

107

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CWP-840-2018

Date of Decision : 26.07.2023

NARESH KUMAR AND ANR.

.....Petitioners

Versus

STATE OF HARYANA AND OTHERS

....Respondents

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

Present : Mr. Anurag Jain, Advocate
for the petitioners.

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

SURESHWAR THAKUR, J. (Oral)

1. The petitioners purchased the writ lands, post the culmination of the proceedings, under the Land Acquisition Act, 1894 (for short hereinafter called as the 'Act of 1894'). Therefore, prima facie, the acquisition of any right, title or interest, through registered deeds of conveyance, as became executed in favour of the present petitioners, by the vendor, but are tainted and flawed. The reason being that on culmination of acquisition proceedings, as became initiated in respect of the petition lands under the 'Act of 1894', rather thereby there is complete divestment of any right, title or interest in the petitioners'-vendors over the petition lands.

2. The writ petitioners had earlier accessed this Court for quashing of notifications for acquisition, as became respectively issued

under Sections 4 and 6 of the 'Act of 1894' and which became respectively issued on 22.02.2007 and on 20.02.2008. However, the said claim, as is evident on a reading of the operative part of the order (Annexure P-11), as made on the said writ petition, to which CWP No. 16371 of 2013, became assigned, operative portion whereof is extracted hereinafter, rather became declined.

“The petitioners purchased the above stated land vide sale deed dated 26.06.2010, i.e., after issuance of Sections 4 and 6 notifications. They are said to have constructed a residential house on the plot.

Since the petitioners have purchased the subject plot after notification under Section 4, we are of the considered view that no direction for the release of their land can be issued. However, we dispose of the writ petition with a direction to the respondents to verify if any construction has been raised and if it does not disturb the public purpose of acquisition, their claim for the release of acquired property to the extent of constructed portion along with proportionate vacant area may be sympathetically considered. We clarify that this direction is being issued keeping in view the equitable considerations as the petitioners belong to poor section of the society, hence this order shall not be taken as a precedent.”

3. Moreover, a reading of the hereinabove extracted portion of the order, as comprised in Annexure P-11, reveals that the petitioners espousal for the writ lands becoming released from acquisition, in terms of Section 101A of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (hereinafter for short called as the 'Act of 2013'), provisions whereof become inserted in the 'Act of 2013' through the Haryana Act No. 21 of 2018, rather also

became declined.

“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.”

4. Be that as it may, though this Court has therein, but on equitable considerations, thus merely rested upon an argument as then became raised before this Court, that some construction has been raised, on the writ lands, at the instance of the present petitioners, thus thereby made directions, that if any such construction is raised on the writ lands, and further if the said raised constructions, does not disturb public purposes, thereupon, the claim for release of the acquired lands, only to the extent of the constructed portion alongwith proportionate vacant area, thus becoming sympathetically considered by the authorities concerned.

5. In pursuance to the said made direction(s), the respondent concerned, has drawn Annexure P-12. A reading of the relevant portion of Annexure P-12, as comprised in paragraph No. 2 thereof, para whereof is extracted hereinafter, reveals that the petitioners, had constructed two rooms measuring 10' x 10' and 20'.3" x 10 on the disputed lands, but the said constructions are lying vacant. However, it is also unfolded therein, that the said constructions would direly affect the public purpose,

inasmuch as, it is reserved in the approved layout plan for the purposes of

a path. Therefore, it became concluded that in terms of the policy dated 26.10.2007, and as became subsequently modified on 24.01.2011, thus the petitioners are not entitled to claim release of the petition lands.

“2. In compliance with the above order, a report was sought from CA HUDA. He sent the same alongwith his recommendations. It was examined in the Department. As per report, the petitioner have claimed for release of land measuring 1K-11M bearing Khasra No. 132//25/3 situated in Sector 8 & 9 Dadri, District Bhiwani. The claimed land was notified u/s 4 & 6 of LA Act 1894 on 22.2.2007 and 20.2.2008. The land was acquired vide award dated 18.1.2010. The petitioner, Sh. Naresh Kumar was owner of ½ share in the land measuring 1K-11M bearing Khasra No. 132//25/3 and rest of half share in the land was owned by Sh. Dalip Kumar s/o Kanhaiya Lal, Petitioner No. 2 Smt. Sarla Devi w/o Sh. Naresh Kumar claimed to have purchased this land from Dalip Kumar. The land was purchased through sale deed dated 26.6.2010 after the announcement of award on dated 26.6.2010. They did not file objections u/s 5A of LA Act. As per site survey, they have constructed two rooms measuring 10'x10' & 20'.3"x10 on the disputed land which are lying closed. The land affects site of park as per approved layout plan of the sector. Hence, the claim of the petitioner is not covered under policy dated 26.10.2007 as modified on 24.1.2011...”

