

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

Reserved on: 15.01.2024

Pronounced on: 31.01.2024

1. CWP-204-2003

GINNY JINDAL

.....Petitioner

Versus

THE COMMISSIONER AND ORS.

....Respondents

2. CWP-6939-2003

BHAGWAN DASS

.....Petitioner

Versus

THE COMMISSIONER AND ORS.

....Respondents

3. CWP-1140-2003

ANISHA BANSAL

.....Petitioner

Versus

THE COMMISSIONER AND ORS.

....Respondents

4. CWP-11098-2009

GURVINDERJIT SINGH AND OTHERS

.....Petitioners

Versus

THE COMMISSIONER AND ORS.

....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE HARSH BUNGER**

Argued by: Mr. Amit Jain, Senior Advocate with
Mr. Chetan Slathia, Advocate
for the petitioner(s)
(in CWP-204-2003, CWP-1140-2003, CWP-11098-2009).

Mr. Suresh Kumar Boodh, Advocate for
Mr. R.L.Sharma, Advocate
for the petitioner (in CWP-6939-2003).

Mr. Maninder Singh, DAG, Punjab.

Mr. Pankaj Gupta, Advocate
for the respondent – PSIEC
(in CWP-204-2003, CWP-1140-2003, CWP-6939-2003).

Mr. Hoshiar Singh, Advocate for
Mr. Sanjeev Sharma, Advocate
for respondent No. 3 (CWP-11098-2009).

SURESHWAR THAKUR, J.

1. Since all the writ petition(s) arise from common theretos notification(s) issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter for short called as the 'Act of 1894'), besides also arise from common theretos declaration(s) issued under Section 6 of the 'Act of 1894'. Therefore, all the writ petition(s) are amenable for becoming decided through a common verdict.

2. The said notification(s) became respectively issued on 11.12.1973 and on 13.02.1974.

3. The challenge made in the instant writ petition(s), is to, the concurrently made orders of eviction, as became respectively passed initially by the learned Collector concerned and thereafter by the Appellate Authority concerned.

4. The orders of eviction are respectively appended as Annexures P-12 and P-15 in CWP-204-2003, Annexure P-8 and P-10 in CWP-6939-2003, Annexures P-13 and P-15 in CWP-1140-2003 and as

Annexures P-6 and P-8 in CWP-11098-2009.

5. Be that as it may, the facts of each of the writ petition(s) (supra) are yet required to be separately delineated.

Facts of CWP-204-2003

6. The petitioner herein purchased land in dispute, forming part of plot No. 72 comprised in Khata No. 309/336, Khasra No. 41/7/1, for a valuable consideration from one Arjan Singh vide agreement to sell dated 02.04.1974. The petitioner continued to enjoy the peaceful possession of the said land purchased by her and it was only in the year 1989, the respondent-Corporation threatened to demolish the construction raised by the petitioner over the land in dispute along with other occupants of the land in the adjoining area on the pretext that the said land had been acquired by the Industries Department.

7. It is averred in the writ petition that the respondent-Corporation considered the matter regarding the allotment to be made to the occupants of the land adjoining the Focal Point, Phase – V, Dhandari Kalan, Ludhiana vide agenda item No. 48.30 of 1991 and it was decided by the respondent-Corporation to allot the land in question to the occupants of the said land in 120 feet wide strip at a rate fixed by the respondent-Corporation. The said agenda item was duly approved by the respondent Corporation vide its resolution dated 04.11.1991 and thereafter the Corporation in its meeting held on 29.12.1992 decided that the occupants of the said land shall be allotted land at the rate of Rs. 225/- square yard subject to the eligibility of the occupants and after receiving evidence of possession.

8. The petitioner alongwith other occupants submitted a

the plot in question to her as the Petitioner had a separate electric and water connection and had raised construction over the plot in dispute and also stated the facts regarding the report of the Local Commissioner in the civil suit and also mentioned about the letters dated 15.02.1993 sent by the respondent-Corporation calling upon them to give evidence with regard to the possession over the plots.

9. In the meantime, the respondent-Corporation after considering the case of certain occupants issued allotment letters to some of the occupants of the land situated in the same strip of land adjoining the Focal Point @ Rs. 225/- square yards.

