

In the High Court of Punjab and Haryana at Chandigarh

(105)

**CWP No. 21745 of 2023
Date of Decision: 06.10.2023**

Mehar Singh and another

.....Petitioners

Versus

State of Haryana and others

.....Respondents

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

Present: Mr. Arvind Kashyap, Advocate
for the petitioners.

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

SURESHWAR THAKUR, J. (ORAL)

1. The present petitioners had earlier filed CWP No. 142 of 2016. The said writ petition was decided on 13.1.2016. Moreover, the subject lands, as encapsulated in the said writ petition, are similar to the subject lands in the instant writ petition.

2. The said writ petition through the order (supra), became dismissed, and, also the SLP, as became raised thereagainst before the Hon'ble Apex Court, thus suffered an alike fate.

3. Subsequent to the concurrently made verdicts of dismissal, on the earlier writ petition (supra), the respondent had issued a notice, upon the present petitioner, thus to cause removals of unauthorized constructions, which existed on the acquired land.

4. It appears, that the above has stemmed the instant cause of action vis-a-vis the present petitioner.

6. The learned counsel for the petitioner has made dependence, upon the provisions, as carried in 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'), as became incorporated in the 'Act of 2013', through Haryana Act No. 21 of 2018, provisions whereof are extracted hereinafter,

“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.”

7. The learned counsel for the petitioners argues thereons, that the subject matter lands are skirted by the lands of builders, and, developers, thereby the respondent acquiring authority concerned, has arbitrarily chosen or has selected the subject matter lands for theirs being put to acquisition.

8. Initially, the nuance of the statutory ingredients of un-essentiality, and, un-viability of the subject matter lands, thus being retained for any public purpose, had already been dealt with in length, by this Court in a judgment rendered in CWP-15175-2023, titled '**The Press Employees and Friends Co-operative Group Housing Society Ltd. V. State of Haryana and others**'. 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.”

9. A reading of the above extracted paragraphs, as carried in the judgment (supra), but clearly reveals, that this Court has not imparted any leverage to a land loser concerned, to make dependence, upon them. Contrarily, this Court has reserved the solitary privilege, rather in the executive concerned, to make objective contemplation(s) vis-a-vis the applications, qua the land losers concerned, insofar as, the apposite statutory ingredients of un-essentiality, and, un-viability of the lands, and, thereby theirs becoming amenable for becoming released from acquisition. Moreover, this Court has also spelt therein, that the said executive decision makings, but would be construed to become infused with rationality, and/or, would become not ridden with arbitrariness, yet only upon evident emergence(s) of *vis major*, or upon evident emergence(s) of exorbitant amounts of compensation, being determined, thereby disabling the acquiring

authority concerned, to make the project concerned, thus financially viable.

10. The above discussion but clearly unveils, that the dependence, as made by the learned counsel for the petitioners, upon the provisions (supra), is a baseless dependence, and, is required to be rejected.

11. Since the dependence upon the provisions (supra), is made on the anchor, that since the said statutory provisions, were brought on the statute book in the year 2018, but with retrospectivity thereto becoming assigned since the year 2014, yet since the writ petition (supra) became dismissed in the year 2016. Moreover, when obviously the concurrently made judgments, on the earlier motion did arise in the 2016, thus at the stage when the said statutory provisions, were not in force. Therefore, the learned counsel for the petitioners submits, that on the anvil of the above incorporated statutory provisions, thus subsequent to the binding, and, conclusive verdicts, becoming earlier rendered, qua thus he has a valid cause of action to make dependence, upon, the said inserted statutory provisions.

12. The foundation of the above argument, is laid, on the subject matter lands becoming skirted by the lands of builders, and, developers, and, yet the subject matter lands becoming arbitrarily chosen or being selected for being subjected to acquisition rather for facilitating a public project. The above made argument also does not appeal to the judicial conscience of this Court. The reason becoming comprised in the factum, that the said argument was apparently raised in the earlier motion, and, it became dismissed.

13. Even otherwise, there is no evidence existing today also before this Court, that the layout plans, as became drawn by the acquiring authority

concerned, were drawn with active malafides. Moreover, assuming so, yet

the review jurisdiction vested in the Writ Court, has been consistently spelt in a catena of judgments rather to become not extendable to review the layout plans, as drawn by the Specialized Cell of the acquiring authority concerned, which is stated in a plethora of judgments, to be enjoying the solitary domain, to make contemplation(s) about the necessity of the particular parcels of lands, being amenable or not being amenable for facilitating the requisite public purpose.

14. Consequently, this Court finds no merit in the instant petition, and, the same is hereby dismissed with costs of Rs. 25,000/- upon, each of the petitioners to be forthwith deposited by the petitioners with the '**Punjab and Haryana High Court Bar Clerks Association, Chandigarh**'.

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

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

October 06, 2023
Gurpreet

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