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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

Reserved on: 15.01.2024
Pronounced on: 31.01.2024

1. CM-289-CWP-2021
in/and CWP-649-2003 (O & M)

AJIT SINGH YADAV AND ANOTHERPetitioners

Versus

STATE OF HARYANA AND ORS.Respondents

2. RA-CW-239-2021
in/and CWP-648-2003 (O & M)

GYANI RAM (DECEASED) THROUGH LR.s.Petitioner

Versus

STATE OF HARYANA AND ORS.Respondents

3. RA-CW-240-2021
in/and CWP-650-2003 (O & M)

KHAZAN SINGH (DECEASED) THROUGH LR.s. AND OTHERS
.....Petitioners

Versus

STATE OF HARYANA AND ORS.Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE HARSH BUNGER

Argued by: Mr. O.P.Goyal, Senior Advocate with
Mr. Mohit Soni, Advocate
for the petitioner(s) in CWP-648-2003 & CWP-650-2003.

Mr. Rajiv Atma Ram, Senior Advocate with
Mr. Paramvir Singh, Advocate and
Mr. Arjun Partap Atma Ram, Advocate

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for the petitioners (in CWP-649-2003).

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

Mr. Arvind Seth, Advocate
for the respondent - HSVP.

SURESHWAR THAKUR, J.

RA-CW-239-2021 in CWP-648-2003
CM-289-CWP-2021 in CWP-649-2003
RA-CW-240-2021 in CWP-650-2003

1. Since all the review/recalling application(s) (supra) in the respective writ petition(s), involve common questions of law, thus, they are amenable to be decided through a common order.

2. In the writ petition(s) (Supra), the hereinafter extracted order dated 09.03.2004 has been asked to be reviewed/recalling.

“ The pleadings in the instant case reveal a large number of disputed questions of facts. In the aforesaid view of the matter, it is not possible for us to entertain the instant controversy in exercise of our jurisdiction under Article 226 of the Constitution of India.

In view of the above, the petitioners are relegated to their ordinary civil remedy, if they be so advised.

Disposed of accordingly.”

For the reasons to be assigned hereinafter, the order (supra) in the writ petition(s) (supra), which has been espoused to be reviewed, is as such recalled and reviewed.

3. The predominant reason for allowing the application(s) (supra) is premised on the ground, that the said order is contrary, to the declaration of law, as made by the Hon'ble Apex Court, in case titled as

'State of Bihar Vs. Dhirender Kumar', reported in (1995) 4 SCC 229

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and '**Laxmi Chand Vs. Gram Panchayat**', reported in (1996) 7 SCC 218, wherein, it has been declared, that the only avenue for making a valid challenge to the launching of acquisition proceedings, thus under the Land Acquisition Act, 1894 (hereinafter for short called as the 'Act of 1894'), rather is through, a writ petition cast under Article 226 of the Constitution of India, becoming preferred before the High Court.

4. In consequence, the order (supra), which is but *per incuriam* to the declaration of law (supra), as made in the verdict (supra), as such it is required to be re-called and reviewed and as such is so done.

5. The fortifying reason for making the above conclusion generates, from the factum, that when the petitioner(s) in terms, of the order (supra), accessed the civil Court concerned, thus for reliefs akin to the ones propagated in the writ petition(s) concerned, hence being accorded to them. However, when the civil suit(s) concerned, was declared to be not maintainable, thus in terms of the verdict (supra).

6. Moreover, when the said dismissal verdict(s), as made on the apposite suit(s), by the learned Civil Judge concerned, thus also on an appeal becoming filed thereagainst before the learned Appellate Court concerned, also suffered an alike fate.

7. In addition, when the RSA No. 571 of 2012, as became directed thereagainst also suffered a verdict of dismissal becoming made thereons on 08.07.2020, whereafter's too, the SLP directed thereagainst, became dismissed through an order made thereons, on 23.11.2020 (Annexure A-18).

8. In consequence, when thereby the present petitioner(s) are

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recalled order (supra). Therefore, for ensuring that the present petitioner(s) are not left remedy less, and for overcoming the said ill situation, reliance is placed upon verdict(s), rendered in cases respectively titled as '**Sunil Vasudeva & Ors. Versus Sundar Gupta and Others**' 2019 (17) SCC 385 ; '**M/s Shekhar Resorts Limited (Unit Hotel Orient Taj) Vs. Union of India and Ors.**' 2023 (3) SCC 220 and '**Anu Bhalla and another Vs. District Magistrate, Pathankot and another**' 2021 AIR (P & H) 1, thereby, too, this Court proceeds to recall/review the order dated 09.03.2004, as passed in the writ petition(s) (supra) and restores them to their respective original numbers. The counsels concerned also proceeded to address arguments on the merits of each of the writ petition(s).

