

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-16998-2022
Reserved on: 21.12.2023
Pronounced on: 25.01.2024

BALWAN SINGH AND ORS.Petitioners

Versus

STATE OF HARYANA & ORS.Respondents

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

Argued by: Mr. Chetan Mittal, Senior Advocate with
Mr. Sandeep Sharma, Advocate
Ms. Gitanjali Sharma, Advocate and
Mr. Rohit Johar, Advocate
for the petitioners.

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

Mr. Ankur Mittal, Advocate with
Ms. Kushaldeep Kaur, Advocate
Mr. Shivam Garg, Advocate
Mr. Siddharth Arora, Advocate
for respondent - HSVP.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioners pray for the making of a mandamus upon co-respondent No. 1, thus seized with the apposite representation (Annexure P-11), to make an order for release of the acquired lands, thus in terms of clause 7 of the policy dated 14.09.2018 (Annexure P-10), whereunders, the State of Haryana, has made a decision to release those acquired lands, which cannot be utilized by the respondents.

2. Before proceeding to make any adjudication, upon, the

earlier instituting CWP-25271-2016, whereby they claimed relief for a lapsing declaration being made in terms of the provisions, embodied in Section 24 (2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter for short refer to as the 'Act of 2013'), besides therein, a claim was also raised for the petitioners being treated at par with those releases, as were made vide orders dated 18.12.2002, dated 26.06.2012 and dated 22.08.2012. When the said writ came up for hearing on 17.11.2020, this Court proceeded to make therein the hereinafter extracted order.

- 1. There are two prayers in the present petition although they are bundled together as prayer (i).*
- 2. The first prayer is for a direction to release the land in question under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.*
- 3. Mr. Sandeep Sharma, learned Counsel appearing for the Petitioners, does not dispute that after the judgment of the Constitution Bench of the Supreme Court in Indore Development Authority v. Manoharlal, AIR 2020 SC 1496, the first prayer does not survive.*
- 4. As regards the second prayer regarding release of the land in question, on the basis that the land of certain other similarly situated persons has been released, Mr. Sandeep Sharma, Advocate seeks some more time to bring additional documents on record. According to him, in 2018 the Respondents released portions of the land acquired pursuant to the same award.*
- 5. At his request, list on 18th January, 2021.*
- 6. In the meanwhile, specific to the issue of release of the land in question, the Respondents will file an affidavit setting out the factual aspects of the matter..."*

3. A reading of the above extracted order, reveals that the counsel for the petitioners abandoned the claim for a lapsing declaration being made in terms of Section 24 (2) of the 'Act of 2013'.

4. However, for arguments being raised relating to the release of the acquired lands, thus in terms of releases made in favour of similarly situated persons, the matter was listed on 18.01.2021.

5. Therefore, when reliefs and causes of action in the instant writ petition are similar to the ones embodied in the writ petition (supra), which was then subjudice before this Court, thereby the instant writ petition was at the stage of its becoming instituted before this Court, rather clearly hit by the doctrine of *res sub judice*.

6. Though the counsel for the petitioners has, attempted to escape, from the rigor of the above doctrine, or qua the above doctrine becoming not attracted to the instant petition, but yet with theirs, in the earlier writ petition, thus appending rather with CM No. 658 of 2021, an order made on 29.05.2019, wherewith they claimed parity vis-a-vis the land losers concerned, whose lands were released from acquisition. However, when the very same order is relied, upon, by the present petitioners, thus for their claiming parity therewith, rather in the subsequent writ petition, which is the present one. Resultantly, no dependence whatsoever can be re laid on the said annexure, thus, to enable the petitioners, or to hence constrain this Court, against its not applying to the subsequent writ petition which is the instant one, rather the doctrine of *res sub judice*. In other words, prima facie, the instant writ petition, thus was mis-constituted.

7. Be that as it may, for reasons (supra), with the counsel for

to the makings of a lapsing declaration in terms of Section 24 (2) of the 'Act of 2013', thereby this Court is not required to be either delving into or making an adjudication in respect thereof.

8. Irrespective of the fact that the instant writ petition is hit by the doctrine of *res sub judice*, yet the claim for a mandamus being made upon the respondent concerned, to make a decision upon the apposite representation, besides the claim raised therein, for the petitioners being treated at par with the purportedly similarly situated land loser concerned, namely one Mohinder Singh, rather also are claims, which are required to be rejected.

9. The reason for drawing the above inference, becomes galvanized from the factum, that the release as was made in favour of the said Mohinder Singh, was through an order made on 29.05.2019. The said order became banked upon the factum that the said Mohinder Singh, was a recipient of an order made on 03.08.2015, by this Court, in CWP-15666-2015, wherein, the said Mohinder Singh claimed the makings qua him of a lapsing declaration in terms of Section 24 (2) of the 'Act of 2013'.

