

119

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-3448-2024
Date of Decision : 15.02.2024

BASIR AHMED AND ORS.Petitioners

Versus

STATE OF HARYANA AND OTHERSRespondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present : Mr. G.S.Goria, Advocate
Mr. Nasir Ahmed, Advocate
Mr. Vikram Singh, Advocate
Mr. Shahbaz Khan, Advocate
Mr. Zakir Hussain, Advocate
for the petitioner.

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

SURESHWAR THAKUR, J. (Oral)

1. The instant writ petition is directed against Annexure P-1, whereby the competent authority declined to favourably apply to the present petitioners, the mandate enclosed in Section 101-A of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter for short refer 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.”

2. Before proceeding to make an adjudication upon the instant writ petition, it is deemed imperative to make an allusion to the trite factum, that the making of the impugned Annexure, is a sequel of the present petitioners, earlier filing CWP-18338-2009 before this Court, whereons, a prayer was made, thus for quashing of the notification for acquisition which became issued on 31.03.2008, and, which became succeeded by an award being made by the learned Collector.

3. However, through an order made on the said writ petition, on 04.08.2010, the relief (Supra) became declined to the present petitioners, thus leading the petitioners to challenge the said order, through theirs instituting SLP (Civil) No. 7338 of 2011, before the Hon'ble Apex Court, but the said SLP was disposed of vide order dated 24.02.2015, yet with a liberty to the petitioner to file a representation before the appropriate authority. Thereafter, representation dated 10.03.2015 was submitted by the applicant. The same was examined and rejected by the State Government vide order dated 24.01.2017, given the same being devoid of merit.

4. Thereafter, the petitioners filed CWP No. 12835 of 2022 before this Court. The said petition was dismissed as withdrawn vide order dated 19.07.2022 passed by this Court but with liberty to the petitioners to file a fresh representation for release of land under Section 101 A of the 'Act of 2013'.

5. In pursuance to the said made order (supra), becoming made by this Court, the present petitioners filed representation before the competent authority, and, whereons Annexure P-1, became rendered.

6. Since the boundary of the said representation is confined vis-a-vis the favourable applicability, if any, of the above extracted provisions qua the petitioners. Therefore, this Court is not required to either delve into or to make any adjudication whether the petitioner is entitled to become bestowed with the beneficent grace of the mandate encapsulated in Section 24 (2) of the 'Act of 2013'.

7. The learned counsel appearing for the petitioners while attempting to invalidate Annexure P-1, has raised a submission on the ground, that given the acquired lands remaining un-utilized as such they are required to be released or exempted from acquisition.

8. The above raised contention is completely rudderless and is required to be rejected and as such is rejected.

9. The reason for making the above contention becomes founded upon the factum, as echoed thereons, that after the lawful termination of the acquisition proceedings, the possession of the acquired lands has been transferred to HSIIDC, thus leading to development work on the acquired lands being almost completed

besides the developed thereons industrial plots rather being in the process of being allotted to the Industrialists concerned.

10. If so, the said argument becomes capsized and is required to be rejected.

11. Even, if assuming that the said echoing in the impugned Annexure, is not fully truthful, and, also assuming that the acquired lands remained un-utilized but the factum of the acquired lands remaining un-utilized, rather to the considered mind of this Court, does not well enable the petitioners to contend that, thereby the acquired lands are either unviable or non-essential for furthering the requisite public purpose.

12. The legal conundrum relating to the impartings of significations to the apposite statutory coinages 'unviability' or 'non-essentiality' of the acquired lands has been settled in a judgment made by this Court in case ***CWP No. 12432 of 2023*** titled as '***Anil Suri and another versus State of Haryana and others***', wherein, in the relevant paragraphs thereof, paras whereof are extracted hereinafter, this Court has expounded, that mere non-utilization of the acquired lands rather does not leverage the land loser concerned, to claim that thereby the said acquired lands are either unviable and/or are non-essential for furthering the requisite public purpose. Contrarily, this Court has in the hereinafter extracted relevant paragraphs, as carried in the verdict (supra), has taken the view, that the nuance of the above statutory coinages, is that, it is applicable only to a situation of evident *vis major* arising or to a situation where on account of an exorbitant sum of compensation becoming determined by the Collector concerned,

thereby, the State Exchequer becoming encumbered with an onerous financial burden, whereby, but naturally the said facet of unviability or non-essentiality, qua the retention of the acquired lands rather for furthering the requisite public purpose, thus works as a well constraint, upon the acquiring authority to conclude, that as such the acquired lands, are amenable for becoming released or exempted from acquisition, their retention but becoming financially unviable.

