

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

CWP-217-2023

Decided on: 06.02.2023

Rohtash and others

....Petitioners

Versus

State of Haryana and others

.... Respondents

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. N.C. Kinra, Advocate for the petitioners.

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

G.S. Sandhawalia, J.

Challenge in the present writ petition by the present petitioners who are eight in number and legal heirs of deceased Sultan Singh is to the notifications issued under Section 4 & 6 of the Land Acquisition Act, 1894 (for short '1894 Act') dated 06.05.1992 (Annexure P-2) and 05.05.1993 (Annexure P-3), respectively alongwith Award dated 17.11.1994 (Annexure P-4). Resultant relief is sought for release of the land from acquisition in terms of the policy of Haryana Government dated 14.09.2018 (Annexure P-5) having been framed under Section 101A of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short '2013 Act').

2. As per the pleadings, the petitioners are the owners in possession of the land falling in village Mouza Patti Mussalman, Hadbast No.174, Sonipat and, their shares have been delineated in paragraph No.2 of the writ petition.

3. A perusal of the paper-book would go on to show that the land in question was acquired for the purposes of development and utilization of the land for Residential and Commercial Area of Sonipat in the said village bearing Hadbast No.174 and the acquisition was also made from two other villages namely Shahjahan Pur Hadbast No.82 and Jamalpur Kalan Hadbast No.173. From the village in question namely Patti Mussalman 121.51 acres were sought to be acquired, which was reduced to 121.34 acres as per Section 6 notification. Eventually Award No.6 dated 17.11.1994 had been passed for the land measuring 84.20 acres falling in village Patti Mussalman, Sonipat and the value of the land at that point of time was fixed @ ₹3,75,000/- per acre. Grand total of ₹5,04,65,953.05 was to be disbursed as per the statutory benefits also. The possession of the land was also noted which have been undertaken after offering compensation and as per the Award it vested in the ownership of Haryana Government and on transfer vested in Haryana Urban Development Authority now Haryana Shahri Vikas Pradhikran (HSVP). Apparently no action has been taken over all these years and the said land has vested in the State.

4. Keeping in view the litigation which was pending on account of the 2013 Act coming into force, the petitioners had joined another set of litigants and filed **CWP No.6902 of 2019 ‘Jai Pal and others Vs. State of Haryana and others’** in which they were arrayed as petitioner Nos.9 to 16 and sought the relief of lapsing under Section 24 (2) of the 2013 Act. The said case was dismissed on 24.11.2020 on the ground that no cause of action survived in view of the judgment of the Apex Court passed in **‘Indore Development Authority Vs. Manohar Lal and others’ AIR 2020 SC 1496**. Counsel at that point of time had taken permission to

withdraw the writ petition with liberty to file afresh if there is any other cause of action. Admittedly at that point of time policy dated 14.09.2018 (Annexure P-5) was already in force and no permission as such was taken for seeking re-consideration on the same. The order dated 24.11.2020 passed in **Jai Pal (supra)** reads as under:-

“Case has been heard through Video Conferencing on account of COVID-19 Pandemic.

Admittedly, in view of judgment in **Indore Development Authority v. Manohar Lal and others, SLP(C) Nos. 9036-9038 of 2016** decided on 6.3.2020, no cause of action survives in this petition. Learned counsel for the petitioners submits that he may be allowed to withdraw the instant petition with liberty to file afresh if there is any other cause of action.

Dismissed as withdrawn with aforesaid liberty.

5. Thereafter, after a period of almost 2 years a representation came to be filed on 20.08.2022 (Annexure P-7) claiming release of land under Section 101-A of the 2013 Act. Resultantly, the present writ petition has been filed. A specific averment has been made in the present writ petition that the respondents had not deposited the amount with the Reference Court and it was lying with the Land Acquisition Collector and petitioners have not received the compensation and possession of the petitioners over the land is from their forefather. Specific averments read as under:-

“15. That the petitioners have not received the amount of compensation too. The respondents have not deposited the amount with the reference court. It is lying with the Land Acquisition Collector. The possession of the petitioners over the land is from their forefather i.e. obviously, prior to the coming into force the Right to Fair Compensation And Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and compensation has not been paid or received by the

petitioners. Thus, the proceedings of acquisition qua the land of the petitioners are not sustainable under law.”

6. Keeping in view the background of the case, we had asked the State to file a short affidavit regarding this aspect as it was not believable that on account of vesting in the year 1994, the State had neither taken the possession and nor paid compensation as per the pleadings.

7. The reply of the State has come forth, wherein it has been specifically denied that the amount of compensation has not been received. Rather in the preliminary objection it has been specifically mentioned that a sum of ₹1,07,402/- has been received by Sultan Singh, predecessor of the petitioners and all their co-sharers had also received compensation and acquisition proceedings has been completed and the land stands vested in the beneficiary department i.e. HSVP. Relevant paragraph of the reply filed by the State reads as under:-

“7. That it is respectfully submitted after the announcement of award, the possession of the land in question was taken by recording Rapat Roznamcha no. 88 dated 17.11.1994 and same was handed over to Haryana Shehri Vikas Pradhikaran (HSVP). It is submitted that out of the total amount of award of Rs.8,52,33,577/- amount of Rs.7,50,05,548/- has been paid/disbursed to the land owners and the balance amount of Rs. 1,28,28,029/- is laying in the LAO Account. As far as the compensation with respect to the land in question is concerned Rs.1,07,402/- has been received by Sultan S/o Harnam i.e. predecessor of the petitioners, which fact has been concealed in the instant petition and instead wrong statement has been made in para no. 15 that no compensation has been received by the petitioners. All the co-sharers have also received the compensation amount, thus, the acquisition proceedings stands completed for all intents and purposes and stands vested in the beneficiary department i.e. HSVP. Therefore, the instant petition deserves to be dismissed with exemplary cost.”

