

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-15383-2016
Reserved on: 26.02.2024
Date of Decision : March 06, 2024

HARIPAL AND ANOTHER

...Petitioners

V/S

STATE OF HARYANA AND OTHERS

...Respondents

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

Present : Mr. Shailendra Jain, Senior Advocate with
Ms. Navneet Kaur, Advocate
for the petitioners.

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

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioners pray for the making of a *mandamus*, upon the respondents concerned, to release the respective residential houses of the petitioners, as comprised in Khasra No.809/2, situated in the revenue estate of village Nathupur, Tehsil and District Gurgaon (now Gurugram). The petitioners claim that therebys they would be awarded parity with other similarly situated land-losers concerned, whose constructed areas became released from acquisition.

2. The notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as “the Act of 1894”), became issued on

03.10.2006 (Annexure P-8), and, the said notification became succeeded by

a declaration made on 01.10.2007 (Annexure P-12), under Section 6 of the Act (supra), and subsequently an award dated 30.09.2009 (Annexure P-13), became passed under Section 11 of the Act of 1894.

3. The notification (supra), became issued for the development of residential, commercial and institutional area of Sector 24 and 25 at Gurgaon. It is evidently surfaces, on a reading of the reply on affidavit furnished to the instant writ petition by the respondents concerned, that through rapat bearing No.93 of 30.09.2009, thus possession became assumed over the disputed lands by the acquiring authority concerned. Moreover, it has also been stated in the said reply, that the compensation amount at Rs.43,50,07,551/-, thus became assessed in respect of the acquired lands, out of which an amount of Rs.3,62,76,537/- has already been paid to the land-owners, and, the balance amount of Rs.39,87,31,014/- along with the compensation amount of the petitioners, is lying deposited in the Reference Court vide cheque No.461905 dated 16.05.2014, for being disbursed to the land-losers concerned. In the face of the above, the petitioners cannot claim the making of a lapsing declaration under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation And Resettlement Act, 2013.

4. Be that as it may, co-petitioner No.1 had instituted CWP-16752-2008 before this Court. In the said writ petition, the petitioner claimed relief for the quashing of the notifications (supra). The claim was rested on the ground that constructions, since the year 1949, had been raised over the acquired lands, by co-petitioner No.1, thereby the objections in the said regard as became raised under Section 5-A of the Act of 1894, rather were

required to be accepted rather than theirs becoming rejected. Co-petitioner No.2 also instituted CWP-16770-2008, wherein, he claimed the very same relief, as became claimed by co-petitioner No.1.

5. It appears that through a common decision made thereons, on 04.11.2008, both the writ petitions (supra) became dismissed. However a reading of the relevant portions of the verdict (supra), as became rendered by this Court, on 04.11.2008 thus respectively upon CWP-16752-2008, and upon CWP-16770-2008, relevant paragraphs became extracted hereinafter, thus candidly reveal, that at the time of filing of the writ petition (supra), a decree for permanent prohibitory/mandatory injunction became rendered by the Civil Court of competent jurisdiction, whereby a direction was passed, upon the Gram Panchayat concerned, to execute a registered deed of conveyance in favour of petitioner No.1. However, since the said decree of permanent prohibitory/mandatory injunction remained unexecuted at the instance of the decree holder(s), thereby this Court ultimately concluded that in absence thereof, thus the disputed lands remain vested in the Gram Panchayat concerned, and, as such it was concluded, that the petitioners rather holding no *locus standi* to challenge the notifications for acquisition.

“Ms. Meenakshi Dogra, learned counsel for petitioner, argued that land in dispute was purchased from Gram Panchayat on the basis of its Resolution passed in favour of the petitioner. She argued that the Gram Panchayat did not get the sale deed registered in favour of the petitioner and, therefore, petitioner filed a civil suit for mandatory and permanent injunction, which was decreed in his favour vide judgment and decree dated 7.9.2005. She argued that residential house of the petitioner has not been released by the Land Acquisition

Collector which is contrary to the policy. It has also been argued that land in dispute is being used for residential purposes since the time of his father and no survey was conducted before issuance of notification under Section 6 of the Act. Moreover, as per policy of the State Government, the land which was constructed prior to notification under Section 4 of the Act, was to be released but the same has not been released. It is also the argument of learned counsel for petitioner that land has been acquired for development and utilization for residential, commercial and institutional purposes and for that purpose, he is entitled for the release.

We have heard arguments of learned counsel for petitioner and perused documents on record.

