

CWP No. 19107 of 2023

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 19107 of 2023

Date of decision : August 31, 2023

BALKRISHAN AND ANOTHER

-PETITIONERS

VERSUS

STATE OF HARYANA AND OTHERS

-RESPONDENTS

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

Present : Mr. Anil Kumar Sharma, Advocate
for the petitioners.

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

KULDEEP TIWARI, J.

1. The principal relief(s), as moulded in the instant writ petition, relates to, after quashing the impugned order dated 24.05.2023 (Annexure P-20), wherethrough, the representation of the petitioners for de-notification of their acquired lands met a negative fate, thereafter make a mandamus upon the respondent(s) concerned to release the lands of the petitioners from acquisition, proceedings whereof were lawfully terminated in the year 1992, i.e. around 3 decades back. The acquired lands are sought to be de-notified in terms of the policies dated 14.09.2018 (Annexure P-25) and 21.07.2022 (Annexure P-26).

2. Under the guise of the relief (supra), the ill endeavour of the petitioners appears to be the retention of their illegal possession over the lawfully acquired petition lands, *inter alia* on the premise, that they have constructed a residential house thereon, besides the acquired petition lands

becoming “unviable” or “non-essential”, for the State Government, for facilitating the relevant public purpose.

3. Since the instant writ petition is a fifth round of litigation, whereby, the petitioners seek the de-notification of the petition lands, which were lawfully acquired around 3 decades back, therefore, for comprehending the controversy, and, for unfurling the primary motive behind persistent launching of litigation(s) concerning the precise subject matter, it would be imperative to first take an overview of the factual backdrop of the case, to conclusively give quietus to the litigation(s).

FACTUAL BACKGROUND

4. The petition lands were, for its development and utilization for industrial area at Sector 37 Gurugram, brought to acquisition by the respondent-State, through issuance of a preliminary notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act of 1894') on 16.12.1988, which was succeeded by issuance of a declaration under Section 6 of the Act of 1894, on 14.12.1989. Thereafter, an award bearing No.16, under Section 11 of the Act of 1894, in respect of the acquired petition lands, was pronounced on 26.3.1992, and, on the very day, the possession thereof was also assumed by the erstwhile Haryana Urban Development Authority (now Haryana State Industrial & Infrastructure Development Corporation Ltd.), through recording a Rapat bearing No.990 dated 26.03.1992. Also, the speaking order (Annexure P-10) makes it evident that the compensation amount, in respect of some of the acquired lands, was received by the predecessor-in-interest of the petitioners, being owner of ½ share of the acquired land, vide Cheque No.598888 dated 25.12.1992. Moreover, it is also apparent from record, that the petitioners never agitated

the launching of the acquisition proceedings (supra), until the enactment of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the 'Act of 2013').

5. Upon coming into force of the Act of 2013, the petitioners invoked the provisions of Section 24(2) of the Act of 2013, through instituting before this Court, a writ petition bearing No. CWP-17001-2014, titled “Balkishan and another V/s State of Haryana and others”, thereby seeking quashing of the notification and declaration (supra). The petitioners claimed the relief (supra), on the premise, that though an award was passed in respect of the acquired lands, however, neither any compensation was paid to them, nor the physical possession was assumed by the acquiring authority. However, this Court disposed of the writ petition (supra), vide order dated 06.05.2015 (Annexure P-8), thereby reserving liberty to the petitioners to, within two months, make a detailed representation, canvassing therein all the pleas as raised in the writ petition (supra), and, also imparted directions to the respondent(s) therein, to decide such representation of the petitioners, but within a period of four months of its filing. Status quo was also ordered to be maintained by the parties upto a decision was taken in the matter. The relevant paragraph of the order (supra), carrying the above directions, reads as under:-

“4. After hearing learned counsel for the parties, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by granting liberty to the petitioners to file a detailed and comprehensive representation raising all the pleas as raised in the present writ petition before the appropriate authority. It is directed that in the event of a representation being filed by the petitioners within a period of two months from today, the same shall be decided in

accordance with law by passing a speaking order and after affording an opportunity of hearing to them within a period of four months from the date of receipt of representation. The petitioners shall be entitled to lead any evidence to substantiate their claim before the concerned authority. Till the matter is decided by the said authority, status quo shall be maintained by the parties. It is, however, made clear that in case no such representation is filed within the stipulated period as noticed above, the interim order shall cease to operate, thereafter.”

