

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

118

CWP-9794-2024

Date of Decision: 01.05.2024

Gagandeep Sharma and another

....Petitioners

Versus

State of Haryana and others

....Respondents

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

Present: Mr. Deepak Agnihotri, Advocate and
for the petitioners.

Mr. Ankur Mittal, Additional Advocate General, Haryana and
Mr. Saurabh Mago, Deputy Advocate General, Haryana.

Mr. Ankur Mittal, Advocate with
Ms. Kushaldeep Kaur Manchanda, Advocate and
Mr. Shivam Garg, Advocate
for respondents No.2 and 4 – HSVP.

Sureshwar Thakur, J. (Oral)

1. Through the instant writ petition, the petitioners claimed the making of a writ of certiorari for quashing Annexure P/2 issued on 28.06.1989 and of Annexure P/3 issued of 29.06.1989. The said annexures became respectively issued under Sections 4 and 6 of the Land Acquisition Act, 1894, (hereinafter in short to be referred as 'the Act of 1894'). Moreover, the petitioners also seek relief for the quashing of the consequent Award, as become made in respect of the khasra numbers enclosed in the writ petition supra. Moreover, a mandamus is also asked to become passed upon the

respondent to decide the representation (Annexure P/9).

2. The said claim became rested upon the policy drawn by the Government of Haryana, in terms of Section 101 A as became inserted in the Act of 1894, through the notification of Haryana Act 21 of 2018 (Annexure P/8). For the reasons to be assigned hereinafter, this Court does not deem it fit to grant the above stated relief to the present petitioners. Initially, for the reason that as spoken by Annexure P/7, annexure whereof, is a verdict drawn by this Court on 19.12.2011 in CWP-10676-1989, that qua therebys the writ petition becoming disposed of along with other connected writ petitions including CWP-16754-1992, CWP whereof, became instituted by the father and predecessor in interest of the present petitioner. The claim raised therein, related to an order of release being made in respect of land measuring 1.304 acres. The verdict made on all the writ petitions (supra), becomes embodied in paragraphs 3 and 4, paras whereof are extracted hereinafter:

“3. Mr. Gupta, has assured the Court that the efforts could be made to save most of the construction belonging to the petitioners if the petitioners were to agree with the suggestion made by the Department. Accordingly, the matter appears to have been discussed by the authorities and on 19.12.2011, a communication has been sent by the Director General Urban Estates Department, Haryana to the Advocate General Office to the effect that the Government has decided to release thickly built up area measuring 1.304 acres (excluding the area forming part of the sector road). The site plan has also been placed on

record, which is mark 'X' and the release area has been depicted by Nos. 1, 2, 3 and 4. The site plan has been taken on record to avoid any dispute and confusion and the same has been seen by the counsel for the petitioners who have expressed their concurrence that the thickly constructed area would be excluded from the acquisition but the area forming part of the sector road would continue to be under acquisition.

4. In view of the above, learned counsel for the petitioners do not want to press the writ petitions. Accordingly, the writ petitions have been rendered infructuous and are disposed of as such."

3. A reading of the above extracted paragraphs do make striking speakings that the lands with the above measurements becoming acceded by the Director General Urban Estates Department, Haryana, to be amenable for theirs being released from acquisition, as the said lands occurred in a thickly built up area measuring 1.304 acres, and resultantly, in terms of the said made instructions to the learned Advocate General concerned, this Court after taking the said instructions besides the site plan, on record, thus allowed the counsel(s) for the petitioner(s) who appeared before the Court to withdraw the writ petition(s) supra, thus on the ground, that the same thereby become rendered infructuous.

4. Therefore, there is no requirement to pass any mandamus upon the respondent concerned to decide the representation (Annexure P/9), in

terms of Annexure P/8 as the said representation does not require any further decision being made thereons, as decision thereons becomes already rendered.

5. However, yet assuming that since the decision passed in the earlier writ petition, was in the year 2011, whereas, Annexure P/8 came into force in the year 2018, whereby the present petitioner or his predecessor in interest became tenably estopped to plead the said fact in the earlier writ petition, whereupon, may be the apposite bar of estoppel, as occurs Order 2 Rule 2 CPC, against the present petitioner, rather may become released. Nonetheless since the instant writ petition has been filed with almost after six years elapsing since the making of Annexure P/8, thereby the instant petition is deemed to be an afterthought and/or is deemed to be stained with the vice of the delays and laches besides is deemed to be an invented recourse, merely to impede the relevant public purpose. Prominently, also when it is stated at the bar by the learned Additional Advocate General, Haryana, on instructions imparted upon him, that the subject lands are an integral component of the layout plan and as such are required to be utilized rather for furthering the relevant public purpose.

6. In case titled ***“State of Kerala v. M. Bhaskaran Pillai”***, AIR ***1997 SC 2703***, the Hon’ble Supreme Court has extended the sphere of “public purpose” and has held that if after utilization of the acquired land for the relevant public purpose, some land still remains unutilized, therefore such acquired land(s) may not be returned to the original landowner, rather they/it can either be utilized for any other public purpose or it/they can be sold by way of public auction, so as to achieve the larger public interest. The relevant

observations, as carried in the case (supra), are reproduced hereunder:-

“...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.....”

7. Resultantly, thereby even if the subject land yet assumingly remain unutilized yet they cannot be released to the land owners, as, they are both vilable and essential for furthering the public purpose(s) concerned.

8. The decision passed in Annexure P/7, when thereby also covers the instant lands, besides when there is similarity of parties in the earlier writ

petition, thus with the parties in the instant writ petition, inasmuch as, the earlier writ petition became instituted by the predecessor in interest/the father of the present petitioner, therebys, when as such the present petitioner is bound by the acts and conducts of his predecessor in interest. Resultantly, besides by the outcome of the earlier motion instituted by his deceased father, thereby he is estopped from making a fresh writ petition before this Court, thus with causes of action, and reliefs, which are but eminently similar to the ones as carried in Annexure P/7, especially when the predecessor in interest father of the petitioner accepted the release of his share in the lands occurring in lands measuring 1.304 acres, which is the quantum of the lands as were also involved in the earlier writ petition. After finding no merits in the instant writ petition, the same is dismissed.

(SURESHWAR THAKUR)
JUDGE

01.05.2024

Varinder Prashad

(LALIT BATRA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No