10. The case of the petitioner remained under consideration with the respondent – Corporation since the year 1993 to the year 1998 and neither the case of the petitioner was rejected nor the petitioner was allotted the plot. Ultimately, the petitioner was constrained to file a civil suit against the respondent-Corporation for mandatory injunction directing the respondent- Corporation to allot plot No. 72 on the basis of resolution passed vide Agenda item No. 48.

11. Further, it is averred in para No. 16 of the paper book that the said suit is still pending adjudication before the learned Civil Court.

12. That during the pendency of the said civil suit, the respondent-Corporation proceeded to file eviction petition under Sections 5 and 7 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (hereinafter for short called as 'the 1973 Act'). Through an order made on 30.03.2001 (Annexure P-12), the learned Collector concerned allowed the said petition and ordered for eviction of the respondent therein besides ordered the respondent to

the land with effect from January 1989 till the handing over possession to the petitioner-Corporation.

13. Feeling aggrieved, the respondent therein, petitioner herein filed an appeal thereagainst before the Commissioner concerned. The learned Commissioner concerned, dismissed the said appeal vide order dated 27.09.2002 (Annexure P-15).

14. The above concurrent eviction orders (Annexure P-12) and (Annexure P-15) have caused pain to the petitioner herein and has led to file thereagainst, the instant writ petition.

Facts of CWP-6939-2003

15. The petitioner herein purchased land in dispute, comprised in Khasra No. 41//16/1, situated in village Dhandari Kalan, District Ludhiana from one Sukhdev Singh son of Faquiria. Sukhdev Singh had in turn purchased the property in question from Dalip Singh son of Bhagta on 16.02.1974. Earlier the predecessor-in-interest of the petitioner and now the petitioner is in possession of the property in question.

16. The State Government vide notification dated 14.02.1974, acquired the land in question for development of Industrial Focal Point Phase V, Dhandari Kalan, Ludhiana. Since the land in question as well as the adjoining area was in possession of various persons, the respondent Corporation framed a scheme for making allotment of areas to the occupants of the land adjoining the Focal Point, whereby it was decided by the respondent Corporation to allot the land to the occupants in 120 feet wide strip at the rates fixed by the respondent Corporation.

17. The respondent Corporation after considering the case of

the land situated in the strip of land adjoining the Focal Point. However, the respondent-Corporation declined to allot the plot to the petitioner herein and proceeded to file eviction petition under Sections 5 and 7 of 'the 1973 Act'.

18. Through an order made on 26.03.2001 (Annexure P-8), the learned Collector concerned allowed the said petition and ordered for eviction of the respondents therein besides ordered the respondents to pay damages @ Rs.300/- each per month for illegal use and occupation of the land with effect from August 1987, till handing over the possession to the petitioner-Corporation.

19. Feeling aggrieved, thereagainst, the respondents therein filed an appeal before the Commissioner concerned. The learned Commissioner concerned, dismissed the said appeal vide order dated 22.04.2003 (Annexure P-10).

20. The above concurrent eviction orders (Annexure P-8) and (Annexure P-10) have caused pain to the petitioner herein and has led to file thereagainst the instant writ petition.

Facts of CWP-1140-2003

21. The petitioner herein purchased land in dispute, forming part of plot No. 71 comprised in Khata No. 309/336, Khasra No. 41/7/1, for a valuable consideration from one Arjan Singh vide agreement to sell dated 02.04.1974. The petitioner continued to enjoy the peaceful possession of the said land purchased by her and it was only in the year 1989, the respondent-Corporation threatened to demolish the construction raised by the petitioner over the land in dispute along with other occupants of the land in the adjoining area on the pretext that the

22. It is averred in the writ petition that the respondent-Corporation considered the matter regarding the allotment to be made to the occupants of the land adjoining the Focal Point, Phase – V, Dhandari Kalan, Ludhiana vide agenda item No. 48.30 of 1991 and it was decided by the respondent-Corporation to allot the land in question to the occupants of the said land in 120 feet wide strip at a rate fixed by the respondent-Corporation. The said agenda item was duly approved by the respondent Corporation vide its resolution dated 04.11.1991 and thereafter the Corporation in its meeting held on 29.12.1992 decided that the occupants of the said land shall be allotted land at the rate of Rs. 225/- square yard subject to the eligibility of the occupants and after receiving evidence of possession.

