

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-2303-1996 (O & M)

Reserved on: 09.04.2024

Pronounced on: 24.04.2024

PANKAJ MANGA AND ORS.

.....Petitioners

Versus

STATE OF HARYANA AND ORS.

....Respondents

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

Argued by: Mr. Rishabh Jain, Advocate
for the petitioners.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. P.P.Chahar, Sr. DAG, Haryana.

SURESHWAR THAKUR, J.

1. Through the instant petition, the petitioners seek the quashing of notification bearing No. LAC (F)-92/NTLA/179 dated 10.12.1992 (Annexure P-1), and, also seek the quashing of notification bearing No. LAC (F)-NTLA-93/245 dated 07.12.1993 (Annexure P-3). The said notification(s) were respectively issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (for short 'the Act of 1894') thus for the public purpose namely, development of residential Sectors 1 and 2, Palwal.

2. The principal ground as raised in the instant writ petition rather by the petitioners for theirs seeking the writ reliefs, is grounded in the factum, that the subject properties, though became raised on the disputed lands but prior to the issuance of notification under Section 4 of the 'Act of 1894' yet the acquiring authority not releasing them from acquisition.

3. Moreover, the further ground as raised in the instant writ petition rather for challenging the Annexures (supra), is rested, on the premise that the acquiring authority in not releasing the subject lands from acquisition, thereby it has breached the mandate of this Court recorded on 03.02.2012, upon CWP No. 15546 of 1995 and other connected petition(s), whereby this Court after quashing the impugned therein acquisition notification(s), rather proceeded to permit the land losers therein to retain possession over the subject lands.

4. The learned counsel for the petitioners has argued, that when there is almost close identity inter-se the notification(s) challenged in the said petition, and, in the instant writ petition, thereby but naturally the relief as became granted in the verdict (supra), is also to be accorded to the present petitioners.

5. However, for the reasons to be assigned hereinafter, the relief as claimed in the instant petition thus for quashing the notification(s) (supra), as became made respectively under Sections 4 and 6 of the 'Act of 1894', rather is not required to be accorded nor any relief relating to the petitioners being permitted to yet invoke the provisions of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter for short called as 'the Act of 2013'), thus is to be accorded to them.

6. The subject lands are comprised in Khasra Nos. 34//27 (5K-10M), 1936 (1K-12M) situated in Village Palwal, District Palwal. The said lands are stated in the reply, on affidavit furnished to the instant writ petition by the respondent concerned, to be acquired

7. It is also stated in the reply, on affidavit, that at the time of launching of acquisition proceedings, the subject lands were vacant and/or no construction(s) existed thereovers.

8. Furthermore, since it is also stated in the reply, on affidavit that the petitioners had filed objections under Section 5A of the 'Act of 1894', thereby seeking the making of an order for release of the subject lands/construction(s), as became raised by the petitioners, but the said objections are stated to be rejected, but after an opportunity of hearing being granted to the present petitioners, thus on the ground that the subject lands were entirely vacant at the time of issuance of a notification under Section 4 of the 'Act of 1894' and the same are required for the purpose of the development of the area. Therefore, it is contended that the order dismissing the objections, as became raised by the present petitioners against the acquisition of the subject lands/construction(s), thus is both a well informed, besides a well made order and does not require any interference.

9. Be that as it may, since it is also stated in the reply, on affidavit that the subject lands are an integral component of the layout plan besides are direly required for completing the developmental works, inasmuch as the subject lands affect not only the green belt, besides also affect the site of the 9 meter road, and also affect the site of the primary school. If so, the petitioners cannot raise any claim for this Court making any tinkering with the layout plans, as thereby this Court would be making ill tinkering with the said layout plans.

10. Furthermore, it is also stated, on reply on affidavit, that an immense expenditure has been incurred by the respondent concerned, in

Resultantly also therebys this Court cannot make any order for releasing the petitioners lands, as therebys the expending of substantial sums of monies towards developmental works over the acquired lands, thus would become rendered nugatory, wherebys loss would ensue to the public exchequer.

