IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-13489-2021
Reserved on: 23.04.2024
Date of Decision : May 21, 2024

C.M. INDUSTRIES

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

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

Argued by: Mr. Sandeep Sharma, Advocate with
Mr. Rohan Moudgil, Advocate and
Mr. Rohit Johar, Advocate for the petitioner.

Mr. Ankur Mittal, Addl. AG Haryana with
Mr. Saurabh Mago, DAG, Haryana.

Mr. Shiv Raj Malik, Advocate as *Amicus Curiae*.

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SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner prays for the issuance of a writ of *Mandamus* thus directing the respondents concerned, to acquire its land and to accordingly pay compensation in terms of the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation And Resettlement Act, 2013 (hereinafter referred to as the "Act of 2013"), as the land of the petitioner has been utilized for metro Railway Line, besides prays for the rendition of a writ in the nature of *Certiorari,* thus for the quashing of impugned public notice dated Nil (Annexure P-2) and Purchase Policy dated 08.03.2019 (Annexure P-11).

FACTS OF THE CASE

2. That the petitioner is owner of land bearing plot No.10-A, situated in Sector-5, Ballabhgarh, District Faridabad. The said land is

situated on the National Highway Faridabad-Ballabhgarh-Mathura Road, where the respondents concerned, have taken possession of the petitioner's lands measuring 174.84 square yards, for the construction of metro railway line, but without lawful acquisition thereof being made, nor with any compensation becoming lawfully determined nor becoming lawfully released to the petitioner. The respondents concerned, are averred to assume possession over the petitioner's lands in the year 2017.

REPLY OF THE RESPONDENT

3. As per the reply instituted on behalf of co-respondents No.3 and 4, it has been admitted therein that the land of the present petitioner has been utilized for the relevant public purpose. It has also been stated therein, that in view of the order passed by this Court, in CWP-12118-2019, the competent authority has approved the release of payment of compensation to all the landowners including the present petitioner as per the provisions of the Act of 2013, which is embodied in Annexure R-2. The details of payment qua the petitioner is mentioned in Annexure R-3. It has been further stated in the reply that HMRTC, is an instrumentality of the government and is engaged in the ongoing project of laying the network of Metro Railway in NCR region of Haryana. HMRTC has sanctioned the payment in lieu of the land of the petitioner utilized by it. However, in the revenue records, till date, the name of the petitioner is being reflected as owner. Therefore, a prayer has been made in the reply that the petitioner be directed to execute the sale deed in favour of HMRTC, so that the HMRTC, can sanction balance payment, in favour of the petitioner, at the time of execution of sale deed to ensure that no dispute subsists thereafter.

THE ISSUE INVOLVED IN THE INSTANT WRIT PETITION

3. The contra stands as taken in the instant writ petition respectively by the present petitioner, and, the one taken by the respondent concerned, relate to the necessity of adherence being made to the statutory mandates enclosed in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation And Resettlement Act, 2013 (hereinafter referred to as the "Act of 2013"), and/or, whether the said mandate becoming adequately complied with, thus in terms of adherences becoming made to the purchase policy dated 08.03.2019 (Annexure P-11).

4. Out of the total assessed compensation amount of Rs. 1,23,11,828/-, a sum of Rs. 97,49,800/- is stated to become paid to the petitioner and the outstanding sums of compensation amount i.e. Rs. 29,24,222/-, becomes also stated by the respondent concerned, in the reply on affidavit furnished to the writ petition, thus to be paid as sale consideration to the present petitioner, rather to become released to it, but only in the event of its executing through its authorized officer, a registered sale deed in respect of the lands utilized by the said respondent, thus for furthering the requisite public purpose.

5. In other words, the respondent concerned, through making the said contention in the reply on affidavit, rather have attempted to dis-entitle the petitioner's claim for compensation becoming yet been directed to be assessed by the acquiring authority, thus strictly in terms of the relevant provisions, as became embodied in the Act of 2013.

6. The said espousal became rested on the purchase policy (supra) and also becomes further premised on the ground, that since the thereunder assessed part of the sale consideration has been released to the petitioner,

besides when the subject lands are evidently subjected to utilization by the acquiring authority, thereupon, the provisions of Section 53-A of the Transfer of Property Act, 1882, do surge to the forefront. Resultantly, it is argued on behalf of the respondent, that the present petitioner through its authorized agent is required to be drawing a deed of conveyance in respect of the subject lands, with the respondent concerned, and, is also required to be directed to present the same for registration before the Sub Registrar concerned.

THE REASONS FOR REJECTING THE SAID SUBMISSION

7. The right to property invested in an individual becomes enshrined in Article 300A of the Constitution of India, provisions whereof become extracted hereinafter.