6. Though the learned counsel appearing for the petitioners, has vehemently argued, that yet the petitioners becoming permitted, to claim release of the lands. However, again this Court does not find any merit, in the said submission, as the said submission was earlier raised in CWP (Supra), and became declined. Though, a reading of the operative part of the verdict, as enclosed in Annexure P-11, did then merely on equitable grounds, reserve a limited privilege to the petitioners, and that too in the

event of the public purpose becoming not affected in case the writ lands became released from acquisition too, thus thereby merely on sympathetic considerations claim hence from the respondent concerned, relief whether as such the petition lands, are required to be released from acquisition.

7. Therefore, the prima donna consideration, which was required to be prevailing upon the respondent concerned, in drawing any conclusion, whether yet the petitioners are entitled to claim any relief qua the acquired lands, became embedded in the factum, that the relevant public purpose remaining but unaffected, thus upon the writ lands becoming released, from acquisition. However, as is evident from a reading of paragraph No. 2, as carried in the reply, on affidavit dated 19.04.2023, as furnished on behalf of respondents No. 1 to 4, para whereof is extracted hereinafter, that public purpose would become direly affected, in the event of the petition lands, becoming released from acquisition, thereupon, this Court does not find any merit in the writ petition.

“2. That in compliance of the above order dated 05.12.2022, letters memo No. 3455 dated 06.12.2022, No. 3519 dated 09.12.2022 and memo No. 3715 dated 23.12.2022 were sent to the District Town Planner, Charkhi Dadri for providing the present status of planning in the land in dispute. In this regard, the report has been received from the District Town Planner, Charkhi Dadri vide their office memo No. CD/DTP-P/611/2023 dated 21.03.2023, in which, it has been clear mentioned that the land of the petitioners is affecting 12 meter Road, PUS Site, Pavement Area and Green Area. Copy of Layout Plan is enclosed herewith as Annexure R-1. ”

8. Moreover, thereby the estopping principle, as ingrained in the statutory norm of constructive res-judicata, thus becomes completely

attracted to the present writ petition, thereby the petitioners cannot re-access this Court with a relief which was earlier denied and which only to the extent (supra), thus only on equitable considerations, became but with further certain restrictions hence allowed. However, when for the reasons above stated, when even the said equitable considerations, relating to the public purpose being not affected, has been disclosed on an affidavit furnished to the writ petition, rather to become direly effected, in case the petition lands are released from acquisition. Resultantly also the petitioners are completely estopped, from re-inventing a litigation which earlier has been thus clinched.

9. Even otherwise, the claim for release from compensation was amenable to be well raised, only at the instance of the land owners concerned, who are the vendors of the present petitioners, and was never raisable at the instance of the present petitioners, as they acquired prima facie a tainted title over the petition lands, on theirs executing thus registered deeds of conveyance with their vendor, but post the completest termination of the acquisition proceedings, as became launched under the 'Act of 1894'.

10. Therefore, but obviously the petitioners have no *locus standi* to access this Court with a claim for the writ lands being released nor obviously in the writ petition, thus have any *locus standi* to contend, that they are entitled to the provisions of Section 24(2) of the 'Act of 2013' especially in the face of paragraph No. ix, as occurs in the reply, on affidavit dated 02.05.2018, furnished to the writ petition, para whereof has become extracted hereinafter.

“ix). That the contents of sub para (ix) of para No. 14 of the

Civil Writ Petition does not need to reply as a part of the new Act, 2013. However, the petitioners are not entitled to get any relief under section 24(2) of the new Act as the possession of the land has been taken and handed over to the Estate Officer, HUDA, Bhiwani vide rapat No. 602 dated 18.01.2010 and 91% amount of compensation of the acquired land has been paid to the land owners as mentioned in para No. 12 & 13 of Preliminary Submissions. However, the petitioners have not received their compensation intentionally and they are at liberty to take the same after completing the necessary formalities.”

11. Predominantly, when a reading thereof underscores, the fact that thereby, the apposite expostulations of law as made by the Hon'ble Apex Court in case titled as “*Indore Development Authority v/s Manoharlal and Ors.*”, reported in (2020)8 SCC 129, do become completely accomplished, rendering disabled even the landowners concerned, to claim benefit of the apposite statutory provision(s), as, appertaining to lapsing of the earlier drawn acquisition proceedings under the 'Act of 1894'.

12. Predominantly, for the reason when it is clear from the above extracted paragraph, that in terms thereof, rapat possession has been assumed, and also when the determined compensation amount, has been tendered for being released to the land owners concerned.

Final order of this Court.

13. In aftermath, this Court finds no merit in the writ petition, and, with the above observations, the same is dismissed. The impugned

orders/notifications are maintained and affirmed.

14. No order as to costs.
15. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

26.07.2023

kavneet singh

Whether speaking/reasoned

Whether reportable

:

:

Yes/No

Yes/No