11. Though the learned counsel for the petitioners by relying upon the decision made by this Court, upon **CWP No. 15546 of 1995**, titled as '**Gulshan Malik and Ors. Vs. State of Haryana and Ors**' decided on 03.02.2012, have argued that in terms thereof, the instant writ petition be also allowed.

12. However, for the reasons to be assigned hereinafter, the reliance as made upon the said decision is a mis-placed reliance, as the verdict (supra) became confined but only in respect of the lands located in District Faridabad, and, did not relate to the lands appertaining to Sector – 2 , Palwal, especially when the connected petition(s) appertaining to Sector – 2, Palwal, were ordered to be listed for further hearing, besides when the notification(s) challenged in the verdict (supra), and, also the awards, as became rendered in the said writ petition(s) rather are distinct from the notification(s) challenged in the instant writ petition, besides the award rendered in the writ petition (supra) is contra distinct to the award rendered in the instant case. Resultantly, therebys there is no well founded leverage in the petitioners for theirs claiming parity with the petitioners in the writ petition (supra).

13. It further appears that on the basis of verdict (supra), the petitioners were able to get the mutation of Khasra No. 1936 (6K-7M)

the revenue officer concerned, but it has been stated that the process qua the rectification of the said mutation as untenably made in favour of the petitioners, is underway, especially when the said mutation has been made on a mis propounded claim of parity to the petitioners in the instant writ petition rather with the petitioners in the writ petition (supra).

14. Consequently, it is directed, that the said apposite process/application for rectification of the mutation recorded in favour of the present petitioners, thus be expedited and be also ensured to be expeditiously concluded.

15. Furthermore, from a perusal of reply, on affidavit, it is revealed that possession of the land of the petitioners falling in Khasra No. 1936 (1K-12M) of village Palwal, District Palwal, became assumed through rapat roznamcha No. 304 dated 06.12.1995, whereafter the possession thereof was handed over to the beneficiary department and award No. 19 dated 06.12.1995 was pronounced in respect of the said Khasra number.

16. Moreover, when it is further indicated in the reply, on affidavit, furnished to the writ petition, by the respondent concerned, that out of total amount of assessed compensation, qua 94 % thereof rather becomes disbursed to the land losers concerned. Furthermore, it has been stated that as far as the compensation of the land of the petitioners is concerned, despite the same becoming tendered, yet the petitioners not seeking disbursement(s) thereof, leading to the same becoming deposited in the Court of Additional District and Sessions Judge, Palwal, for therebys it becoming available for becoming released

17. Therefore, the effect of the above, is naturally qua the respondent concerned, thus adducing adequate discharging evidence in respect of the hereafter duo of parameters, as, spelt by the Hon'ble Apex Court in its verdict rendered in case titled as 'Indore Development Authority Versus Manoharlal and others', to which SLP (Civil) Nos. 9036-9038 of 2016, has been assigned,

a) Rapat possession becoming assumed over the acquired lands by the acquiring authority before the coming into force of the 'Act of 2013') ;

b) the assessed compensation amount becoming deposited for thereby it becoming released to the land losers concerned, especially when the said deposits have been made prior to the coming into force of the 'Act of 2013'.

18. Resultantly the petitioners also therebys cannot claim the making of a lapsing declaration in terms of Section 24 (2) of the 'Act of 2013'.

19. Since, therebys the subject lands becomes free from all encumbrances and are completely vested in the acquiring authority. Resultantly therebys the occupation of the petitioners, over the subject lands rather is as trespassers thereovers and the petitioners are required to be lawfully vacated therefrom.

20. Furthermore, though the petitioners in the alternative claim that since no award with regard to Khasra No. 34//27 (5K-10M) of Village Palwal, District Palwal has been pronounced within the period of limitation prescribed in Section 11 of the 'Act of 1894', thereby the acquisition proceedings are vitiated. Resultantly, it is contended that if

award be directed to be made in terms of the relevant provisions, as encapsulated in the 'Act of 2013'.