> *"**300A. Persons not to be deprived of property save by authority of law.**— No person shall be deprived of his property save by authority of law.]"*

8. Consequently, unless just and fair compensation in terms of the relevant acquisition statute becomes determined vis-a-vis the estate holder concerned, thereupon the acquisition of the estate of the estate holder concerned, rather would be expropriatory. Moreover, the valid exercisings of the power of eminent domain whereunders just and fair compensation, is but required to be assessed vis-a-vis the estate holder concerned, thus on acquisition of his estate being made rather for furthering the apposite public purpose concerned, becomes embodied in specific legislative enactment(s). More specifically in the instant case, the power of eminent domain wherebys the subject lands were required to be lawfully put to acquisition, thus is the Act of 2013. The necessity of acquisitions being made under the statute (supra), is etched in the premise, that the thereunders carried statutory

provisions but are to become completely abided by State, so that, the makings of compensation amounts through the making of an award by the Collector concerned, rather becomes made strictly in terms of the statutory parameters, as become enshrined thereins. The purveying of all the requisite statutory benefits to the estate holders concerned, thus would ensure that there is no expropriation of the estates of the land-loser concerned, besides would also ensure that just, fair and reasonable compensation becomes assessed vis-a-vis their acquired estates. Conspicuously thereby the constitutional right to property, as invested in the estate holder concerned, would become ensured to become well protected. Emphatically the above would happen from adherences being made to the apposite legislative enactment, thus prescribing therein the valid exercising of powers of eminent domain whereby it would become ensured that the said power of eminent domain, has been well exercised, rather for obviating the ill eruption of any ill consequence, arising from adoptions of any contra thereto mechanisms, rather thus unfair and unjust reasonable compensation becoming assessed, wherebys the power of eminent domain would but become ill exercised.

9. It is in the light of the above, that the validity of the purchase policy whereunders certain amounts of compensation have been assessed vis-a-vis the estate holders, in purported compliance of the statutory mandates, as encapsulated under the Act of 2013, rather is required to be decided. Primarily as stated (supra), since the procedure for determination of compensation, is in *extenso* encapsulated in the relevant statutory provisions carried in the Act of 2013, thereby s the said provisions are required to be completely adhered to. Therefore, there was no occasion for the respondent

concerned, to depart from the said prescribed statutory mode of making acquisition of the subject lands, besides to depart from the statutory norms as carried in the relevant legislative enactment rather for therebys just, fair and reasonable compensation becoming assessed.

10. The reason for making the said conclusion further spurs from the factum, that if, the legislature intended that some mode other than the one prescribed in the said statute rather was amenable for becoming adopted by the acquiring authority, for thereby just and fair compensation becoming assessed vis-vis the land-loser concerned, thereupon such a provision was yet required to exist there, whereby the necessity of making of an award in respect of the acquired lands in terms of the mandate existing in the Act of 2013, may be construed to become eased or diluted. Pointedly, there exists no statutory norm in the Act of 2013, whereunders other than the making of an award in respect of the acquired lands rather the respondent can proceed to under the purchase policy make acquisitions of the estates of the land-loser concerned. Therefore, the execution of deeds of conveyance, *inter se* the land-loser concerned, and the acquiring authority, thus in terms of the purchase policy (Annexure P-11), when rather remains uncontemplated in the relevant legislative enactment. In sequel, the lack of existence of the said provisions in the Act of 2013, leads this Court to draw an inference, *qua* the adoption of purchase policy at the instance of the respondent concerned, to thereby make acquisitions of the estate of estate holder, is completely antithetical to the statutory mandates borne in the special statute relating to the well exercising of the power of eminent domain.

11. Be that as it may, even if assumingly compensation almost equal to the one which may hence become assessed even by the Collector

concerned, while exercising the powers under the Act of 2013, thus assumingly becomes assessed by the acquiring authority, yet there would be therebys a complete foreclosure against the land-loser concerned, especially after his executing registered deeds of conveyance in respect of the subject lands concerned, rather to but post the execution and registration of the deeds of conveyance, hence contend that the sale consideration borne in the said deeds of conveyance is rather an insufficient or inadequate assessment of compensation, and/or, is not assessments of just and fair compensation in respect of the subject lands. Resultantly, therebys there may be breach to the mandate carried under Article 300A of the Constitution of India, whereunders the acquisition of the estate of any private person, is to be made only subject to assessment of just and reasonable compensation in respect thereof, and, that too strictly in terms of the specific legislative enactment relating to acquisition of lands. Since for covering the above situation, thus the special enactment (supra) relating to acquisition of the estates of private persons, has been enacted, but with remedies to the aggrieved from the compensation award pronounced by the Collector concerned, to lawfully access the authority concerned, to thereupons claim enhancement of compensation.

