

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

**CWP-22895-2022**

**Date of Decision: 23.01.2023**

**Malkhan Singh and others**

**.....Petitioners**

**Vs.**

**State of Haryana and others**

**.....Respondents**

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA  
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

**Present:** Mr. Kamal Chaudhary, Advocate,  
for the petitioners.

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

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**G.S.SANDHAWALIA, J. (ORAL)**

The challenge in the present petition are to the notifications dated 30.04.1986 (Annexure P-2) and 28.04.1987 (Annexure P-3) under Sections 4 and 6 of the Land Acquisition Act, 1894, (hereinafter referred to as the Act of 1894), and Award dated 28.12.1988 (Annexure P-4). Challenge has also been raised to the order dated 11.01.2018 (Annexure P-7), wherein in pursuance of earlier orders passed in CWP-2948-2015, titled as **Harish Pal and others** vs. **State of Haryana** on 07.10.2015, directions had been issued to decide the representation.

The case set out in the present petition is that petitioners No. 1 to 5 are owners in possession of 10 '*kanals*' and 16 '*marlas*' of land and petitioner No. 6 is in possession of 03 '*kanals*' and 12 '*marlas*', falling in Village Mewla Maharajpur, Tehsil Badkhal, District Faridabad. It has also been averred that on an early occasion the land measuring 03 '*kanals*' and 10 '*marlas*' has been released, vide order dated 03.01.2003 and earlier the

father of the petitioners had filed CWP-2034-1991. Accordingly, directions had been issued to release the land of the petitioners from acquisition to the extent occupied by the structures which were used for residential purpose only on the date of issuance of notification under Section 4 of the Act of 1894.

It is further averred that under the new Act, i.e. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the Act of 2013), the petitioners had approached this Court by way of filing of CWP-2948-2015 and this Court had passed the order on 07.10.2015 (Annexure P-6), wherein directions were given to consider the representation as noticed above.

A perusal of the impugned order dated 11.01.2018 (Annexure P-7) would go on to show that the Award was passed way back in the year 1988 and 87% of the compensation has already been disbursed. The objections under Section 5-A had not been filed by the petitioners and the acquisition of the land in question had been planned for the purpose for which it was notified and affects planning of Sector 46, Faridabad, i.e. District Centre/Green Belt. It was also noticed that the possession had been handed over vide the '*Rapat Roznamcha No. 188*' vide order of the even date when the Award was passed, i.e. 28.12.1988, and therefore, the applicants are in unauthorised possession of the land and are to be considered as encroachers. In such circumstances, the Zonal Committee did not recommend the request of the petitioners under Section 24 (2) of the Act of 2013.

Resultantly, the petitioners had then approached this Court by way of CWP-10077-2018, titled as **Harish Pal and others** vs. **State of**

Haryana and others, which had been dismissed, vide a detailed order, the lead case being CWP-8878-2018, titled as Sehdev Singh and others vs. State of Haryana and others, on 11.11.2020 (Annexure P-8).

Resultantly, it is now prayed that liberty had not been given under the provisions of Section 101-A of the The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Haryana Amendment) Act, 2017 (hereinafter referred to as the Act of 2017), and therefore a fall back was made to the judgment of the Supreme Court in Civil Appeal Nos. 2714-2715 of 2021, titled as Raghubir Singh and another vs. State of Haryana and others, decided on 15.07.2021. Thus, relief has now been sought.

Learned counsel has now tried to convince us that the certain set of the land owners had approached the Apex Court against the order dated 11.11.2020 and have been given liberty as such to approach the State Government, in view of the judgment in Raghubir Singh's case, vide order dated 04.02.2022 in SLP (C) No. 812-813 of 2022, titled as Mohan Singh and others vs. State of Haryana and thus, prayed for the same relief.

We are of the considered opinion that the facts swing in a different manner in the present case. The petitioners had already approached this Court on an earlier occasion and relief has been granted to them to the extent that their constructed portion has been directed to be released. They continued to initiate litigation thereafter but had never challenged the order of the Division Bench dated 11.11.2020 within the statutory period of limitation and therefore, accepted the earlier order passed. At that point of time they never chose to amend their writ petition

and take the benefit of the amendment and the policy of the State dated 14.09.2018. The judgment in Raghubir Singh's case was subsequently considered in SLP (C) 16421-2021, titled as Ram Swaroop (deceased) through Lrs. and another vs. State of Haryana and others wherein while noticing the provisions of the amendment and while referring to Raghubir Singh's case, the relevant observations were made:-

*“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 nonessential. 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. xxxx  
xxxx xxxx xxxx xxxx*

*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.”*

It has been time and again held by the Apex Court that if a point is available as such and not argued at earlier point of time, then it cannot be raised in an subsequent round of litigation on the ground that the first was badly argued. Once before the coordinate Bench, the challenge to the impugned order as such wherein the authorities had applied their mind as such that the land was acquired for the purpose of which it has been planned; compensation has already been granted to the extent of 87% and it was effecting the planning of Section 46, Faridabad, was final *inter se*. It would not now lie in the mouth of the present petitioners to say that their case should be considered afresh under Section 101-A of the Act of 2013. It is also to be noticed that the benefit of release has already been granted to them by an earlier Division Bench and therefore by keeping the *lis* prolonged, the planned development as such for the sector is badly effected.

In such circumstances, we are of the considered opinion that having remained unsuccessful in getting the speaking order dated

11.01.2018 (Annexure P-7) set aside, the petitioners are now raising the issue afresh which is not permissible. Accordingly, we do not find any ground to interfere in the present petition.

The same is consequently, dismissed.

(G.S. SANDHAWALIA)  
JUDGE

January 23, 2023  
nitin

(HARPREET KAUR JEEWAN)  
JUDGE

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| Whether Speaking   | Yes |
| Whether Reportable | No  |