

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

(I) CWP No. 436 of 2015
Reserved on: 20.07.2023
Date of decision : 01.08.2023

ASHOK KUMAR 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. Keshav Pratap Singh, 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, claim relief for the quashing of the impugned notifications respectively issued on 04.06.1986 and 15.04.1987, and, to which respectively Annexures P-1 and P-2 are assigned.

2. The disputed lands fall in Killa No.81/21. The learned counsel for the petitioners claims, that only the land comprised in the disputed killa number, has been subjected to acquisition, whereas, similar thereto located lands of other landowners concerned, rather have been released from acquisition. Therefore, the learned counsel for the petitioners claims, that any declining order, as made on the apposite representation, thus by the competent authority concerned, hence in pursuance to the directions, as carried in the verdict (Annexure P-3) made by this Court on 11.03.2011, upon CWP-3419-

1987, operative part whereof becomes extracted hereinafter, be thus, declared to be holding no value in the eyes of law.

“A site plan was put on record showing dimensions of the land released under acquisition. As regards the land which is the subject matter of the acquisition, in these two writ petitions, it was clearly mentioned in the letter referred to above that the land falling in Khasra No.109//18/3 min, and, 23/1 min, is a part of sector road alignment and as such it cannot be released. Rest of the land was released from acquisition except the area falling under sector roads as mentioned in paragraph (ii) of letter dated 14.2.2011. We feel that in view of the above order passed by the authorities, grievance of the petitioners stands satisfied.

Sh. R.M. Singh, counsel for the petitioners only states that in the land, falling in Khasra No.17, construction is in existence. If that is so, the owners of that land may take up the matter with the Authorities concerned for release of their land. We are hopeful that the relief which was granted to the similarly situated persons, will also be granted to the occupants/owners of the land falling in Khasra No.17.”

3. Before proceeding to analyze the above made address before this Court, by the learned counsel for the petitioners, the stark fact which but bars the present petitioners to reconstitute the instant writ petition before this Court, becomes embedded in the factum, that the petitioners had earlier motioned this Court, through theirs instituting CWP-3419-1987, and, thereon a decision (Annexure P-3) was made on 11.03.2011. Since in the writ petition (supra), a prayer alike to the one, as made in the instant writ petition, and, as relates to the quashing and setting aside of the notifications (supra), rather was made, and, but was declined, thus with the hereinabove extracted operative part carried therein. Therefore, insofar as the relief relating to the quashing of the notifications (supra), as made in the instant writ petition, which is but similar to the relief, as claimed in the earlier writ petition (supra), relief

whereof became but declined, thus makes the instant writ petition to become a misconstituted endeavour. The reason being, that with similarity(ies) therein of relief(s), and, also with similarity(ies) therein of cause of action(s), to the ones, as are embodied in the instant writ petition, besides with their being but similarity of litigants therein with the litigants herein. Resultantly, thereby the instant motion is completely estopped by the statutory norm of *constructive res judicata*, as embodied in Section 11 of the CPC.

4. Be that as it may, though the operative part of the verdict (*supra*) did reserve some liberty to the petitioners, to make a representation to the authorities concerned, thus to claim parity with the other landowners concerned, wheretowhom, the benefit of releases of their lands from acquisition thus became granted. However, it is clear from a reading of the reply, as becomes furnished to the instant writ petition, that the said representations have been rejected. Nonetheless, no challenge is made to the said order of rejection, as became made upon the apposite representation, thus by the authorities concerned. Therefore also, the instant writ petition, thus making a challenge to the said declining order, as made on the representation(s) of the petitioners, thus by the competent authority(ies) concerned, cannot but survive, nor can it become granted to the petitioners.

5. Irrespective of the above, it is pertinent to mention here, that the impugned notifications became issued respectively in the years 1986, and, 1987, and thereafter, an award in terms of Section 11 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act of 1894') became announced on 31.03.1988. The above fact is but evident from a reading of the reply, as becomes furnished to the instant writ petition, by the respondents. Moreover,

