

2024:PHHC:078106-DB



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-19912-2015 (O & M)
Reserved on: 20.05.2024
Pronounced on: 27.05.2024

MOHD. YAKUB AND OTHERSPetitioners

Versus

STATE OF HARYANA AND OTHERSRespondents

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

Argued by: Mr. Vijay Kumar Jindal, Senior Advocate with
Mr. Akshay Jindal, Advocate
for the petitioners.

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

Mr. Ankur Mittal, Advocate with
Mr. Kushaldeep K. Manchanda, Advocate and
Ms. Saanvi Singla, Advocate
for respondent - HSIIDC/HSVP.

SURESHWAR THAKUR, J.

CM-8254-CWP-2024

1. During the pendency of the instant writ petition, the demise of petitioner No. 1-Mohd. Yakub has occurred on 04.01.2023. It has been averred in paragraph No. 3 to the application that the deceased is survived by his LRs, as, enumerated therein.

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2. Since for an adjudication of the instant writ petition, the substitution of the deceased by his LRs is imperative. Therefore, after allowing the asked for substitution, the instant application is allowed.

3. The amended memo of parties, as appended with the application is taken on record.

4. No notice is required to be served upon the newly added LRs-petitioners, as they stand represented through their counsel Mr.Akshay Jindal, Advocate.

Main case.

1. The instant writ petition became remanded by the Hon'ble Supreme Court vide order dated 21.02.2024. The operative part of the said order is extracted hereinafter.

“.....Accordingly, the impugned orders are set aside and the matters are remitted to the High Court for fresh consideration of all the other issues on merits that have been raised in the respective petitions in accordance with law.....”

2. The learned counsel appearing for the petitioners argues, that since the declaration as became passed under Section 6 of the Land Acquisition Act, 1894 (hereinafter referred to as “the Act of 1894”), was so passed on 23.12.2014, thereby when the date of making of the said declaration, thus occurred subsequent to the coming into force of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation And Resettlement Act, 2013 (hereinafter referred to as the “Act of 2013”). Therefore, he argues that no legal relevance can become assigned to the issuance of a notification under Section 4 on

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3. Therefore, he submits that the notification(s) (supra), are required to be quashed, and, set aside, thus on the ground, that since on the date of makings of Section 6 notification, the 'Act of 2013' had assumed force thus, thereby the proceedings for acquisition were required to be launched under the 'Act of 2013', than under the 'Act of 1894'.

4. The above raised contention before this Court by the learned counsel for the petitioners, is no longer *res integra*, as it becomes completely answered by a verdict drawn by the Hon'ble Apex Court in case titled as “*Haryana State Industrial and Infrastructure Development Corporation Ltd. And others V Deepak Aggarwal and others*” to which *Civil Appeal No.5947-5948 of 2022* arising out of *SLP(C) Nos.16631-16632 of 2018* became assigned. The Hon'ble Apex Court in paragraph No.31 of the verdict (supra), paragraph whereof, becomes extracted hereinafter, had therein formulated the question of law, thus for an answer being rendered thereons.

“31. Now, we will consider the other common questions involved in the captioned appeals. They pertain to the questions as to whether Section 4 notification issued under the L.A. Act prior to 01.01.2014 (date of commencement of 2013 Act) could continue or survive after 01.01.2014 and, as to whether Section 6 notification under the L.A. Act could be issued after 01.01.2014.”

5. A reading of the hereinabove extracted formulated question of law, reveals that the issue which engaged the Hon'ble Apex Court appertained to whether the initiation of proceedings under the 'Act of 1894', commenced on the date of the making of a notification under

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Section 4 of the said Act, or whether the initiation of acquisition proceedings under the 'Act of 1894', commenced on the date of making of a declaration under Section 6 of the 'Act of 1894'. It appears that the reason for the drawing of questions of law (supra), arose from the provisions occurring in Section 24(1) of the 'Act of 2013', provisions whereof stands extracted hereinafter.

“24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.—(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,—

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.”

6. Moreover, the Hon’ble Apex Court was engaged in making an interpretation of the phraseology “proceedings initiated under the 'Act of 1894', as occurs in Section 24(1) of the 'Act of 2013'. In rendering an answer to the above question of law, the Hon’ble Apex Court in paragraph No.32 thereof, paragraph whereof becomes extracted hereinafter, had expostulated, that the initiation of acquisition proceedings under the 'Act of 1894', thus occurs on the date of making of a notification under Section 4 of the said Act, and, that the initiation of acquisition proceedings under the 'Act of 1894', does not occur, on

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the date of issuance of a declaration under Section 6 of the 'Act of 1894'.