6. Pursuant to the order (supra), the petitioners moved a representation dated 12.05.2015 (Annexure P-9), before the competent authority concerned. However, the competent authority concerned, after perusing the report of Zonal Committee concerned, which was constituted to decide such representations, rejected the representation (supra), vide a speaking order dated 25.1.2017 (Annexure P-10).

7. The principal reasons, which weighed with the competent authority concerned, for rejection of the representation (supra), as contained in Annexure P-10, related to lawful termination of the relevant acquisition proceedings, i.e. through pronouncement of award on 26.3.1992; assumption of possession vide Rapat No.990 dated 26.3.1992, and, payment of compensation vide Cheque No.25.12.1992. The further reason, as recorded in Annexure P-10, related to development of Sector 37-III, Gurgaon, through carving of 7 number of plots of 1/16 acre category 12 mtr wide road. The other prominent reason for rejecting the representation (supra) was lack of any substantial evidence to prove the existence of any structure at the relevant time. The relevant extract of the Annexure P-10 is reproduced as under:-

“1. It is a misconception that structures prove the possession of the land because the existing structure if any is/was acquired

alongwith the land so after payment it because the sole property of the department and department demolishes the structure in due course of time so if any structure is/was present at the time of acquisition Vest in state/department free from all encumbrances. The payment details of the land acquisition officer can ascertain and if additional payment has been made that means the structure were acquired. If no additional payment was made that proves that was no structure at the relevant time and the construction if any raised is with mala fide intention and at a later stage.

2. *Physical possession of the land has been taken by HUDA which is corroborated by the rapat Roznamcha no.990 dated 26.3.1992. The rapat roznamcha is substantive piece of evidence to prove change physical possession written by an independent authority i.e. Land Acquisition Collector. Further it is worth mentioning that due to LARR Act there has been a spirit of such cases where HUDA land has been encroached upon with mala fide intention just to take benefit of section 24 (2) of LARR Act. Hence the present occupation is unauthorized, illegal and has no meaning because it is of recent origin and not a continuous possession. Due to status quo granted by the Hon'ble Court action could not be taken these trespassers and encroached on the HUDA land.*

Though the petitioner has mentioned that he is in possession of the disputed land but he has not submitted any evidence to prove his claim. Even at the time of his personal hearing he did not submit any evidence thus his claim cannot be accepted.

3. *Land in question is to be utilized for the planned development of Sector 37-III, Gurgaon i.e. for the purpose of 7 No. Plots of 1 /16 acre category 12mtr wide road.*

4. *The Sh. Man Singh S/o Chandgi father of the petitioners is owner of ½ share is recorded in his office record. The total area 0-8-0 is recorded acquired land, out of the land bearing khasra no. 348/1(0-3-0, 211 0-5-0). The compensation amount of this*

acquired land is of Rs.58433.20Ps. As per ½ share of ownership of Sh. Man Singh S/o Chandgi Ram the compensation amount is of Rs.291216.60 Ps out of which amount of Rs. 10956.20 PS has been taken vide Cheque No.598888 dated 25.12.1992. As per award statement payment of area 0-3-0 in khasra no. 138/1 is recorded.

Therefore keeping the above facts in view the committee did not recommend for considering the request of the petitioner u/s 24(2) of RFCT LARR Act, 2013.”

8. Aggrieved by the rejection order (Annexure P-10), the petitioners again approached this Court, by filing CWP-5676-2017, titled “Balkishan and another V/s State of Haryana and others”. This time, a Coordinate Bench of this Court, vide order dated 05.12.2017 (Annexure P-19), accepted the claim raised by the petitioners, while observing that since the statutory ingredients, as laid down under Section 24(2) of the Act of 2013, have been satisfied, therefore acquisition proceedings qua petitioners’ land measuring 5 biswas have lapsed. The operative part of the order (Annexure P-19) is extracted hereunder:-

“In the case in hand, it is the admitted position on record that the petitioners have not been paid the amount of compensation for the acquired land, though the award was announced way back in the year 1992. In addition, admittedly even the construction was existing on the acquired land prior to the issuance of notification under Section 4 of the 1894 Act and the petitioners are still in possession of the constructed portion.

In view of our aforesaid discussions, as ingredients laid down under Section 24(2) of the 2013 Act have been satisfied, acquisition of land measuring 5 biswas owned by the petitioners has lapsed.

However, the State shall be at liberty to either initiate fresh proceedings for acquisition of land or negotiate with the

landowners for purchasing/retaining the land in accordance with law, in case the land in question is required for completion of any project or otherwise. The petitioners shall maintain status quo regarding the land in question for a period of six months to enable the State to take decision.

