that till such time the decision is taken by the High Powered Committee and thereafter for a period of 15 days, from the date of communication of the order passed, to the landowners, through a registered post, the status quo regarding possession shall be maintained. It is also agreed that in case if any adverse order is passed against any of the landowners, liberty shall remain to file a fresh petition taking all the pleas including one which have been taken in these writ petitions.

As above, these writ petitions stands disposed of.”

8. In pursuance to the directions (supra) of this Court, the petitioner-Society filed a detailed representation before the competent authority concerned. The said representation carried therein every plea, which the petitioner-Society is now raising before this Court, inasmuch as, release of the acquired lands, and/or, exchange of land, as the same relief is purportedly granted to the other similar builders/developers. However, as is apparent from Annexure P-13, the competent authority concerned, after giving a thoughtful consideration to the representation (supra), rejected the claim of the petitioner-Society on 10.09.2014, with the following observations:-

“5. XX XX XX

(i) Director General Town and Country Planning, Haryana vide memo no.4265 of 14.3.2012 has intimated that the ownership of Khasra nos.128//22/1, 23/2, 133882, 12/2, 9, 15/2, 13/1, 3, 13, 23/2, 8, 14 of village Saketri area measuring 7.875 acres belongs to the Press Employees and Friends Cooperative Group Housing Society Ltd.

Panchkula. The petitioner has not applied for grant of license/CLU permission. The aforesaid site falls in the Sector 1 MDC reserved for open space. The above area is part of Rajiv Gandhi Walkers Paradise Park.

(ii) Chief Administrator, HUDA, Panchkula vide memo no.2069 dated 22.02.2012 has intimated that information regarding CWP mentioned under subject was sought from the District Town Planner, Panchkula which has been received through email dated 22.02.2012. A photocopy of the report sent by District Town Planner, Panchkula is enclosed. Sajra-cum-Layout Plan showing the location of land in question is also enclosed. Land of the society falls in open spaces zone and is vacant at site. Land is not recommended to be released. It is pertinent to mention that report in this case had earlier also been sent vide memo no. CTP/STP(M)/20241 dated 08.12.2011.

XX XX XX”

9. Rejection of the representation (supra), on 10.09.2014, through Annexure P-13, led the petitioner-Society to again approach this Court, through its filing CWP-23818-2014. However, yet again, this Court through an order made on 31.08.2020, on the writ petition (supra), dismissed the claim of the petitioner, in terms of the judgment dated 06.03.2020, rendered by the Constitution Bench of the Hon’ble Supreme Court, in case titled **“Indore Development Authority v. Manoharlal and others etc.”, AIR 2020 SC 1496.** However, as desired by the learned counsel for the petitioner therein, a direction was made upon the respondent- authority(ies) concerned to examine the representation of the petitioner therein, if any made by invoking the provisions of Section 101-A of the Act of 2013, and thereafter to make an appropriate decision thereon.

10. Thereafter, the petitioner-Society made several representations, as enclosed in Annexures P-18 to P-18D, P-20 and P-21, before the competent authority(ies) concerned, canvassing therein the pleas, as raised in the present

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writ petition, inasmuch as, plea qua de-notification of the acquired lands in accordance with Section 101-A of the Act of 2013 and the relevant policy framed thereunder.

11. However, the petitioner-Society claims that the representations (supra), as remain purportedly undecided, gave rise to a cause of action and accordingly compelled it to again engage itself in a third round of litigation. Resultantly, the instant writ petition is instituted, thereby seeking the making of a mandamus upon the respondent(s) concerned to consider and make a final decision on its representation(s), and/or, to allot some alternate land/site, meant for residential purpose, to the petitioner-Society in lieu of the acquired lands, and/or, at least consider its case, under the Haryana Land Pooling Policy 2022.

12. Per contra, the learned State counsel has vociferously objected the maintainability of the present writ petition, inter alia, on the ground that all the pleas, which have been raised in the purported undecided representations (supra) as well as in the instant writ petition, have already been adjudicated upon by the competent authority, vide order dated 10.09.2014 (Annexure P-13), and, upon a challenge being made to the order (supra), through CWP-23818-2014, a declining order was recorded thereon by this Court, through Annexure P-16. Therefore, in view of the doctrine of *constructive res judicata*, such already adjudicated pleas are now un-amenable for being again racked up in the present round of litigation, under the garb of liberty being granted, through Annexure P-16, to invoke the provisions of Section 101-A of the Act of 2013 before the competent authority concerned. Moreover, insofar as the raising of any new plea(s) is concerned, the same could have been raised in the second round of litigation itself, which the petitioner opted not to raise.

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Therefore, by dint of doctrine of *constructive res judicata*, any plea which was well available to be raised earlier, cannot be permitted to be racked up in the instant writ petition.

13. The learned State counsel has further argued that the petitioner-Society does not have any vested right to make any representation, invoking the provisions of Section 101-A of the Act of 2013, thereby seeking de-notification of the acquired lands, on the premise, that such lands have yet remained unutilized for the purpose for which they were acquired. The above submission is rested on the ground that Section 101-A of the Act of 2013 is merely an enabling clause, giving right to the State Government, to de-notify such portion of land, which according to it, has become “unviable” and “non-essential” for accomplishing any efficacious public purpose. In support of his above submission, he has placed reliance upon a judgment rendered by this Court on 17.07.2023, upon **CWP-9666-2023**, titled “**Lalit Kumar and anr. V/s State of Haryana and anr.**”

14. The learned State counsel has also drawn attention of this Court towards the declining order dated 10.09.2014 (Annexure P-13), which has since attained finality and wherethrough, the representation of the petitioner-Society was rejected by the competent authority concerned, with a categorical observation that “*the petition lands, which fall in the Sector 1 MDC and reserved for open space, are a part of Rajiv Gandhi Walkers Paradise Park*”. Therefore, he seeks dismissal of the instant writ petition, as in view of the above factum, the petition lands are very much essential and required for the apt public purpose.