The petitioner has challenged notifications only on the ground that the land in dispute has been purchased from the Panchayat and the same is being used for residential purposes for the last many years and since the time of his father. The petitioner has not established that action of the respondent-authorities is malafide or arbitrary and that land of other similarly situated persons has been released. The petitioner establishes his ownership on the basis of judgment and decree of the civil court dated 7.9.2005. The land in dispute belongs to Gram Panchayat which was purchased by the petitioner by way of Resolution passed by it. Though the petitioner establishes his ownership on the basis of judgment and decree of the civil Court, but nowhere it has been pointed out as to how much and of what type of construction is there on the land in dispute and how the authorities have not considered his case. Hence, the petitioner has not made out a case for release of the land in dispute. Moreover, learned counsel for petitioner has not been able to point out as to whether any pick and choose method was adopted by the respondents in acquisition of the land. Even till today, the land in dispute has not been registered in favour of

the petitioner and unless and until the land is registered, Gram Panchayat will remain owner of the land in dispute. Ownership of the petitioner over the land in dispute is still in dispute in the absence of the registration and the petitioner has no ground to challenge the notifications under Sections 4 and 6 of the Act.”

6. The decision (supra), has remained unchallenged thereby it acquires conclusive and binding effect.

7. Similarly, petitioner No.2 also filed civil suit for permanent prohibitory/mandatory injunction, and, the same was decreed vide judgment and decree dated 13.08.2005. In pursuance to the said judgment and decree, sale deed No.20558 was registered on 20.11.2014. The said decree became challenged by the aggrieved-defendant Gram Panchayat concerned, through the latter raising an appeal thereagainst before the learned District Judge, Gurgaon, but the latter dismissed the apposite first appeal, and, the subsequent thereto RSA-2446-2007, as became filed by the Gram Panchayat Nathupur, also became dismissed by this Court through its drawing a dismissalal verdict thereons, on 17.08.2007.

8. Consequently, the judgments and decrees rendered by the Civil Court of competent jurisdiction respectively on 07.09.2005, and, on 13.08.2005, whereby the Gram Panchayat became enjoined to execute the respective registered deeds of conveyance in respect of the disputed lands vis-a-vis the petitioners, thus acquired finality, and, conclusivity. Moreso, when no material exists, on record suggestive, that the said judgments and decrees became reversed or became annulled by the Hon'ble Apex Court.

9. It is not disputed that in pursuance to the said decrees of permanent prohibitory/mandatory injunction becoming granted in respect of

the disputed lands, vis-a-vis the petitioners, that petitioner No.1 executed a sale deed Vasika No.30377 dated 28.03.2008 (Annexure P-5), thus with Gram Panchayat, Nathupur. Similarly, petitioner No.2 also executed a sale deed Vasika No.20558 dated 20.11.2014 (Annexure P-7), thus with Gram Panchayat, Nathupur. Therefore, evidently the sale deeds, as respectively carried in Annexure P-5 and P-7, and, which became respectively executed, on 28.03.2008, and, on 20.11.2014, thus became executed only post the issuance of a notification under Section 4 of the Act of 1894, notification whereof became issued on 03.10.2006 (Annexure P-8). It is trite law that on issuance of a notification under Section 4 of the Act of 1894, thus the right, title and interest over the acquired estates rather vests in the Acquiring Authority concerned.

10. If so, it has to be considered whether with the judgments and decrees as became respectively rendered by the Civil Court of competent jurisdiction, thus respectively, on 07.09.2005, and, on 13.08.2005, hence respectively *qua* both the petitioners, besides when the said judgments and decrees became rendered prior to the issuance of a notification under Section 4 of the Act of 1894, *qua* whether therebys, there is any consequent annulment of the principle (*supra*), that on issuance of a notification under Section 4 of the Act of 1894, that therebys the right, title and interest over the disputed lands, thus vests in the acquiring authority concerned.

11. Undisputedly even prior to the rendition(s) of decrees (*supra*), the Gram Panchayat concerned, was the owner of the disputed lands. To the considered mind of this Court, even if they became rendered prior to the issuance of a notification under Section 4 of the Act of 1894, yet they do not

ipso facto, thus on their renditions occurring, even prior to the issuance of a notification (*supra*), rather annulled the vestment of title which became bestowed vis-a-vis the acquiring authority rather on the issuance of a notification under Section 4 of the Act of 1894, and, despite the notifications (*supra*) becoming issued subsequent thereto on 03.10.2006.

