

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-25843-2013
Reserved on: 12.03.2024
Pronounced on: 18.04.2024

HARGOBIND SINGH AND OTHERS

.....Petitioners

Versus

STATE OF PUNJAB AND ORS.

....Respondents

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

Argued by: Mr. Raina S. Thakur, Advocate
for the petitioners.

Mr. Maninder Singh, Sr. DAG, Punjab.

Ms. Rupa Pathania, Advocate
for respondent No.5.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioners pray for quashing of notification (Annexure P-2) issued on 09.05.2013, under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as “the Act of 1894”); besides pray for the quashing of notification (Annexure P-3/A) issued on 09.09.2013, under Section 6 of the Act of 1894.

2. The brief facts of the case are that the Government of Punjab issued a notification dated 09.05.2013, to acquire land measuring 44.963 acres, situated at villages Dhol, Rajpur Kalan, Moujpur, Bhago Majra, falling in Sectors 99, 105, 106, 108, 109 and 110 of SAS Nagar (Mohali) for setting up mega township project approved by the authorities in favour of respondent

No.5. The purpose was mentioned as “at the expense of the company for public

purpose, the planned harmonious and compact urban development of the area”.

3. Reiteratedly, the public purpose as mentioned in the apposite notification is “with a view to promote the Mega Housing Development Schemes in the State of Punjab, and, for that the government entered into an agreement with respondent No.5 for setting up the Mega Township project in Sectors 99, 105, 106, 108, 109 and 110, Tehsil and District SAS Nagar”. Thereafter, the State Government issued a notification under Section 6 of the Act of 1894 (Annexure P-3/A) for acquiring land measuring 44.963 acres, thus for the apposite public purpose.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONERS

4. The learned counsel for the petitioners contends, that the impugned notifications are liable to be quashed and set aside as the procedure provided under Chapter-VII of the Act of 1894, and under the rules known as The Land Acquisition (Companies) Rules, 1963 (hereinafter referred to as “the Rules of 1963”) have not been followed. Further as per Section 44-B of Part-VII of the Act of 1894, the land can be acquired for a private company, but only for the purpose mentioned in clause-(a) of sub-section (1) of Section 40, provisions whereof becomes extracted hereinafter. However, it is contended that in the present case, no Land Acquisition Committee was constituted by the State Government, as provided under Rule 3 of the Rules of 1963 nor when the public purpose (supra), falls in alignment with the hereinafter extracted provisions. Therefore, it is contended that the acquiring authority rather blatantly transgressed the statutory mandate, as enclosed in the statutory provisions (supra), and, thereby the acquisition as made for a public/private

“40(1) [(a) that the purpose of the acquisition is to obtain land for the erection of dwelling-houses for workmen employed by the Company or for the provision of amenities directly connected therewith, or]”

5. It is further submitted by the learned counsel for the petitioners, that till date no amount of compensation has been deposited by the company-respondent No.5 thus with the government. Resultantly, it is argued that if the acquisition of the subject lands, is necessitated, thereby the acquisition in respect thereof, being enjoined to be launched under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation And Resettlement Act, 2013 (hereinafter referred to as the ‘Act of 2013’).

6. The learned counsel appearing for respondent Nos. 1 and 4 submits, that as per the reply, Mega Housing Project of respondent No.5 has been approved by the High Empowered Committee under the Chairmanship of Chief Minister, Punjab, in its meetings held on 12.01.2006, and, on 01.06.2006. Subsequently, letter of intent dated 08.03.2006, and, 02.05.2006, besides revised letter of intent dated 15.11.2006 were issued, by the Nodal Agency for Mega Projects in housing sector thus in favour of respondent No.5. The said Mega Housing Project of respondent No.5 has been approved by the Punjab Government under the Industrial Policy, 2003, which was also extended to housing projects vide notification No.1925 dated 22.4.2005, issued by the Government of Punjab, Department of Industries and Commerce. Subsequently, the Government Punjab, Department of Housing & Urban Development signed legal agreements with respondent No.5 on 15.06.2006, and, on 16.11.2006, thus for setting up Mega Housing Project of respondent No.5. Thereafter, the State Government issued notification under Section 4 of the Act of 1894, to acquire

the apposite lands for the public purpose (supra).