CWP-648-2003 (O & M), CWP-649-2003 (O & M) and CWP-650-2003 (O & M)

FACTUAL BACKGROUND

9. For the sake of brevity, the facts of CWP-649-2003 are taken here for deciding the instant controversy.

10. The petitioner(s) in the writ petition (supra) stated themselves to be owners of land measuring 56 kanal 13 marla situated in Village Bindapur, Tehsil and District Gurugram, and also stated to have constructed houses and school ('A' class construction) prior to the issuance of a notification under Section 4 of the Land Acquisition Act, 1894, hereinafter for short called as the 'Act of 1894'.

11. The land in dispute was acquired vide notification dated 15.05.1997, as issued under Section 4 of the 'Act of 1894', which was followed by a declaration made under Section 6 of the 'Act of 1894' and subsequent thereto an award dated 13.05.2000 became passed. The said

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land was acquired for the public purpose namely residential, commercial and industrial area, Sector - 51, Gurugram.

12. The petitioner(s) firstly challenged the acquisition proceedings by way of filing CWP-5840-2000, which was disposed of vide order dated 04.10.2000, with direction(s) that the petitioners may submit representation to Chief Administrator, HUDA, which shall be considered after giving opportunity of hearing.

13. The representation filed by the petitioners for release of their land, was rejected on the ground, that the land of the petitioners was vacant at the time of issuance of notification under Section 4 of the 'Act of 1894' and the same, thus cannot be released from acquisition.

14. That after rejection of the claim of the petitioners, they filed the instant writ petition by disputing the fact, that the land in question, was not vacant at the time of issuance of a notification, under Section 4 of the 'Act of 1894' rather thereons existed 'A' class constructions prior to the issuance of a Section 4 notification, under, the 'Act of 1894'.

15. Thereafter, this Court through the hereinabove extracted order dated 09.03.2004, disposed of the writ petition, by relegating the petitioners to their ordinary civil remedy, if they be so advised.

16. In view of the order dated 09.03.2004, the petitioners filed a suit for declaration and permanent injunction, before the learned Civil Judge (Senior Division), Gurgaon. That vide judgment and decree dated 29.10.2011 (Annexure A-15), the learned trial Court dismissed the petitioner(s) suit, by deciding the issue of maintainability of the apposite suit rather against the plaintiffs.

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First appeal before the learned Additional District Judge, Gurgaon. The said appeal became dismissed by the learned First Appellate Court, through an order made thereons, on 12.01.2012 (Annexure A-16).

18. The petitioner(s) alongwith other landowners assailed the afore orders before this Court through theirs filing RSA No. 571 of 2012. The said RSA also became dismissed by this Court, on 08.07.2020 (Annexure A-17), on the ground that the civil suit is not maintainable.

19. Feeling dis-satisfied from the afore order, the petitioner(s) filed SLP (Civil) No. 13279-2020 before the Hon'ble Supreme Court. Through an order made on 23.11.2020 (Annexure A-18), the said SLP became dismissed by the Hon'ble Apex Court.

20. It is apt to mention here that the petitioners herein also filed CWP-4514-2016, whereby they invoked the mandate of Section 24 (2) 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'), wherein there occurs a provision rather for making the earlier launched acquisition proceedings under the 'Act of 1894', to be amenable to become declared lapsed, but on non adduction of apposite discharging evidence, vis-a-vis, the duo of apposite parameters, thus by the acquiring authority concerned.

21. However, the said petition in view of the judgment of the Constitution Bench of the Hon'ble Supreme Court rather in **Indore Development Authority v. Manohar Lal and others etc., AIR 2020 SC 1496**, became dismissed, through an order made by this Court on 08.09.2020,

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22. The learned State counsel submits that the challenge in the instant petition(s), are hit by the vices of delay and laches, as the representation(s) filed by the petitioner(s) in view of the liberty accorded to them, rather was rejected on 06.09.2001.

23. The petitioner(s) had chosen not to assail the said declining order(s) made on their representation(s) rather for two years and thereafters' have belatedly filed the instant writ petition(s), thereby, making their belated challenge to become hit by the bar of delay and laches.

24. The possession of the land stands taken through rapat no.413 dated 13.05.2000 and compensation amount tendered qua it, thus becoming available to become released to the land losers concerned. Therefore, the acquisition proceedings are lawfully completed in all respects and they cannot be declared to become lapsed.

Averment(s)/contentions of the learned counsel for the petitioner(s) and inference of this Court.

25. The learned counsel appearing for the petitioner(s) have claimed relief for quashing of the impugned notification(s) dated 15.05.1997 and 14.05.1998, respectively issued under Sections 4 and 6 of the 'Act of 1894', and, further for issuance of a writ in the nature of mandamus, thus directing the respondents to release the subject lands from acquisition.

