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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-8979-2018

Date of decision:28.08.2023

ASHOK KUMAR

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. N.C. Kinra, Advocate
for the petitioner.

Mr. Ankur Mittal, Addl. AG Haryana with
Mr. Saurabh Mago, DAG, Haryana.

SURESHWAR THAKUR, J. (ORAL)

1. Through the instant writ petition the petitioner challenges the makings of Annexure P-20, which becomes recorded in pursuance to the directions passed by this Court, on 13.10.2014 upon CWP-21152-2014, titled '*Ashok Kumar and others V. State of Haryana and others*'. The directions which became passed in the writ petition (supra), are extracted hereinafter.

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After hearing learned counsel for the petitioners, we dispose of this writ petition with a direction to respondent No.3 to decide the question whether possession of the land acquired has been taken or not and whether or not the compensation has been paid to the petitioners. A decision in this regard be taken within a period of three months from the date of receipt of certified copy of this order. Till a decision, as aforesaid, is taken, the parties are directed to maintain status-quo.”

2. In the impugned order a conclusion became recorded, that the constructions which became raised on the disputed lands, have been raised, as such after the issuance of a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as “the Act of 1894”).

3. However, the learned counsel for the petitioner argues, that the said speaking made in the impugned annexure (Annexure P-20), is outside the ambit of the above extracted directions, more especially vis-a-vis one(s) occurring at page No.98 of the paperbook. He thus submits that with a conclusive finding becoming recorded by this Court, in paragraph No.16 of CWP-4498-1993, para whereof stands extracted hereinafter, that the alleged constructions were made on the disputed lands prior, to thus issuance of a notification under Section 4 of the Act of 1894, yet the Authority which drew Annexure P-20, thus contrary to the above conclusive finding, rather concluding that the said construction(s) was raised hence post the issuance of a notification under Section 4 of the Act of 1894. Resultantly, the benefit of the relevant paragraph has been untenably denied to the petitioner.

““16. xxx

i) The claim of the petitioners for the release of their constructed properties from acquisition shall be considered by the respondents in the light of the Government policy dated 26.10.2007, as modified from time to time, on the premise that construction was raised by them prior to issuance of notification under Section 4 of the Act. Resultantly, the constructions which are not found to have obstructed any 'public utility' shall be released in accordance with this policy;

ii) Wherever any constructed property is required to be demolished for completion of a 'public utility' the effected land-owners shall be allotted residential plots in accordance with the policy-decision dated 9.11.2010;

iii) The entire exercise, as directed above, shall be completed within a period of four months from the date of receiving a certified copy of this order.

iv) The interim directions issued earlier by this Court shall continue to operate till the completion of afore-stated exercise.”

4. The above made argument would have some force only when as a matter of fact, the above extracted directions, were thus with a firm conclusivity, that the disputed constructions as raised, on the disputed lands, become as such raised thereon, prior to the issuance of a notification under Section 4 of the Act of 1894.

5. However, on a reading of the said directions, does not reveal, that this Court had made a firm conclusion, that the disputed constructions were made as a matter of fact prior to the issuance of a notification under Section 4 of the Act of 1894. Contrarily a deepest reading of the relevant portion of the order (supra), reveals, that merely a consideration order was passed, upon the respondent concerned, to in the light of the relevant policy thus take a decision whether the disputed constructions raised on the disputed lands rather became raised thereons prior to the issuance of a notification under Section 4 of the Act of 1894.

6. If so, when the decision, recorded in Annexure P-20 declaring, that the disputed constructions were raised on a disputed lands, thus post the issuance of a notification under Section 4 of the Act of 1894, is as such in terms of the relevant policy. Therefore, when thus there is no privilege assigned to the respondent concerned, to release those lands whereons constructions occur hence post the issuance of a notification under Section 4 of the Act of 1894.

7. Resultantly, the learned counsel for the petitioner cannot argue that there was a per-emptory finding recorded by this Court, qua the disputed constructions becoming raised on the disputed lands hence prior to the issuance of notification (supra), and/or, that a finding contrary thereto as carried in Annexure P-20, thus becoming interfered by this Court.

8. Learned counsel for the petitioner also argues, that irrespective of the above, there is cogent material existing on record, thus displaying that the said constructions was made prior to the issuance of a notification under Section 4 of the Act of 1894, and, thereby the above recorded finding in the impugned order hence becomes belied. Even in the above regard, the reliance as placed by the learned counsel for the petitioner, on Annexure P-7 is a misplaced reliance, as, therein there is no categorical finding, that the said constructions have been raised on the disputed lands, thus prior to the issuance of the apposite notification. Contrarily, there is only a mention that the possession of disputed lands, thus has become not assumed, but merely on the plank, that they are under litigation.

9. Moreover, the present petitioner had earlier motioned this Court through instituting CWP-21152-2014, and, thereon a decision was made on 13.10.2014. The said decision is extracted hereinabove. A reading of the said decision reveals, that the only plea raised therein appertained to compensation not being received by the petitioner, and/or, the possession of the acquired lands becoming also not assumed by the Acquiring Authority.

10. Therefore, representation in the above regard Annexure P-9 was ordered to be decided and a decision thereon has been made, and, which is carried in Annexure P-8. A reading of Annexure P-8 reveals, that the petition lands are required for furthering the public purpose, thereby they are not amenable for being released from acquisition.

11. In the instant writ petition apart from a challenge being made to impugned annexure (Annexure P-20), as was made in pursuance to the directions passed by this Court in a subsequent writ petition, there is no challenge thus relating to the applicability to the writ lands hence of the provisions of 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”). Therefore, this Court refrains from either delving into or making a determination whether as a matter of fact rather the mandate of Section 24(2) of the Act of 2013 is applicable to the writ lands.

12. In consequence, this Court finds no merit in the instant petition, and, is constrained to dismiss the same. Hence, the petition is dismissed.

(SURESHWAR THAKUR)
JUDGE

28.08.2023

Ithlesh

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned:-	Yes/No
Whether reportable:	Yes/No