12. The reason for forming the above conclusion stems, from the factum, that the said judgments, and, decrees rather did also require execution thereof being made, thus through executions of the apposite registered deeds of conveyance hence *inter se* the petitioners and the common defendant(s) in the said suit i.e. the Gram Panchayat Nathupur.

13. However, the deeds of conveyance as became respectively executed vis-a-vis the petitioners, became thus executed respectively on 28.03.2008 and on 20.11.2014. Therefore, the execution of the deeds of conveyance vis-a-vis the petitioners rather occurred on a date post, the issuance of a notification under Section 4 of the Act of 1894, especially when, on the said dates despite rendition of decrees (*supra*), in favour of the petitioners, rather no registered deeds of conveyance become executed, whereas, only thereby the decrees became executed, whereby they acquired the apt legal effectivity. Moreover, when thereby alone there was a purported conferment of right, title and interest over the disputed lands vis-a-vis the plaintiffs/petitioners.

14. The effect of non-execution of registered deeds of conveyance vis-a-vis the disputed lands thus, in contemporaneity to the rendition of decrees, vis-a-vis the petitioners, and/or, prior to the issuance of a

notification under Section 4 of the Act of 1894, is that, the petitioners cannot draw any leverage from the said decrees, given theirs remaining unexecuted.

15. The petitioners have completely suppressed from this Court, the relevant fact, whether the acquiring authority became impleaded as defendant in the apposite civil suits, and/or, if the acquiring authority was not required to be impleaded so in the civil suit, as its institution occurred prior to the institution of a notification under Section 4 of the Act of 1894, yet the reason for non-impleadment of the acquiring authority before the Appellate Authority or before this Court rather also remains not spoken by the petitioners.

16. The further effect of suppression of the above fact, at the first appellate stage, and, at the second appellate stage, besides with no well founded reason becoming made by the petitioners for not causing the impleadment of the acquiring authority, in the array of respondent/defendant, is that, thereby the judgments and decrees becoming obtained through intentional non-impleadment of a just and proper party to the *lis*, which was but the acquiring authority.

17. In the petitioners omitting to cause the impleadment of a just and proper party to the *lis*, but bolsters an inference, that the said omission became prompted only for ensuring that the acquiring authority, if became so impleaded, as a party-defendant at the relevant stages, thereby on a written statement becoming instituted by the said impleaded but just and proper party, thus necessarily requiring fresh issues becoming formulated, and, may be also necessitated the further requirement of evidence becoming adduced thereons. Resultantly, thereby there may have been a possibility of

the remand of the *lis*, besides there may have been a possibility of findings adversarial to the petitioners becoming recorded by the Remandee Court, may be essentially, on the principle that on issuance of a notification under Section 4 of the Act of 1894, thus vestment of right, title and interest over the disputed lands rather happens vis-a-vis the acquiring authority, whereby the petitioners may have been non-suited.

18. Therefore, it appears that the petitioners through their intentionally avoiding the impleadment of a just and proper party to the *lis*, thus have managed to secure decrees (*supra*), from the Civil Court of competent jurisdiction, whereby the said decrees even if they have been executed post the issuance of a notification, through execution of deeds of conveyance, yet the said decrees of the Civil Court of competent jurisdiction do acquire the stains of *suppresio veri and suggestio falsi*, as arising from the intentional omission of the plaintiffs therein, to cause impleadment of a just and necessary party to the *lis*.

19. The result of the above discussion, is that, the petitioners have no *locus standi* to challenge the notification for acquisition nor they are capacitated to claim releases *qua* them of their respectively acquired estates.

20. Moreover in the earlier writ petition, whereons, this Court had passed the hereinabove extracted observations, the present petitioners did not evidently raise any claim for their acquired estates becoming released from acquisition, thus on the purported premise, that the acquired estates of other similarly situated land-losers, thus becoming released from acquisition. In addition, nor any liberty became reserved to the petitioners to thus at the appropriate stage, rather raise a fresh motion before this Court.

21. The effect of the above, is that, thereby the petitioners became estopped to claim either the releases to them of their respectively acquired estates, and/or, to claim that they have a well constituted ground for making a challenge to the validly launched acquisition proceedings.

22. In aftermath, this Court finds no merit in the instant petition, and, is constrained to dismiss the same. Hence, the instant petition is dismissed.

(SURESHWAR THAKUR)
JUDGE

6.03.2024

(LALIT BATRA)
JUDGE

Ithlesh

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