In the High Court of Punjab and Haryana at Chandigarh

CWP No. 24221 of 2021 (O&M)
Date of Decision: 21.9.2023

Puran Singh ......Petitioner

Versus

State of Haryana and others .....Respondents

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

Present: Mr. Dharamvir Sharma, Advocate
for the petitioner.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Pardeep Prakash Chahar, Sr. DAG, Haryana and
Mr. Saurabh Mago, DAG, Haryana.

Mr. Ankur Mittal, Advocate with
Ms. Kushaldeep Kaur, Advocate and
Mr. Shivam Garg, Advocate
for the respondent-HSVP.

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SURESHWAR THAKUR, J. (ORAL)

1. Through the instant petition, the petitioner seeks a mandamus, upon the respondents concerned, to release his land as well as his constructed house situated in village Gurgaon, Tehsil and District Gurugram, in view of policy dated 14.9.2018 (Annexure P-3).

2. A notification under Section 17(1) read with Section 4 of the Land Acquisition Act, 1894 (for short 'the Act of 1894') became issued on 28.3.1985. The said notification was succeeded by notifications made on 15.1.1986, and, on 16.1.1986, under Section 6 of the Act of 1894 (Annexure P-2). An award in terms of Section 11 of the Act of 1894 was made on 14.1.1988.

3. The learned counsel for the petitioner argues, that no compensation has been assessed in respect of the structures which became

raised on the acquired land, despite the fact, that the said structures were raised prior to the issuance of the notification under Section 4 of the Act of 1894, thus the award is vitiated. If assumingly, the said ground has some aura of truth, thereby the said plea was required to be raised through an objection petition being raised under Section 5-A of the Act of 1894. Since the said objection did not become raised, therefore, the said belated raising of objections (supra), is not only time barred, but thereby also creates an estoppel against its becoming raised before this Court.

4. Therefore, the conclusion which is sparked therefrom, is that, the constructions (supra) were made post the investment of right, title and interest over the acquired land in the respondents. Furthermore, thereby the petitioner is a trespasser on the said acquired land, and, is required to be forthwith handing over the possession of the acquired land to the respondent concerned.

5. The ground raised by learned counsel for the petitioner, that since there is release(s) of lands thus purportedly similarly situated to the disputed lands, thereby on the principle of parity therewith, the acquired lands be also released from acquisition.

6. However, again the above argument is unmeritworthy, as it is squarely within the domain of the respondents concerned, unless malafides are attributed, and, are also proven to thus, retain the acquired lands, and, or to release the lands from acquisition. Significantly the above material is grossly amiss, therefore, the above plea does also fail.

7. Since the disputed lands, as above stated, are an integral component of the layout plan, therefore, when the acquired lands are suitable, and/or are also tailored to the public purpose. Resultantly, their

releases from acquisition would tantamount to defeating and jeopardizing public interest. Contrarily, if the releases thereof are ordered to be made, thereupon only individualistic interest would become invalidly protected, thus jeopardizing public interest which rather predominates individualistic interests.

8. However, since the above contemplation has been drawn with the keenest application of mind, and, after appraisal of all the relevant factors. Consequently, this Court does not deem it fit, and, appropriate to interfere with the said made contemplation by the executive concerned, nor the present petitioner can make any argument, before this Court, that not the executive but the present petitioner, does enjoy the leverage, to sustain an argument, that the layout plan exemplifying the necessity of retention of the petitioner's land, is misprepared nor he can argue that it be redrawn, as both preparation, and, re-drawing of the layout plan falls squarely within the domain of Engineering Cell of the acquiring authority concerned. Resultantly, this Court in the exercise of its review jurisdiction cannot order to either re-prepare or redraw the layout plan.

9. Even otherwise, the acquisition was made in the year 1985, and, though the above provisions became inserted in the year 2013, through Haryana Act No.21 made in the year 2018, and, though was made retrospectively applicable from the year 2014, but the statutory provision (supra), cannot be availed at this belated stage. More so, when it has been declared in a verdict made by this Court in ***CWP-15175-2023***, titled '***The Press Employees and Friends Co-operative Group Housing Society Ltd. V. State of Haryana and others***' that the import of the above statutory parameters are extremely limited, and, confined under extreme emergent

circumstances. Moreover, when it is also been spelt therein, that in case the acquired estate is an integral component of the developmental plan, and, is also an insegregable part of the public purpose for which the acquired lands are subjected to acquisition, thereby the above statutory parameters of unessentiality, and, unviability retention of the petition lands thus are unavailable to become ably canvassed to the writ petitioner.

10. Moreover, the said relief as is planked, upon the policy (supra), the said relief cannot be granted to the petitioner, as the learned State counsel has in CWP-14077-2022, placed on record a communication addressed to the office of Advocate General, Haryana by the Financial Commissioner, Revenue and Addl. Chief Secretary to the Government of Haryana, Revenue and Disaster Management, wherein, there occurs a speaking that the said policy is under active consideration for its withdrawal being made.

11. Further, this Court earlier in ***The Press Employees's case (supra)*** had in length dealt with similar issues as in the instant writ petition. The relevant paragraphs of the verdict (supra) are extracted hereinafter.

