

CWP No. 2375 of 2018

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 2375 of 2018

Date of decision : August 21, 2023

RAJBIR 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. Shreenath A. Khemka, Advocate
for the petitioners.

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

KULDEEP TIWARI, J.

1. The instant writ petition is cast to reap the relief(s) qua annulment of the lawfully terminated acquisition proceedings, as launched under the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act of 1894'). The relief(s) (supra) is craved upon the fundamentals of the lapsing provisions, as enshrined 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').

FACTUAL BACKGROUND

2. The petition lands were brought to acquisition, by the respondent-State, through issuance of a preliminary notification under Section 4 of the Act of 1894, on 11.11.2002, which was succeeded by the issuance of a declaration under Section 6 of the Act of 1894, on 07.11.2003. Ultimately, the acquisition proceedings in respect of the petition lands were lawfully terminated through

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pronouncement of an award bearing No.6, on 28.10.2005, and, through assumption of possession of the acquired lands on the same day vide Rapat No.123. However, since the petitioners admittedly did refuse to receive the determined compensation amount, therefore it was deposited with the Land Acquisition Collector concerned, as is evident from the written synopsis furnished by the respondents.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONERS

3. The learned counsel for the petitioners claims the acquisition proceedings to have lapsed, as neither the actual physical possession of the acquired lands has been assumed by the acquiring authority concerned, nor the petitioners have received the compensation amount. He further claims that no notice, as contemplated under Section 9(1) of the Act of 1894, was ever served upon the petitioners, thereby expressing any intention to take possession of the acquired lands. The actual physical possession is alleged to be retained by the petitioners, whereas, only symbolic possession has been allegedly assumed by the acquiring authority concerned. Furthermore, he contends that non-compliance of the provisions, as carried in Section 31(2) of the Act of 1894, also attracts the mandate of Section 24(2) of the Act of 2013 and renders the acquisition proceedings to lapse.

SUBMISSIONS OF LEARNED COUNSEL FOR THE RESPONDENTS

4. Per contra, the learned State counsel representing the respondents has vehemently objected the maintainability of the instant writ petition, *inter alia* on the ground of concealment qua previous rounds of litigation(s). He submits that the present writ petition constitutes the fifth round of litigation concerning the same subject matter, whereas, the petitioners have, except giving the details of CWP No.14834 of 2012 and CWP No.22038 of 2013,

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concealed the actual details of the litigation(s), as were initiated before this Court and which went upto the Hon'ble Supreme Court. The actual details of the litigation(s), as unfolded from a reading of the synopsis (supra), is summarily discussed hereinafter.

5. The petitioner No.3 along with other co-sharers launched the first round of litigation against the acquisition proceedings (supra), through instituting before this Court a Civil Writ Petition No.14264 of 2004, titled "Angrej Singh & ors. V/s State of Haryana & ors.". However, the writ petition (supra) met the fate of dismissal, through an order made on 17.09.2004.

6. The dismissal order (supra) was challenged by the aggrieved petitioners therein, through instituting a SLP(C) bearing Diary No. 4668 of 2005, before the Hon'ble Supreme Court. However, the SLP(C) (supra) also received a dis-affirmative verdict, on 05.12.2005, thereby validating the acquisition proceedings (supra).

7. Thereafter, the second round of litigation commenced through the present petitioners instituting a Civil Writ Petition No.14834 of 2012 before this Court, thereby seeking the relief(s) for making a mandamus upon the respondent(s) therein, to make a decision upon their representations, for nullification of the acquisition proceedings (supra). However, during the pendency of the writ petition (supra), the claim made in the representations concerned was rejected by the competent authority concerned, vide order dated 04.05.2013. Consequently, through an order made on the writ petition (supra) on 06.05.2013, it was disposed of as being rendered infructuous.

8. The rejection order dated 04.05.2013, as made upon the representations (supra) of the petitioners, again brought the petitioners No.1 and 3 before this Court in third round of litigation, through institution of CWP-

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22038-2013. However, the other co-sharers concerned opted not to join the said petitioners in the writ petition (supra). In the writ petition (supra), the petitioners No.1 and 3 also filed a CM No.2991-CWP-2014 seeking a declaration qua the acquisition proceedings to have lapsed, in terms of Section 24(2) of the Act of 2013. Accordingly, the writ petition (supra) was allowed by this Court vide order dated 14.12.2016 and the impugned acquisition proceedings were declared to have lapsed.

9. The affirmative order (supra), as received by the petitioners No.1 and 3 on the writ petition (supra), caused pain to the respondent- State and resultantly, led it to institute a SLP(C) Diary No.39907/2017 before the Hon'ble Supreme Court. The Hon'ble Supreme Court set aside the order passed by this Court on 14.12.2016, while allowing the appeal on 09.02.2018.

10. Dis-satisfied with the order (supra) of the Hon'ble Supreme Court, the petitioners concerned entered into a fourth round of litigation, by filing MA-1847-2021 in SLP(C) (supra), seeking recalling of the order adversarial to them, as made on 09.02.2018, however, by concealing the factum qua pendency of the present writ petition. Ultimately, the MA (supra) was withdrawn by the petitioners concerned on 29.11.2021.

11. The synopsis (supra) also reveals about the pendency of a CM-6133-CWP-2022 in CWP-22038-2013, which came to be filed for restoration of the main writ petition, with a prayer to decide that writ petition on merits, instead of the lapsing provisions. However, the said misc. application is now listed for hearing along with one CWP-22073-2013, and, is listed for 13.10.2023. It is also averred that the factum qua pendency of the instant writ petition is not disclosed in the restoration application (supra).