ANALYSIS

15. We have made careful evaluation of the submissions, as advanced

by the learned counsel for the petitioner and the learned State counsel, and, have also perused the record. However, before proceeding to form any opinion, it would be apt to first examine the scope and object of the provisions of the hereinafter extracted Section 101-A of the Act of 2013, as inserted through Haryana Act No.21 of 2018, and, brought into force w.e.f. 01.01.2014.

“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 nonessential, 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.”

16. The literal interpretation of the above extracted Section makes emergences that it is merely an enabling provision, which enables the State Government to de-notify such lands, as acquired under the Act of 1894, and, which in its opinion, have become “unviable” or “non-essential” for the public purpose, for which it acquired them. However, the liberty to de-notify such lands, can be exercised by the State Government, on such terms and conditions, as it considers expedient, vis-a-vis, payment of compensation on account of damages, if any, sustained by the landowner concerned.

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 “non-essential”, on the ground, that the land has not been utilized, or, the land continues to be his possession, even after pronouncement of the award ?

18. Before commencing to effectively adjudicate the hereinabove formulated issues, it is deemed imperative to travel through the legal history of the Act of 1894.

19. The land acquisition proceedings, under the Act of 1894, used to commence with the publication of a preliminary notification under Section 4, where through the State Government concerned expresses its intention, to the public at large, about the requirement of the land in any locality, for any public purpose. Thereafter, upon hearing of the objections being done by the Collector concerned, if any moved under Section 5-A, against the preliminary notification (supra), a declaration under Section 6 had to follow, that the land is required for a public purpose. The declaration (supra) was to be succeeded by the pronouncement of an award, under Section 11, by the Collector concerned. Pursuant to pronouncement of the award (supra), the Collector concerned became empowered to assume possession of the acquired lands, as

contemplated under Section 16, and thereupon, the acquired lands come to vest absolutely in the State Government, free from all encumbrances. For ready reference, Sections 4, 6, 11 and 16 of the Act of 1894 are reproduced hereinafter:-

“4. Publication of preliminary notification and power of officers thereupon. - (1) *Whenever it appears to the [appropriate Government] the land in any locality [is needed or] is likely to be needed for any public purpose [or for a company], a notification to that effect shall be published in the Official Gazette [and in two daily newspapers circulating in that locality of which at least one shall be in the regional language], and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality [(the last of the dates of such publication and the giving of such public notice , being hereinafter referred to as the date of the publication of the notification)].*

(2) *Thereupon it shall be lawful for any officer, either generally or specially authorized by such Government in this behalf, and for his servants and workman, -*

to enter upon and survey and take levels of any land in such locality;

to dig or bore into the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches;

and, where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle;

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

6. Declaration that land is required for a public purpose.- (1) *Subject to the provision of Part VII of this Act, [appropriate Government] is satisfied, after considering the report, if any, made*

under section 5A, sub-section (2)], that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders [and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under section 4, sub-section (1) irrespective of whether one report or different reports has or have been made (wherever required) under section 5A, sub-section (2)];

[Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1)-

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967), but before the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984), shall be made after the expiry of three years from the date of the publication of the notification; or

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984), shall be made after the expiry of one year from the date of the publication of the notification:]

Provided further that] no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

[Explanation 1. - In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under section 4, sub-section (1), is stayed by an order of a Court shall be excluded.

Explanation 2. - Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues.]

(2) [Every declaration] shall be published in the Official Gazette [and in two daily newspapers circulating in the locality in which the land is situated of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being

hereinafter referred to as the date of the publication of the declaration), and such declaration shall state] the district or other territorial division in which the land is situate, the purpose for which It is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be; and, after making such declaration, the [appropriate Government] may acquire the land in manner hereinafter appearing.

11. Enquiry and award by Collector. - [(1)] On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objection (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land [at the date of the publication of the notification under section 4, sub-section (1)], and into the respective interests of the persons claiming the compensation and shall make an award under his hand of-

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, or whom, or of whose claims, he has information, whether or not they have respectively appeared before him:

[Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorize in this behalf:

Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.

[(2) Notwithstanding anything contained in sub-section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form

prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement.

(3) The determination of compensation for any land under sub-section (2) shall not in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.

(4) Notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), no agreement made under sub-section (2) shall be liable to registration under that Act.]

[11A. Period shall be which an award within made. - The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceeding for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984), the award shall be made within a period of two years from such commencement.

Explanation - In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.]

16. Power to take possession. *- When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon [vest absolutely in the [Government]], free from all encumbrances.*

20. A conjunct reading of all the above extracted provisions makes it abundantly clear that after lawful termination of the acquisition proceedings, through pronouncement of an award, and, through assumption of possession by the acquiring authority concerned, respectively under Sections 11 and 16, thus the acquired lands become vested absolutely in the State Government, and, free from all encumbrances.