7. Reiteratedly, it is submitted that the land described in the notifications (supra), are needed by the State Government, at the expenses of the Company-respondent No.5, for public purpose viz planned, harmonious and compact urban development of the area in accordance with the duly notified Master Plan of SAS Nagar, and, more specifically for the planned harmonious and compact development of Mega Township Project of respondent No.5 at villages Dhol, Rajpur Kalan, Moujpur, Bhago Majra, Tehsil and District SAS Nagar.

8. Learned State counsel submits that since the acquisition was done by the State Government in discharge of the policy of the State, thereby the subject acquisition has to be considered as acquisition for public purpose, but if the compensation is not contributed by the State. He further submits, that since the acquisition is carried out under Part II of the Act of 1894 under the policy of the State Government, as such Sections 39 to 42 and Section 44-B of the Act of 1894, are not applicable.

Fulcrum of the entire case is rested upon the provisions carried in Section 43 of the Act of 1894

9. The question of law which is required to be to be formulated and to be also answered by this Court, is whether, in terms of the agreement entered into *inter se* the government and the private respondent-developer concerned, thus the provisions carried in Section 43 of the Act of 1894, provisions whereof becomes extracted hereinafter, thus relax and dilutes, rather the rigor of the statutory mandates, as respectively carried in Sections 39 to 42 of the Act of 1894.

“43. Section 39 to 42 not to apply where Government bound by agreement to provide land for Companies. - The provisions of sections 39 to 42, both inclusive, shall not apply and the corresponding sections of Land Acquisition Act, 1870 (10 of 1870), shall be deemed never to have applied, to the acquisition of land for any Railway or other Company, for the purposes of which, [under any agreement with such Company, the secretary of State for India in Council, the Secretary of State, [the Central Government or any State Government] is or was bound to provide land].”

10. If the answer to the above formulated question of law is in the affirmative, therebys even if assumingly in terms of sub-section (1) clause (a), (aa) and (b), of Section 40 of the Act of 1894, provisions whereof become extracted hereinafter, rather the appropriate government is assumingly not satisfied from an enquiry report, or has not recorded any satisfaction, vis-a-vis, an enquiry report, as purportedly made in respect of the enshrinements carried in the above extracted provisions, as, borne in Section 40 of the Act of 1894. However, irrespective of the above, yet in the wake of the provisions embodied in Section 43 of the Act of 1894, the mandate enclosed in Sections 39 to 42 of the Act of 1894, does become ousted or excluded, predominantly in the wake of an agreement arrived at *inter se* the developer and the government. Resultantly, thereby the said provisions become ineffective, and/or therebys non compliance, if any, to the said provisions, becomes completely inconsequential.

“40. Previous enquiry. - (1) [(a) that the purpose of the acquisition is to obtain land for the erection of dwelling houses for workmen employed by the Company or for the provision of amenities directly connected therewith, or

[(aa) that such acquisition is needed for the construction of some building or work for a Company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose, or]

(b) that such acquisition is needed for the construction of some work, and that such work is likely to prove useful to the public].”

For the reasons to be assigned hereinafter the submissions addressed by the learned counsel for the petitioners is rejected, and, the submissions addressed by the learned State counsel is accepted.

11. Even if there is no recorded satisfaction by the appropriate government vis-a-vis any purported enquiry, thus detailing therein, the speakings as enshrined in clauses (supra), as carried in the statutory provisions, borne in Section 40 of the Act of 1894, yet for the reasons to be assigned hereafter, the provisions of Section 43 of the Act of 1894, do come to the forefront. Resultantly, thereby the provisions of Sections 39 to 42 of the Act of 1894 become excluded. In sequel non-compliance, if any, to the provisions of Section 40 of the Act of 1894, by the appropriate government, does not at all vitiate, the acquisition proceedings, as became launched for the benefit of the private company-developer concerned, who becomes arrayed in the instant writ petition, as co-respondent No.5.

12. The primary reason for holding so is banked, upon the factum that there is evidently an agreement (Annexure R-1/3) entered into *inter se* the government and respondent No.5. Therefore, when in the wake of the said agreement, thus the provisions of Section 43 of the Act of 1894, make inapplicable the provisions as engrafted in Sections 39 to 42 of the Act of 1894. In sequel, the effect of non-compliance, if any, by the acquiring authority with the statutory mandate enshrined in Section 40 of the Act of 1894, rather assumes no relevance.