“72. Moreover, this Court in ***CWP-15174-2023***, titled as ***“The Press Employees and Friends Co-operative Group Housing Society Ltd. V/s State of Haryana and others”***, decided on ***19.07.2023***, made the hereinafter extracted observations:-

“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 “non-essential” 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 de-notify 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.”

73. In view of the above alluded settled legal proposition, since in the present writ petitions also, the acquisition proceedings stood lawfully terminated, as elaborated

hereinabove, therefore, since Section 101-A of the Act of 2013, which is only an enabling clause for the State Government/acquiring authority to de-notify the acquired land, but only if it becomes “unviable” and “non-essential” for any efficacious public purpose, thereby the said statutory provision does not endow any right in the erstwhile landowners to either challenge the validity of already lawfully concluded acquisition proceedings, or, to seek release of their acquired lands, on mere oral assertions, without bringing any cogent material on record.

74. The power to de-notify lands, by virtue of Section 101-A, can only be invoked when the twin statutory ingredients therein, i.e. the acquired lands becoming “unviable” and “non-essential” for any public purpose, rather are satisfactorily fulfilled. Therefore, the de-notification of acquired lands is only possible when such lands evidently fall within the domain of the above prescribed twin conditions, which are the mandatory pre-conditions for the State Government to form an objective opinion, while taking into consideration the larger public interest.

75. Conspicuously, in the formation of the said objective opinion, only the executive has the prerogative to take, or, to form the said objective opinion and the landlooser(s) concerned cannot dictate the manner of making of such objective opinion(s), nor can thrust his standpoint, vis-a-vis, the executive, in the latter taking a view, that the benefits of said statutory ingredients are to be compulsorily assigned to the landlooser(s) concerned. The reason being, that the landlooser(s) concerned has an individualistic interest in his seeking exemption of his acquired lands, whereas, the executive in his making objective contemplations about the meteing of benefits thereof to the landlooser(s) concerned, or, not meteing benefits thereof to the landlooser(s) concerned, thus is required to be bearing in mind the larger public interest. Therefore, in the manner(s) of making of objective contemplations, vis-a-vis, meteings or assignments of benefits of the said statutory conditions, to the landlooser(s) concerned, the imperative factor may be the inclusion of the disputed lands in the layout

plans concerned. If so, the inclusion of the disputed lands in the layout plans renders them to be working towards a public purpose, and/or, thereby the disputed lands become an insegregable component of an imperative public purpose. Therefore, when even otherwise, this Court is barred in the exercise of its writ jurisdiction, to review or to re-examine the formulation of layout plans, thus by the engineering cell of the acquiring authority concerned. Resultantly, reverence is to be meted to the layout plans concerned, which includes therein the disputed lands. In sequel, the release(s) of acquired lands, but on the above statutory conditions, thus may be barred to be claimed by the landlooser(s) concerned.

76. *In making the above inference, this Court finds support from the replies respectively furnished to the writ petitions, wherein, it has been categorically stated, that the acquired lands are essential for facilitating the public purpose(s), as carried in the respectively drawn Final Development Plans concerned. Therefore, when the acquired lands are an insegregable component of emergent public purposes and are also but required for developmental activities, thereby their release would prejudicially affect the relevant public purposes. Therefore, for ensuring that the relevant public purposes are not impeded, thus predominance is to be assigned to public interest, than to the individualistic interest of the erstwhile landowners concerned.*

77. *Nonetheless, it is also no more res integra that if after utilization of the acquired land for the relevant public purpose, rather some lands, yet remain unutilized, thereby they need not be returned to the original landowner, rather they can either be utilized for any other public purpose or it can be sold by way of public auction, so as to achieve the larger public interest. Gainful reference in this regard can be placed upon case titled “**State of Kerala v. M. Bhaskaran Pillai**”, AIR 1997 SC 2703, wherein, the Hon’ble Supreme Court has held as under:-*

“...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.....”