23. The petitioner alongwith other occupants submitted a representation dated 12.11.1994 to the respondent-Corporation to allot the plot in question to her as the Petitioner had a separate electric and water connection and had raised construction over the plot in dispute and also stated the facts regarding the report of the Local Commissioner in the civil suit and also mentioned about the letters dated 15.02.1993 sent by the respondent-Corporation calling upon them to give evidence with regard to the possession over the plots.

24. In the interregnum, the respondent-Corporation after considering the case of certain occupants issued allotment letters to some of the occupants of the land situated in the same strip of land adjoining the Focal Point @ Rs. 225/- square yards.

25. The case of the petitioner remained under consideration with the respondent – Corporation since the year 1993 to the year 1998

allotted the plot. Ultimately, the petitioner was constrained to file a civil suit against the respondent-Corporation for mandatory injunction directing the respondent- Corporation to allot plot No. 72 on the basis of resolution passed vide Agenda item No. 48.

26. Further, it is averred in para No. 16 of the paper book that the said suit is still pending adjudication before the learned Civil Court.

27. That during the pendency of the said civil suit, the respondent-Corporation proceeded to file eviction petition under Sections 5 and 7 of the 'the 1973 Act'. Through an order made on 30.03.2001 (Annexure P-13), the learned Collector concerned allowed the said petition and ordered for eviction of the respondent therein besides ordered the respondent to pay damages @ Rs.2000/- per month for illegal use and occupation of the land with effect from January 1989 till the handing over possession to the petitioner.

28. Feeling aggrieved, the respondent therein, petitioner herein filed an appeal thereagainst before the Commissioner concerned. The learned Commissioner concerned, dismissed the said appeal vide order dated 22.10.2002 (Annexure P-15).

29. The above concurrent eviction orders (Annexure P-13) and (Annexure P-15) have caused pain to the petitioner herein and has led to file thereagainst, the instant writ petition.

Facts of CWP-11098-2009

30. The petitioners purchased property measuring 3300 square yards comprised in Khasra No. 41/16/1 and 17/1, situated in village Dhandari Kalan, District Ludhiana from Sukhdev Singh son of Faquiria. Sukhdev Singh had, in turn, purchased the property in

predecessor-in-interest of the petitioners and now the petitioners are in possession of the property in question.

31. The State Government vide notification dated 14.02.1974, acquired the land in question for development of Industrial Focal Point Phase V, Dhandari Kalan, Ludhiana. Since the land in question as well as the adjoining area was in possession of various persons, the respondent Corporation framed a scheme for making allotment of areas to the occupants of the land adjoining the Focal Point, whereby it was decided by the respondent Corporation to allot the land to the occupants in 120 feet wide strip at the rates fixed by the respondent Corporation.

32. The respondent Corporation after considering the case of certain occupants issued allotment letters to some of the occupants of the land situated in the strip of land adjoining the Focal Point. However, the respondent-Corporation declined to allot the plot to the petitioners herein and proceeded to file eviction petition under Sections 5 and 7 of 'the 1973 Act'.

33. Through an order made on 11.02.2005 (Annexure P-6), the learned Collector concerned allowed the said petition and ordered for eviction of the respondents therein besides ordered the respondent(s) to pay Rs.550/- each per month, as damages totaling Rs. 3300/- per month from the date of filing of the petition till handing over the possession.

34. Feeling aggrieved, thereagainst, the respondents therein, petitioners hereins filed an appeal before the Commissioner concerned. The learned Commissioner concerned, dismissed the said appeal vide order dated 06.01.2009 (Annexure P-8).

(Annexure P-8) have caused pain to the petitioners herein and have led to file the instant writ petition thereagainst.

Relevant stands taken by the respondent(s) in terms of the replies filed, on affidavit, in each of the writ petition(s).