10. It also appears that through an order made on 29.05.2019, the apposite representation of the said Mohinder Singh was decided and in respect of land comprised in Khasra No. 36//25, letter of intent dated 21.11.2017 was issued with the condition, that in lieu of the land qua which the acquisition proceedings, had lapsed thus the said petitioner was to give land measuring 914.09 sq. mtrs. free of cost to HSVP thus for construction of roads and further 98 sq. mtrs of land would also be given free of cost to HSVP.

concerned, was entitled to a lapsing declaration in terms of Section 24 (2) of the 'Act of 2013', rather in view of the mandate recorded by the Hon'ble Apex Court in **Pune Municipal Vs. Harakchand Misirimal Solanki, reported in 2014 (1) CTC 755**. Moreover, when the said lapsing declaration was also made in favour of the said Mohinder Singh. Consequently, therebys besides when the said order of release was a conditional order and the apposite conditions became complied with. Therefore, the said order cannot be construed to be also made applicable to the petitioners also.

12. Contrarily also when with the petitioners herein abandoning the claim relating to the making of a lapsing declaration in terms of Section 24 (2) of the 'Act of 2013'. As but a natural corollary thereto, given the facts (supra), relating to the releases made in favour of one Mohinder Singh, thus being completely contra distinct to the facts at hand, as arising from the present petitioners, unlike the petitioners in case (supra), rather abandoning their claim for the making of a lapsing declaration vis-a-vis the acquired lands.

13. In sequel, with the above apparent inter-se distinctivity inter-se the release(s) made qua one Mohinder Singh and the release(s) claimed by the present petitioners, rather emerging to the fore, thereby it but eclipses the claim for release(s), thus in terms thereof, as made by the present petitioners nor obviously the petitioners are entitled to claim parity with the said Mohinder Singh.

14. Moreover, the earlier filed CWP-25271-2016, by the petitioners herein was permitted to be withdrawn, vide order dated 13.12.2022, as, passed by this Court. Therefore, also with the earlier

withdrawn, thus also make the instant writ petition to apart from being hit by the principle of *res sub judice*, to also become covered by the verdict of dismissal, as became made on the earlier writ petition.

15. Even otherwise this Court cannot make the above mandamus upon the respondent concerned, as it is, categorically spelt out in the reply, on affidavit, furnished to the writ petition by the respondents, that the acquired lands are an integral part of the layout plan, whereby this Court becomes constrained, thus to not tinker with the said drawn layout plan, which is but naturally facilitative, for furthering the public purpose. Moreover, when in a judgment recorded by this Court in case titled as '*The Press Employees and Friends Co-operative Group Housing Society Ltd. Vs. State of Haryana and Others*', 2023: PHHC:106793-DB, this Court had in length dealt with similar issues as raised in the instant writ petition. The relevant paragraphs of the verdict (*supra*) are extracted hereinafter.

“17. From the above facts and the legal submissions, as made by the learned counsels for the parties, the following issues arise for determination and adjudication, for arriving at a just decision upon the present lis:-

(i) Whether the intent of the legislature behind insertion of Section 101-A in the Act of 2013 is to release the “unutilized” acquired lands, or, its aim and object is to enable the State Government to de-notify only such lands, which become “unviable” and “non-essential” for the State Government, as acquired under the Act of 1894?

(ii) Whether the insertion of Section 101-A in the Act of 2013 can give rise to a new cause of action, in favour of the landowner concerned, to challenge the lawfully concluded acquisition proceedings, under the Act of 1894?

(iii) Whether the landowner concerned has a vested right to assert that the acquired land has become “unviable” and “nonessential”, on the ground, that the land has not been utilized, or, the land continues to be his possession, even after pronouncement of the award ?

27. Though Section 101 of the Act of 2013, contemplated the return of the land acquired under this Act, but it mandated the said land to have remained unutilised for a period of five years from the date of taking over the possession. Moreover, this provision is applicable only to the lands acquired under the Act of 2013, but, it does not have any applicability qua the lands acquired under the Act of 1894.

28. Therefore, faced with the impediment of de-notification of the lands acquired under the Act of 1894, the State legislature inserted the provisions of Section 101-A in the Act of 2013, through Haryana Act No.21 of 2018, thereby empowering the acquiring authority/State Government to denotify the lands acquired under the Act of 1894, acquisition proceedings whereof stand lawfully terminated, but only if such lands have become “unviable” or “non-essential”. However, at this stage, we are not examining the constitutional validity of insertion of Section 101-A in the principal Act, through the State Amendment Act (supra), leaving this issue to be decided in an aptly instituted lis.

29. Section 101-A has been inserted by the State legislature only with the intent to protect the State Government/acquiring authority from the saving effect of Section 6 of the Act of 1897 and that protection is available only in the circumstances, when the acquired land has become “unviable” and “nonessential” for any public purpose.

30. The combined effect of Section 114 of the Act of 2013 and Section 6 of the Act of 1897 has limited the scope and applicability of Section 101-A. The saving, as assigned in Section 6 of the Act of 1897, would not apply to the extent hindered by Section 101-A. Therefore, the power to denotify lands, by virtue of Section 101-A, can only be invoked when the twin statutory ingredients, are fulfilled. Therefore, the de-notification of acquired lands is only possible when such lands fall within the domain of the above prescribed twin conditions, which are the mandatory pre-conditions for the State Government to form a subjective opinion, while taking into consideration the larger public interest.

