

**239/30 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CWP-26395-2021

Reserved on: 05.09.2023

Pronounced on: 22.09.2023

BARFO DEVI AND OTHERS

.....Petitioners

Versus

STATE OF HARYANA AND ORS.

....Respondents

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

Argued by: Mr. Nitin Jain, Advocate
for the petitioners.

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

Mr. Ankur Mittal, Advocate with
Ms. Kushaldeep Kaur Manchanda, Advocate
Mr. Shivam Garg, Advocate
Mr. Jugam Arora, Advocate and
Mr. Siddharth Arora, Advocate
for respondent-HSVP.

SURESHWAR THAKUR, J.

1. The claim made in the instant writ petition is for a mandamus being made upon the respondents concerned, to, in terms of the policy dated 14.09.2018 of the Haryana Government, thereby, the petition lands be released from acquisition, thus, on theirs becoming un-essential or unviable for being used for the requisite public purpose.

2. The learned counsel appearing for the petitioners has forcefully contended, by planking submission, on the mandate of Section 101 A of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter for short refer to as the 'Act of 2013') as became

incorporated in the 'Act of 2013', through Haryana Act No. 21 of 2018, provisions whereof are extracted hereinafter, that the petition lands are un-essential or unviable for the relevant public purpose. Therefore, he has argued that the petition lands, irrespective of the earlier launched acquisition proceedings under the Land Acquisition Act, 1894 (hereinafter for short called as the 'Act of 1894') thus becoming fully terminated, rather are un-essential or are unviable for being used for the relevant public purpose, thereby they are yet available for becoming released from acquisition.

***“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.”

3. It has been averred in the writ petition, that the land of the petitioners alongwith other lands situated in the revenue estates of villages Wazirabad, H.B. No. 75, Village Kanhai, H.B. No. 73, Village Bindapur, H.B. No. 93, Tehsil and District Gurugram, became the subject matter of compulsory acquisition process.

4. That being aggrieved of the notification(s) for acquisition, the petitioners filed CWP-14162-2001 before this Court. The said petition became dismissed through an order made on 12.08.2003.

5. Feeling aggrieved against the same, the petitioners filed SLP before the Hon'ble Supreme Court. The said SLP was disposed of on 22.07.2004 with certain direction(s) to the respondent to consider the objections of the appellants.

6. That pursuant thereto, the petitioners approached the Government concerned with representation dated 28.12.2005. However, the same did not find favour with the authorities concerned. Thereafter, the petitioners filed CWP-6216-2007, which was dismissed by this Court through an order made on 20.05.2008.

7. Feeling aggrieved from the afore, the petitioners filed SLP before the Hon'ble Supreme Court, and the same was dismissed on 05.10.2017.

8. The petitioners also filed CWP-4109-2016, seeking lapsing of the acquisition proceedings under Section 24(2) of the 'Act of 2013'. However, the same was dismissed by this Court through an order made on 24.08.2020 but with liberty to make a representation to the authority concerned invoking Section 101-A of the 'Act of 2013'.

9. Moreover, it is also contended that the respondents have proceeded to adopt the practices of invidious discrimination, inasmuch as, the respondents releasing the lands of other land owners adjacent to the petitioners land, whereas, the respondents yet proceeding to subject the petition lands to acquisition, through making the impugned notification(s).

10. It is further averred in the writ petition, that in view of clause 7 of the policy dated 14.09.2018 of the Haryana Government, the acquired lands be released from acquisition. The relevant portion of the policy (supra) is extracted hereinafter.

7. *The District Level Sub-Committee constituted under clause 5 or clause 6, as the case may be, shall while examining the opinion of the acquiring department consider the following issues:*

- (i) if the acquired land has become non-viable land or non-essential land*
- (ii) extent of payment of compensation, if any, to the land owner(s) on account of damages, if any, sustained by them due to acquisition of land.*
- (iii) extent of compensation by providing alternate land along with payment of damages, if any, in case of part utilization of acquired land or in case of any encumbrances created on/against the acquired land or part thereof.*

Explanation: -

(1) Unviable land means the whole or part of the acquired land which has become unsuitable for utilization for the purpose for which it was acquired due to act of Nature, or increase in acquisition cost as a result of any reason including any enormous enhancement in compensation amount payable on such a land due to court orders, or material or drastic change in policy of the Government wherein such extenuating circumstances have emerged where in the opinion of the Government to be recorded with reasons, it would not be in public interest to continue with acquisition, or change in socio-economic and geographical factors in respect of the acquired land or for any other reasonable cause.

(2) Non-essential land means the whole or part of the acquired land which cannot be practically utilized for the purpose for which it was acquired to any of the reasons enumerated in explanation (1) or better alternatives have become available for the project and it is not possible to continue with any alternative public purpose in respect of acquired land.

11. The petitioners have also filed representation (Annexure P-14) before the authorities concerned seeking releasing of the land in view of Section 101-A (supra) as well as the policy dated 14.09.2018.

Reasons for rejecting the submissions of the learned counsel for the petitioners.

12. The learned counsel appearing for the petitioners has planked his submission, on anvil of Section 101 A (supra) as well as, on anchor of clause 7 of the policy dated 14.09.2018 of the Haryana Government, but yet the said submission becomes completely unhinged, in the face of a specific contention existing in paragraph No.17 of the reply, on affidavit, as furnished to the petition by the respondent concerned, contents whereof are extracted hereinafter.