CWP-204-2003

*That the land including the land in dispute bearing Khasra no.41//7/1 khata no. 309 situated in village Dhandari Kalan Teh. & Distt. Ludhiana was acquired by the State of Punjab vide notification U/s 4 & 6 of the Land Acquisition Act on 11/12/1973 and 13/02/1974. **The possession of the land was taken by the State Of Punjab and the compensation of the land was paid by the Govt., to the rightful owners and the land in question was handed over to the Corporation (P.S.I.E.C) which is a unit of Industries Deptt. of Punjab for development of Industrial Focal Point. The Petitioner has never lodged any claim before the Collector Land Acquisition to claim ownership of the land in question. Since the petitioner in the present writ petition is claiming title on the basis of agreement of sale which carries no value as the ownership of the seller has not been proved by the respondent. Therefore, an agreement does not by itself create or extinguish the title and the party claiming title under the agreement must necessarily seek a declaration from competent court.***

*That the claim of the petitioner for the allotment of plot has been examined by the competent authority at the highest level alongwith the claim of other similarly situated persons. A sub committee constituted by the Corporation has examined all the cases in its meetings held on 31.1.2001 and 18.4.2001. While dealing with the claim of the petitioner, it came to the conclusion that the petitioner was not covered within the criteria and, therefore, not entitled to the plot. The matter was put up before the allotment committee in its 28th meeting held on 25.9.2001 under the Chairmanship of Director of Industries and Commerce, Punjab, **Vide proceedings, Annexure P-18 the allotment committee also concluded that the petitioner's claim deserved to be rejected and the eviction proceedings deserved to be pursued. The matter has, thus, been examined by the authorities in accordance with law and the decisions of the allotment committee***

have attained finality. The present petition seeking allotment of land dehors of and in deference to the decision of allotment committee is wholly incompetent and liable to be summarily dismissed.

CWP-6939-2003

*That in reply to para no. 12 of the writ petition it is submitted that in response to the directions of the Hon'ble Punjab and Haryana High Court, the Corporation had decided to regularise the possession of the petitioners therein Thakurdin & others covering Shri Sukhdev Singh also on 06.03.2002. In addition to this the Corporation had also requested the State Government vide its letter dated 11.03.2002 to examine the issue relating to the regularisation of the possession of the petitioners and other similar persons who had remained in possession of the Corporation's land for 10 years or more. In response to our letter dated 13.11.2002, the State Government has intimated vide their dated 28.11.2002 that **the matter has been considered and there was no justification to frame policy for regularisation of illegal encroachments on the land as it will further encourage the tendency of the illegal occupation.** Accordingly, the matter regarding regularisation of encroachment and the decision of the State Govt. dated 28.11.2002 thereafter were placed before the Board of Directors of the corporation in their 216th meeting held on 11.12.2002. The Board considered and decided not to regularise the possession of the other illegal occupants of land.*

CWP-1140-2003

*Same as the stand taken by the respondents in **CWP-204-2003.***

CWP-11098-2009

That the contents of para 3 of writ petition are admitted being matter of record. However, it is clarified that the answering respondent acquired the land in the year 1974-75. The answering respondent acquired approximately 480 acres of land to be developed in phases for focal point. Part of the land approximately 7 acres was encroached, which was to be part of Phase-V Focal Point Dhandarikalan. There were various encroachments. The proceedings under the Public Premises Act against all the encroachers being drawn

*in the year 1990. Later on it was decided that since it is up hill to remove all the encroachments, therefore, the persons who had encroached the land and were issued notices under Public Premises Act and whose names also appear in the Local Commission Report, who was appointed by the court of Collector, Ludhiana should be allotted the plot of maximum area of 500 sq. yards and the Focal Point should be developed in planned manner. **Therefore, in pursuance of the above said policy of the Government the persons who fulfilled criteria i.e who had been issued notices under Public Premises Act up to 1989 and whose names were also in the Local Commission Report dated 23.5.91 should be allotted plots. In view of the policy whoever falls in the above said criteria has been allotted the plot.***

The petitioner was neither issued any notice under Public Premises Act nor his name appeared in the report of the Local Commissioner, which was appointed by the Court.

Common submissions of the learned counsel for the petitioner(s).

