IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

120 **CWP-22267-2023**
Date of Decision : **October 04, 2023**

RELIANCE EMINENT TRADING AND COMMERCIAL PRIVATE LIMITED .....Petitioner

VERSUS

STATE OF HARYANA AND OTHERS .....Respondents

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

Present: Mr. Amti Jain, Sr. Advocate assisted by
Mr. Sumeet Jain, Advocate
for the petitioner.

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

KULDEEP TIWARI. J.

1. Through instant petition, the petitioner-company has assailed the acquisition proceedings which were successfully and legally terminated way back in the year 2013, on the ground, that the acquired land has remained unutilized for the last 10 years, therefore, the land has become "non-essential" and "unviable" for facilitating any public purpose. While placing reliance upon 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 inserted therein through Haryana Act No.21 of 2018 and brought into force w.e.f. 01.01.2014, a mandamus is asked to be made upon the respondent(s) concerned, to release the acquired land of the petitioner from acquisition.

2. The respondent-State issued a notification (Annexure P-8)

under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as '**the Act of 1894**') on 21.5.2010 thereby expressing its intention to acquire the petition land(s) and other parcels of land, for public purposes, namely, for development of "Residential and Commercial, Sector Road, Green Belt, Sector-10, Dabwali". The notification (Supra) was followed by issuance of a declaration (Annexure P-9) under Section 6 of the *ibid* Act on 20.5.2011. Subsequently, an award No.2, qua the petition land(s), was announced on 15.5.2013 and upon pronouncement of the award, the possession of the acquired land was assumed by the acquiring authority concerned, through recording a *Rapat* bearing No. 261 dated 15.5.2013 in the relevant revenue records. Thereupon, mutation No.17834 was entered on 28.10.2007 in favour of the acquiring authority concerned.

3. Being aggrieved with the acquisition proceedings(Supra), the petitioner has now challenged the same, besides has also challenged the notice dated 8.9.2023 (Annexure P-4) issued under Section 18(1)(b) of the Haryana Shaheri Vikas Pradhikaran Act, 1977 (hereinafter referred to as '**the Act of 1977**') and the order dated 29.9.2023 issued under Section 18(2) of the *ibid* Act whereby, the petitioner was ordered to be evicted from the acquired land(s).

4. The main contention of learned counsel for the petitioner is that the petition land has never been utilized for the purpose, for which it has been acquired, therefore, it has become "unviable" and "non-essential" and in view of the provisions of Section 101-A of the Act of 2013, the petitioner is entitled to claim the release of the petition land(s).

The learned counsel for the petitioner has further submitted that in case the land is released in favour of the petitioner, it would cause no detriment to the State or to the acquiring authority as the petitioner has also planned to establish a commercial complex and activities which are in consonance with the public purposes for which the land was acquired. The learned counsel for the petitioner has further argued that the petitioner would suffer a huge financial loss as only meagre compensation has been granted in lieu of acquired petition land(s). The reason for delay in challenging the present acquisition notification(s) is attributed to his own ignorance qua the acquisition proceedings. The petitioner alleges his being acquainted with the acquisition proceedings when the respondent-Haryana Shaheri Vikas Pradhikaran (HSVP) served the petitioner with a notice under Section 18(1)(b) of the Act of 1977.

5. It is informed by the learned State counsel that the possession of the petition land(s) was assumed way back on 15.5.2013 and compensation was tendered before the competent authority concerned. He has further submitted that even a reference petition for enhancement of compensation qua the acquired land was also filed and the learned Reference Court vide its judgment dated 16.3.2018 has enhanced the compensation amount from ₹60,00,000/- to ₹67,42,410/- per acre. The learned State counsel has also submitted that the petition land(s) is affecting the part of planning as the same is earmarked for the site for EWS/housing scheme, Sector Road as per the approved revised layout-cum-demarcation plan of Sector-10, Dabwali, therefore, no

question arises that the land has become “unviable” and “non-essential”.

6. We have heard the learned counsel for the parties at length and have perused the entire record with their able assistance.

7. Before we delve into the legality of the arguments raised by the learned counsel for the petitioner, it is relevant to capture a glance of Section 101-A of the Act of 2013, which reads as under:-

> “***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 nonessential, 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.”*

8. A perusal of Section 101-A of the Act of 2013 clearly depicts that it is merely an enabling clause which allows the acquiring authority to release the land which was acquired under the Act of 1894, in case the same has become “unviable” and “non-essential” for any public purpose.

9. Though the terms “unviable” and “non-essential” have not been imparted any definition, either in the Act of 1894, or, in the Act of 2013, however, the respective definition assigned to the above respective terms, in the Oxford Dictionary, is “Not sustainable, feasible or

practicable", and, "Not essential". Therefore, by no means of imagination, the definition of the above terms can be linked with the term "unutilized". Moreover, it is also no more *res integra*, that the land which has once been acquired, if subsequently becomes un-amenable for facilitating the relevant public purpose, as denoted in the acquisition notification, can yet be "utilized" for accomplishing any other efficacious public purpose.

10. 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".

11. 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."

12. Moreover, in the absence of any cogent evidence on record suggestive that the acquired lands have become "unviable" or "non-essential" for any efficacious use, the mere "unutilization" of the acquired

lands for a long span, does not confer any valid authority, either upon the landowners concerned or upon the State Government, to respectively either seek de-notification or order de-notification of the acquired lands.

13. Therefore, once the award has been passed by the Land Acquisition Collector concerned, the present writ petition is not maintainable. The petitioner has no right to assail the acquisition proceedings in view of the law settled by the Hon'ble Supreme Court in **Starwire (India) Ltd. Vs. State of Haryana and others, (1996) 11 SCC 698** and **Sevika Properties (P) Ltd. and another Vs. State of Rajasthan and others, 2008(4) SCC 695**. This Court has also specifically held in the case of **Jatinder Singh Vs. State of Haryana and others, 2009(18) RCR (Civil) 233**, that once an award has been passed by the Land Acquisition Collector then the writ petition is not maintainable.

14. In view of the above discussion, we do not find any merit in the present petition and the same is, hereby, dismissed.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

October 04, 2023
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Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No