

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-6860-2007 (O & M)
Reserved on: 06.02.2024
Pronounced on: 27.02.2024

MAHARANA PRATAP CHARITABLE TRUSTPetitioner

Versus

STATE OF HARYANA AND ORS.Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: Mr. M.L.Sarin, Senior Advocate with
Mr. Ritesh Aggarwal, Advocate
for the petitioner.

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

Mr. Ankur Mittal, Advocate with
Ms. Kushaldeep Kaur, Advocate
for respondent No. 5.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein prays for the quashing of the notification(s) Annexures P-3 and P-9, respectively issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter for short called as the 'Act of 1894'), followed by a declaration issued under Section 6 of the 'Act of 1894', whereby the land in question has been acquired for the public purpose of residential and commercial area, Sector – 23, Bhiwani.

Factual background

The petitioner is a charitable trust based in Bhiwani,

Haryana. The trust deed was executed and registered on 13.07.2000. The main objects of the petitioner-trust are to establish and run educational institutions and undertake social service and projects. The petitioner is at present running the educational institutions namely Bhiwani Institute of Technology and Science, College of Management, BITS College of Polytechnic, Maharana Pratap college of Education for women and BITS Polytechnic.

3. That on 08.08.2001, the Gram Panchayat of village Paluwas passed a resolution whereby it was decided to gift to the petitioner shamilat land measuring 237 kanals 2 marlas in village Paluwas for setting up an educational institution. The present dispute pertains to land measuring 169 kanals 13 marlas comprised in Khasra No. 235/1 in village Paluwas.

4. The State Government vide order dated 12.12.2001 (Annexure P-1) granted approval to the Gram Panchayat of village Paluwas to gift its shamlat land measuring 237 kanals 2 marlas in favour of the petitioner.

5. That certain residents of village Paluwas challenged the gift as made in favour of the petitioner by theirs filing CWP-3000-2002 before this Court. The said writ petition vide order dated 15.12.2003 was dismissed as having been rendered infructuous.

6. An LPA as became preferred thereagainst was also dismissed through an order made on 12.07.2006, by the Division Bench of this Court.

7. After the land in dispute was gifted to the petitioner, the petitioner-Trust decided to set up a Polytechnic as well as Women

Bhiwani for sanction of the building plan for raising construction of the building of the Polytechnic and Women College. The petitioner also deposited the requisite fee besides deposited the development charges for sanction of the building plans.

8. The Municipal Council, Bhiwani sanctioned the building plans of both these institutions. Upon the plans being sanctioned by the Municipal Council, Bhiwani, the petitioner started raising construction of the buildings of the Polytechnic as well as of the Women College on the land in dispute.

9. On 31.08.2005, the State Government granted a 'No Objection Certificate' to the petitioner for starting the 'Maharana Pratap College of Education for Women' (MPCEW) on the land in dispute.

10. On receipt of the 'No Objection Certificate' from the State Government, the petitioner also applied to the National Council for Teacher Education for recognition of the MPCEW for starting the One Year B.Ed. Course. The petitioner also applied to Maharishi Dayanand University, Rohtak for affiliation of the MPCEW.

11. On 21.03.2006, the State Government issued a Section 4 notification under the 'Act of 1894' seeking to acquire a huge tract of land measuring over 160 acres in Villages Bhiwani Lohar, and Paluwas for the public purpose of residential and commercial area, Sector 23, Bhiwani. The land in dispute was covered by the said notification. The adjoining land owned by the Bhiwani Gaushala Trust was also notified for acquisition.

12. The petitioner submitted detailed objections under Section 5A of the 'Act of 1894' before respondent No. 2 against the acquisition

cancelled its earlier passed resolution dated 08.08.2001

13. In the meantime, the petitioner received the respective permissions, and both the MPCEW and BITS Polytechnic started functioning for the session 2006-07 and at present have 100 students and 264 students enrolled respectively.