21. Under the Act of 1894, the acquiring authority concerned had

very limited powers, as contemplated in Section 48 of the *ibid* Act, to withdraw from the acquisition proceedings. Section 48 of the *ibid* Act granted liberty to the Government concerned to withdraw from the acquisition of any land, whose possession has not yet been taken, meaning thereby, if the possession of any acquired land has once been assumed by the acquiring authority, thereupon, the State Government became thereafter barred to exercise any power to withdraw from acquisition. Section 48 of the *ibid* Act is extracted hereunder:-

“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.”

22. The Hon’ble Supreme Court, in a judgment rendered in case titled ***“Vinayak House Building Cooperative Society Ltd. Vs. State of Karnataka”***, in ***Civil Appeal No.3600 of 2011***, decided on 26.08.2019, has examined the scope of Section 48 of the Act of 1894. In the judgment (*supra*), after quoting the report of the Select Committee dated 23.03.1893, which implies that larger powers of withdrawal from acquisition, should be conferred upon the government, which provides compensation from the taxes of the Empire, however, no such power should be given once possession has been taken, it was ultimately concluded by the Hon’ble Supreme Court that the

government should refrain from de-notifying or dropping any land being acquired for the formation of a layout, under Section 48 of the Act of 1894. Simultaneously, the courts should also be very strict while considering the plea of the landowners seeking de-notification of the acquired lands, or, quashing of the notification on the ground of lapsing, as the supremacy of public good over private interest is always to be borne in mind. The relevant paragraphs of the judgment (supra) read as under:-

“23. The select committee in its second report dated 23rd March, 1893 had given certain clarifications, which are as under:

“We have altered the terms of the first clause of S.48, which gives certain powers to Govt. to withdraw from a contemplated acquisition of land so as to make it clear that this withdrawal may be made at any time before possession is taken but not afterwards. Instances were quoted in our Preliminary Report in which the Collector was proved by the Judge's award to have been seriously misled as to the value of the land and in which the Govt., would not have acquired the land had it received a correct appraisalment. We think, that a Govt. which provides compensation from the taxes of the Empire should have larger powers of withdrawal than are given by the present Act, but we are of opinion that no such power should be given after possession has once been taken and that each local Govt., must protect itself by executive instructions to Collectors to refrain from taking possession until after the award of the Judge, in every case in which there is a material difference between the Collector and the owner as to the value of the property”.

(emphasis supplied)

38. We are of the considered view that the government should refrain from de-notifying or dropping any land being acquired for the formation of a layout, under Section 48 of the L.A. Act or under any other law. The courts should also be very strict while considering the plea of the landowners seeking de-notification of the lands which are being acquired or quashing of the notification on the ground of lapsing of the scheme or on any other grounds in respect of the acquired lands for the formation

of the layout. It has to be kept in mind that private interest always stands subordinated to the public good.

48. We have also noticed that the State Government has been denotifying the lands under section 48(1) of the Act for the past 10-15 years and allegations have been made that these orders have been passed with ulterior motives. We are of the view that the state Government has to reconsider all these orders and take corrective steps in case it is found that such orders have been passed in violation of the law. Perpetuation of illegality has to be ceased, desisted and deterred at any cost.”

23. As is clear from the hereinabove made discussion, under the scheme of the Act of 1894, the State Government or the acquiring authority, did not have any power to withdraw from the acquisition proceedings once the possession of the acquired lands stood assumed by the authority concerned.

24. After more than 70 years of independence, the legislature realized existence of some lacunae in the Act of 1894, inasmuch as, lack of provisions to rehabilitate and resettle the affected parties from land acquisition, and, accordingly enacted the Act of 2013, which assumed force w.e.f. 01.01.2014, thereby repealing the Act of 1894. The principal ideology and the aim behind enactment of the Act of 2013 are threefold, i.e.:-

“(i) to make the land acquisition process, for progress of the nation, a more transparent process, while causing least disturbance to the landowners/affected families concerned;

(ii) to provide fair compensation to the landowners/affected families concerned;

(iii) to make adequate provisions for rehabilitation and resettlement of the landowners/affected families concerned, through development of their social and economic status post

acquisition of their lands.”

25. Section 114 of the Act of 2013 provides for a “Repeal and Saving Clause”. Sub-section (1) of Section 114 of the ibid Act repealed the Act of 1894, while sub-section (2) thereof, which carried a saving clause, held the repeal under sub-section (1) to be not prejudicial to the general application of Section 6 of the General Clauses Act, 1897 (hereinafter referred to as the ‘Act of 1897’), subject to “save as otherwise provided”. For ready reference, Section 114 of the Act of 2013, and, Section 6 of the Act of 1897 are extracted hereinafter:-

“114. Repeal and saving.—

(1) The Land Acquisition Act, 1894 (1 of 1894) is hereby repealed.

(2) Save as otherwise provided in this Act the repeal under sub-section (1) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals.”

“6. Effect of repeal.—*Where this Act, or any 4[Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not--*

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.”