12. Finally, the instant writ petition, which constitutes the fifth round

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of litigation, qua the same acquisition proceedings, has been filed by the petitioners in 2018, however, by concealing the factum qua pendency of SLP(C) Diary No.39907/2017 before the Hon'ble Supreme Court, thereby assailing the order of this Court dated 14.12.2016.

13. Summing up his arguments, the learned State counsel representing the respondents has drawn the attention of this Court towards paragraph Nos.14 and 20 of the instant writ petition, as a substantial piece of evidence to corroborate the factum of concealment at the instance of the petitioners, wherein, the petitioners have declared that they have not previously filed any such or similar petition, either in this Hon'ble Court or in the Hon'ble Supreme Court of India, on the subject cause of action to seek the same relief. The paragraph Nos.14 and 20 of the instant writ petition are reproduced as under:-

“14. That it may pertinent to mention here to the effect that one Rajbir Singh alongwith Sukhbir Singh, who happened to be the co-sharers to the extent of 1/4th shareholder in aforestated land measuring 271 Kanal 16 Marlas, which comes to 67 Kanals 19 Marlas and 1/8th shareholder in aforestated land measuring 130 Kanal 4 Marlas, which comes to 32 Kanal 11 Marla and 70/356th shareholder in aforestated land measuring 4 Kanal 9 Marla, which comes to 17 Marlas through a Civil Misc. Application No.2991 of 2014 filed in CWP No.22038 of 2013 already got a similar declaration vide a order dated 14.12.2016 read with order dated 01.12.2017 that the subject acquisition process qua the aforestated share of their land have lapsed u/s 24 (2) of the Act of 2013. True copies of the said order dated 14.12.2016 and 01.12.2017 are annexed herewith as Annexure P-9 & Annexure P-10 respectively.

20. That the petitioners have not previously filed any such or similar writ petition either in this Hon'ble Court or in the

Hon'ble Supreme Court of India on the subject cause of action to seek the same or similar relief qua the shares as stated hereinabove derived either by themselves or through their predecessors-in-interest. The details of the previous writ petition filed by the petitioners No. 1 & 3 qua their share in their own right has already been given in para 14 hereinabove."

REASONS FOR REJECTING THE WRIT PETITION

14. We have meticulously examined the entire record, including the orders passed by this Court as well as by the Hon'ble Supreme Court, in the previous rounds of litigation(s). Though in the face of the submissions advanced by the learned State counsel representing the respondents, which reveals the malafide intention of the petitioners, inasmuch as, their making material concealment before this Court, the instant writ petition is liable to be straightway rejected, however, in the larger interest of justice, let us deal with the present matter on its merits.

15. The record(s) transpires that upon filing of objections under Section 5-A of the Act of 1894, by some of the petitioners, a cold storage having dimensions 105 x 118 was released from acquisition, while rest of the land was acquired. Reiteratedly, the record(s) also unveils in unambiguous terms that the acquisition proceedings qua the petition lands, which were launched for their development and utilization for Transport Nagar, Sector 33, Kurukshetra, were lawfully terminated through pronouncement of an award bearing No.6, on 28.10.2005, and, through assumption of possession of the acquired lands, by the acquiring authority concerned, on the same day vide Rapat No.123. However, upon an acknowledged refusal of the petitioners to receive the compensation amount so determined, under the award (supra), therefore it was tendered before the Land Acquisition Collector concerned, at

the relevant time, for its being claimed and disbursed to the landowner(s) concerned.

16. Therefore, in view of the postulation of law, as propounded in the case of “Indore Development Authority V/s Manoharlal & Ors. Etc.”, SLP(C) Nos.9036-9038 of 2016, wherein, it has been postulated that tendering of the compensation amount before the Collector concerned, for its being available for being released to the landowner(s) concerned, would be a sufficient compliance to the mandate, as carried in Section 24(2) of the Act of 2013 and therefore, the mere non-payment or non-deposit of the compensation amount in the court concerned would not cause the ill effect of the acquisition proceedings, as launched under the Act of 1894, to become lapsed. The relevant paragraph of the judgment (supra) is extracted hereinafter:-

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

“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.”*

17. Furthermore, since the issue relating to non-compliance of the provisions, as carried in Section 31(2) of the Act of 1894, thereby making the acquisition proceedings to lapse, in respect of the petition lands, was agitated by some of the present petitioners in the previous rounds of litigation(s), and, which has attained finality upto the highest Court of the land, therefore the present present is barred by the doctrine of “*constructive res judicata*” and consequently, is not maintainable. It is based on the public policy of finality to a dispute and conclusiveness of judicial decisions.

18. Moreover, it further emerges from the record(s) that the acquired petition land affects the site for sector dividing road-1 part, booking agency with pavement and parking-43, sewerage pipping area-1,

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24 mts. wide road-3, and, various other developmental activities. Therefore, it is abundantly clear that there is dire necessity of the petition lands for accomplishing the relevant public purpose.

FINAL ORDER

19. As a conspectus to the above made observations, this Court finds no merit in the instant writ petition. Since the instant writ petition is a frivolously instituted motion, with material concealment made therein, therefore, the instant writ petition is dismissed with cost of Rs.50,000/- to be forthwith deposited in the Poor Patient Fund of the P.G.I.M.E.R., Chandigarh.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

August 21, 2023
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No