78. *Also, 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.*

79. *Therefore, but obviously, non-utilization(s) of the acquired lands for a prolonged duration of time does not thereby render them to be “unviable” or “non-essential” for the requisite public purpose. The reason being, that public purpose is the cornerstone for acquisition(s) of the disputed lands, and, rather on retention of the acquired lands, than making release(s) thereof to the landlooser(s) concerned, thus the public purpose rather would still remain intact or alive. In consequence, the ever alive public purpose is required to be effectively galvanized. The above would happen only on retention of the acquired lands, than their release(s) or exemption(s) being meted to the landlooser(s) concerned, but,*

irrespective of the fact, that the disputed lands remain unutilized for an inordinately long spell of time.

80. *In the non-purveying of enablements, vis-a-vis, the landlooser(s) concerned qua the beneficent grace of the above statutory conditions of “unviability” or “non-essentiality”, thus would be construed to be well exercised, rather by the executive, only upon evident occurrence(s) of vis major or upon exorbitant and excessive sums of compensation monies, becoming determined by the statutory authority, thereby making the relevant project to be financially unviable. Therefore, to the considered mind of this Court, the limits or the domains, besides the functionality of the above statutory conditions, is thus, within the realm of evident emergence(s) of vis major or upon exorbitant and excessive sums of compensation monies, becoming determined by the statutory authority, thereby making the relevant project to be financially unviable.*

81. *The hereinabove elaborately assigned reasons are ample for rejecting the principal argument of the learned counsel(s) for the petitioner(s), which generates from Section 101-A of the Act of 2013, as well as, the policy dated 14.09.2018.”*

13. Furthermore, in a verdict rendered by the Hon'ble Apex Court in case **Civil Appeal No.7634 of 2023** titled as '**Nandkishor Babulal Agrawal Vs. The State of Maharashtra and Ors**', it has been expostulated by the Hon'ble Apex Court, in the relevant paragraph thereof, para whereof is extracted hereinafter, that there cannot be a time limit within which the authorities are expected to utilize the acquired lands.

“ 11. In our considered view, the High Court would be extremely circumspect to issue a mandamus in the exercise of its extraordinary jurisdiction under Article 226 of the Constitution, directing to release a lawfully acquired land only on the premise that such land has not been utilized for

the public purpose for which it was acquired. There is no gainsaying that once the land vests in the State or its authorities, the 'public purpose' of its acquisition can be changed at a later stage. All that is required is that such land should be utilized for public purposes only. In fact, there cannot be a time limit within which the authorities are expected to utilize the acquired land. The Municipalities or such other agencies are expected to have long-term plans for regulated development of urban areas and for that purpose, certain pockets of land are required to be kept vacant as reserve pool to cater the future needs.

14. Also, in a verdict rendered by the Hon'ble Apex Court in case **SLP (Civil) No. 16421 of 2021 titled as 'Ram Swaroop (dead) through LRs. and Another Vs. The State of Haryana and Ors'**, it has been expostulated by the Hon'ble Apex Court, thus in the relevant paragraph(s) thereof, paras whereof are extracted hereinafter, that the opinion of the State Government whether the land is unviable or non-essential cannot be disputed by the landowner at the drop of the hat.

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 nonessential mainly because the landowner continued to be in possession by virtue of an interim order passed by the High Court.

*9. This Court in **Raghubir Singh** has held that it is the bounden duty of the State to examine the relevant facts and form suitable opinion as may be advised regarding the lands having become unviable or non-essential or not. The opinion of the State Government whether the land is unviable or non-essential cannot be disputed by landowner at the drop of the hat. The principles of judicial review of an administrative action as laid down by this Court in *Tata Cellular v. Union of India* are illegality i.e., decisionmaker must understand correctly the law that regulates his decision making power and must give effect to it; irrationality namely *Wednesbury unreasonableness*; and procedural impropriety.....”*

15. Furthermore, even if the acquired lands remained unutilized for a prolonged duration of time, yet it has also been declared in the verdict made by this Court in **Anil Suri's case (supra)**, that the dynamics of the public purpose are ever changing and there can be yet a change from the public purpose as enshrined in the notification for acquisition, rather to some other public purpose.

Final Order of this Court.

16. In aftermath, this Court finds no merit in the writ petition, and, with the above observations, the same is dismissed. The impugned notification(s), and consequent thereto award are maintained and affirmed.

17. No order as to costs.

18. Since the main cases itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

15.02.2024
kavneet singh

(SUKHVINDER KAUR)
JUDGE

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