26. The concerted effect of above extracted Sections, on the application of Section 24(1) of the Act of 2013, has been considered by the Hon'ble Supreme Court in case titled ***“Maharashtra Vidarbha Irrigation Development Corpn. v. Mahesh & ors.”***, reported in (2022) 2 SCC 772, wherein, it has been held that in terms of Section 24(1)(a) of the Act of 2013, Section 114 of the Act of 2013 as well as Section 6 of the Act of 1897 would not apply to the extent hindered by Section 24(1) of the Act of 2013, for the following reasons:-

“(i) Section 114 of the Act of 2013 while accepting the applicability of Section 6 of the Act of 1897 made its application subject to ‘save as otherwise provided’ in the Act of 2013;

(ii) Section 6 of the Act of 1897 itself provided that the general savings would not apply when legislative intent is contrary.”

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 de-notify 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 “non-essential” 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 de-notify 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.

31. Further, the concept of “public purpose” has been thoroughly scrutinized and explained by the Hon’ble Supreme Court in case titled **“Daulat Singh Surana v. First Land Acquisition Collector”, 2007(1) RCR (Civil) 260**, in the hereinafter extracted manner:-

“.....73. Public purpose cannot and should not be precisely defined and its scope and ambit be limited as far as acquisition of land for the public purpose is concerned. Public purpose is not static. It also changes with the passage of time, needs and requirements of the community. Broadly speaking, public purpose means the general interest of the community as opposed to the interest of an individual.”

32. In case titled “*State of Kerala v. M. Bhaskaran Pillai*”, AIR 1997 SC 2703, the Hon’ble Supreme Court has extended the sphere of “public purpose” and has held that if after utilization of the acquired land for the relevant public purpose, some land still remains unutilized, it need not be returned to the original landowner, rather it can either be utilized for any other public purpose or it can be sold by way of public auction, so as to achieve the larger public interest. The relevant observations, as carried in the case (supra), are reproduced hereunder:-

“...3. In view of the admitted position that the land in question was acquired under the Land Acquisition Act, 1894 by operation of section 16 of the Land Acquisition Act, it stood vested in the State free from all encumbrances. The question emerges: Whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilised for the public purpose envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act and is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through the public auctions so that the public also gets benefited by getting higher value.....”

33. On the touchstone of the hereinabove discussed legal propositions, as expounded by the Hon’ble Supreme Court, though the scope of “public purpose” has been expanded, but simultaneously, the scope for the State Government to exercise its power for de-notification of the acquired

lands has been curtailed.

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)**

FINDINGS ON THE HEREINABOVE FORMULATED ISSUES

35. Keeping in mind the hereinabove made legal discussions, let us now proceed to assign answers to the hereinabove formulated issues.

ISSUE NOS.(I) AND (III)

36. Issue Nos.(i) and (iii) are being taken up together, as they are amenable for being adjudicated through a common reasoning. As discussed hereinabove and reiteratedly, the legislature has empowered the State Government to de-notify the acquired lands, by invoking the provisions of Section 101-A, but only upon its recording a subjective satisfaction, that the acquired lands have become “unviable” or “non-essential” for any public purpose. Such subjective satisfaction should not be vague and fanciful, but legal and objective.

37. Though the terms “unviable” and “non-essential” have not been imparted any definition, either in the Act of 1894, or, in the Act of 2013, however, the respective definition assigned to the above respective terms, in the Oxford Dictionary, is “Not sustainable, feasible or practicable”, and, “Not essential”. Therefore, by no means of imagination, the definition of the above terms can be linked with the term “unutilized”. Moreover, it is also no more *res integra*, that the land which has once been acquired, if subsequently becomes un-amenable for facilitating the relevant public purpose, as denoted

in the acquisition notification, can yet be “utilized” for accomplishing any other efficacious public purpose.

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”.

39. Moreover, in the absence of any cogent evidence on record suggestive that the acquired lands have become “unviable” or “non-essential” for any efficacious use, the mere “unutilization” of the acquired lands for a long span, does not confer any valid authority, either upon the landowners concerned or upon the State Government, to respectively either seek de-notification or order de-notification of the acquired lands.

40. To make any finding upon the Issue No. (iii), it would be relevant to first deal with some of the judicial pronouncements, as made by a Coordinate Bench of this Court as well as by the Hon’ble Supreme Court.

41. A Division Bench of this Court, while considering the issue “whether the landowners can make a representation to the State Government to seek de-notification of their land, under Section 101-A of the Act of 2013”, as raised in **CWP-22241-2016**, titled “**Raghubir Singh and anr. V/s State of Haryana and others**”, has returned a negative response thereto. The Division Bench of this Court, through an order made on 01.10.2020, upon the writ petition (supra), held that the landowners have no right to represent to the

State Government for de-notification of their acquired lands, as Section 101-A of the Act of 2013 is only an enabling clause, thereby empowering the State Government to de-notify the acquired lands, only if the same become “unviable” or “non-essential”.

42. Aggrieved by the findings recorded in the order (supra), the petitioners therein, made a challenge thereto before the Hon’ble Supreme Court, by filing **Civil Appeal Nos.2714-15 of 2021**, titled **“Raghubir Singh and another V/s State of Haryana and others”**. The Hon’ble Supreme Court, in its order dated 15.07.2021, as made upon the appeal (supra), though held that the landowners can approach the State Government to exercise its power under Section 101-A of the Act of 2013, but also held that this Section certainly does not give a vested right to the landowners regarding de-notification of the acquired lands. The relevant paragraphs of the judgment (supra) are reproduced as under:-

“10. Thus understood, there is no reason to assume that the landowners cannot request the State Government to consider such representation inviting a decision of the State, within the realm of Section 101-A of the 2013 Act. This provision is certainly not in the nature of giving a vested right to the landowners regarding denotification of the acquired land nor does it follow that upon denotification, the lands in question must return to the erstwhile owners only. It will be open to the State Government to denotify the acquired land on such terms and conditions as may be expedient, in public interest. Thus, the provision empowers the State to denotify the lands acquired under the 1894 Act.

