

2024:PHHC:068052-DB



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

**CWP-6938-2024
Date of Decision : 15.05.2024**

NAND KISHORE AND OTHERSPetitioners

Versus

STATE OF HARYANA AND OTHERSRespondents

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

Present : Mr. Vikram Singh, Advocate
for the petitioners.

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

SURESHWAR THAKUR, J. (Oral)

1. Through the instant writ petition, the petitioners' structures/houses became acquired through the issuance of a notification Annexure P-1, on 27.08.1987. The said notification was issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter for short called as the 'Act of 1894') and was succeeded by a declaration made under Section 6 of the 'Act of 1894', on 25.08.1988 (Annexure P-2). In consequence thereto, an award became rendered by the Collector concerned.

2. Through the instant writ petition, the present petitioners claim the benefit of 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.

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3. The said claim is rested on the factum that the subject properties are both unviable and un-essential for theirs being retained for facilitating the requisite public purpose. In consequence, a mandamus is asked to be made upon the respondent concerned, to decide the representation/application (Annexure P-5) embodying therein the said fact.

4. The instant writ petition has been filed in terms of a liberty becoming granted to the petitioners by this Court through an order made on 10.01.2024, upon CWP No. 29538 of 2023. The said order is reproduced hereinafter.

“1. Learned counsel for the petitioners seeks, and, is granted permission to withdraw the present petition, but with liberty to challenge the acquisition proceedings through theirs instituting a fresh writ petition.

2. Dismissed as withdrawn, with liberty aforesaid.”

5. Though the learned counsel for the petitioners submits that in the face of the above order becoming rendered by this Court, in the earlier writ petition, thereby the instant writ petition, is a well constituted petition, and thereby the mandamus as asked to be made upon the respondents concerned, for the making a lawful speaking decision upon Annexure P-5, is a relief which as such, thus is required to be granted to the petitioners.

6. However, for the reasons to be assigned hereinafter, the above made submission is rudderless and is required to be rejected.

7. Even, if assumingly this Court has passed the above orders but yet the counsel for the petitioners cannot in the garb of the said

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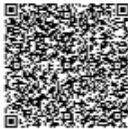


estoppel created through Order 2 Rule 2 CPC.

8. If this Court concludes that irrespective of the above said order becoming passed, the present petitioners have prima facie earlier abused the writ jurisdiction on this Court, and, are repeatedly proceeding to abuse the process of law, thereby this Court would proceed to dismiss the instant writ petition.

9. For determining whether the present petitioners have abused the process of law, and, have also repeatedly abused the writ remedy, it is deemed necessary to refer to averments made in paragraph No. 21 of the writ petition, which speak of the factum of the present writ petitioners, accessing this Court through their instituting writ petition(s), thus commencing from the year 1989 and lasting upto their filing the instant writ petition before this Court.

10. The provisions of Section 101 – A (supra), became inserted in the 'Act of 2013' in the year 2018 and it appears on a reading of paragraph No. 21 of the paper book, that some of the writ petitioners either filed the respective writ petitions, thus when the said provisions were on the statute book and/or the decisions made on the writ petitions were so made but when the said statutory provision existed in the 'Act of 2013'. However, the present petitioners did not take to plead the said fact in the earlier writ petition nor when they then had an opportunity to with the leave of the Court seek an amendment to the writ petition concerned, for therebys the plea raised now, on premise of the provisions of Section 101- A (supra), being incorporated therein, thereby when but the said opportunity became waived.



11. Conspicuously also when thereby, the said endeavours became abandoned or became omitted to be recoured by the present writ petitioners.

12. Therefore, the sequel of abandonment of the said endeavours or the effect of the said fact remaining unpleaded or unaverred in the earlier writ petition, is that, thereby the said omitted facts cannot be introduced by the petitioners in the instant writ petition nor the present petitioners can claim relief on the basis of the said earlier omitted facts.

13. The reason for making the said conclusion becomes aroused from the factum that the mandate of Order 2 Rule 2 CPC creates an estoppel against the petitioners, especially when they had earlier omitted to plead the relevant fact, despite the said fact being available to them at that stage for its rather becoming pleaded.

Final Order of this Court.

14. 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. No order as to costs.

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

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

15.05.2024

kavneet singh

Whether speaking/reasoned
Whether reportable

:

Yes/No
Yes/No