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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-6262-2024

Date of decision:04.04.2024

SURESH

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Divyam Singh, Advocate for
Mr. Vikram Singh, Advocate
for the petitioner.

Mr. Ankur Mittal, Addl. AG Haryana with
Mr. Pradeep Prakash Chahar, Sr. DAG, Haryana.

Mr. Ankur Mittal, Advocate with
Ms. Kushaldeep Kaur, Advocate and
Mr. Shivam Garg, Advocate for HSVP.

SURESHWAR THAKUR, J. (ORAL)

1. The present petitioner along with other co-petitioners had earlier instituted CWP-18527-2017. On the said writ petition a decision (Annexure P-11) was made whereby this Court dismissed the said writ petition. The making of Annexure P-11 by this Court, led the aggrieved therefrom, to institute SLP (Civil) bearing No.1108 of 2020, before the Hon'ble Apex Court. The Hon'ble Apex Court through an order made thereons on 02.03.2021, i.e. on the said SLP (Annexure P-12), after allowing the said SLP, and, also after obviously annulling Annexure P-11, granted liberty to the petitioners to access the competent authority with an application cast in terms of Section 101-A of the Right to Fair

Compensation and Transparency in land Acquisition, Rehabilitation and Resettlement Act, 2013, as applicable to the State of Haryana (hereinafter referred to as the “Act of 2013”).

2. It is not contested today before this Court that an adversarial order on the said representation was made by the competent authority. The making of the said adversarial order on the relevant representation is appended as Annexure P-9 to the instant writ petition.

3. Annexure P-9 was made on 17.01.2024. However, before the making of the said decision by the competent authority, the present petitioner had already instituted CWP-1883 of 2022 before this Court. Nonetheless, as disclosed by Annexure P-8, the said writ petition was dismissed on the ground that the same has become rendered infructuous.

4. The making of Annexure P-8 by this Court has not been challenged before the Hon’ble Apex Court, and, obviously the earlier writ petition which resulted in the making of Annexure P-11, and, which further resulted in the making of Annexure P-12 by the Hon’ble Apex Court, whereby excepting liberty becoming granted, to the petitioner to access the competent authority, thus with a representation cast under Section 101-A of the Act of 2013, rather no further relief was granted to the present petitioner. Therefore, but obviously a successive litigation, preferred by the present petitioner on the same and similar cause of action, which resulted in the making of Annexure P-12, by the Hon’ble Apex Court, whereby thus excepting the limited facet (*supra*), thus no further relief was granted, rather was not maintainable before this Court, given the same being hit by the doctrine of constructive *res judicata*.

5. However, the petitioner to escape the rigor of the said doctrine of *res judicata*, has re-instituted the instant writ petition before this Court,

on the ground, that an adversarial decision (Annexure P-9) has been made by the competent authority in terms of the directions passed by the Hon'ble Apex Court in Annexure P-12.

6. The learned counsel for the petitioner also contends, that since the petitioner has an indefeasible right to challenge the said decision thus the said right cannot be declined. However, the said ground as raised today before this Court by the learned counsel for the petitioner, thus to escape from the applicability of the doctrine of *res judicata*, to the successive writ petition bearing No.CWP-1883-2022, rather also is not acceptable to this Court.

7. The reason for making the said inference becomes derived from the imperative factum that Annexure P-9 was passed on 17.01.2024, but the decision on CWP-1883-2022 was made on a date subsequent thereto. Though a copy of Annexure P-7, is stated by the learned State counsel to be placed before this Court, yet this Court proceeded to make Annexure P-8. Since from a reading of Annexure P-8, contents whereof, are reproduced hereinafter, rather it is apparent that though the learned counsel for the petitioners therein, may have then asked for the causing an amendment to the writ petition, yet he omitted to ask for an apposite amendment being made to the writ petition nor then he asked that he may be permitted to incorporate but with the leave of this Court, a relief relating to the quashing of Annexure P-9.