11. Viewed thus, the conclusion of the Division Bench in the impugned order, that the land owners cannot be allowed to approach the State Government to exercise its power under Section 101-A of the 2013 Act, may not be an accurate statement of law and needs to be understood in the above terms.

12. Accordingly, we set aside the impugned judgment. We make it clear

that the writ petitioners-landowners may approach the State Government in reference to Section 101-A of the 2013 Act, which representation can be considered by the State Government (State of Haryana) on its own merits; keeping in mind the constricted power given to the State Government to denotify the acquired land if it becomes unviable or non-essential, in public interest and to do so on such terms as may be considered expedient.

13. The fact that the landowners have already constructed some structures on the acquired land, which has vested in the State Government, by itself can be no reason to denotify the acquired land. It can be done only if the State Government is fully satisfied that the land has become unviable or non-essential for the purpose of development and in particular for reason for which it was so acquired.”

43. The ratio of law, as laid down in the appeal (supra), was again reiterated by the Hon’ble Supreme Court in case titled **“Ram Swaroop (Dead) through LRs & anr. V/s State of Haryana & ors.”**, arising out of **SLP (Civil) No.16421 of 2021**, therein holding that no landowner has a vested right to assert that the land acquired has become unviable or non-essential mainly because the landowner continued to be in possession by virtue of an interim order passed by the High Court. It was further held that the opinion of the State Government, whether the land is unviable or non-essential, cannot be disputed by landowner at the drop of the hat. Finally, it was concluded therein, that the landowners cannot compel an exercise of power by the State Government in their favour, as the landowners have no vested right to seek de-notification of the land. The relevant paragraphs are extracted hereinafter.

“8. Section 101-A of 2013 Act (as inserted in State of Haryana) gives liberty to the State Government 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 landowner due to such acquisition. Section 101-A is an enabling provision with the State Government to denotify the land vested with the State if it finds that any public purpose for which land was

acquired under the Land Acquisition Act, 1894 becomes unviable or non-essential. In other words, the power is with the State Government on its satisfaction that the land acquired has become unviable or non-essential. No landowner has a vested right to assert that the land acquired has become unviable or non-essential mainly because the landowner continued to be in possession by virtue of an interim order passed by the High Court.

11. The claim of the appellants for release of land on account of Section 24(2) had been rejected by the State Government on 12.09.2016. The writ petition against the said order stands dismissed on 12.10.2020. Thus, the present appeal is merely an attempt to continue to be in possession of the land on one pretext or the other so as to defeat the public purpose of acquisition of the land for development and utilization of residential, commercial and institutional area, Sector-51, Gurgaon (now Gurugram). This Court in Raghbir Singh has held that Section 101-A does not give a vested right to the landowner to seek denotification or even that upon denotification, the land in question must return to the erstwhile owners only. The State Government is at liberty to pass such order other than release of land in favour of the landowners.

12. Therefore, the appellants cannot compel an exercise of power by the State Government in their favour as the appellants have no vested right to seek denotification of the land. Consequently, the present appeal is dismissed.”

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 de-notification 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.

ISSUE NO.(II)

45. Now, insofar as the Issue No. (ii) is concerned, reiteratedly the power to de-notify the acquired lands, under Section 101-A of the Act of 2013, is always subject to savings, as prescribed under Section 6 of the Act of 1897. Therefore, the acquisition proceedings, which stood lawfully terminated under the Act of 1894, cannot be revived because of effect of savings, as prescribed under Section 6 (supra). The insertion of Section 101-A in the Act of 2013, which is merely an enabling provision, thereby enabling the State Government to de-notify the acquired lands, does not furnish a new cause of action in favour of the landowners concerned to challenge the lawfully terminated acquisition proceedings. The Hon'ble Apex Court in case titled ***“Haryana State Industrial and Infrastructure Development Corporation Ltd. & Ors. V/s Mr. Deepak Aggarwal & Ors.”***, 2022(3) R.C.R. (Civil) 934, examined the scope and the extent of applicability of the provisions of the old Act of 1894, despite its repeal, in view of Section 24 of the Act of 2013. It has been held therein that Section 24 has been incorporated in the Act of 2013, by the legislature, as a balancing provision for controlling the extent of retrospectivity and for curtailing the erosion of right of landholders. The Hon'ble Apex Court, while arriving at the above conclusion, also observed that the legislature was fully aware of the fact that the lands acquired under the Act of 1894 are being used for several public purposes and will be required for infrastructural projects, therefore lapsing of everything on repeal of the Act of 1894 would be seriously detrimental to public interest and at the same time, the interest of landowners were also taken into account. The relevant extract of judgment (supra) reads as

“22. The legislative intention behind bringing up the 2013 Act was to have a unified enactment facilitating land acquisition for industrialization, infrastructure and urbanization projects in a timely and transparent manner and at the same time, providing for just and fair compensation, to make adequate provision for rehabilitation and resettlement mechanism for affected persons and their families. As a preamble its objects and reasons have been given in the 2013 Act thus:

"An Act to ensure, in consultation with institutions of local self-government and Gram Sabhas established under the Constitution, a humane, participative, informed and transparent process for land acquisition for industrialisation, development of essential infrastructural facilities and urbanisation with the least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post acquisition social and economic status and for matters connected therewith or incidental thereto."

