

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 24512 of 2012 (O&M)

Reserved on : 10.4.2024

Date of Decision: 29.4.2024

Dinesh Kumar and others

.....Petitioners

Versus

State of Haryana and others

.....Respondents

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

Argued by: Mr. Sanjeev Kumar Bawa, Advocate with
Ms. Nisha Rana, Advocate
for the petitioners.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Pardeep Prakash Chahar, Sr. DAG, Haryana.

SURESHWAR THAKUR, J.

1. Through the instant petition, the petitioners seek the quashing of notification dated 8.4.1988 (Annexure P-1), and, also seek the quashing of notification dated 10.10.1988 (Annexure P-2). The said notifications were respectively issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (for short 'the Act of 1894'). The consequent thereto award dated 5.10.1990 (Annexure P-3) has also been asked to be quashed, and, set aside.

2. The above espoused writ claims become founded upon the provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the Act of 2013'), whereunders the petitioners become empowered to claim the making of a lapsing declaration.

Grounds raised in the instant petition

3. The grounds, as raised in the instant petition by the petitioners,

are that the notification issued under Section 4 of the Act of 1894, was required to be published in two daily newspapers circulating in the locality out of which, one is required to be in the regional language. However, the mandatory requirements of Section 4 of the Act of 1894, regarding the publication of the notification under Section 4 of the Act of 1894, were not complied with. It is further averred in the petition, that though the notification under Section 6 of the Act of 1894 was published in the official gazette, however, neither any publication became conducted nor any notice was given at the convenient place. Moreover, the award dated 5.10.1990 was pronounced by the Collector concerned, without any prior notice to the affected persons. It is further averred in the petition, that prior to the issuance of notification under Section 4 of the Act of 1894, the petition lands were commonly owned by the petitioners along with their ancestors, and, they have been living in two khasra numbers by constructing their houses.

Reasons for rejecting the above grounds

4. However, for the reasons to be assigned hereinafter, the above claimed reliefs are liable to be declined.

5. From a perusal of the reply on affidavit, furnished to the instant petition, it is evident, that despite an apposite opportunity being granted to the land losers concerned, yet the petitioners rather not availing the said opportunity nor theirs preferring objections in terms of Section 5-A of the Act of 1894, before the Collector concerned. In the face of abandonment of the said opportunity by the petitioners, to thus prefer objections under Section 5-A of the Act of 1894, before the Collector concerned, thereby theirs' said made abandonments, thus tantamounts to theirs acquiescing to the valid launching of the acquisition proceedings, besides fosters a further

conclusion, that the petitioners become estopped to claim before this Court, that either they became forestalled to raise objections or the said objections became summarily dismissed.

6. Moreover, it has also been stated in the reply on affidavit, that the notification dated 8.4.1988 issued under Section 4 of the Act of 1894, was got published in the daily leading news papers, and, thereafter the munadi was also got conducted in the locality by beat of drums, besides a report in this regard was also made which became reduced into writing vide rapat no. 445 dated 14.4.1988, and, was also pasted at various convenient places i.e. the offices of Land Acquisition Officer, Urban Estates Haryana Gurgaon, Deputy Commissioner Gurgaon, and Halqa Patwari, Tehsil Office, SDM Office etc.

7. Furthermore on a reading of reply, it is revealed, that the declaration under Section 6 of the Act was also got published in the daily leading newspapers on 18.10.1988. In addition, munadi was also got conducted by beat of drums in the locality concerned, and, a report to that effect was recorded by the Halqa Patwari. It is also stated in the reply, that the substances of declaration under Section 6 of the Act of 1894 were also placed at the convenient places in the locality.

8. Therefore, thereby there is but complete adherence to all the mandatory statutory prescription(s), thereby the launching of the acquisition proceedings cannot be construed to become vitiated.

9. In addition, the present petitioners would be entitled to the espoused writ relief(s), as relates to this Court, thus declaring rather lapsed the extant drawn acquisition proceedings, but only when the provisions embodied in Section 24(2) of the Act of 2013, becoming proved to become

breached by the respondents. However, for the reasons to be assigned hereinafter, the asked for relief qua the making of a lapsing declaration cannot be accorded by this Court.