“We think that while considering those questions we will have to bear in mind the purposes and the legislative history of the 2013 Act and also the intention of the legislature in drafting the same in the manner in which it now exists. We have already dealt with those aspects. One crucial aspect discernible from Section 24(1)(a) has also to be taken note of in this context. The combined effect of Section 24(1) and clause (a) thereof is that if land acquisition proceeding under the L.A. Act was initiated prior to 01.01.2014, the date of coming into force of the 2013 Act, and if it was not culminated in an award under Section 11 of the L.A. Act, then all the provisions of the 2013 Act relating to the determination of compensation should apply to such acquisition proceedings. Thus, it is obvious that in case of non-passing of an award in terms of Section 11 of the L.A. Act where the acquisition proceedings have been initiated prior to 01.01.2014, all provisions under the 2013 Act relating to the determination of compensation alone would apply to such acquisition proceedings. In other words, it would mean that in such circumstances the land acquisition proceedings should continue, but all the provisions relating to the determination of compensation under the 2013 Act alone will be applicable to such proceedings, meaning thereby, the 2013 Act would come into play only at that stage. There can be no doubt with respect to the position that between the initiation of land acquisition proceedings by issuance and publication of notice under Section 4(1) of the L.A. Act and the stage at which compensation for the acquisition calls for determination, there are various procedures to be followed to make the

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acquisition in accordance with the law. The question is when Section 24(1) of the 2013 Act makes it clear with necessary implication that all provisions of the 2013 Act relating to the determination of compensation alone would be applicable to such proceedings initiated under the L.A. Act but, not culminated in an award, how the procedures are to be regulated during the intervening period till the proceedings reach the stage of determination of compensation. There cannot be any uncertainty on that aspect. The procedures to be undertaken and the manner in which they are to be regulated cannot remain uncertain. They are conducted either in the manner provided under the L.A. Act or in the manner provided under the 2013 Act. But then, in view of Section 24(1)(a), the provisions relating to the determination of compensation alone can be applied to such proceedings or in other words, there is only a restricted application of the provisions of the 2013 Act in relation to such proceedings. The inevitable conclusion can only be that what is applicable to the various procedures to be undertaken during the period up to the stage of determination of compensation are those prescribed under the L.A. Act. We have no doubt that without such a construction, the provisions under Section 24(1)(a) would not work out, in view of the restrictive application of the 2013 Act. It is in this context that the decision in Ambica Quarry Works' case (supra) assumes relevance. Any construction of the said provision without taking into the legislative intention, referred hereinbefore would defeat the legislative intention as also the very objects of the 2013 Act. Certainly, it would not be in public interest to allow such proceedings to lapse or allow the authorities to follow the procedures during such period according to their sweet will. A uniform procedure has to be followed in respect of such proceedings. The

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acquisitions initiated for public purposes should go on in a fair and transparent manner with a view to achieve the intent and purport of the 2013 Act and at the same time, the persons affected shall have definite idea about the manner in which procedures would be conducted. The Party 'B' would not be justified in describing such situations of necessity and the consequential application of provisions which are actually saved on account of the construction of Section 24 as an attempt to bring the words expressly employed in Section 24(1)(b) and absent in Section 24(1)(a), by indirect method to Section 24(1)(a) of the 2013 Act. The aforesaid conclusions and findings would make the contentions of Party 'B' that Section 4(1) notification issued prior to 01.01.2014 could not survive after 01.01.2014 and also that Section 6 notification under the L.A. Act could not be issued after 01.01.2014, unsustainable. In fact, all such procedures and formalities shall be continued till the determination of compensation by applying all the provisions for determination of compensation, under the 2013 Act. A contra-construction, in view of the restrictive application of the provisions to such proceedings during its continuance, would make the provisions under Section 24(1)(a) of the 2013 Act unworkable."

7. Moreover, while making the above interpretation to the above statutory phraseology, which occurs in the 'Act of 1894', the Hon'ble Apex Court in paragraph 32 carried in verdict (supra), thus proceeded to declare, that if the notification under Section 4 of the 'Act of 1894', is issued prior to the coming into force of the 'Act of 2013', thereby if the award, which was otherwise to be drawn in terms of Section 11, of the 'Act of 1894', thus is not drawn prior to the coming

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into force of the 'Act of 2013', or is drawn on coming into force of the 'Act of 2013', yet the Acquiring Authority concerned, rather in terms of the provisions extracted (supra), becoming endowed with or being preserved a liberty, to yet proceed to make an award under the 'Act of 1894', besides the making of an award under the 'Act of 1894', thus post the coming into force of the 'Act of 2013', rather assuming force. Importantly, yet the compensation being amenable to become determined in terms of the statutory principles contemplated under the 'Act of 2013'.