though it appears, that the instant petition despite being barred by the above norm of *constructive res judicata*, yet the petitioners have re-accessed this Court, claiming relief similar to the one, as became agitated earlier in the writ petition (supra), and, which became rejected through the verdict (supra). The apposite relief, which is impermissibly re-canvassed before this Court, is that, in terms of the verdict, as made by the Hon'ble Apex Court in case titled ***“Indore Development Authority v/s Manoharlal and Ors.”***, reported in ***(2020)8 SCC 129***, the landowners, petitioners herein, are entitled to lapse of the acquisition proceedings. In the judgment (supra), there occurs a trite expostulation of law thus in the relevant paragraph thereof, paragraph whereof becomes extracted hereinafter, that for debarring the acquiring authority, or, for enabling the landowners concerned, from claiming the benefit of the lapsing provision, as comprised in Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the ‘Act of 2013’), there is an imperative statutory discharging requirement, upon, the State qua two ingredients:- (a) the necessity of tendering of compensation for its becoming claimed for being released to the landowners concerned; (b) the assumption of possession being evidently assumed by the acquiring authority, thus through the drawing of a Rapat Roznamcha.

“1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1.1.2014 the date of commencement of Act of 2013, there is no lapse of proceedings. Compensation has to be determined under the provisions of Act of 2013.

2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.

3. The word ‘or’ used in Section 24(2) between possession and

compensation has to be read as 'nor' or as 'and'. The deemed lapse of land acquisition proceedings under Section 24(2) of the Act of 2013 takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

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

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

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

7. *The mode of taking possession under the Act of 1894 and as contemplated under Section 24(2) is by drawing of inquest report/memorandum. Once award has been passed on taking possession*

under Section 16 of the Act of 1894, the land vests in State there is no divesting provided under Section 24(2) of the Act of 2013, as once possession has been taken there is no lapse under Section 24(2).

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

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

6. However, even the above argument cannot be accepted by this Court, as it is evident on a reading of the reply furnished to the instant writ petition, that through Rapat bearing No.22, drawn on 31.03.1988, the authority concerned had assumed the possession of the petition lands. Moreover, it is also evident on a reading of the reply (supra), that in pursuance to the making of the award, the entire compensation amount became deposited, for thereby its being available to become claimed to be released, by the landowners concerned. Consequently, in view of the reply (supra), it is clear that thereby accomplishment is secured by the twin statutory ingredients (supra).

7. Apart from the above, since the learned counsel for the petitioners has argued, that in terms of Section 101 of the Act of 2013, the landowners are entitled to claim release of their lands from acquisition. In making this submission, he premises it, on the ground, that the lands are

unessential and unviable for being put to the relevant public purpose. However, in the light of the dismissal of the representations, in respect thereof, by the competent authority concerned, and, to which no challenge is made in the writ petition, nor relief is claimed, thus thereby the said argument cannot be addressed before this Court. Nonetheless, even in the absence of relief (supra) becoming claimed by the petitioners, it is but clear from a reading of the reply (supra), that after an objective contemplation becoming made by the competent authority concerned, thus an informed decision became taken, qua the acquired lands rather being both essential and viable for completely facilitating the relevant public purpose. The said made informed decision, unless it is shown to be ridden with malafides, thus cannot be interfered with by this Court, in the exercise of its writ jurisdiction. Since neither the said malafides are imputed to the authority(ies) concerned, nor became proven, therefore the declining order, as made on the apposite representation(s), is thus valid.

8. Paramountly so, though the petitioners allege that they become discriminated by the authorities concerned, in respect of their claim for their lands being released from acquisition rather becoming declined. Moreover, though the above ground is premised on, that some similarly situated landowners' estates became released from acquisition. However, even the above ground does also founder, in the face of their being rather disparity inter se the landowners, whose estates became released from acquisition, and, the present writ petitioners, inasmuch as, the landowners whose estates became released from acquisition, thus preferring objections under Section 5-A of the Act of 1894, and, upon the said objections being heard, thereupon an order qua their

estates being released from acquisition rather becoming made, by the competent authority concerned. Conspicuously, when the present petitioners did not choose to file any objections under Section 5-A of the Act of 1894, before the competent authority concerned, whereas, visibly the other landowners did so. Resultantly the stark distinguishing fact (supra) thus inter se the present writ petitioners rather with the other landowners concerned, whose estates become released from acquisition, but naturally relents this Court from assigning any merit to the above made argument.

9. In aftermath, this Court does not find any merit in the instant writ petition and the same is accordingly dismissed.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

01.08.2023
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Whether speaking/reasoned ? Yes/No
Whether reportable ? Yes/No