10. Since discharging evidence has been adduced by the respondent-acquiring authority, both qua assumption of rapat possession of the acquired lands through rapat bearing No. 52 dated 5.10.1990, and, qua the determined compensation amount becoming available to become disbursed to the land losers concerned.

11. Consequently, thereby the mandate of the verdict recorded by the Hon'ble Apex Court, in case titled as 'Indore Development Authority Versus Manoharlal and others', to which SLP (Civil) Nos. 9036-9038 of 2016, has been assigned, and, wherein, in the relevant paragraph thereof, para whereof stands extracted hereinafter, it becomes propounded, that when in respect of acquisition proceedings, as become launched, under the 'Act of 1894', rather upon the acquiring authority begetting compliance, with both the contingencies, spelt therein, thus thereby attraction of the lapsing provisions to the acquired lands, hence as required under Section 24(2) of the 'Act of 2013', rather becoming unavailable for becoming recoured by the land losers.

“363. In view of the aforesaid discussion, we answer the questions as under:

1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1.1.2014 the date of commencement of Act of 2013, there is no lapse of proceedings. Compensation has to be determined under the provisions of Act of 2013.

2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under

Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.

3. The word 'or' used in Section 24(2) between possession and compensation has to be read as 'nor' or as 'and'. The deemed lapse of land acquisition proceedings under Section 24(2) of the Act of 2013 takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

4. The expression 'paid' in the main part of Section 24(2) of the Act of 2013 does not include a deposit of compensation in court. The consequence of non-deposit is provided in proviso to Section 24(2) in case it has not been deposited with respect to majority of land holdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the Act of 1894 shall be entitled to compensation in accordance with the provisions of the Act of 2013. In case the obligation under Section 31 of the Land Acquisition Act of 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the Act of 2013 has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the Act of 1894.

5. In case a person has been tendered the compensation as provided under Section 31(1) of the Act of 1894, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). Land owners who had refused to accept

compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the Act of 2013.

6. The proviso to Section 24(2) of the Act of 2013 is to be treated as part of Section 24(2) not part of Section 24(1)(b).

7. The mode of taking possession under the Act of 1894 and as contemplated under Section 24(2) is by drawing of inquest report/ memorandum. Once award has been passed on taking possession under Section 16 of the Act of 1894, the land vests in State there is no divesting provided under Section 24(2) of the Act of 2013, as once possession has been taken there is no lapse under Section 24(2).

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 Act of 2013 came into force, in a proceeding for land acquisition pending with concerned authority 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.

9. Section 24(2) of the Act of 2013 does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the Act of 2013, i.e., 1.1.2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition.”

12. Consequently, when both the conditions (Supra), inasmuch as, with both conditions relating to, rapat possession over the acquired lands, becoming assumed on 5.10.1990, besides with the compensation amount,

as determined through the apposite award, rather becoming tendered under Section 31 of the 'Act of 1894', for thereafter its becoming available for being released to the land losers concerned, thus become evidently complied with. In sequitur, the writ relief relating to the acquisition proceedings, becoming declared to become lapsed in terms of Section 24(2) of the 'Act of 2013', is but obviously rejected.

13. Predominantly also when it is revealed in the reply filed on behalf of the respondents concerned, that the acquired lands are an integral component of the layout plans, and, as such are required for furthering the public purpose.

14. Even otherwise, the notification for acquisitions became issued in the year 1988, therefore, the institution of the instant writ petition, rather in the year 2012, makes it to become imbued with gross pervasive stains of delay and laches.

15. Even the Hon'ble Apex Court in a judgment rendered in case titled ***"M/s Star Wire (India) Ltd. V/s State of Haryana and others"***, ***reported in (1996) 11 SCC 698***, has in the relevant paragraph of its verdict, paragraph whereof becomes extracted hereinafter, thus declared that any belated challenge, as made to the relevant lawfully fully terminated acquisition proceedings, thus is hit by the vices of delay and laches, and thereby too, the said belated motion as existing in the instant petition, is but required to be declared as misconstituted.