36. The learned counsel for the petitioner(s) appearing before this Court, challenge the concurrently made orders of eviction, as passed by the statutory authorities under the 'the 1973 Act', thus on the ground that the said orders of eviction were not passable, as prior to the institution of the said eviction petition, rather the petitioners in the relevant petition(s), had instituted a civil suit, and, the said civil suit was also *sub judice*, at the relevant stage. Therefore, when thereins a decree for mandatory injunction, thus directing the defendants to allot the plot in question, rather was claimed. Moreover, with a further claim thereins for restraining the defendants from dispossessing the plaintiffs from the suit property.

37. In addition, when in the said *sub judice* suit, wherein, became impleaded the respondents-acquiring authorities, thus a claim became also raised, that the petitioner(s) are not in unauthorized

possession of the petition lands, thus premised upon the respective agreement(s) to sell, as appended with the relevant writ petition(s).

38. Therefore, it was contended that until a declining decree was made on the said made claim, rather in the civil suit, thereupto the authorities under 'the 1973 Act', did not enjoy any jurisdiction to either declare, that the petitioner(s) were in unauthorized occupation of the disputed lands nor any valid orders of eviction rather could be passed against the petitioner(s) concerned.

39. The counsel for the petitioner(s) have also vigorously contended before this Court, that since the respondents, have practiced invidious discrimination against them, inasmuch as, theirs making allotment(s) to other occupants, upon, the acquired lands, but yet when the petitioner(s), were similarly situated to such allottees, yet theirs not being treated at par with them, thereby the launching of the eviction proceedings against them, is a gross abuse of the process of law, and/or irrespective of verdicts of eviction being passed against them, rather for ensuring that the petitioner(s), be treated at par with such similarly situated allottees, thus the respondents concerned being also directed to make allotment(s) of the relevant parcels of land, hence even to the petitioner(s) concerned.

Submissions by the learned counsel for the respondents.

40. The learned counsel appearing for the respondents, has vigorously argued before this Court, that the assumption of jurisdiction by the statutory authorities below, was a validly assumed jurisdiction, as the present petitioner(s), were evidently in unauthorized possession of the petition lands.

submissions, on the plea that the purported agreement(s) to sell, whereons reliance has been made by the petitioner(s) concerned, thus in the apposite civil suits concerned, for thereby the Civil Court concerned, making an affirmative adjudication on the apposite suit, thus is a mis-placed reliance, and/or, no leverage can be drawn therefrom.

42. In making the above submissions, the learned counsel for the respondents, rests the same on the plea, that the said agreement(s) to sell, were executed post the issuance of a notification under Section 4 of the 'Act of 1894', and that when there is a declaration of law, thus made in a plethora of judgments rendered by the Hon'ble Apex Court, that on issuance of a notification under Section 4 of the 'Act of 1894', rather thereby it but disrobes all right, title and interest in the land losers concerned, over the subject lands, rather concomitantly an absolute right, title and interest over the acquired lands, becomes bestowed in the acquiring authority. Therefore, it is contended, that the present petitioner(s) cannot draw any sustenance from such defective or flawed agreement(s) to sell.

Analysis of the submissions made by the learned counsel for the parties and reasons for rejecting the submissions made by the learned counsel for the petitioner(s) and accepting the submissions made by the learned counsel for the respondents.

43. Initially, a statutory bar is created, through occurrence of a provision in Section 15 of 'the 1973 Act', provisions whereof, become extracted hereinafter, thus against the exercising of jurisdiction, by the Civil Courts concerned, in respect of lands owned and possessed by the State of Punjab, and/or, in respect of public premises.

“ 15. No court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person who

is in unauthorized occupation of any public premises or the recovery of the arrears of rent payable under sub-section (1) of section 7 or the damages payable under sub-section (2) of that section or the costs awarded to the State Government or the corporate authority under sub-section (5) of section 9 or any portion of such rent, damages or costs.”

44. Therefore, though in the wake of the said statutory bar, the jurisdiction, as became assumed on the apposite petition(s) by the authorities contemplated under 'the 1973 Act', but was a well exercised jurisdiction thereons.