13. Predominantly also when the Mega Housing Project of respondent No.5 has been approved by the High Powered Committee under the

Chairmanship of Chief Minister, Punjab, in its meetings held on 12.01.2006, and, on 01.06.2006. Furthermore, with the issuance of a valid letter of intent vis-a-vis respondent No.5, thereby the launching of acquisition proceedings for a public purpose rather through the aegis of co-respondent No.5, rather does not acquire any vice of any vitiation.

14. However, since in the instant case, the award has not been awarded, therefore question arises as to whether the compensation is to be determined under the Act of 1894 or under the Act of 2013.

15. Though, the learned State counsel argues that since in terms of interim orders passed by this Court, thus the learned Collector concerned, became precluded to pronounce an award under Section 11 of the Act of 1894. Resultantly, he argues that thereby the mandate enclosed in paragraphs No.10.12 and 10.13, 17(i), carried in the judgment rendered by the Hon'ble Apex Court in '**Faizabad-Ayodhya Development Authority, Faizabad Versus Dr. Rajesh Kumar Pandey and Others; 2022 Live Law (SC) 504**', paras whereof, are extracted hereinafter, do empower this Court to direct the Collector concerned, to pass an award under Section 11 of the Act of 1894.

“10.12 Thus, it is necessary to dwell into the reasons as to why no award has been made. As discussed aforesaid, if there is an order of restraint on the Collector or on the acquiring authority and as a result of which, the Collector or the Land Acquisition Officer is not in a position to make an award for reasons beyond his control and in compliance of the interim order granted by a court of law at the instance of the land owner or any other person who may have questioned the acquisition, the period during which the interim order has operated has to be reckoned and if on the date of enforcement of Act, 2013 i.e., 01.01.2014, no award has been made owing to the operation of such an interim order granted by a Court in favour of the land owner, then the provisions of the 2013, Act cannot straightaway be

made applicable in the determination of the compensation. This is because, but for the operation of the interim order, the award could have been made under the provisions of the Act, 1894 until 31.12.2013 and then provisions of Act, 1894 would have applied as per clause (b) of sub-section 1 of Section 24. But on the other hand, owing to the operation of the interim order granted by a Court in favour of land owner, the award would not have been made as on 01.01.2014 when the Act, 2013 was enforced.

10.13 *In our view in such a situation the acquiring authority cannot be burdened with the determination of compensation under the provisions of the Act, 2013. In other words, the land owner cannot, on the one hand, assail the acquisition and seek interim orders restraining the authorities from proceeding further in the acquisition, and on the other hand, contend that since no award has been made under Section 11 of Act, 1894 on 01.01.2014, the provisions of the Act, 2013 should be made applicable in determining the compensation.*

17. *In view of the above and for the reasons stated above, it is observed as under:-*

(i) It is concluded and held that in a case where on the date of commencement of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, no award has been declared under Section 11 of the Act, 1894, due to the pendency of any proceedings and/or the interim stay granted by the Court, such landowners shall not be entitled to the compensation under Section 24(1) of the Act, 2013 and they shall be entitled to the compensation only under the Act, 1894.”

16. Consequently, the said made argument is vindicated by this Court, especially when during the pendency of the instant writ petition an interim order became passed on 02.12.2013, by this Court, order whereof becomes extracted hereinafter. Resultantly, when the above extracted paragraphs carried in the verdict (supra), as made by the Hon’ble Apex Court, it becomes expostulated that when the award under the Act of 1894, became precluded to

orders becoming passed by this Court, thereby the non rendition of an award under the Act of 1894, thus is to be condoned.

“It is, inter-alia, contended that the impugned acquisition for all intents and purposes amounts to acquisition for a private-company for which Part-VII of the Land Acquisition Act, 1894 ought to have been invoked.

Notice of motion for 02.05.2014.

Meanwhile, both the parties are directed to maintain status-quo,”

17. In sequel, when it has also been expostulated in the above extracted paragraphs that therebys an award is to be passed in terms of the Act of 1894. Consequently, the award to be made by the Collector concerned, in pursuance to the notifications (supra), be made by him in terms of Section 11 of the Act of 1894. The said award be pronounced within 2 months from today. The compensation, as determined therein, is ordered to be forthwith deposited by co-respondent No.5, before the Collector concerned, so that the assessed compensation becomes available to becoming released to the land-losers concerned.

18. Disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

18.04.2024
Ithlesh

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