

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 16448 of 2023
Reserved on: 01.08.2023
Date of decision : 08.08.2023

SATYA PRAKASH AND OTHERS

-PETITIONERS

VERSUS

STATE OF HARYANA AND OTHERS

-RESPONDENTS

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

Present : Mr. Vipin Pal Yadav, Advocate
for the petitioners.

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

SURESHWAR THAKUR, J.

1. The petitioners, through the instant writ petition, ask for relief of de-notification of the lands, as became acquired vide notification dated 21.10.2013 (Annexure P-2), and, vide declaration dated 21.08.2014 (Annexure P-5), thus made in terms of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act of 1894'). The petitioners also, in terms 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 became inserted therein through Haryana Act No.21 of 2018, ask for return or release of the acquired lands to them.

2. A perusal of Annexure P-1, as became issued on 25.04.2011, unfolds that the writ lands became acquired for a public purpose, namely, Construction of Disposal and Sewerage Treatment Plant of Charkhi Dadri

Town, Tehsil Charkhi Dadri, District Bhiwani. The said notification was issued under Section 4 read with Clause (c) of Sub-section (2) of Section 17 of the Act of 1894. The said notification became succeeded by Annexure P-2, with a direction to the Land Acquisition Collector concerned, to cause public notice of the substance of Annexure P-1, to the general public.

3. Thereafter, objections (Annexure P-3) against the issuance of the above Annexures became raised by the landowners concerned. The notice about hearing being made on the said objections, became issued to the objectors, thus as revealed by Annexure P-4, but there is no further evidence existing on record in display, that as a matter of fact, the objectors did appear before the Collector concerned, on the date mentioned in Annexure P-4. Thus, it has to be concluded, that the objectors omitted to record their appearance on the date specified in Annexure P-4. Therefore, the dismissal order, if any, as became made by the authority concerned, upon Annexure P-3, cannot be challenged, thus on the ground, that the petitioners became condemned unheard.

4. Subsequently, a declaration (Annexure P-5) under Section 6 of the Act of 1894, read with provisions of Section 24(1)(a) of the Act of 2013, became issued on 21.08.2014. The award, as made in terms of the notifications and declaration (supra), is appended as Annexure P-6. It appears that the said award was made in terms of the Act of 1894. Moreover, the date of the making of the said award is 29.07.2016.

5. It is on the premise of the making of the award (Annexure P-6), thus in the year 2016 by the Collector concerned, though his exercising powers under the Act of 1894, that the learned counsel for the petitioners

argues, that the determination of compensation, as made thereunder, is unlawful and that thereby, the earlier launched proceedings under the Act of 1894 be declared to be void and non est. The said argument becomes rested, upon, the above stark factum relating to the making of the award, thus in the year 2016, especially when at that stage, the Act of 2013 rather was in force, thereby the acquisition proceedings as became launched under the Act of 1894 be declared, in terms of Section 24(2) of the Act of 2013, to thus become lapsed.

6. However, for the reasons to be assigned hereinafter, the above made argument is shorn of legal vigour, and, is thus liable to be rejected. The reason for drawing the above conclusion stems from the factum, that the Hon'ble Apex Court in a judgment, made in case titled *"Haryana State Industrial & Infrastructure Development Corpn. Ltd. v. Deepak Aggarwal"*, *reported in (2023) 6 SCC Page 518*, has made a decision adversarial to the above argument, as, posed before this Court, by the learned counsel for the petitioners. The reason for the Hon'ble Apex Court, in drawing the above conclusion, stemmed from an interpretation being made therein, to the provisions, as become engrafted in Section 24(1) of the Act of 2013. The Hon'ble Apex Court had, in making an interpretation of the coinage(s) "proceedings initiated under the Land Acquisition Act 1894", and, which are spoken in Clause (a) thereof, proceedings whereof when yet do not result in the making of an award under Section 11 of the said Act, thus has been further spoken therein, that thereby the provisions of the Act of 2013, as relate to the determination of compensation for the acquired lands, rather would become applicable.

7. Necessarily the issue, as canvassed before this Court, appertains to the fact, that since the award under Section 11 of the Act of 1894, was not made during the currency of the said statute, but was made when the Act of 2013 was brought on the statute book, and/or, was in force at the time of making of Annexure P-6, whether thereby the award as made under the Act of 1894 (Annexure P-6), thus assumes any legality.

8. Moreover, the further issue which falls for determination, is that, thereby whether the lapsing provisions, as contained in Section 24(2) of the Act of 2013, do come to the forefront, whereby, the acquired lands may be declared to become lapsed from acquisition.