8. In consequence, it has to be now determined, whether the Acquiring Authority concerned, issued the notification under Section 4 of the Act of 1894, thus prior to the coming into force of the Act of 2013, inasmuch as, whether the said notification became issued prior to 01.01.2014, thus whereons the 'Act of 2013' assumed force and/or came into operation.

9. In the above regard, it is not disputed, that the notification as issued under Section 4 of the 'Act of 1894', was issued on 24.12.2013, and, when the date of issuance of the said notification, is prior to the coming into force of the 'Act of 2013'. Therefore, in terms of the verdict (supra), the acquisition proceedings became initiated as such under the 'Act of 1894'. Consequently, the subsequently issued declaration under Section 6 of the 'Act of 1894', even if the date of making of the said declaration, was subsequent to the coming into force of the 'Act of 2013'. Nonetheless, the trite factum of issuance of a notification under Section 4 of the 'Act of 1894' rather on a date, but

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relevance and import, thus for thereby validating the subsequently issued declaration under Section 6 of the Act of 1894.

10. Furthermore, a perusal of reply on affidavit reveals that the award of the instant acquisition proceedings could not be passed owing to the interim orders passed by this Court, which were further made absolute by this Court vide order dated 05.09.2017, whereby the notification qua the petitioners was quashed in view of the full Bench judgment rendered in case titled as **Deepak Aggarwal and another Vs. State of Haryana and others**. Thereafter, the said judgment of the full Bench of this Court became set aside by the Hon'ble Apex Court in case titled as **HSI IDC Vs. Deepak Aggarwal (Supra)** and the instant writ petition became remanded by the Hon'ble Apex Court vide order dated 21.02.2024 and the Hon'ble Apex Court directed to maintain **status quo** regarding possession. It was in view of the above stay order in operation till today, that the award could not be pronounced.

11. However, since the said non passing of award and non assumption of possession of the subject lands was owing to the interim/final orders respectively passed by this Court and the Hon'ble Apex Court, therefore, it cannot be construed that the authorities have not proceeded in accordance with law and/or the acquisition proceedings become vitiated.

12. Reliance in this regard has been placed upon the verdict rendered by the Hon'ble Apex Court in case titled as '**State of Maharashtra Vs. M/s Moti Ratan Estate and Anr.**' reported in **AIR 2019 (SUPREME COURT) 4149**, wherein it has been expostulated

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that if there is any stay over the action or proceeding by a Court of law, in one or the other matter arising from the selfsame acquisition proceedings in reference to Section 4 followed with Section 6 of the Act, the authorities are said to be justified in the given facts and circumstances to stay their hands and await the decision of the Court and such a period during which there is a stay over the action or proceeding by a Court of law in a matter, that has to be excluded for all practical purposes, in computing the statutory period of two years in passing of an award under Section 11 of the Act.

13. The import of the above expostulations, is that, the non rendition of awards under the 'Act of 1894', when arises from stay orders becoming granted by the Courts of Law, thereby the launching of acquisition proceedings under the 'Act of 1894', thus would not become lapsed, rather the Collector concerned, may in terms of Section 11 of the 'Act of 1894' thus make an award.

14. However, in the instant case the Section 4 notification became issued on 24.12.2013, followed by declaration under Section 6 of the 'Act of 1894' on 23.12.2014, therefore, in view of the settled factual matrix rendered in judgment by the Hon'ble Apex Court in ***HSI IDC Vs. Deepak Aggarwal case (supra)***, the provisions of Section 24 (1) (a) of the 'Act of 2013' shall apply to the instant case and the determination of compensation shall be made in accordance with the provisions of the 'Act of 2013'.

15. Therefore, the respondent concerned, is directed to pass award under Section 11 of the 'Act of 1894' in respect of the acquired

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lands but the determination of compensation be made in terms of the 'Act of 2013'. Furthermore, the petitioners are directed to forthwith hand over encumbrance free possession of the subject lands to the respondent concerned.

16. Conspicuously also since it has been stated in the reply on affidavit, already on record, that the subject lands are an integral component of the layout plans, thereby when they are facilitating the relevant public purposes. Consequently, when public purpose than the ill individualistic interest of the petitioners is rather to be furthered. Resultantly, this Court finds no merit in the instant petition, and, is constrained to dismiss it.

Final Order of this Court.

17. In aftermath, this Court finds no merit in the writ petition, and, with the above observations, the same is disposed of. The impugned notification(s) are maintained and affirmed but as stated (supra) the award be passed qua the subject lands under Section 11 of the 'Act of 1894' but compensation be determined in terms of the 'Act of 2013'.

18. No order as to costs. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

27.05.2024
kavneet singh