

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

2024:PHHC:129059-DB



1.

CWP-10259-2017

Mohammad Mamman

Versus

State of Haryana & others

Date of Decision: 27.09.2024

--Petitioner

--Respondents
2.

CWP-10262-2017

Bhullu

Versus

State of Haryana & others

--Petitioner

--Respondents
3.

CWP-10278-2017

Safat & others

Versus

State of Haryana others

--Petitioners

--Respondents
4.

CWP-10279-2017

Prithvi Raj Grover & another

Versus

State of Haryana & others

--Petitioners

--Respondents
5.

CWP-10315-2017

Deen Mohammad

Versus

State of Haryana & others

--Petitioner

--Respondents
6.

CWP-10469-2017

Ratti Khan

Versus

State of Haryana & others

--Petitioner

--Respondents
7.

CWP-11091-2017

Subhash & another

Versus

State of Haryana & others

--Petitioners

--Respondents

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Versus
State of Haryana & others --Respondents

**CORAM:- HON'BLE MR. JUSTICE G.S. SANDHAWALIA.
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN.**

Present:- Mr. Pavan Malik, Advocate,
Mr. Arjun Atri, Advocate &
Mr. Kul Bhushan Sharma, Advocate
for the petitioners.

Mr. Ankur Mittal, Addl. A.G., Haryana,
Mr. Saurabh Mago, DAG, Haryana &
Ms. Kushaldeep Kaur, Advocate.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Ms. Kushaldeep Kaur, Advocate,
Mr. Siddhant Arora, Advocate and
Ms. Naina Jindal, Advocate for H.S.V.P./H.U.D.A.

G.S. SANDHAWALIA.J (Oral)

1. This order shall dispose of the aforementioned thirty five writ petitions as common issue is involved therein. Pleadings have been extracted from CWP-10259-2017 (Mohammad Mamman Vs. State of

2. The challenge in these petitions is to the notification dated 31.03.2017/11.04.2017 (Annexure P-7) issued under Section 101 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for the 2013 Act) whereby the land acquired under the 1894 Act was sought to be returned to the landowners. The compensation paid was to be recovered as arrears of land revenue. The said provision reads as under:-

“101. Return of unutilised land.

When any land acquired under this Act remains unutilised for a period of five years from the date of taking over the possession, the same shall be returned to the original owner or owners or their legal heirs, as the case may be, or to the Land Bank of the appropriate Government by reversion in the manner as may be prescribed by the appropriate Government.”

3. Since this matter was connected with **CWP-8398-2017 (Harish Kumar @ Harish Malik Vs. State of Haryana & others)**, the reply filed in the said case is to be treated as a reply in this case also, as per the order dated 19.09.2017. While issuing notice of motion on 24.05.2017, the Co-ordinate Bench had recorded the consent of the State Counsel that during the pendency of the writ petition, the amount of compensation already paid to the petitioner shall not be recovered.

4. Vide notification dated 12.08.2009 (Annexure P-2) the land acquisition was done under Section 4 of the Land Acquisition Act, 1894 (for short the 1894 Act) for the public purpose of development of residential and commercial Sectors no.1, 2 & 9 at Nuh initiated and the subsequent declaration dated 11.08.2010 (Annexure P-3) was made under Section 6 of the 1894 Act, followed by the award dated 06.08.2012 (Annexure P-4).

5. By pressing into the provisions of Section 101 of the 2013 Act, the State directed that if any person interested or land owner(s) to whom the land is to be returned may within a period of 30 days of publication of this notification in the official gazette, file his/her claim in writing before the Land Acquisition Collector concerned so as to enable him to complete the process of reversion of the land after deciding the claims as per law. The compensation already paid to the land owner(s) was to be recovered as arrears of land revenue in case the land owner(s) fail to deposit the same within a period of one month from the date of decision of the Land Acquisition Collector of their claims. The relevant portion of the impugned notification dated 31.03.2017 (Annexure P-7) reads as under:-

“Notification

The 31st March of 2017

No.LAC(F)-NTLA/2017/- Whereas, for acquiring land falling in revenue estate of villages Nuh, Firozpur Namak, Shahpur Nangli and Palla, Tehsil Nuh, District Nuh, for public purpose, namely, for development of residential & commercial Sectors-1,2 & 9 at Nuh, notification under section 4 of the Land Acquisition Act, 1894 was issued vide No. LAC (F)-2009/NTLA/323 dated 12.8.2009 published in the Haryana Government Gazatte (Extraordinary) dated 12.8.2009 and declaration under section 6 thereof was made vide No. LAC(F)/NTLA/331 dated 11.8.2010 published on 11.8.2010 in the Haryana Government Gazatte (Extraordinary), and award was announced on dated 06.08.2012.