45. Be that as it may, it appears that in the garb of the agreement(s) to sell concerned, for enforcement whereof, a civil suit became instituted by the petitioner(s) concerned, before the Civil Court concerned, and which civil suit was evidently filed prior to the institution of the apposite eviction proceedings, and, was also *sub judice*, at the stage of rendition of concurrent orders of eviction, on the relevant petition(s), that a dispute about title over the subject lands rather has arisen amongst the contesting litigants.

46. The said dispute relates to the validity of assertability of the petitioner(s) qua their claim, to title, to the petition lands. Therefore, on the basis of the said assertion, it is contended before this Court, by the counsel for the petitioner(s), that unless there was a clear clinching vesting of title over the petition lands in the respondent-State, thereby the apposite eviction petition was not maintainable, before the statutory authorities concerned, nor valid orders of eviction could be passed thereons.

47. If the above, is the reason for launching, an onslaught to

the validity of the concurrently made orders of eviction, this Court for reasons to be assigned hereinafter, does not concur, with the said submissions.

48. Primarily for the reason, that since the agreement(s) to sell on which dependence is made by the counsel for the petitioner(s) for unhinging the claim of the respondents concerned, to claim the vesting in them, of absolute right, title and interest over the petition lands, rather were executed post the issuance of a notification under Section 4 of the 'Act of 1894'. Therefore, but naturally since it is declared in a plethora of verdict(s) rendered by the Hon'ble Apex Court, that on issuance of a notification under Section 4 of the 'Act of 1894', there occurs complete vestment of right, title and interest over the subject lands in the acquiring authority, but with a concomitant divestment of right, title and interest over the acquired lands, thus in the land losers concerned. Resultantly thereby, it has to be but concluded that no valid sustenance can be drawn from the said agreement(s) to sell.

49. Nonetheless, the above findings are not required to be forestalling the civil Court of competent jurisdiction wherebefore any civil suit, if any, is yet *sub judice*, to discount but for the above reason, the said agreement(s) to sell.

50. However, at this stage, the above *prima facie* conclusions, with respect to the lack of legal consequentiality whatsoever, of the said agreement(s) to sell, but founded upon the above inference, rather *prima facie*, appears to be both sufficient and adequate, thus for this Court to conclude, that assumption of jurisdiction by the statutory authorities concerned, on the relevant petition(s), rather was an able

premised, on the ground, that prior to the assumption of jurisdiction, on the relevant petition(s), rather no enforceable decree became rendered by the civil Courts of competent jurisdiction, whereby they declared the said agreement(s) to sell, to thus holding legal consequentiality, if they did hold such legal consequentiality, so as to debar the authorities concerned, to exercise jurisdiction, on the eviction petition(s) concerned.

51. Therefore, when there is a bar (supra) created against the exercising of jurisdiction by the Civil Courts concerned, in respect of a subject matter covered within the ambit of the special statute (supra). Resultantly therebys, the apposite assumption of jurisdiction, besides also the rendition of orders of eviction, on the eviction petition(s) concerned, thus are construed to be validly made.

52. Predominantly, besides reiteratedly on, the short ground that, at the relevant stage of institution of the eviction petition(s), there was but for reason (supra), investment of absolute title as owners in the respondent concerned, thereby, the acquired lands became a public premise, and any unauthorized occupation thereons rather by the petitioner(s) was but required to be relieved, through orders of eviction being passed against them, as aptly done.

53. Furthermore, the said orders of eviction, were also required to be passed, so as to enable the acquiring authority concerned, to ensure that therebys, the public purpose concerned, for which the petition lands, became acquired, do not suffer nor therebys the public purpose becomes untenably delayed or frustrated, thus to the prejudice of public interest.

have argued that the respondents concerned, proceeded to make invidious discrimination against them, inasmuch as, theirs omitting to allot lands to the present petitioner(s), whereas, vis-a-vis similarly situated persons, the respondents proceeding to allot lands to them.