12. However, yet the adoption of the purchase policy by the State of Haryana, has completely pre-empted the land-loser concerned, to claim the apposite enhancements of compensation, through his recoursing the statutory remedies, as prescribed in the Act of 2013, wherebys *prima facie* an inference may become garnered, that on the said estoppel becoming created, through the execution of sale deeds *inter se* the land-loser concerned, and, the acquiring authority, that thereby may be despite in some

situations despite the sale consideration embodied in the sale deeds rather being not just and fair assessment of compensation, yet the aggrieved land-loser concerned, becoming estopped to throw any challenge theretos. The said was not contemplated by the said enactment (supra), relating to the valid exercising of power of eminent domain wherebys in terms of Article 300A of the Constitution of India, the apposite special legislation rather was required to be embodying provisions relating to assessment of just and fair compensation. The said special statute is carried in the Act of 2013, but yet there is a departure therefrom at the instance of the respondent concerned, through its invoking the purchase policy. The adoption of the purchase policy has, for the reasons (supra) reiteratedly pre-empted the land-loser concerned, from recoursing the therein contemplated statutory remedies, for therebys his/its claiming enhancement of compensation. Consequently, thereby an ill estoppel becomes created against the seeking of enhancements, *qua* the land-loser concerned, especially *qua* his recoursing the statutory remedies, as expostulated in the said enactment. Resultantly, the said created ill estoppel against the land-loser concerned, to rather recourse the apposite statutory remedies, thus is an ill created estoppel and as such infringes the statutory mandates concerned. Therefore, it is required to be declared to be *ultra vires* both Article 300A of the Constitution of India, and also *ultra vires qua* the consequent thereto special enactment relating to acquisition of estates of private individuals, thus with specific provisions relating to determination of just, fair, and, reasonable compensation.

13. The respondent concerned, though has visibly utilized petitioner's estate, and, in the reply furnished to the instant writ petition, has contended, that since a part of the compensation has been released to the

petitioner, through purported adherences being made to the relevant provisions carried in the Act of 2013. Therefore, it is in terms of obedience being made to the purchase policy, that thus the respondent concerned, has claimed valid avoidances of adherences to the statutory provisions carried in the Act of 2013, thus for making valid acquisitions of the estate of the land-loser. Moreover, thereunders especially when part of the compensation has been released to the present petitioner and the remaining part thereof, has been contended in the reply on affidavit, to be releasable to the present petitioner, but on his executing the registered deeds of conveyance, with the respondent concerned, thus concomitantly the respondent concerned, intends to draw leverage from the provisions of Section 53-A of the Transfer of Property Act, 1882, provisions whereof are extracted hereinafter. A such, it is contended that the petitioner becomes estopped to claim the writ reliefs against the respondents.

> *"[**53A. Part performance**.—Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,*
>
> *and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,*
>
> *and the transferee has performed or is willing to perform his part of the contract,*
>
> *then, notwithstanding that, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall*

be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.]"

HOWEVER FOR THE REASON TO BE ASSIGNED HEREINAFTER THE ABOVE MADE ARGUMENT IS RUDDERLESS AND IS REJECTED

14. Primarily, for the reason that the provisions of Section 53-A of the Transfer of Property Act, 1882 are applicable only in a situation where a contract of sale is entered into amongst private estate holder concerned, but the said provision cannot be attracted in the face of a specific statute encapsulating therein, the requisite statutory provisions for thereunders just, fair and adequate compensation being determined in terms of Article 300A of the Constitution of India. In sequel, the provisions of Section 53-A of the Transfer of Property Act, 1882, are of no help to the respondents nor also the contention raised in the reply furnished by the respondents, that it is therebys withholding the releases of the entire component of the compensation amount, as become determined purportedly through adherence being made to the provisions carried in the Act of 2013, thus also is not acceptable to the judicial conscience of this Court.

15. Be that as it may, the amount already released to the petitioner, through purported adherence being made to the provisions relating to assessment of compensation, as carried in the Act of 2013, *qua* their acquired estates, can be adjusted against the compensation to be lawfully assessed, but only after the making of a notification under the Act of 2013, and, subsequent thereto a lawful award being made, so that the aggrieved

therefrom, in case the thereunders assessed compensation, is not just, fair and reasonable, thereupon, the petitioner can avail remedies for seeking enhancement thereofs.

16. Having so stated, the prior theretos adoption by the State of Haryana vis-a-vis the purchase policy, is not required to be disturbed at all as the thereunders invested rights, title and interest would become unjustly disturbed.

17. However, the purchase policy is quashed, and, set aside to the extent that it is contrary but both Article 300A of the Constitution of India, besides *qua* all the statutory principles relating to the assessment and determination to the compensation, as carried in the special legislative enactment (supra) relating to the well exercising of the power of eminent domain by the acquiring authority.

18. In consequence, the respondent concerned, is directed to acquire the land in dispute under the Act of 2013, by passing an award. However, the amount already paid to the petitioner shall adjusted in the compensation amount to be determined under the Act of 2013.

19. Disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

21.05.2024
Ithlesh

(LALIT BATRA)
JUDGE

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