21. However, the above argument is merit-less, as evidently, on the date of pronouncement of the subject lands award, there was a stay/*status quo* order in operation with respect to the land falling in Khasra No. 34//27 (5K-10M) of village Palwal, District Palwal. Consequently, when on account of pendency of the instant writ petition or on account of the interim order of stay, as became passed by this Court, thus the Collector concerned became precluded to make an award in terms of Section 11 of the 'Act of 1894'.

22. Consequently, when in the above said situation, the Hon'ble Apex Court in a judgment rendered in case titled as '***Faizabad-Ayodhya Development Authority, Faizabad Versus Dr. Rajesh Kumar Pandey and Others ; 2022 Live Law (SC) 504***', made the hereinafter extracted expostulations of law, qua the pendency of the judicial proceedings or the passing of any interim order, when the relevant proceedings are subjudice before a Court of Law, thus causing a well deterrence upon the acquiring authority, to make an award in terms of Section 11 of the 'Act of 1894'. The relevant paragraphs No. 10.12 and 10.13, and 17 (i) thereof are extracted hereinafter.

10.12 Thus, it is necessary to dwell into the reasons as to why no award has been made. As discussed aforesaid, if there is an order of restraint on the Collector or on the acquiring authority and as a result of which, the Collector or the Land Acquisition Officer is not in a position to make an award for reasons beyond his control and in compliance of the interim order granted by a court of law

at the instance of the land owner or any other person who may have questioned the acquisition, the period during which the interim order has operated has to be reckoned and if on the date of enforcement of Act, 2013 i.e., 01.01.2014, no award has been made owing to the operation of such an interim order granted by a Court in favour of the land owner, then the provisions of the 2013, Act cannot straightaway be made applicable in the determination of the compensation. This is because, but for the operation of the interim order, the award could have been made under the provisions of the Act, 1894 until 31.12.2013 and then provisions of Act, 1894 would have applied as per clause (b) of sub-section 1 of Section 24. But on the other hand, owing to the operation of the interim order granted by a Court in favour of land owner, the award would not have been made as on 01.01.2014 when the Act, 2013 was enforced.

10.13 In our view in such a situation the acquiring authority cannot be burdened with the determination of compensation under the provisions of the Act, 2013. In other words, the land owner cannot, on the one hand, assail the acquisition and seek interim orders restraining the authorities from proceeding further in the acquisition, and on the other hand, contend that since no award has been made under Section 11 of Act, 1894 on 01.01.2014, the provisions of the Act, 2013 should be made applicable in determining the compensation.

17. *In view of the above and for the reasons stated above, it is observed as under:-*

(i) It is concluded and held that in a case where on the date of commencement of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, no award has been declared under Section 11 of the Act, 1894, due to the pendency of any proceedings and/or the interim stay granted by the Court, such landowners shall not be entitled to the compensation under Section 24(1) of the Act, 2013 and they shall be entitled to the compensation only under the Act, 1894.

23. The import of the above expostulations, is that, the non rendition of awards under the 'Act of 1894', when arises from stay orders becoming granted by the Courts of Law, thereby the launching of acquisition proceedings under the 'Act of 1894', thus would not become lapsed, rather the Collector concerned, may in terms of Section 11 of the 'Act of 1894', thus make an award.

24. Therefore, this Court in tandem therewith concludes that in respect of those tracts of lands qua which no award became passed, owing to the operation of the apposite orders of stay, thus becoming granted by this Court, therebys the Collector concerned, may in terms of the explanation carried in Section 11-A of the 'Act of 1894', thus proceed to make the awards.

Final Order of this Court.

25. 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.

26. No order as to costs.
27. Moreover, the acquiring authority may proceed to make a lawful award in respect of Khasra No. 34//27 (5K-10M) in terms of the explanation carried in Section 11-A of the 'Act of 1894'.
28. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUKHVINDER KAUR)
JUDGE

24.04.2024

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