The writ petition stands disposed of.”

9. The affirmative order (supra) on the writ petition (supra), led the respondent- State, through erstwhile Haryana Urban Development Authority, to institute an appeal bearing Diary No.29227 of 2021, before the Hon’ble Supreme Court. The Hon’ble Supreme Court, through a verdict recorded on 14.02.2022 on the appeal (supra), and, relying upon the exposition of law as carried in **“Indore Development Authority v. Manoharlal”, (2020) 8 SCC 129**, set aside the affirmative order (supra) and relegated the parties to this Court for reconsideration of the writ petition on merits. The relevant extract of the remand order (supra) is reproduced as under:-

“Without expressing any opinion either way on the relevant facts to be decided in the writ petition, we set aside the impugned judgment and order and relegate the parties before the High Court for reconsideration of the writ petition on its own merits and in accordance with law.

All contentions available to both sides are left open.

The parties to appear before the High Court on 12.04.2022, when the High Court may proceed to hear the remanded matter on that day or assign a suitable date for disposing of the same expeditiously.

It will be open to the parties to file further affidavits/documents before the High Court in the remanded proceedings, if they so desire, before 12.04.2022.”

10. However, upon remand of the lis (supra), the petitioners rather than addressing arguments on the merits of the case, chose to withdraw the

said petition, but seeking reservation of liberty to make a fresh representation before the competent authority concerned for release of land under Section 101-A of the Act of 2013. Consequently, this Court through an order made on 31.05.2022, upon the remanded lis (supra), dismissed the writ petition by assigning the liberty (supra) to the petitioners.

11. Availing the liberty (supra), the petitioners made a representation (Annexure P-22) before the competent authority concerned, for release of their land. However, the competent authority concerned, through a declining order made on 20.01.2023 (Annexure P-27), declined the relief claimed in the representation (supra), on the ground of the petition lands being “viable” and “essential” for the acquiring authority concerned.

12. The declining order (Annexure P-27) was assailed by the petitioners before this Court, through institution of CWP-9353-2023, *inter alia* on the ground, that the order (supra) is a non speaking one. However, during the course of hearing of the writ petition (supra), the learned State counsel sought permission to withdraw the order (Annexure P-27), but with liberty reserved for a fresh order being passed by the Zonal Committee concerned, while taking into account all the pleas raised by the petitioners. Consequently, the writ petition (supra) was disposed of through an order (Annexure P-28) made thereon, on 02.05.2023, with liberty assigned to the competent authority to pass a speaking order on the representation (supra) within three weeks.

13. Accordingly, in terms of the above reserved liberty, a speaking order (Annexure P-29) was passed on 25.05.2023 by the competent authority, whereby, the representation of the petitioners for release of acquired land was rejected, with the hereinafter extracted categorical reasoning:-

“In view of the facts mentioned above, the Committee has

observed that the claimed land is viable and essential for HSVP and therefore the Committee did not find any merit in considering the request of the applicant as per the policy for return of unutilized land under the provisions of Section 101A of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Haryana Amendment) Act, 2017 due to reasons listed below:-

I. The land in question stands awarded vide Award No.16 dated 26.03.1992 and the possession has already been handed over to HSVP vide Rapat No.990 dated 26.03.1992.

II. The land in question is essential and vital for HSVP. As per demarcation plan of Sector 37 Udyog Vihar, Phase 4, Gurugram, the land affects approx. 7 No. plots of 1/16 acres category, 12 mtr. Wide road.

III. The petitioners/applicants filed objections under Section 5A of 1894 Act, and the land was vacant at the time of notification under Section.

Hence, it is established that acquisition proceedings have attained finality in case of petitioners/applicants land in question and the recommendations of the constituted zonal committee have been approved by the competent authority i.e. Govt. of Haryana whose decision was conveyed vide letter Memo No.A-1-2023/1535 dated 28.03.2023. Accordingly, the claim of the petitioners/applicants for release of land is hereby rejected in view of observations/facts mentioned above.”

14. Annexure P-29, which is an order adversarial to the petitioners, aggravated their grievance and led them to again invoke the jurisdiction of this Court, through instituting the instant writ petition.