14. On 27.12.2006, the petitioner submitted detailed representation to the Chief Minister of Haryana praying for release of the land in dispute. However, the State Government did not take any action in that regard.

15. On 20.03.2007, the State Government issued declaration under Section 6 of the 'Act of 1894'. The entire land in dispute was covered by the said notification. However, the entire adjoining land of the Bhiwani Gaushala Trust, which was included in Section 4 notification, was released from acquisition at the intervention of the then Chief Minister who openly announced that the land of Bhiwani Gaushala Trust would be released from acquisition.

16. Further, certain other land on which houses of employees in the District Courts have been built were also released from acquisition.

17. It is apt to mention here that the instant writ petition was adjourned *sine die* with a direction to post the writ petition for hearing after the decision of Hon'ble Supreme Court in Civil Appeal No. 4835 of 2015 titled as 'State of Haryana and another Vs. Maharana Partap Charitable Trust'.

18. Thereafter, the Hon'ble Apex Court in view of the order made, on 02.01.2023, upon, Civil Appeal No. 4835 of 2015, quashed

that the matter pending before the High Court be considered, in accordance with law, and on merits on other issues, if any. The operative part of the said order is extracted hereinafter.

“4. The view taken by the larger Bench of the High Court that the period of stay granted by the Courts is not to be excluded for determining the period of 5 years under Section 24 (2) of the 2013 Act is just contrary to the decision of the Constitution Bench of this Court in the case of 'Indore Development Authority Versus Manoharlal & Ors. Etc.’ reported in 2020 (8) SCC 129.

5. In Paragraphs 366.8, this Court has observed and held as under :

“366.8. The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the 2013 Act came into force, in a proceeding for land acquisition pending with the authority concerned as on 1.1.2014. The period of subsistence of interim orders passed by Court has to be excluded in the computation of five years.”

6. In view of the above, the impugned order passed by the larger Bench of the High Court taking a contrary view is unsustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside. Now the matter pending before the High Court to be considered in accordance with law and on merits on other issues, if any....”

19. A reading of the above extracted order passed by the Hon'ble Apex Court, on the apposite Civil Appeal reveals that this Court is not required to either delving into or make an adjudication vis-a-vis the applicability of the provisions enshrined in Section 24 (2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, vis-a-vis, the present

petitioner but rather is required to answer/adjudicate the writ petition in respect of the present petitioner becoming discriminated, inasmuch as, despite releases of land to other similarly situated persons, yet the petitioner's land becoming not released.

20. Since this Court while making a decision upon connected RSA-2947-2017 and RSA-3919-2017, has thereby declared that the gift made in favour of the plaintiff-Trust is null and void, thereby but obviously the petitioner has no locus standi, thus as owner of the acquired lands, to raise the instant writ petition before this Court.

21. In other words, for lack of any valid locus standi, inhering in the petitioner, thereby, the instant writ petition is mis-constituted and is liable to be dismissed.

22. Even otherwise, the claim of the petitioner-Trust to be treated at par with the other land owners whose acquired estates became released from acquisition, is, also a completely mis-constituted claim.

23. The reason for drawing the above conclusion generates from the factum that though the present petitioner claims parity with release of lands to a Gaushala but the said claimed parity becomes rendered rudderless.

24. The reason for making the above conclusion is garnered from the factum of a reply, on affidavit, being made to the instant writ petition, by Sh. Rajesh Khoth, Land Acquisition Collector, Urban Estates Department Haryana, Hisar, wherein, it has been spoken that the land released to a Gaushala has been so released with a condition, that no CLU being asked for rather for converting the said Gaushala to some other activity, besides with a further condition that in case the

returned to the HUDA.

25. In consequence, with the above conditional releases being made to the Gaushala, thereby when the establishment of a Gaushala on the released lands is but for a non profiteering purpose, besides with the said releases, becoming hemmed with further restriction(s) (supra), whereas, the petitioner institution rather contrarily being a profiteering institution, thereby it cannot claim parity with the release of lands, as made to a non profiteering Gaushala. Moreso, when the said release is hemmed with further limitation(s) (supra).

