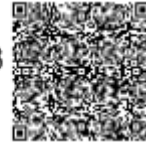


**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

2024:PHHC:143266-DB



(224)

CWP-43-2022

Date of Decision: 04.11.2024

Naveen Kumar & another

--Petitioners

Versus

State of Haryana & others

--Respondents

**CORAM:- HON'BLE MR. JUSTICE G.S. SANDHAWALIA.
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA.**

Present:- Mr. Satpal Bhasin, 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 and
Mr. Siddhant Arora, Advocate for
HSVP/Respondent no.3.

G.S. SANDHAWALIA.J (Oral)

1. The petitioners seek quashing of notification dated 30.06.2010 (Annexure P-4) issued under Section 4 of the Land Acquisition Act, 1894 (for short the 1894 Act) and consequent notification dated 29.06.2011 (Annexure P-5) issued under Section 6 of the Act, 1894.

2. It is a matter of record that the award has already been passed on 24.06.2013 (Annexure P-8) as per the pleadings of the respondents. The case of the petitioners is that they are owners of 1 Kanal 6 ½ Marlas falling in Khewat No.17/15, Khata No.17, Killa No.41//15/2(5-5) situated in village Garhi Sarai Namdarkhan and the said land is falling on the main road leading from Gohana, Sonipat next to a petrol pump stated to be

within the *Abadi Deh* and that the same cannot be utilized for any development. Resultantly, the prayer is made for returning the land in terms of Section 101 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short the 2013 Act) and Section 101 A as amended by the State of Haryana, on the ground of being unviable and non-essential. The land was purchased out of a larger chunk of land on 05.09.2005. It is the own case of the petitioners that co-sharers of the land had filed objections under Section 5 A of the 1894 Act and petitioners had never challenged the acquisition proceedings. It is further their case that the land had not been utilized and physical possession of the same had not been taken and the land is situated adjoining the petrol pump and could not be utilized for the purpose, as the respondents did not require the land. Photographs of the plot in question have been appended with the petition as Annexure P-11.

3. Apparently, the claim under Section 101 of the 2013 Act does not lie as the land was acquired under the 1894 Act and the provision for return of land only pertains to the land acquired under the 2013 Act, which is clear from the reading of Section 101 of the 2013 Act. The same was also subject matter of consideration in case of ***Indore Development Authority Vs. Manoharlal & others, AIR 2020 SC 1496***, wherein, the Apex Court had also dealt with this aspect in paragraph 361, which is reproduced as under:-

“361. Section 24 deals with lapse of acquisition. Section 101 deals with the return of unutilized land. Section 101 cannot be said to be applicable to an acquisition made under the Act of 1894. The provision of lapse has to be considered on its own strength and not by virtue of Section 101 though the spirit is to give back the land to the original owner or owners or the legal heirs or to the Land Bank. Return of

lands is with respect to all lands acquired under the Act of 2013 as the expression used in the opening part is "When any land, acquired under this Act remains unutilized". Lapse, on the other hand, occurs when the State does not take steps in terms of [Section 24\(2\)](#). The provisions of Section 101 cannot be applied to the acquisitions made under the Act of 1894. Thus, no such sustenance can be drawn from the provisions contained in [Section 101](#) of the Act of 2013. Five years' logic has been carried into effect for the purpose of lapse and not for the purpose of returning the land remaining unutilized under [Section 24\(2\)](#)."

4. We have followed the said view in **CWP-10259-2017 (Mohammad Mamman Vs. State of Haryana & others and connected petitions)** decided on 27.09.2024, where the State had exercised its powers under Section 101 of the 2013 Act without any jurisdiction and thus, we allowed the said writ petition following the above said principle as in that case also, the land had been acquired under the 1894 Act.

5. Coming to the second issue as to whether the petitioners are entitled for consideration under Section 101 A of the 2013 Act, which is the power to de-notify the land on account of non-viability or non-essentiality.

6. The stand of the respondent is regarding the aspect of the need of the land and the fact that the other co-sharers have not objected to the acquisition, which was for the purpose of development of Section 13, Gohana. The possession was taken on the date the award was passed i.e. on 24.06.2013 by recording Rapat Roznamcha No.587 of even date and the land was handed over to respondent no.3-HSVP and stood vested in it from the passing of the award way back almost one decade earlier before the said writ petition was filed in the year 2022. The respondent no.3 in its written statement has specifically averred that the land involved in the petition

affects planning of 45 meter green belt adjoining the petrol pump site as per layout plan, copy of which is annexed with the petition as Annexure R-1.

7. We have examined the layout plan and it would be clear from the same that a green belt is situated on one side of the petrol pump which is 33 meter wide and on the other side of the petrol pump is the larger chunk of 10 kanals 2 marlas which can also be utilized for the said purpose of maintaining the green belt. The right of the land owners to seek consideration, thus, has been substantially met and answered in the reply of the department for whom the land had been acquired.

8. Under such circumstances, the view taken by Apex Court in case of **Raghubir Singh & another Vs. State of Haryana & others, Civil Appeal Nos.2714-2715 of 2021 arising out of SLP(C) Nos.6411-6412 of 2021** is duly satisfied that even though, it is not a vested right but would require consideration. Once the stand is of the user department as the land was acquired for purpose of maintaining the green belt and the same would not lie in the mouth of the land owners to take a contrary stand. Even otherwise, no replication has been filed to the stand of the respondents. The requirement of the land is for public purpose and therefore the argument that whether it is unviable or non-essential also, does not hold much ground in the peculiar facts and circumstances of the case. It is also to be noticed that the writ petition has been filed after a considerable delay and the land owner in principle had accepted the acquisition way back in the year 2013 when the award had been passed. It is only on account of the amendment made by the State in the year 2018 apparently which gave a cause of action which led to the filing of the writ petition in the year 2022.

9. The said aspect, thereafter, was re-considered by the Apex Court in *Civil Appeal No.16421 of 2021 'Ram Swaroop (dead) through LRs & another Vs. State of Haryana and others'* and the Apex Court, thus, clarified that Section 101-A does not give a vested right to the landowner to seek denotification. It is not for this Court to sit over the opinion of the competent authority, who had to ensure effective town planning and whether the land is required, which stood vested in the State once the Award was passed on 13.08.2002. Claim as such is only on the ground that possession continues, which cannot be sustained, since the petitioner apparently has continued to be in unauthorized occupation, thereafter.

10. Thus, in view of the categoric stand taken by the respondents regarding the need of the land, the non-viability or non-essentiality stands ruled out and thus, we do not find any plausible reason to interfere in the planned development of the area. Even otherwise, since the land in question is joint and the petitioners are only owners of the 1/10th share of the land and the same is not partitioned, it would be a moot question, even, if the land is released, which portion belongs to the petitioner as the other land owners have accepted the acquisition proceedings. Thus, there is no valid reason to interfere with the proceedings. Accordingly, the present writ petition is dismissed.

(G.S. SANDHAWALIA)
JUDGE

04.11.2024
lucky

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No