REASONS FOR REJECTING THE WRIT PETITION

15. What emanates from an overall survey of the hereinabove discussed factual backdrop of this case, is that, the instant writ petition does

not carry any fresh plea, rather comprises the same stale pleas, as were agitated in the previous rounds of litigation(s). Since all such pleas have already been adjudicated upon in the previous rounds of litigation(s), therefore, investing the precious time of this Court in re-adjudication of the already adjudicated pleas would not at all be fruitful, rather the petitioners themselves are indeed estopped by the principle of *constructive res judicata* to repeatedly raise similar pleas. Therefore, we will confine the sphere of our consideration only insofar as the challenge to the impugned order (Annexure P-29) is concerned.

16. However, before proceeding to assign the reasons for rejecting the writ petition, a reference to Section 101-A of the Act of 2013 would be gainful, based whereupon, the petitioners have challenged the impugned order (Annexure P-29), besides have claimed the release of their lands from acquisition. Section 101-A of the Act of 2013 reads as under:-

“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.”

17. We have carefully analyzed the order (Annexure P-29), as impugned in the present motion. However, neither do we find any perversity or infirmity in the impugned order, nor does any concrete and compelling circumstance surfaces for us to make any mandamus upon the respondent(s)

concerned, to release the petition lands from acquisition, in terms of the policies dated 14.09.2018 (Annexure P-25) and 21.07.2022 (Annexure P-26).

18. The primary reason, which impels this Court, to form the above inference, is that, the claim of the petitioners is stained with the gross pervasive vice of delay and laches. Evidently, no challenge was made to the lawfully terminated acquisition proceedings, which terminated on 26.03.1992, until the enactment of the Act of 2013. Admittedly and reiteratedly, after the pronouncement of an award bearing No.16 on 26.03.1992, the predecessor-in-interest of the petitioners did receive compensation in respect of some of the acquired lands, however, the remaining compensation amount, despite its being tendered, is yet lying deposited with the learned Collector concerned, on account of continuous litigation, as is evident on a reading of the impugned order (Annexure P-29). The possession of the acquired lands was also assumed by the acquiring authority concerned through Rapat No.990 drawn on 26.03.1992. Therefore, the petitioners cannot be permitted to continue to make challenge to the acquisition proceedings, which attained finality 3 decades back. It is not more *res integra* that a person who raises his claim after a considerable delay, has to be told that delay and laches have closed the doors of Courts for him.

19. To the above formed inference, ample corroboration is lent by the Hon'ble Apex Court, as in a judgment rendered in case titled *"Star Wire (India) Ltd. V/s State of Haryana and others"*, reported in (1996) 11 SCC 698, Hon'ble Apex Court has declared that any belated challenge, as made to the fully terminated acquisition proceedings, is hit by the vice of delay and laches, therefore, the said belated motion is required to be declared as misconstituted.

20. The second reason for this Court to arrive at a dis-affirmative conclusion, upon the asked for relief(s), emanates from the object underlying the

insertion of Section 101-A in the Act of 2013, through Haryana Act No.21 of 2018. The provisions of Section 101-A are only enabling provisions, 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. No landowner has any vested right to claim release of the acquired lands, on mere assertions, that the acquired lands have become “unviable” or “non-essential”, mainly because the landowner concerned continues to retain possession of the acquired lands, or, because the acquired lands remain yet unutilized.

21. The impugned order (Annexure P-29) specifically emphasizes the necessity of the acquired lands for the relevant public purpose, for which they were acquired. The provisions of Section 101-A do 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. The term “unutilized” can never be equated with the terms “unviable” or “non-essential”.

22. This Court has already considered the scope and object of Section 101-A of the Act of 2013, in a judgment rendered in case titled “***Lalit Kumar and another vs State of Haryana and another***”, ***CWP-9666-2023***. The relevant paragraphs of the judgment (supra) are reproduced as under:-

“16. This Court has examined the provisions of Section 101-A of the Act of 2013, in the light of the above laid down principle. For ready reference, Section 101-A of the Act of 2013 is reproduced as under:-

“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

non-essential, 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.”

17. A reading of the above extracted provisions elucidates that it is an enabling clause, giving right to the State Government, to de-notify such portion of lands, which according to the State, has become unviable and unessential. However, at this stage, we are not examining the constitutional validity of insertion of Section 101-A in the principal Act, by the State Government, thereby leaving this issue open for adjudication in an apt lis. Although there is no restraint on any landowner to approach the competent authority concerned to seek de-notification of his acquired lands, under the provisions (supra), however such landowner does not have any vested right to continue to retain his possession over the acquired lands, until their representation for release of acquired lands from acquisition, is ultimately decided. The provisions of Section 101-A of the Act of 2013 cannot be invoked in a mechanical manner, merely on asking of the petitioners/landowners concerned, to assert that they have vested right to seek de-notification of their acquired lands.