“17. That it is respectfully submitted that in the case in hand, the land surrounding the land in question is acquired land and is in the possession of the answering respondent. The land of the petitioners' falls in Sector 52 Gurugram and affects the planning residential plots, internal road, 3 plots of 3 marlas, 10 meter wide road, park, 18 meter road, 6 plots of 8 marla and 15 Nos plots in sector 52 Gurugram. True copy of the layout plan is annexed herewith as Annexure R-2 for the kind perusal of this Hon'ble Court.”

13. A reading of the said contents, does make graphic emergence(s), that the petition lands are earmarked for the apposite public purpose and thereby are utilized, or are utilizable, and or, are viable for facilitating the apposite public purpose. Consequently, the counsel for the petitioners cannot argue, that the petition lands are either un-essential or unviable for facilitating the apposite public purpose nor he can well rest any argument premised, on the provisions

14.09.2018. Contrarily, post valid termination of earlier launched acquisition proceedings under the 'Act of 1894', thereupon yet the retention, if any, of the petition lands, by the petitioners, especially when they evidently sub-serve the public purpose, thus is rather completely unlawful. The reason being that the above ground premised on anvil of Section 101 A of the 'Act of 2013' or upon, policy dated 14.09.2018, is completely capricious and also is arbitrary. The reason being that the statutory ingredients therein, appertaining to un-essentiality or unviability of the disputed lands, thus for facilitating the apposite public purpose, rather are to be tested, on anvil of objective contemplations, as made by the authority concerned, and since the above objective thereto contemplation, is but manifestative, that the petition lands are an integral component of the layout plans relating to the completion of the relevant public purpose. Therefore, the learned counsel for the petitioners has untenably planked the above argument, thus premised on the provisions of Section 101 A of the 'Act of 2013' and/or, upon, policy dated 14.09.2018.

14. Conspicuously upon vesting of ownership over the acquired lands, in the respondent concerned, thus happening on issuance(s) of notification(s) (supra), thereby when the State becomes absolute owner of the acquired lands. Resultantly the investment of complete or absolute ownership over the acquired lands in the respondent-State, thus makes it well empowered within the ambit of the verdict rendered by Hon'ble Apex Court in the case of “***State of Kerala Vs. M.Bhaskaran Pillai***”, AIR 1997 SC 2703, even make sale of the acquired lands through public auction. Thus, in the event of it being not

rather is tenable, as thereby the auction monies as become fetched by the State of Haryana, thus would also result in theirs sub-serving some other public purpose(s). Therefore, except in a very rare or exceptional circumstances, inasmuch as, upon occurrence of *vis major* or upon exorbitant sums of compensation monies being determined, thus making their liquidations, to cause an onerous burden to the State exchequer, thus, thereby the statutory parameters of un-essentiality or unviability of retention of the acquired lands, may become adopted by the State of Haryana. However, the above exceptions are not available on the records of the case.

15. Furthermore, the learned counsel for the petitioners argues that despite direction(s) being passed upon the respondent concerned, in view of the verdict passed in CWP-4109-2016, to decide representation of the petitioners, whereby they claim for release(s) or exemption(s) of the lands, from acquisition, thus in terms of Section 101 A of the 'Act of 2013' as well as policy dated 14.09.2018, yet no decision has been made by the authorities concerned. Therefore, the learned counsel for the petitioners prays that mandamus be made upon the respondents to comply with the direction(s) as made in the writ petition (*supra*).

16. In this regard, though decision may have been made on the said representation. Nonetheless, even if no decision is made on the said representation, yet irrespective of the above, since the acquired lands are declared, in the layout plan to be an integral component of the development activities to be launched thereons. Consequently, when the above objective contemplation, thus has been made in respect of the

retention of the acquired lands rather by the respondent-State.

Resultantly, the said plea cannot become capitalized by the petitioners. Therefore, the sequel of the above, is that, the acquired lands are both essential as well as viable for sub-serving the requisite public purpose. Resultantly reply in the above regard, as furnished to the writ petition, is accepted, and thereby irrespective of no decision being made on the subjudice representation of the petitioners by the competent authority, thus also does not constrain this Court to make a mandamus in the above regard upon the respondents.

17. Conspicuously also when it has been stated by the learned Additional Advocate General, Haryana that withdrawal of the policy (supra) is under active consideration of the respondent and that very shortly the policy (supra) is likely to be re-called.

18. Resultantly also in the face of the above, this Court does not thus deem it fit and appropriate to yet await the decision on the subjudice apposite representation, if any, filed by the present petitioners before the authorities concerned, the same being planked upon a policy, which as stated (supra), is likely to be very shortly re-called.

19. Moreover, on a perusal of para no. 4 of the reply filed by the respondent to the writ petition, it is revealed that the petitioners, though have not lifted the determined compensation, but have yet filed through the learned Collector concerned, a petition for enhancement, thus before the learned Reference Court concerned.

20. The effect of the above, is that, thereby the petitioners are deemed to accept the validity of the launching of the acquisition proceedings, and thereby they are rather estopped from challenging the validity of the launching of the acquisition proceedings.

21. Further, this Court earlier in case titled as '*The Press Employees and Friends Co-operative Group Housing Society Ltd. Vs. State of Haryana and Others*', 2023: PHHC:106793-DB, 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?

(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.”

Final Order of this Court.

22. In aftermath, this Court finds no merit in the writ petition, the same being completely frivolous, thus is required to be dismissed with costs. Therefore, the same is dismissed with costs of Rs. 50,000/-

upon each of the petitioners to be forthwith deposited by them with the

'Himachal Pradesh Aapada Raahat Kosh - 2023' for mitigating the natural disaster in the State concerned.

23. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

22.09.2023

kavneet singh

(KULDEEP TIWARI)
JUDGE

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