However now the scheme has become unviable and the land in question has remained unutilized.

Therefore, in pursuance of the provisions of Section 101 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and all other powers enabling him in

this behalf, the Governor of Haryana is pleased to return the land of these sectors as specified below to the land owners.

Any person interested or land owner(s) to whom the land is to be returned may within a period of 30 days of publication of this notification in the official gazette file his/her claim in writing before the Land Acquisition Collector, Urban Estates, Haryana, Faridabad, so as to enabling him to complete the process of reversion of the land after deciding the claims as per law. The compensation already paid to the land owner(s) shall be recovered as arrears of land revenue, in case the land owner(s) fail to deposit the same within a period of one month from the date of decision of the Land Acquisition Collector of their claims.”

6. The Apex Court in case of **Indore Development Authority Vs. Manoharlal & others, AIR 2020 SC 1496** had occasion to deal with Section 101 of the said Act and while dealing with the provisions of Section 24 held that the said section is not applicable to an acquisition made under the 1894 Act and the provisions of the said section cannot be applied to such acquisition. The reference which had been made to the said provisions for the purpose of argument, while dealing with the lapsing issue under Section 24 of the 2013 Act, was repelled. Paragraph 361 of the judgement of Apex Court reads as under:-

“361. [Section 24](#) deals with lapse of acquisition. Section 101 deals with the return of unutilized land. Section 101 cannot be said to be applicable to an acquisition made under the Act of 1894. The provision of lapse has to be considered on its own strength and not by virtue of Section 101 though the spirit is to give back the land to the original owner or owners or the legal heirs or to the Land Bank. Return of lands is with respect to all lands acquired under the Act of 2013 as the expression used in the opening part is "When any land, acquired under this Act remains unutilized". Lapse, on the other hand, occurs when the State does not take steps in

terms of [Section 24\(2\)](#). The provisions of Section 101 cannot be applied to the acquisitions made under the Act of 1894. Thus, no such sustenance can be drawn from the provisions contained in [Section 101](#) of the Act of 2013. Five years' logic has been carried into effect for the purpose of lapse and not for the purpose of returning the land remaining unutilized under [Section 24\(2\)](#).”

7. It is a matter of record that Section 101 A had been inserted by the State at a subsequent point of time on 24.05.2018 w.e.f. 01.01.2014, whereby power can be used to de-notify the land on account of unviability or non-essentiality, which was at a subsequent point of time by virtue of the said amendment and in pursuance to that a policy dated 14.09.2018 has been introduced. The action of the State, in the present case was under Section 101 of the principle act, which is very specific that if the land acquired under the Act remained unutilized for a period of five years from the date of taking over the possession, the same is to be returned to the original land owner(s). There is no provision under Section 101 for return of unutilized land for the acquisition, which was made under the 1894 Act, and as held by the Apex Court.

8. In such circumstances, the Constitution Bench has also held that after passing of award and vesting of the land in the State, there is no power which exists and the said exercise is, thus, without any jurisdiction under the 2013 Act. It also runs out of the judgement of the Apex Court in case of **M/s Kranti Associates Pvt. Ltd. & another Vs. Shri Masood Ahmed Khan & others, 2010(4) RCR (Civil) 600**, wherein it has been held that even if an administrative decision is taken which has implications, it has to contain reasons and the only reason given is that the scheme is unviable.

9. From the file it transpires that the acquisition proceedings were

nullified on account of the Reference Court enhancing the market value of the land to Rs.1,85,14,286/- per acre vide order dated 06.10.2016 (Annexure P-5). The same was on the basis of another award, whereby the market value of land had been assessed at Rs.1,42,14,286/- from Rs.43 lac per acre for the land of village Nuh and Rs.33 lac per acre for the other three villages. In the Regular First Appeal filed by the State only 20% of the enhanced compensation was stayed and the balance was to be disbursed on furnishing simple surety which led to the H.U.D.A examining the said issue of feasibility of the acquisition and the non-viability of the project. This would be clear from the affidavit filed by the Chief Administrator, HUDA dated 11.02.2016 in CM-14332-CI-2015 in RFA-2629-2015 titled as State of Haryana and others Vs. Lal Chand and others (Annexure P-6).

10. Perusal of the same would go on to show that it had been decided that the land owners may take back their lands after signing an agreement and return the amount. It is further averred that the land owners did not agree to the decision of the Govt. and therefore there was withdrawal from acquisition. Thus, it is apparent that for financial constraints and not resorting to their legal remedies, the State has taken this arbitrary action inspite of the fact that under Section 48 of the 1894 Act once having announced the award and taken possession, the bar would come into play as per settled principle of law. The said fact has been sought to be justified in the written statement now filed.