18. As has already been observed hereinabove, this is the third round of litigation, whereby the petitioners have primarily aimed at obtaining a relief to retain their illegal possession over the acquired lands. Moreover, the petitioners have not been able to point out any single cogent evidence on record suggestive that their acquired lands have become unviable or unessential for efficacious use by the acquiring authority concerned.”

23. As a conspectus to the above discussed settled legal proposition, since in the present case also, the acquisition proceedings stood lawfully terminated way back on 26.03.1992, therefore, Section 101-A of the Act of 2013, which is only an enabling clause for the acquiring authority to de-notify the acquired land, only if it becomes “unviable” and “non-essential” for any efficacious public purpose, does not furnish any cause of action to challenge the validity of already lawful concluded acquisition proceedings.

24. Moreover, it also transpires from the record, that at the time of issuance of the preliminary notification under Section 4 of the Act of 1894, the acquired lands were lying vacant, so the existence of any structure thereon, prior to launching of the acquisition proceedings, is merely a fanciful assertion. After lawful acquisition and assumption of possession by the acquiring authority concerned, through recording of a valid Rapat, the acquired land vests in the acquiring authority free from all encumbrances, and thereafter, if any person yet retains the acquired lands, it results in his acquiring the status of a trespasser. The Hon’ble Supreme Court in the case titled **“Indore Development Authority v. Manoharlal”, 2020 AIR (Supreme Court) 1496**, has categorically held that after pronouncement of a valid award, the acquired land vests in the State Government free from all encumbrances, and, any person retaining the possession of such acquired lands even thereafter, has to be treated as a “trespasser”, as such person does not have any right to possess such lands. The relevant paragraphs, carrying the above observations, are extracted as under:-

“244. Section 16 of the Act of 1894 provided that possession of land may be taken by the State Government after passing of an award and thereupon land vest free from all encumbrances in the State Government. Similar are the provisions made in the case of

urgency in Section 17(1). The word “possession” has been used in the Act of 1894, whereas in Section 24(2) of Act of 2013, the expression “physical possession” is used. It is submitted that drawing of panchnama for taking over the possession is not enough when the actual physical possession remained with the landowner and Section 24(2) requires actual physical possession to be taken, not the possession in any other form. When the State has acquired the land and award has been passed, land vests in the State Government free from all encumbrances. The act of vesting of the land in the State is with possession, any person retaining the possession, thereafter, has to be treated as trespasser and has no right to possess the land which vests in the State free from all encumbrances.

245. The question which arises whether there is any difference between taking possession under the Act of 1894 and the expression “physical possession” used in Section 24(2). As a matter of fact, what was contemplated under the Act of 1894, by taking the possession meant only physical possession of the land. Taking over the possession under the Act of 2013 always amounted to taking over physical possession of the land. When the State Government acquires land and draws up a memorandum of taking possession, that amounts to taking the physical possession of the land. On the large chunk of property or otherwise which is acquired, the Government is not supposed to put some other person or the police force in possession to retain it and start cultivating it till the land is used by it for the purpose for which it has been acquired. The Government is not supposed to start residing or to physically occupy it once possession has been taken by drawing the inquest proceedings for obtaining possession thereof. Thereafter, if any further retaining of land or any re-entry is made on the land or someone starts cultivation on the open land or starts residing in the outhouse, etc., is deemed to be the trespasser on land which in possession of the State. The possession of trespasser always inures for the benefit of the real owner that is the State Government in the case.”

25. Moreover, the factum regarding existence of a residential house, if any, on the acquired petition lands, is not a sufficient ground in itself, to either ask for or grant the relief of de-notifying the acquired petition lands. Gainful reference in this regard can be placed upon the judgment of the Hon'ble Supreme Court, drawn in case titled ***“Raghubir Singh and another v. State of Haryana and others”***, (2022) 4 SCC 728, wherein, it has been specifically held that if a landlord has constructed some structure over the acquired lands, which comes to vest in the State Government, thus can be no reason to de-notify the acquired lands. The relevant paragraph of the judgment (supra) is extracted hereunder:-

“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.”

26. As a consequence of the hereinabove assigned reasons, this Court finds no merit in the instant writ petition and the same is accordingly dismissed. Since the instant writ petition is a frivolously instituted petition, therefore, it is dismissed with costs of Rs.50,000/- to be forthwith deposited in the Poor Patient Fund of P.G.I.M.E.R., Chandigarh.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

August 31, 2023
devinder

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