“1. Learned counsel for the petitioners submits that since the asked for order, has been made by the competent authority, therefore, the instant petition has become rendered infructuous, and the same may be disposed of, as such.

2. Prayer is accepted.

3. Instant petition is disposed of, as having been rendered infructuous.”

8. Consequently the omission (supra), of the learned counsel for the petitioner when ultimately resulted in the above made order becoming passed by this Court, thereby the said omission, does tantamount to abandonment and waiver of challenge to Annexure P-8, and, consequently also the bar of estoppel embodied in Order II Rule 2, becomes attracted against the petitioner whereby he becomes completely restrained from re-accessing this Court.

9. Though in the wake of the above inference, this Court finds no merit in the instant writ petition, but even in the larger interest of justice, this Court, on a reading of Annexure P-9, finds that certain observations which are occurring in the relevant portions thereof, relevant portions whereof becomes extracted hereafter, rather candidly revealing, that there has been active concealment and suppression by the present petitioner, both from this Court, and, also from the Hon'ble Apex Court, qua whatever acquired portion of the estate of the land-losers concerned, was amenable for becoming released, thus the said estate(s) becoming released. Moreover, there is also a clear indication therein, that despite evident rapat possession becoming made in respect of the acquired lands, besides despite the compensation amount as became assessed, yet leading to a grievance thereto being ventilated by the land-losers concerned, through theirs asking for the enhancement of the determined compensation amount, and, the said motion becoming finally decided upto the Hon'ble Apex Court.

“(i) The factum of release of constructed portion of the land has been conveniently concealed by them as the land measuring 0-6 marlas was left out from acquisition before announcement of Award.

(ii) The applicants have further concealed that their predecessor in interest filed cases for enhancement which stands finally decided till the Hon'ble Supreme Court of India.

(iii) The applicants have maliciously claimed that they are in the physical possession of the land in question whereas the possession of the land in Question stood taken long back vide Rapat no.15 dated 06.09.2005.

(iv) More importantly the applicants have made deliberate misrepresentation in Para No.9 of the representation that the applicants are in continuous physical possession upto till date as per revenue record, so the applicants are praying that the land may be released on the ground that on the land is well developed having construction upon it since the time of issuance of notification under section 4, it has been pointed out that the as per record, the land measuring 0-6 marlas having construction has been left out from acquisition of the petitioners was released from acquisition after declaration under section 6 of the Act and before announcement of Award as per direction of the Government received vide letter No.6642 dated 18.08.2005 and rest of the land was acquired for public purpose and the possession of the same has been already been taken and handed over to the Estate Officer, HUDA (now HSVP), Jind vide Rapat No.15 dated 06.09.2005. Even the mutation entries stand sanctioned in favour of HSVP vide Mutation No.11041 dated 25.06.2014.”

10. In sequel, therebys the petitioner acquiesces to the validity of the launching of the acquisition proceedings, and, therebys also further acquiesces to the unamenability of application to the acquired estates, thus of the lapsing provisions, as encapsulated in Section 24(2) of the Act of 2013. The reason being that since adequate discharging evidence becomes adduced by the acquiring authority in respect of a) rapat possession becoming evidently assumed by the Acquiring Authority over the acquired land,; b) compensation amount becoming deposited for the same being released to the petitioner/land-losers concerned. Predominantly also when

the land-losers concerned, evidently claimed enhancement thereof, besides are also stated to receive the said enhanced amount of compensation.

11. In sequel, there is complete estoppel against the petitioner, thus claiming that his acquired lands be released from acquisition, especially when it is also clearly stated in Annexure P-9, that the acquired estates are an integral component of the layout plan, thereby making the said estates thus both just and essential for furthering the requisite public purpose.

12. Hence, this Court finds no merit in the instant, and, the same is dismissed.

(SURESHWAR THAKUR)
JUDGE

04.04.2024
Ithlesh

(LALIT BATRA)
JUDGE

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