11. It is also further settled principle that the speaking order itself has to contain the reasons and the notification does not give forth all these reasons and therefore even the said stand cannot be examined by this Court keeping in view the law laid down by the Apex Court in ***Mohinder Singh***

Gill and another Vs. The Chief Election Commissioner, New Delhi and

another, 1978 AIR Supreme Court 851, wherein it has been held that the State cannot improve its stand by incorporating reasons in the written statement or the affidavit filed in Court.

12. It has also been brought to our notice that in similar circumstances, the landowners had prayed for similar relief for denotifying the land from acquisition under the 1894 Act in CWP-15879-2023 titled *Urmila Devi Vs. State of Haryana & others*, decided on 26.07.2023. The defence of the State was that the provisions of Section 101 of the 2013 Act could not be invoked if the acquisition had been initiated under the 1894 Act and once there was a complete vestment of right, title and interest over the acquired land. The award had also been passed in that case, which is the position herein also and the Co-ordinate Bench had, thus, recorded that the title and interest of the acquired land had led to complete divestment of right and title and the claim for return of the land can only be under the provisions contained for release of land under Section 101 of the 2013 Act provided they were fulfilled. Relevant observations read as under:

“3. Be that as it may, the petitioner asks for relief but founded on [Section 101](#) of the Act of 2013. Therefore, it is deemed imperative to analyse the mandate of Section 101, as carried in the Act of 2013, provisions whereof are extracted hereinafter.

"101. Return of unutilised land.- When any land acquired under this Act remains unutilised for a period of five years from the date of taking over the possession, the same shall be returned to the original owner or owners or their legal heirs, as the case may be, or to the Land Bank of the appropriate Government by reversion in the manner as may be prescribed by the appropriate Government."

4. A reading of the above extracted provisions of Section 101, as carried in the Act of 2013, thus reveals, that the twin primary ingredients for the counsel succeeding before this Court, for the benefit thereof becoming granted to him are:

I) The right to claim the benefit of the said provision becoming available only when acquisition proceedings are drawn under the Act, of 2013.

II) It becoming proven that despite acquisition proceedings, as became drawn, and/or became concluded under the Act of 2013 yet the acquired lands becoming unutilized for a period of 5 years, from the date of taking of assumption of possession over such acquired lands, thus by the Competent Authority concerned.

5. If so, since the acquisition proceedings were not drawn under the Act of 2013, whereas, they were drawn under the Act of 1894, thereby the imperative statutory necessities (supra), but only carried in the Act of 2013, when thus evidently remain unaccomplished. Consequently, the above espoused relief in the writ petition cannot be granted to the petitioner.

6. Be that as it may, when the above alluded unfoldings, as occur in the scribed instructions, as, placed on record today, before this Court, by the learned State counsel, thus speak, that as a matter of fact the earlier launched acquisition proceedings, thus were under the Act of 1894, besides speak, that they became completely terminated, through an award being made in the year 2008. Therefore, when but obviously thereby complete vestment of right, title and interest over the acquired lands, rather in the Acquiring Authority, but obviously did then happen, and, concomitantly thereby complete divestment of right, title and interest over the acquired lands in the petitioner, thus thereby did also then happen.

7. In consequence, irrespective of unutilization of the petition lands, as of date, conspicuously since the acquisition proceedings were concluded under the Act of 1894, wherein, there is no provision that on unutilization of lands for a period of 5 years from the date of taking of possession thereof, thus the landowners can claim return of the acquired lands to them, from the Acquiring Authority. Contrarily, when the said provisions only occur in the above statutory provisions contained under the Act of 2013, whereas, ingredients thereof remain evidently unaccomplished.

8. Therefore, also this Court does not deem it fit, and, appropriate to grant the statutory benefit, as encapsulated in [Section 101](#) of the Act of 2013 thus to the petitioner. For all the above reasons, this Court is not at all inclined to quash the acquisition proceedings launched, and,

concluded under the Act of 1894. Hence, the instant petition is dismissed.”

13. Once the State has, thus, held out in the above-said case that the provisions of Section 101 of the 2013 Act would not be applicable to the acquisition under the 1894 Act and successfully defended in one round of litigation, we are of the considered opinion that the action of the State in utilizing the same provisions to denotify the land and attempt to return them, would be without lack of jurisdiction and legal sanctity. Even otherwise, the State cannot be allowed to blow hot and cold while taking one line of defence and on its own, taking the contrary stand when it comes to its own convenience.

14. In the above circumstances, we quash the impugned notification dated 31.03.2017/11.04.2017 and allow the present writ petitions.

(G.S. SANDHAWALIA)
JUDGE

27.09.2024
lucky/sailesh

(HARPREET KAUR JEEWAN)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable: Yes