"Shri P.P. Rao, learned senior counsel for the petitioner, contends that the petitioner had no knowledge of the acquisition proceedings; as soon as it came to know of the acquisition, it had challenged the validity of the acquisition proceedings and, therefore, it furnishes cause of action to the petitioner. He further contends that the writ petition could not be dismissed on

the ground of laches but was required to be considered on merits. We find no force in the contention. Any encumbrance created by the erstwhile owner of the land after publication of the notification under Section 4(1) does not bind the State if the possession of land is already taken over after the award came to be passed. The land stood vested in the State free from all encumbrances under Section 16. In Gurmukh Singh & Ors. vs. The State of Haryana [J] 1995 (8) SC 208], this Court had held that a subsequent purchaser is not entitled to challenge the legality of the acquisition proceedings on the ground of lack of publication of the notification. In Y.N. Garg vs State of Rajasthan [1996 (1) SCC 284] and Sneh Prabha vs. State of U.P. [1996 (7) 325], this Court had held the alienation made by the erstwhile owner of the land after publication of the notification under Section 4(1), do not bind either the State Government or the beneficiary for whose benefit the land was acquired. The purchaser does not acquire any valid title. Even the colour of title claimed by the purchaser was void. The beneficiary is entitled to have absolute possession free from encumbrances. In U.P. Jal Nigam, Lucknow through its Chairman & Anr. vs. M/s Kalra Properties (P) Ltd., Lucknow & Ors. {(1996) 1 SCC 124], this Court had further held that the purchaser of the property, after the notification under Section 4(1) was published, is devoid of right to challenge the validity of the notification or irregularity in taking possession of the land before publication of the declaration under Section 6. As regards laches in approaching the Court, this Court has been consistently taking the view starting from State of Madhya Pradesh & Anr. vs. Bhailal Bhai & Ors. [AIR 1964 SC 1006] wherein a Constitution Bench had held that it is not either desirable or expedient to lay down a rule of universal application but the unreasonable delay denies to the petitioner, the discretionary extraordinary remedy of mandamus, certiorari or any other relief. The same was view reiterated in catena of decisions, viz., Rabindranath Bose & Ors. vs. The Union of India & Ors. [(1970 (1) SCC 84]; State of Mysore & Ors. vs. Narsimha Ram Naik [AIR 1975 SC 2190]; Aflatoon & Anr. vs. Lt. Governor of Delhi [(1975) 4 SCC 285]; M/s. Tilokchand Motichand & Ors. vs. H.B. Munshi, Commissioner of Sales Tax, Bombay & Anr. [AIR 1970 SC 898]; State of Tamil Nadu & Ors. etc. V. L. Krishnan & Ors. etc. [JT 1995 (8) SC 1]; Improvement Trust, Faridkot & Ors. vs. Jagjit Singh & Ors. [1987 Supp. SCC 608]; State of Punjab & Ors. vs. Hari Om Co-operative House Building Society Ltd., Amritsar [1987 Supp. SCC 687]; Market Committee, Hodal vs. Krishan Murari & Ors. [JT 1995 (8) SC 494] and State of Haryana vs. Dewan Singh [(1996 (7) SCC 394] wherein this Court had held that the High Court was not justified in interfering with the acquisition proceedings. This Court in the latest judgement in Municipal Corporation of Great Bombay vs. The Industrial Development & Investment Co. Pvt. Ltd. & Ors. [JT 1996 (8) SC 16], reviewed the entire case law and held that the person who

approaches the Court belatedly will be told that laches close the gates of the Court for him to question the legality of the notification under Section 4(1), declaration under Section 6 and the award of the Collector under Section 11. ”

Final Order of this Court.

16. In aftermath, this Court finds no merit in the writ petition, and, with the above observations, the same is dismissed. The impugned notifications, and, award are maintained and affirmed.
17. The pending application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

April 29, 2024
Gurpreet

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