26. Further, a prayer for the quashing of the order, as passed by respondent No. 2, order whereof, is an intimation to the petitioner(s) regarding rejection of their representation, as became made by the petitioners, to the respondent-authorities, thus for the release of their

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27. It appears that the espoused lapsing declaration becomes banked upon a verdict recorded by the Hon'ble Apex Court in case titled as '**Indore Development Authority Vs. Manoharlal and Others**', AIR 2020 SC 1496. It is contended that the respondent concerned has not adduced clinching discharging evidence in respect of :

a) The rapat possession of the acquired lands becoming not assumed.

b) The determined compensation amount becoming not available for it becoming disbursed to the land losers concerned.

28. However, the above lapsing declaration cannot be claimed, simply for the reason that in an earlier writ petition bearing No. CWP-4514-2016, the said raised claim became rejected on 08.09.2020. Consequently, the re-raising of the said rejected claim, but is barred by the estopping principle of *res judicata*. Even otherwise, the said claim thus for the making of a lapsing declaration, becomes unhinged as it is but evident from a reading of reply, on affidavit, that clinching discharging evidence rather has been adduced in respect of able employments of the duo of parameters, relating to rapat possession of the acquired lands becoming assumed, through rapat No. 413 dated 13.05.2000, and, also qua the determined compensation amount, becoming available for becoming disbursed to the land losers concerned.

29. In-so-far, as the challenge made to the rejection orders made on 06.09.2001, thus on the apposite representation of the petitioner(s), rather is concerned, whereby the petitioner(s) claim for

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rejected. Even the said claim also cannot be accorded to the present petitioner(s).

30. The reason for making the said conclusion, arises from the factum, that though the said claim, is banked upon releases being made to similarly situated land losers concerned, but it appears on a reading of the reply furnished to the writ petition, that the said claim is a mis-founded claim, as unlike purportedly similarly situated land losers concerned, whose built up acquired estates, became released from acquisition, thus on the premise qua the said built up released estates being raised prior to the issuance of Section 4 notification, rather the petitioner(s) lands, were evidently vacant at the relevant stage.

31. Emphasizingly, the construction(s), if any, on the acquired lands, are detailed in the reply, on affidavit, to become raised but post the issuance of a notification under Section 4 of the 'Act of 1894'. Consequently, such raised construction(s) on the acquired lands, thus post, the issuance of Section 4 notification are to be construed to become unauthorizedly raised thereons, as at the said stage, there was no subsisting right, title or interest over the acquired lands, in the land losers concerned.

32. The further reason for declining parity to the present petitioner(s) with the land losers concerned, whose estates became released from acquisition, is founded on the factum, that from a perusal of reply, on affidavit, it is revealed that the releasings of such acquired lands were made to the land losers concerned, on the premise, that they were having licenses, which became so issued, as per the Government policy, while on the other hand, when the construction(s) which were

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notification, thus they were but unauthorizedly raised on the subject lands. Therefore, there cannot be any parity inter-se the petitioner(s) with such land losers concerned, whose acquired estates became released from acquisition.

33. Furthermore, a reading of the paper book reveals, that post the issuance of Section 4 notification, the petitioners were granted opportunity to file objections under Section 5-A of the 'Act of 1894' and that the petitioners also availed the said opportunity. However, the objection(s) as became filed by the petitioner(s) became decided against the petitioners, thus leading to the makings of the impugned notification/declaration under Section 6 of the 'Act of 1894'. Therefore, the counsels for the petitioner(s) cannot contend, that the rejection orders, as, made on their objection petition(s) are arbitrarily made nor they can contend that the rejection orders were in breach of the solemn principle of *audi alteram partem*.

34. Further, the respondents in their reply-affidavits, filed in all the writ petition(s) (supra), as well as in their arguments, firmly contend that the writ land(s), were acquired for furthering the requisite public purpose and that the petition lands are an integral component of the layout plans, relating to the completion of the relevant public purpose.

35. Since predominance is to be assigned to the public purpose than to individual interests of the estate holders concerned besides when this Court cannot tinker with the expertise of the Engineering Cell of the acquiring authority, who prepares the layout plans. Therefore, this Court refrains to allow the petitioner(s) claim for the

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FINAL ORDER BY THIS COURT.

36. In aftermath, this Court finds no merit in the writ petition(s), and, with the above observations, the same are dismissed. The impugned notification(s), and consequent thereto award are maintained and affirmed.
37. No order as to costs.
38. Since the main cases itself have been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(HARSH BUNGER)
JUDGE

31.01.2024

kavneet singh

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