34. Furthermore, the provisions of Section 101-A does not vest any discretionary power in the State Government for de-notification of the lands, which remained unutilized for a long span, rather the only permissible ground for de-notification is “unviability” or “non-essentiality” of the acquired lands for being put to **any efficacious public purpose. (emphasis supplied)**

38. As a natural corollary of the hereinabove discussions as well as the propositions of law, as laid down by the Hon'ble Supreme Court, it can be safely concluded that the intent of the legislature, behind the insertion of Section 101-A in the Act of 2013, is not the release of unutilized acquired lands, rather its aim and object is to empower the State Government to de-notify only such lands, which have been acquired under the Act of 1894 and which have become "unviable" and "non-essential" for it, based upon tangible evidence, for executing any "public purpose".

44. Therefore, in the light of the legal propositions (supra), it is abundantly clear that though the landowners can approach the State Government seeking de-notification of the acquired lands, in exercise of powers conferred under Section 101-A of the Act of 2013, however, this Section does not give them any vested right to seek a mandamus for denotification of the acquired lands. A writ of mandamus can be issued only for the enforcement of any right conferred upon a person by law. In the absence of any vested right conferred by law, a mandamus cannot be passed upon the authority(ies) concerned. Therefore, we refrain ourselves from passing any mandamus upon the authority(ies) concerned to examine the representation of the petitioner-Society for de-notification of the acquired lands.

47. Once the land is lawfully acquired, it vests in the State Government/acquiring authority concerned, free from all encumbrances, and thereafter, the landowner concerned does not have any concern in respect of the user of his acquired land, i.e. whether the land has been used for the purpose for which it was acquired or for any other purpose.

49. Therefore, in view of the hereinabove elaborately made discussions, the issues, as formulated above, are reiteratedly answered in the hereinafter extracted manner:-

“QUA ISSUE NO.(I):

The intent of the legislature, behind insertion of Section 101-A in the Act of 2013, is not to release the “unutilized” acquired lands, rather its aim and object is to enable the government to de-notify only such lands, as acquired under the Act of 1894, and, which have become “unviable” and “non-essential” for facilitating any public purpose.

QUA ISSUE NO.(II):

The answer to the issue No.(ii) is also in negative. The insertion of Section 101-A does not give rise to any new

cause of action, in favour of the landowners concerned, to challenge the lawfully concluded acquisition proceedings, under the Act of 1894.

QUA ISSUE NO.(II):

The answer to this issue is also in negative. The landowners do not have any vested right to asset that the acquired lands have become “unviable” and “non-essential”, on the ground, that such lands have not yet been utilized, or, that such lands yet continues to be in possession of the landowners, even after pronouncement of the award.”

16. Therefore, the learned counsel for the petitioners has untenably planked the above arguments, thus premised on Section 101-A of the 'Act of 2013' or upon clause 7 of the policy dated 14.09.2018 (Annexure P-10).

17. Conspicuously also when it has been stated by the learned Additional Advocate General, Haryana that withdrawal of the policy (supra) is under active consideration of the respondent and that very shortly the policy (supra) is likely to be re-called.

18. Furthermore, upon vesting of ownership over the acquired lands, in the respondent concerned, thus happening on issuance(s) of notification(s) of acquisition, thereby when the State becomes absolute owner of the acquired lands. Resultantly the investment of complete or absolute ownership over the acquired lands in the respondent-State, thus makes it well empowered to, within the ambit of the verdict rendered by Hon'ble Apex Court in the case of ***“State of Kerala Vs. M.Bhaskaran Pillai”, AIR 1997 SC 2703, even make sale of the acquired lands through public auction***. Thus, in the event of it being not utilized, the exercisings of the above power by an absolute owner, rather is tenable, as thereby the auction monies as become fetched by the State of Haryana, thus would also result in theirs sub-serving some

circumstances, inasmuch as, upon occurrence of *vis major* or upon exorbitant sums of compensation monies being determined, thus making their liquidations, to cause an onerous burden to the State exchequer, thus, thereby the statutory parameters of un-essentiality or unviability of retention of the acquired lands, may become adopted by the State of Haryana. However, the above exceptions are not available on the records of the case.

19. Moreover, the averment as to the respondent practicing invidious discrimination(s), vis-a-vis the petitioner(s) herein, though also makes allusions to specific instances of discrimination(s) vis-a-vis the land losers concerned, inasmuch as, the same being done through Annexures P-6 to P-9.

20. However, since this Court for reasons (*supra*) has made a firm conclusion that the acquired lands are an integral component of the layout plans. Thus, the said conclusion also ousts the land-losers concerned to claim parity with other purportedly similarly situated estate holders concerned qua whom release(s) were made, but on the premise that their released lands were not an integral component of the layout plans.

21. Thus, the argument (*supra*) is merit-less, and, is rejected.

Final Order of this Court.

22. In aftermath, this Court finds no merit in the writ petition, and, with the above observations, the same is dismissed.

23. No order as to costs.

pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

25.01.2024

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