23. Bearing in mind the aforesaid legislative intention we will have to construe Section 24 and also the word 'initiated' employed in section 24(1), of the 2013 Act. The word 'initiated' has to be construed with a view to implement the aforesaid twin purposes of providing fair and just compensation and facilitating acquisition of land for industrialization, infrastructure and urbanization projects. We have already referred to the impact of 'initiation' of land acquisition proceedings and its culmination in an award under Section 11 of the L.A. Act and also non-culmination in such an award.

24. For a proper and purposive construction of the word 'initiated', in the contextual situation it will not be inappropriate to look into the legislative history of Section 24 of the 2013 Act as well, as explained in the written submission filed on behalf of

HSIIDC/STATE/COMMITTEE dated 11.04.2022. However, we do not deem it necessary to refer to or to deal with it, in detail. In short, it is stated therein that the events happened prior to the drafting of Section 24, as it exists on the statute book today, is a safe guide to cull out the legislative intent in formulating Section 24 in the 2013 Act, by the legislature. Furthermore, it is stated therein that the legislature was fully aware of the fact that lands acquired under the L.A. Act were already being used for several public purposes and more particularly for infrastructural projects and large number of acquisition proceedings under the L.A. Act, relating large number of public projects for various public purposes, are in progress at various stages. Hence, lapsing of everything would be seriously detrimental to public interest and at the same time, the interest of land holders is also taken into account. The consideration of all such relevant aspects and the pros and cons made the legislature to come up with a balancing provision under Section 24(1)(a) and clauses therein, in the 2013 Act. This was incorporated as a balancing provision for controlling the extent of retrospectivity and for curtailing the erosion of rights of land holders. (emphasis supplied)”

46. Further gainful reference in the above regard can be placed upon case titled **“Indore Development Authority v. Manoharlal”, 2020 AIR (Supreme Court) 1496**, wherein, the Hon’ble Supreme Court while examining the scope and extent of the applicability of Section 24(2) of the Act of 2013, has made the hereinafter extracted observations:-

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

1. to 8. XX XX

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.”

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.

48. The outcome of the above discussion is an answer to the Issue No.(ii) in negative. Section 101-A neither furnishes any new cause of action in favour of the landlords, nor it is a tool to revive a stale and time barred claim, in respect of acquisition proceedings which stood concluded under the Act of 1894.

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.”

50. Now, insofar as the alternative relief asked for by the petitioner-Society is concerned, it relates to allotment of any alternate site/land, reserved for residential purpose, to the petitioner-Society in lieu of the acquired lands, in terms of a similar concession being purportedly granted in the case of Samar Estates, arising out of the same acquisition proceedings. Here, it would be apt to record that the plea (supra) was duly considered by the State Government while making a declining order on 10.09.2014 (Annexure P-13), upon the representation of the petitioner-Society. The relevant paragraph of the order (supra) is extracted as under:-

“7. The Committee noted that Annexure P-6 to the representation is not policy dated 18.09.2008 but policy dated 19.12.2006. The Committee further observed that the process of grant of license to private developers is guided through the provisions of Haryana Development and Regulation of Urban Areas Act 1975. Director, Town and Country Planning vide his report referred above clearly mentioned that no license application was filed with his office for the land owned by the society in Khasra Nos. referred above. However, even for academic exercise, it needs to be clarified that for consideration of license application, an important parameter is the conformity with the Development Plan as provided under Rule 8 of Rules, 1976 framed under the Act ibid. In the present case, it is an admitted fact that the land of the society is located in open space zone, therefore, does not conform to the provisions of Development Plan. The Committee observed that the reference to grant of license to Madanpura Cooperative Society, swastika Vihar and Amarnath Aggarwal Investment Pvt. Ltd. is totally out of place as in none of these cases the license has been granted after release of land from acquisition. Licenses have been granted in these cases by following due process

law, whereas in the present case, even license application has not been filed. The Committee noted that emphasis has been laid on the fact that the land of the society falling in open space zone should be exchanged with land of HUDA in sector 2, MDC. There is no policy of HUDA to exchange the land with the land under acquisition to bring it in conformity with the land use proposals of the development Plan to enable the owner to seek license. In fact, the reference to exchange of land in no. of cases in Gurgaon is totally misleading. These exchanges are considered where land has already been licensed and the exchange is mutually beneficial to HUDA and the developer for better planning of the colony land and HUDA land. In the present case, request is being made to release the land in open space zone, exchange it with the land in residential zone and then grant the license. This is not covered in the release policy dated 26.10.2007 or subsequent policy dated 24.01.2011. Neither such an exercise is mutually beneficial to HUDA. As far as the claim to acquire the land for one integrated project is concerned, the Committee did not find any merit in this contention also. The land is to be acquired and developed in accordance with the provisions of the Development Plan, even if the land is being acquired through a single notification. The land falling under the open space zone will be developed for recreational and open space uses as the open spaces designated in the development Plan are public utilities and are developed for the benefit of public at large and therefore, the development of open spaces is a larger public interest.”