9. The Hon'ble Apex Court, while imparting an interpretation to the above statutory coinage, as exists in Sub-section (1) of Section 24 of the Act of 2013, has in paragraphs 32 and 34 of its judgment, rendered in case (supra), paragraphs whereof become extracted hereinafter, thus made a conclusion, that the signification to be imparted to the above coinage, is that, the issuance of notification under Section 4(1) of the Act of 1894, and, also upon its being published in the official gazette, rather causes initiation of proceedings under the Act of 1894. Consequently, it was further held, that when Clause (a) of Sub-section (1) of Section 24 of the Act of 2013, thus speaks that yet when no award is made under Section 11 of the Act of 1894, thereupon, only in respect of determination of compensation, the apposite provisions, as contained in the Act of 2013, thus would apply. Therefore, it was concluded, that since a restrictive application is made to the Act of 2013, and, but only limited to the aspect of determination of compensation being made under the Act of 2013, thus in respect of proceedings for acquisition becoming launched or initiated

rather under the Act of 1894, thus through issuance of a notification and its publication in the official gazette, and, whereafter no award being made under the Act of 1894. Resultantly, in the above situation, when evidently in the instant case, after the launching of acquisition proceedings under the Act of 1894, through apposite publication(s) and apposite printing(s) in the official gazette, thus proceedings under the Act of 1894 became launched, but never became terminated or culminated through an award being made in terms of Section 11 of the Act of 1894. Therefore, when in the year 2016, when Annexure P-6 was made, rather the Act of 2013 was in force. In sequitur, in the light of the hereinafter extracted expostulations of law, as made in the judgment (supra) rendered by the Hon'ble Apex Court, the authority concerned was required to determine compensation not under the Act of 1894, but was required to make determination of compensation, through recouring the apposite mandate of the Act of 2013.

“Bearing in mind the twin purposes mentioned hereinbefore, they can only be achieved if the word “initiated” is taken as the point of time when Section 4(1) Notification is issued and published under the LA Act, 1894, in the Official Gazette. Such a construction would embrace more number of affected persons within the fold of affected persons entitled to higher amount of compensation by application of the 2013 Act in the matter of determination of compensation. As a necessary sequel more extent of land in respect of which acquisition proceedings have been initiated, for public purposes, under the LA Act, 1894 for the various ongoing and proposed projects, would remain protected from lapsing.

(Para 32)

The point of initiation of land acquisition proceedings under the LA Act, 1894 for the purpose of Section 24(1) of the 2013 Act, is issuance and publication of Section 4(1) Notification in the Official Gazette of the appropriate Government.

(Para 34)''

10. In summa, this Court holds, that the award (Annexure P-6), as made in the year 2016, attract thereagainst the mandate of Section 24(1)(a) of the Act of 2013, and as such, it is quashed and set aside, however, with a mandamus upon the respondent(s) concerned, to make determination of compensation in respect of the acquired lands, thus through the recouring of the apposite mandate carried in the Act of 2013.

11. Be that that as it may, the further effect of the above conclusion, is but that, the provisions of Section 24(2) of the Act of 2013, which make the earlier launched proceedings under the Act of 1894, to become lapsed, with a further consequence, that the appropriate government shall initiate proceedings for such acquisitions afresh, in accordance with the provisions of the Act of 2013, thereby do not require their attraction qua the writ lands, nor this Court deems it fit to declare the earlier launched proceedings to become lapsed.

12. The reason for making the above conclusion, spurs from the factum, that there is no withdrawal of the said issued notification under Section 4 of the Act of 1894, thus at the instance of the concerned. Therefore, when yet the public purpose survives. Moreover, when only for the award (Annexure P-6) for reason (supra) being inaptly drawn under the Act of 1894, whereas, compensation was to be determined under the Act of 2013, thus Annexure P-6 has been quashed. Therefore but as a necessary corollary, it is

concluded that thus for facilitating the public purpose, which remains alive, that the craved for mandamus (supra), has to be made upon the respondent(s) concerned to, in terms of Section 24(1)(a) of the Act of 2013, draw an award in terms of the Act of 2013.

13. The further effect of the above conclusion, is that, the prayer made in the writ petition, that in terms of Section 101-A of the Act of 2013, as became inserted therein through Haryana Act No.21 of 2018, thus the acquired lands be released from acquisition, thus also is required to be discountenanced. Predominantly since the above argument is premised on the ground, that the acquired lands are unviable or unessential for facilitating the apposite public purpose, as becomes unfolded in the notification of acquisition, as made under Section 4 of the Act of 1894.

14. Nonetheless, when the writ lands have been acquired in the exercise of the power of eminent domain, and, unless the exercising of the said power rather was evidently shown to be an unjust expropriatory measure, thus through no compensation being awarded to the landowners concerned, that thereby the said acquisition could be termed to be unlawful. However, when for the reasons spelt hereinabove, the mandamus (supra) has been made, upon, the respondent(s) concerned, but obviously thereby the acquisition of the acquired lands, thus in the exercise of the power of eminent domain by the State of Haryana, rather cannot be termed to become capriciously or arbitrarily exercised, nor can it be said that an unjust expropriation of the petition lands has been made by the State of Haryana.

15. If so, and, further as stated above, since the public purpose is still alive and when no evidence, both tangible and potent, becomes adduced

before this Court rather in display, that the lands are unviable or unessential for facilitating the public purpose, thereupon, this Court would not accept the above argument of the learned counsel for the petitioners, hence as becomes premised on Section 101-A of the Act of 2013.

16. Contrarily, thus this Court construes, that the public purpose is yet alive and if so, if this Court yet makes an order for releasing the petition lands from acquisition, thereby the yet alive public purpose would not become subserved, rather would become completely defeated. Since the above is not the intention of the legislature, in engrafting Section 101-A of the Act of 2013, therefore the relief appertaining to release of petition lands is declined.

17. In summa, this Court finds no merit in the instant writ petition and is constrained to dismiss it. Accordingly, the writ petition is dismissed, but with the above made mandamus upon the respondent(s) concerned.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

08.08.2023
devinder

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