

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

CWP-3501-2022 (O&M)

Reserved on: 29.08.2023

Date of Decision : September 05, 2023

MAHIPAL AND OTHERS

-PETITIONERS

V/S

STATE OF HARYANA AND OTHERS

-RESPONDENTS

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

Present : Mr. Vivek Sethi, Advocate
for the petitioners.

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

SURESHWAR THAKUR, J.

1. The petitioners seek relief for the quashing of notifications, as became respectively issued under Section 4 and 6 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act of 1894'), and, which become respectively enclosed in Annexures P-1 and P-2. The further relief, as asked for in the instant writ petition, relates to the quashing of the award (Annexure P-3).

2. However, since it becomes unfolded from a reading of the order made by this Court on 02.03.2022, relevant part whereof becomes extracted hereinafter, that then the learned counsel for the petitioners rather restricted his prayer to the disputed lands being released from acquisition, thus in terms of Section 101-A of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the 'Act of 2013').

in Gram Panchayat of Village Bhatola vs. State of Haryana and others, CWP No. 28811 of 2017 (decided on 10.07.2020), *Rati Ram and another vs. State of Haryana and others*, CWP No. 6313 of 2015 (decided on 05.11.2015) and *M/s. Kataria Constructions Pvt. Ltd. vs. State of Haryana and others*, CWP No. 16085 of 2012 (decided on 05.11.2015), learned counsel for the petitioners gives up his claim for quashing of the notification dated 14.08.2008 (Annexure P-1) and notification dated 30.08.2008 (Annexure P-2) issued under Section 4 read with Section 17 and Section 6 of the Land Acquisition Act, 1894 followed by award dated 27.08.2010 (Annexure P-3). He restricts his prayer to release the land of the petitioners under Section 101-A of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and for that purpose, two representations dated 08.09.2020 (Annexure P-8) and 29.01.2021 (Annexure P-9) have been made by the petitioners.”

3. Therefore, though this Court through an order made on July 13, 2023 had formulated the hereinafter extracted questions, for answers being rendered thereons.

“(i) Whether in the wake of acquisition proceedings, thus terminating under the Act of 1894, whether as such 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’), are applicable?

(ii) Whether if the provisions of Section 24(2) of the Act of 2013 are not applicable, then whether the provisions of Section 101-A, as occur in Act of 2013, are ipso facto fully applicable vis-a-vis the reliefs claimed in the writ petitions, especially for want of adduction of cogent evidence, but suggestive, that the imperative statutory ingredients, as expressed therein, in the coinage “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”, thus are satisfied?

4. Nonetheless in view of the above extracted scope of the instant writ petition, this Court would only proceed to make an answer to substantial question of law No.(i).

5. Consequently, this Court would proceed to both delve into, and, make an adjudication only in respect of the above limited relief, as asked for in the instant writ petition. In other words, this Court would only answer substantial question No.(i).

6. Though yet learned counsel for the petitioners has argued, that there is no necessity of retaining the acquired lands, and, he planks the above arguments on the ground, that the disputed lands have been subjected to commercial use, whereas, the disputed lands were initially meant for construction thereon of sectoral roads.

7. However, for the reasons to be assigned hereinafter, the above raised argument, before this Court, is rudderless and is liable to be rejected. The principal reason for making the above inference stems, from the factum, that earlier also the acquisition proceedings became challenged before this Court, through institution of various writ petitions, i.e. CWP-16085-2012, CWP-21835-2013, CWP-21858-2013, CWP-21862-2013, CWP-21875-2013, CWP-28248-2013, CWP-28252-2013, CWP-11094-2014, CWP-11103-2014, CWP-19825-2014, CWP-21011-2014, CWP-23761-2014 and CWP-24189-2014. The challenge in the writ petitions (supra) was raised on the ground, that there is marginal land left after the land required for construction of road, and thereby, the same be returned to the landowners concerned.

8. For in terms of order(s) made in writ petitions (supra), hence

examining the viability of the release of the said marginal, or, left over land, after making user of the relevant acquired lands for construction thereons of sectoral roads, a meeting was held under the chairmanship of the Principal Secretary, Town and Country Planning and Urban Estate Department, Haryana on 22.11.2013, wherein, sector-wise availability of marginal land was considered. However, in CWP-21835-2013, Annexure A was filed. Imminently therein in respect of the disputed lands, in the apposite writ petition, it is mentioned that 12 meter wide service road is provided on either side of 60 meter wide ROW. Furthermore, it is also disclosed therein, that marginal land falling beyond 12 meter wide service road is merged with the acquired land in the sectors. Therefore, the said marginal land, in commercial Sector 79, has been detailed therein to be useful for commercial purpose.

9. Apparently, the petitioners' lands falls in Sector 79, and, as detailed in the relevant affidavit, it has been proposed to be used for commercial purposes. The affidavit, as filed in the writ petition (supra), and, which becomes annexed as Annexure A with the reply on affidavit, as furnished to the instant writ petition by the respondent(s) concerned, appears to have become accepted by this Court, through its drawing a verdict on 05.11.2015, on the writ petition (supra).

10. The telling effect of the above, is that, assumingly even if the present petitioners were one amongst the petitioners in the writ petition (supra), thereby they become estopped to contest or challenge the above made detailings, as appertain to the instant lis, thus in Annexure B, as annexed with the reply to the instant writ petition.

11. Conspicuously also, in view of the expostulations of law, as pronounced by the Hon'ble Apex Court in case titled "***State of Kerala v. M.***

Bhaskaran Pillai”, **AIR 1997 SC 2703**, relevant portion whereof stands extracted hereinafter, whereby the respondent-State becomes ably empowered to make user of the acquired lands for a purpose other than for which it became acquired. Therefore, the conversion of the marginal land thus qua user thereof for a purpose other than for which it became earmarked, thereby does not vitiate the acquisition, as made in respect thereof.

“...3. In view of the admitted position that the land in question was acquired under the Land Acquisition Act, 1894 by operation of section 16 of the Land Acquisition Act, it stood vested in the State free from all encumbrances. The question emerges: Whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilised for the public purpose envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act and is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through the public auctions so that the public also gets benefited by getting higher value....”

12. Provisions of Section 24(3) of the Act of 2013, and, also the judgment made by the Hon’ble Apex Court in “**Indore Development Authority V. Manoharlal and others**” reported in **AIR 2020 SC 1496**, are also not applicable qua the petitions rather for the hereafter recorded reasons.

13. The learned State counsel has placed on record a status report

which details that the possession of the disputed lands became assumed through Rapat Roznamcha No.813 of 27.08.2010. Moreover, when the compensation as became determined in respect of the acquired lands has been received by the present petitioners, thereby with the above evident factum probandum becoming ably proven by the respondent-State. Resultantly on proof of the factum probandum (supra), thereby in terms of the verdict made by the Hon'ble Apex Court in Indore Development Authority's case (supra), this Court pauses to not declare the acquisition proceedings to become lapsed. Substantial question of law accordingly answered.

FINAL ORDER

14. As a sequel to the above, this Court finds no merit in the instant writ petition, and, is constrained to dismiss it. Accordingly, the instant writ petition is dismissed with cost of Rs.50,000/- to be forthwith deposited by the petitioners with the 'Himachal Pradesh Aapada Raahat Kosh – 2023' for mitigating the natural disaster in the State concerned.

15. All pending application(s), if any, stand disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

September 05, 2023
devinder

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No