51. Reiteratedly, though the order (supra) was assailed by the petitioner-Society, through instituting CWP-23818-2014 before this Court, however, this Court dismissed the writ petition (supra), in terms of the judgment rendered by the Hon'ble Apex Court in **Indore Development Authority's case (supra)**. Therefore, we are in consonance with the submission(s) made by the learned State counsel, that the plea (supra) for allotment of alternate site/land, is hit by the doctrine of *res judicata*, thus, the plea (supra) cannot be permitted to be revived, by citing the circumstances of

CWP-15174-2023 and connected

32

any individual case.

52. The last alternate relief, as asked for by the petitioner-Society, is founded upon its case being considered under the Haryana Land Pooling Policy 2022. However, the above asked for relief cannot be granted, as the learned counsel for the petitioner-Society has miserably failed to explain the applicability of the policy (supra) qua the petition lands, whose acquisition proceedings had lawfully terminated way back in 2003.

53. As a sequel to the hereinabove made discussions, this Court finds no merit in the instant writ petitions and the same are accordingly dismissed.

(KULDEEP TIWARI)
JUDGE

July 19, 2023
devinder

CWP-15174-2023 and connected

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SURESHWAR THAKUR, J.

1. Though for the well made and informed reasons occurring in the verdict rendered by my learned brother, I concur with him.

2. However, I deem it fit to yet further dilate upon the *res controversia* as relates to:-

(a) The grievance enunciated in the writ petition relating to the un-utilized writ land(s), thus being amenable to become construed to be a valid reckoner, for thereby, the respondents thus, within the ambit of Section 101-A of the Act of 2013, as became inserted therein through Haryana Act No.21 of 2018, and, brought into force w.e.f. 01.01.2014, provisions whereof become extracted hereinafter, being well empowered to construe them to be “unviable” or “non-essential”.

“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 nonessential, 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.”

(b) That whether the above contemplation, to be made by the respondent-State, about the unviability or non-essentiality of the acquired land, is but exclusively within the domain of the

respondent(s) and that the land looser concerned does not have any able leverage to claim any vested indefeasible right, to well found a claim rested upon the above, for thereby his seeking de-notification of his land(s).

(c) That whether in terms of the judgment made by the Hon'ble Apex Court in ***Civil Appeal Nos. 2714-15 of 2021, titled "Raghubir Singh and another v/s State of Haryana and others"***, whereby, liberty has been reserved to the land looser concerned to access the State Government to enable it, to exercise its powers under Section 101-A of the Act of 2013, thus per-se make it obligatory, upon the respondent(s) concerned, to make a favourable order vis-a-vis the land looser concerned, especially in the wake of the expostulation(s) of law, as embodied in a judgment made by a Constitution Bench of the Hon'ble Apex Court in case titled ***"Indore Development Authority vs Manoharlal", 2020 AIR (Supreme Court) 1496***, wherein, the Hon'ble Apex Court has declared, that upon lawful acquisition being made, thus of the estates concerned, thereby unless there is able invocation of the mandate of Section 24(2) of the Act of 2013, thereupons such lawful acquisitions result in complete vestment of right, title and interest over the acquired land in the acquiring authority.

(d) That whether such complete vestment of right, title and interest of acquiring authority over the acquired land, when thus has resulted in a further dicta becoming made thereins, that time barred claims become unamenable for reopening, nor

thereby the lawfully concluded acquisition proceedings can become reopened.

(e) That whether in the garb of the above extracted provisions, which are an exception to the launching of acquisition proceedings under the Act of 1894, that whether to what extent the said apposite statutory exception, thus mounted on the parameter of unviability or non-essentiality of retention of the acquired land(s), as spelt in Section 101-A of the Act of 2013, thus can become assigned the requisite effectivity and workability.

(f) That whether in the light of the Hon'ble Apex Court in a verdict rendered in the case of ***“State of Kerala vs M. Bhaskaran Pillai”***, AIR 1997 SC 2703, thus making expostulations, that the mere non-utilization of the acquired land(s) for the relevant public purpose are, thus unamenable to be reverted to the land looser, rather they become yet amenable for being utilized for any other purpose or become amenable to be sold by public auction, so as to achieve the larger public interest, whether thereby there is a severe or a trammelled restriction vis-a-vis the workability or effectivity of the parameter(s) (supra), as occur in the provision (supra).

Reconciling the above conundrum

(g) While making an insightful and informed contemplation about the above, this Court is of the view, that the applicability of the enshrined parameters in Section 101-A (supra) as embodied in the Act of 2013, are subject, to an objective

contemplation about the availability of the said parameters to the land loser. The said makings of an objective contemplation of the above, is but the occupied field of the Executive. Therefore, in the said occupied field by the Executive, the land loser may not have any well endowed or well reserved indefeasible right to challenge, the said objective contemplation by the Executive, whereby, it deems it fit to thus speak, that the acquired land(s) are yet essential or are viable for furthering the requisite public purpose. Moreover, though in *Raghubir Singh's* case (supra), the Hon'ble Apex Court has reserved the right in the land loser to make a representation to the Executive in terms of the provisions, as embodied in Section 101-A (supra), but the said reservation of a right by the Hon'ble Apex Court, to the land loser concerned, thus cannot also be construed to be endowing an inevitable and indefeasible right to the land loser concerned, rather to prevail upon the Executive, to yet seek release of the land(s) but merely on some conjectural premises, that they remain unutilized, besides thereupons the land(s) are non-essential or unviable for facilitating the public purpose. Conspicuously, when from the layout plans, as become prepared by the respondent(s) concerned, thus candid speakings emanate qua the amenability of retention of such acquired lands, or, of theirs being thus subjected to the public purpose for which they became acquired.