26. Be that as it may, the objections under Section 5A of the 'Act of 1894' became invited from the petitioner Institution. The said opportunity became availed by the petitioner-Institution yet the land Acquisition Collector concerned, did not recommend that the acquired estates of the petitioner-Institution be released from acquisition.

27. The reason for the making of the declining order vis-a-vis the petitioner-Institution(s) claim for release(s) being made qua its acquired lands, is embodied in the factum as revealed on a reply, on affidavit, furnished to the writ petition by Sh. R.P.Gupta, IAS, Administrator, HUDA, that releases as made of 102.72 acres of the land, were respectively vis-a-vis Gaushala in village Paluwas, and, qua A and B class construction(s) rather occurring in a thickly populated zones.

28. Contrarily, when it is also tritely enunciated in the reply, on affidavit, especially in paragraph No. 14 thereof, wherein, the hereinafter extracted echoings occur, which are but suggestive that at the time of the issuance of notification under Section 4 of the 'Act of

lands rather no other construction(s) existed thereovers.

14. That in reply to the contents of para No.14 of the Civil Writ Petition it is submitted that the petitioner who filed objections u/s-5A of the Act within prescribed period of limitation were properly heard. After giving full opportunity of hearing, the Land Acquisition Collector made a report on individual objections and sent the report with his recommendation to the Govt. for the final decision. The Govt. released the total land of 104.69 acres in village Bhiwani Lohar and village Paluwas. Out of which land measuring 102.72 acres was belonging to the Goshala Paluwas. Rest of the released land was thickly populated having A & B class constructions. Whereas land in dispute was mostly vacant and there was a small area under construction at the time of notification under Section 4 of the Act.

29. Therefore, it appears that, at the stage of issuance of a notification under Section 4 of the 'Act of 1894', there were minimal development activities carried on the acquired lands, whereas, the complete developmental activities as became made on the acquired lands, but were so made only subsequent to the issuance of Section 4 notification.

30. Since, on the issuance of the acquisition notification, there is complete divestment of right, title and interest in the estate holder concerned, over the acquired lands, whereas, there is a complete investment of right, title and interest, over the acquired lands, thus in the acquiring authority. Therefore, also the petitioner cannot claim that the acquired lands be released from acquisition.

31. Be that as it may, since as a sequel of the writ petition being dismissed would result in the educational pursuits of the students

undertaking education in the Educational Institution concerned, rather being also forestalled. Therefore, for ensuring that no disturbance ensues to the educational pursuits of the students undertaking education in the petitioner educational institution.

32. Resultantly, if deemed fit and appropriate, by the respondent concerned, subject to qua the acquired lands, rather the panchayat concerned forfeiting its claim for compensation, it may consider to take over the educational institution, so that thereby the public purpose or public interest, thus becomes also sub served.

33. Consequently, thereby the change (supra), brought to the public purpose, from the one initially stated in the notification for acquisition, but may also become well clothed with an aura of validity. However, the said takings over, be considered to be done with the consent of the members of the village proprietary body, as over the disputed lands the entire village proprietary body may be having common rights of users thereof. Though, in the face of this Court declaring the suit lands to become vested in the panchayat, thus thereby making the panchayat to become an able recipient of the determined compensation amount, yet only for enabling the students, who are pursuing education in the petitioner educational institution, thus to continue to receive education there besides to enable the future generations to also receive education in the educational institution concerned. Resultantly, the panchayat concerned may through a resolution may forfeit its claim for compensation rather it may on certain terms and conditions favourable to all members of the village proprietary body thus may consider to pass a resolution for the takings

Final Order of this Court

34. In aftermath, with the above observations, this Court finds no merit in the writ petition, the same being devoid of any merit is dismissed accordingly.
35. The impugned notification(s) and consequent thereto award are maintained and affirmed.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

27.02.2024
kavneet singh

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