> *"17. From the above facts and the legal submissions, as made by the learned counsels for the parties, the following issues arise for determination and adjudication, for arriving at a just decision upon the present lis:-*
>
> ***(i) Whether the intent of the legislature behind insertion of Section 101-A in the Act of 2013 is to release the "unutilized" acquired lands, or, its aim and object is to enable the State Government to de-notify only such lands, which become "unviable" and "non-essential" for the State Government, as acquired under the Act of 1894?***
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> ***(ii) Whether the insertion of Section 101-A in the Act of 2013 can give rise to a new cause of action, in favour of the landowner concerned, to challenge the lawfully concluded acquisition proceedings, under the Act of 1894?***
>
> ***(iii) Whether the landowner concerned has a vested right to assert that the acquired land has become "unviable" and "nonessential", on the ground, that the land has not been***

utilized, or, the land continues to be his possession, even after pronouncement of the award ?

27. Though Section 101 of the Act of 2013, contemplated the return of the land acquired under this Act, but it mandated the said land to have remained unutilised for a period of five years from the date of taking over the possession. Moreover, this provision is applicable only to the lands acquired under the Act of 2013, but, it does not have any applicability qua the lands acquired under the Act of 1894.

28. Therefore, faced with the impediment of de-notification of the lands acquired under the Act of 1894, the State legislature inserted the provisions of Section 101-A in the Act of 2013, through Haryana Act No.21 of 2018, thereby empowering the acquiring authority/State Government to denotify the lands acquired under the Act of 1894, acquisition proceedings whereof stand lawfully terminated, but only if such lands have become "unviable" or "non-essential". However, at this stage, we are not examining the constitutional validity of insertion of Section 101-A in the principal Act, through the State Amendment Act (supra), leaving this issue to be decided in an aptly instituted lis.

29. Section 101-A has been inserted by the State legislature only with the intent to protect the State Government/acquiring authority from the saving effect of Section 6 of the Act of 1897 and that protection is available only in the circumstances, when the acquired land has become "unviable" and "nonessential" for any public purpose.

30. The combined effect of Section 114 of the Act of 2013 and Section 6 of the Act of 1897 has limited the scope and applicability of Section 101-A. The saving, as assigned in Section 6 of the Act of 1897, would not apply to the extent hindered by Section 101-A. Therefore, the power to denotify lands, by virtue of Section 101-A, can only be invoked when the twin statutory ingredients, are fulfilled. Therefore, the de-notification of acquired lands is only possible when such lands fall within the domain of the above prescribed twin conditions, which are the mandatory pre-conditions for the State Government to form a subjective opinion, while taking into consideration the larger public interest.

34. Furthermore, the provisions of Section 101-A does 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****.* ***(emphasis supplied)***

38. As a natural corollary of the hereinabove discussions as well as the propositions of law, as laid down by the Hon'ble Supreme Court, it can be safely concluded that the intent of the legislature, behind the insertion of Section 101-A in the Act of 2013, is not the *release of unutilized acquired lands, rather its aim and object is to empower the State Government to de-notify only such lands, which have been acquired under the Act of 1894 and which have become "unviable" and "non-essential" for it, based upon tangible evidence, for executing any "public purpose".*

44. Therefore, in the light of the legal propositions (supra), it is abundantly clear that though the landowners can approach the State Government seeking de-notification of the acquired lands, in exercise of powers conferred under Section 101-A of the Act of 2013, however, this Section does not give them any vested right to seek a mandamus for denotification of the acquired lands. A writ of mandamus can be issued only for the enforcement of any right conferred upon a person by law. In the absence of any vested right conferred by law, a mandamus cannot be passed upon the authority(ies) concerned. Therefore, we refrain ourselves from passing any mandamus upon the authority(ies) concerned to examine the representation of the petitioner-Society for de-notification of the acquired lands.

47. Once the land is lawfully acquired, it vests in the State Government/acquiring authority concerned, free from all encumbrances, and thereafter, the landowner concerned does not have any concern in respect of the user of his acquired land, i.e. whether the land has been used for the purpose for which it was acquired or for any other purpose.

49. Therefore, in view of the hereinabove elaborately made discussions, the issues, as formulated above, are reiteratedly answered in the hereinafter extracted manner:-

*"**QUA ISSUE NO.(I):***
The intent of the legislature, behind insertion of Section 101-A in the Act of 2013, is not to release the "unutilized" acquired lands, rather its aim and object is to enable the government to de-notify only such lands, as acquired under the Act of 1894, and, which have become "unviable" and "non-essential" for facilitating any public purpose.
QUA ISSUE NO.(II):
The answer to the issue No.(ii) is also in negative. The insertion of Section 101-A does not give rise to any new cause of action, in favour of the landowners concerned, to challenge the lawfully concluded acquisition proceedings, under the Act of 1894.
QUA ISSUE NO.(III):
The answer to this issue is also in negative. The landowners do not have any vested right to asset that the acquired lands have become "unviable" and "non-essential", on the ground, that such lands have not yet been utilized, or, that such lands yet continues to be in possession of the landowners, even after pronouncement of the award."

12. Consequently, this Court finds no merit in the instant petition, and, the same is hereby dismissed with costs of Rs. 50,000/- to be forthwith

deposited by the petitioner with the '***Punjab and Haryana High Court Bar Clerks Association, Chandigarh***'.

13. The pending application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

September 21, 2023
Gurpreet

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