3.

Succinctly, the statutory discretion vested in the Executive

hence in applying the enshrined parameters in Section 101-A of the Act of 2013, inasmuch as, those relating to unessentiality and unviability of the acquired land(s) and thus theirs being released or returned to the land looser concerned, thus has to be exercised with fairness and transparency, besides with an objective contemplation by the Executive. Reiteratedly the land looser concerned do not have any indefeasible right to as such make a claim, that the acquired land(s) be reverted to them, except when there is evident gross invidious discrimination, thus becoming stemmed from similarly situated land(s) becoming ably and lawfully released to the land looser concerned besides when the said claimed parity does not result in scuttling the layout plan, which includes the land(s), in respect whereof, a declaration is asked to be made in terms of Section 101-A of the Act of 2013.

4. The declaration made by the Hon'ble Apex Court in ***Indore Development Authority's*** case (supra), with an open pronouncement therein, that on lawful acquisition of the acquired land(s) taking place under the Act of 1894, thereby there is complete vestment of right, title and interest over such acquired lands of the Acquiring Authority, besides when it is also declared therein that stale and bald claims for invoking the statutory mandate, qua lapsing of the acquisition proceedings, as, drawn under the Act of 1894, as embodied in Section 24(2) of the Act 2013, rather require theirs being discountenanced. Predominantly, when the said claim is also thus firmly foreclosed by Rapat possession being assumed of the acquired land, and/or, upon the determined compensation being tendered in terms of Section 31 of the Act of 1894, whereupons, in the garb of Section 101-A (supra), there would be an untenable assigning of a latitude to the

land looser concerned to defeat the public purpose. Imminently so, when the well made objective contemplation, as entered into by the Executive, thus is unchallengeable before the writ court. The reason being that the Executive in the exercise of the statutory discretion vested in it, under the statutory provisions engrafted in Section 101-A of the Act of 2013, when becomes founded upon objective material, thus speaking about the necessity qua retention of the acquired lands, thus for furthering the requisite public purpose. Moreover, when the said made objective contemplation is founded upon layout plans drawn in respect of the relevant lands. Therefore when the expertise employed by the engineering cell of the department concerned, is obviously but within the exclusive domain of the said experts, and is unamenable for becoming supplanted by this Court, in the exercise of its writ jurisdiction. Resultantly, the founding, or, the resting thereons of the objective contemplation by the Executive, while its exercising its statutory discretion vested under the provisions (supra), thus cannot be overcome even by this Court, in the exercise of its writ jurisdiction, nor the land looser concerned can avail the benefit of the mandate enclosed in the statutory provision (supra).

5. The mandate recorded by the Hon'ble Apex Court in ***M. Bhaskaran Pillai's*** case (supra) that mere non utilization of the acquired land(s) yet does not withhold the authority of the State to, in the larger public interest, thus make utilization thereof for any other public purpose or through sale by way of public auction, but obviously is required to be read into the norm qua un-essentiality or unviability of the retention of the acquired land. Therefore, the Executive in the exercise of its executive contemplation, in terms of the above statutory discretion, has to also bear in

mind the above expostulation of law. The fate thereof would be that the Executive while making an objective contemplation about non-availability of the benefit of the statutory coinages vis-a-vis the land loser concerned, thus does so, upon, the expostulation(s) (supra), as made in *M. Bhaskaran Pillai's* case (supra). Therefore, any exercising of jurisdiction by Executive in favour of the land loser concerned, has to be an extremely cautious exercise, thus requiring its being made with a well informed objective, besides judicious application of mind, so as to save the acquired land, from becoming hit by the expostulation occurring in *M. Bhaskaran Pillai's* case (supra).

6. However, in the above endeavour, though the application of the statutory parameters (supra), as engrafted in Section 101-A of the Act of 2013 rather no straitjacket formula can be captured in thus elucidations being made by this Court. However, the effectivity or the workability of the said statutory provisions also has to be ensured. Therefore, in the above endeavour the executive contemplation has to be grooved in a grave, besides on an insightful legal wisdom.

7. Necessarily hence the availability of the parameter (supra), as enshrined in the statutory provisions (supra), thus to my considered mind, has to be exercised solitarily by the Executive, and, in the application of the parameters (supra), the land loser concerned, has no domain, as in the said endeavour the land loser concerned, visibly does not hold any occupied field. Nonetheless, if the executive deems fit to exercise the statutory discretion in favour of the land loser concerned, thereby such exercisings of said discretion thus has to be done in extremely urgent and exceptional cases. In nut shell, thus the verdict(s) (supra), both restrict, and, severely

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trammel the vested statutory discretion in the Executive.

8. Be that as it may, even if earlier the said exercising(s) of discretions by the Executive, as became founded on the statutory provision(s) (supra), rather fall foul of the above enshrined judicial dicta embodied in judgment(s) (supra), thereby, in appropriate cases, which are laid before this Court, this Court may proceed to apply its judicial mind about the validity of exercisings of statutory discretion(s) by the Executive, hence in favour of the land looser concerned.

9. Accordingly, the writ petitions are dismissed.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

September 04, 2023
devinder

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No