55. However, even the above ground is rudderless. The reason for making the above conclusion becomes garnered, from the factum that the other purportedly similarly situated persons, with the present petitioner(s) rather were found to be in possession over the petition lands, in the year 1989, whereas, but for a bald averment being raised by the present petitioner(s) that they alike them were in possession of the acquired land in the year 1989, no further supporting evidence is adduced. Therefore, for lack of adduction of any supporting evidence to the above bald averment, thereby they cannot claim any parity with the other allottees, who evidently were in possession over the acquired lands, in the year 1989, whereby their names became enlisted in the list of un-authorized occupants, thus leading to the allotments being made in their favour. Contrarily, the names of the present petitioner(s) did not become so enlisted in the relevant list and as such there was denial of allotments to them.

56. Consequently, the above non enlisting of the present petitioner(s) in the relevant list, whereas, the other purportedly similarly situated to the present petitioner(s), thus un-authorized occupants or encroachers upon the acquired lands rather finding their occurrence, in the relevant list, thereby the said inter-se distinction, also does not create any hostile or invidious discrimination, becoming perpetrated against the present petitioner(s).

vehemently argued, that, though in terms of Section 53-A of the Transfer of Property Act, 1882, provisions whereof are extracted hereinafter, thus the petitioner(s) have assumed possession of the acquired lands and that too after paying the entire sale consideration to the respective vendors, thereby the provisions (supra), did work as a protective shield qua them, for theirs repulsing the onslaught on their but lawful possession, over the acquired lands, as becomes made rather through the launching of eviction proceedings against them by the respondent concerned.

“53A. Part performance.-- Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.]

58. However, the above argument is bereft of any vigor. The reason for making the above conclusion arises from the factum, that the legal consequentiality thereof, if any, or the application thereto, if any, to the agreement(s) to sell, thus would become necessitated, only when the respective vendors were holding a valid title over the lands, covered within the agreement(s) to sell. However, when as stated (supra) none of the vendors held any valid alienable title to the lands covered within the agreement(s) to sell, inasmuch as, thus for reasons (supra), rather the agreement(s) to sell, being executed post the issuance of a notification under Section 4 of the 'Act of 1894', thus evidently at a stage when there is complete vestment of right, title and interest over the acquired lands, in the acquiring authority, and, but with a concomitant divestment of right, title and interest, over the acquired lands, in the vendors concerned. Resultantly thereby no capital or legal leverage whatsoever can be drawn by the petitioner(s) from the said agreement(s) to sell.

59. Without adversely commenting, on the validity of the said allotment(s) made to the said unauthorized occupants, over the acquired lands, the said allotment(s) do appear to be made as a measure of condonation of unauthorized occupations, as made over the acquired lands, whereby there is loss to the exchequer and/or there is unjust vindication of unauthorized possession over the acquired lands. Therefore, too, but without reversing the allotment(s), as previously made by the respondents concerned, thus in terms of, the then relevant policy, this Court is of the view, that in-so-far as the present petitioner(s), are concerned, apart from theirs, for reasons (supra), not

thus neither the benefit of such policies nor the benefit of the relevant resolutions, thus can be assigned to the present petitioner(s).

60. Be that as it may, on anchor of the said policies wherethrough release(s) were made to unauthorized occupants over the acquired lands, thus constitutes the clearest breach of declaration of law against the makings of untenable distribution of public lands, except through the employments of auction proceedings, whereby only to the highest bidder, rather lawful allotments of public lands rather can be made. It is enigmatic as to what propelled the respondent-State to distribute public lands, in a most unfair manner and arbitrary manner, and that too, to those persons who were in unauthorized occupation of public lands, and, who as such were rather required to be evicted through the drawings of eviction proceedings, through recourings being made to the relevant statutes.

FINAL ORDER BY THIS COURT.

61. In aftermath, this Court finds no merit in the writ petition(s), and, with the above observation(s), the same are dismissed. The impugned Annexures (eviction orders) in all the writ petition(s) (supra) are maintained and affirmed.

62. It is clarified that the above observation(s) are meant only for a decision on the instant petition(s) and may not influence or may not be construed to be influencing the learned Civil Court concerned, wherebefore whom the civil suits, if any, are *sub judice*.

63. No order as to costs.

pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

31.01.2024

kavneet singh

Whether speaking/reasoned

Whether reportable

:

:

Yes/No

Yes/No