8. In the reply filed, it has further been mentioned that the petitioners did not file any objection under Section 5-A of the 1894 Act and as per site inspection, the land in question was found to be vacant. The land in question as per the Circulation Plan of Sector-29 affects the planning of 50 meter wide green belt alongwith 18 meter wide service road. The layout plan has also been appended as (Annexure R-1) in support of the said averments.

9. It is, thus, apparent that there is concealment of facts and in our considered opinion an attempt has been made to get interim orders and to delay the development. The present writ petition which has been filed is a misuse of process of law. Rather keeping in view the settled law in **M/s Prestige Lights Ltd. Vs. State Bank of India, 2007 (4) R.C.R. (Civil) 46**, the writ petition is not entitled to be heard on merits at all. The relevant portion of the said judgment reads as under:-

“34. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a Writ Court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.

35. In the case on hand, several facts had been suppressed by the appellant-Company. Collusive action has been taken with a view to deprive the respondent- Bank from realizing legal and legitimate dues to which it was otherwise entitled. The Company had never disclosed that it had created third party's

interests in the property mortgaged with the Bank. It had also shifted machinery and materials without informing the respondent-Bank prejudicially affecting the interest of the Bank. It has created tenancy or third party's right over the property mortgaged with the Bank. All these allegations are relevant when such petitioner comes before the Court and prays for discretionary and equitable relief. In our judgment, the submission of the respondent-Bank is well-founded that appellant is not entitled to ask for an extraordinary remedy under [Article 226](#) of the Constitution from the High Court as also equitable remedy from this Court under [Article 136](#) of the Constitution. A party, whose hands are soiled, cannot hold the writ of the Court. We, therefore, hold that the High Court was not in error in refusing relief to the appellant-Company.”

10. However, in spite of that we go on to examine the second claim which has been made regarding the right under Section 101-A of the 2013 Act. The reply filed would go on to show that the land is very much required and that it has not become non-essential and unviable, though reliance has been placed upon judgment passed in ‘**Raghubir Singh and another Vs.State of Haryana and others**’, 2022 (4) SCC 728. The said judgment was discussed in a subsequent decision by the Apex Court passed in SLP (C) No.16421 of 2021 ‘**Ram Swaroop (deceased) through Lrs. and another Vs. State of Haryana and others**’ decided on 15.11.2021 and resultantly it was held that the litigation was only an attempt to continue to be in possession of the land, so as to defeat the public purpose of the acquisition. Relevant portion of the judgment passed in **Ram Swaroop (supra)** reads as under:-

“8. Section 101-A of 2013 Act (as inserted in State of Haryana) gives liberty to the State Government 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 landowner due to

such acquisition. Section 101-A is an enabling provision with the State Government to denotify the land vested with the State if it finds that any public purpose for which land was acquired under the Land Acquisition Act, 1894 becomes unviable or non-essential. In other words, the power is with the State Government on its satisfaction that the land acquired has become unviable or non-essential. No landowner has a vested right to assert that the land acquired has become unviable or non-essential mainly because the landowner continued to be in possession by virtue of an interim order passed by the High Court.

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11. The claim of the appellants for release of land on account of Section 24(2) had been rejected by the State Government on 12.09.2016. The writ petition against the said order stands dismissed on 12.10.2020. Thus, the present appeal is merely an attempt to continue to be in possession of the land on one pretext or the other so as to defeat the public purpose of acquisition of the land for development and utilization of residential, commercial and institutional area, Sector-51, Gurgaon (now Gurugram). This Court in Raghubir Singh has held that Section 101-A does not give a vested right to the landowner to seek denotification or even that upon denotification, the land in question must return to the erstwhile owners only. The State Government is at liberty to pass such order other than release of land in favour of the landowners.

12. Therefore, the appellants cannot compel an exercise of power by the State Government in their favour as the appellants have no vested right to seek denotification of the land. Consequently, the present appeal is dismissed.”

11. Thus, we are of the considered opinion that firstly on account of concealment of facts, the writ petition is not liable to be entertained. Secondly, the viability aspect has already been replied in the written statement filed by the State that the land is required for the development and part of the road, thus, it cannot be released. Thirdly, earlier also the

writ petition had been filed and withdrawn and the same relief cannot be asked time and again, though at that point of time also policy dated 14.09.2018 (Annexure P-5) was already in force and liberty was only taken qua any fresh cause of action, which in our considered opinion there is none.

12. Resultantly, we refrain ourselves from imposing exemplary costs upon the petitioners and dismiss the writ petition.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

February 06, 2023
Naveen

Whether speaking/reasoned :	Yes
Whether Reportable :	No