

2024:PHHC:062081-DB



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-26102-2022 (O & M)
Reserved on: 01.05.2024
Pronounced on: 06.05.2024

RAMESH KUMAR AND OTHERSPetitioners

Versus

STATE OF HARYANA AND ORS.Respondents

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

Argued by: Mr. Umesh Kumar Kanwar, Advocate
Ms. Nisha Rana, Advocate
for the petitioners.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. P.P.Chahar, Sr. DAG, Haryana and
Mr. Saurabh Mago, DAG, Haryana.

Mr. Ankur Mittal, Advocate with
Ms. Kushaldeep K. Manchanda, Advocate and
Mr. Shivam Garg, Advocate
for respondent-HSVP.

SURESHWAR THAKUR, J.

CM-4950-CWP-2024

1. The application is allowed subject to all just exceptions.
The document as annexed with the application is taken on record as
Annexure P-26.

CM-13757-CWP-2023

2. The application is allowed subject to all just exceptions.

Annexures P-21 to P-23.

Main case

3. The claim made in the instant writ petition is for a mandamus being made upon the respondents concerned, to, in terms of the policy dated 14.09.2018 (Annexure P-14) of the Haryana Government thus make the petition lands being released from acquisition, rather on theirs becoming un-essential or unviable for being used for the requisite public purpose.

4. The learned counsel appearing for the petitioners has forcefully contended, by planking submissions, on the mandate of Section 101 A 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') as became incorporated in the 'Act of 2013', through Haryana Act No. 21 of 2018, provisions whereof are extracted hereinafter, that the petition lands are un-essential or unviable for the relevant public purpose. Therefore, he has argued that the petition lands, irrespective of the earlier launched acquisition proceedings under the Land Acquisition Act, 1894 (hereinafter for short called as the 'Act of 1894') thus becoming fully terminated, rather are un-essential or are unviable for being used for the relevant public purpose, thereby they are yet available for becoming released from acquisition.

“101A. Power to denotify land.- When any public purpose, for which the land acquired under the Land Acquisition Act, 1894 (Central Act 1 of 1894) becomes unviable or non-essential, the State Government shall be at liberty to denotify such land, on such terms, as considered expedient by the State Government, including

the payment of compensation on account of damages, if any, sustained by the land owner due to such acquisition:

Provided that where a part of the acquired land has been utilized or any encumbrances have been created, the landowner may be compensated by providing alternative land alongwith payment of damages, if any, as determined by the State Government.”

5. Further, a prayer has been made in the writ petition for issuance of directions to the respondents to consider and decide the representation(s)/application(s) dated 13.08.2022 and 16.08.2022 for release of land in view of Section 101-A of the 'Act of 2013'.

6. Therefore, the learned counsel appearing for the petitioners has planked his submission, on anvil of Section 101 A (supra) as well as, on anchor of clause 7 of the policy dated 14.09.2018 of the Haryana Government, but yet the said submission becomes completely unhinged, in the face of a specific contention existing in paragraph No. 17 of the reply, on affidavit, as furnished to the petition by the respondent concerned, contents whereof are extracted hereinafter.

“17. The land of the petitioners affects the planning of 11 plots of 4 marla and 1 road of 9 meter wide and is very much essential to achieve the public purpose for which it was acquired.”

7. A reading of the said contents, does make graphic emergence(s), that the petition lands are earmarked for the apposite public purpose and thereby are utilized, or are utilizable, and or, are viable for facilitating the apposite public purpose. Consequently, the counsel for the petitioners cannot argue, that the petition lands are either un-essential or unviable for facilitating the apposite public purpose nor he can well rest any argument premised, on the provisions

of Section 101 A of the 'Act of 2013' or in view of the policy dated 14.09.2018. Contrarily, post valid termination of earlier launched acquisition proceedings under the 'Act of 1894', thereupon yet the retention, if any, of the petition lands, by the petitioners, especially when they evidently sub-serve the public purpose, thus is rather completely unlawful. The reason being that the above ground premised on anvil of Section 101 A of the 'Act of 2013' or upon, policy dated 14.09.2018, is completely capricious and also is arbitrary. The reason being that the statutory ingredients therein, appertaining to un-essentiality or unviability of the disputed lands, thus for facilitating the apposite public purpose, rather are to be tested, on anvil of objective contemplations, as made by the authority concerned, and since the above objective thereto contemplation, is but manifestative, that the petition lands are an integral component of the layout plans relating to the completion of the relevant public purpose. Therefore, the learned counsel for the petitioners has untenably planked the above argument, thus premised on the provisions of Section 101 A of the 'Act of 2013' and/or, upon, policy dated 14.09.2018.

8. Furthermore, the legal conundrum relating to the impartings of significations to the apposite statutory coinages 'unviability' or 'non-essentiality' of the acquired lands has been settled in a judgment made by this Court in case **CWP No. 12432 of 2023** titled as '**Anil Suri and another versus State of Haryana and others**', wherein, in the relevant paragraphs thereof, paras whereof are extracted hereinafter, this Court has expounded, that mere non-utilization of the acquired lands rather does not leverage the land loser

unviable and/or are non-essential for furthering the requisite public purpose. Contrarily, this Court has in the hereinafter extracted relevant paragraphs, as carried in the verdict (*supra*), has taken the view, that the nuance of the above statutory coinages, is that, it is applicable only to a situation of evident *vis major* arising or to a situation where on account of an exorbitant sum of compensation becoming determined by the Collector concerned, thereby, the State Exchequer becoming encumbered with an onerous financial burden, whereby, but naturally the said facet of unviability or non-essentiality, qua the retention of the acquired lands rather for furthering the requisite public purpose, thus works as a well constraint, upon the acquiring authority to conclude, that as such the acquired lands, are amenable for becoming released or exempted from acquisition, given their retention but becoming financially unviable.

“72. Moreover, this Court in ***CWP-15174-2023***, titled as ***“The Press Employees and Friends Co-operative Group Housing Society Ltd. V/s State of Haryana and others”***, decided on ***19.07.2023***, made the hereinafter extracted observations:-

“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 “non-essential” 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 de-notify 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.”

73. *In view of the above alluded settled legal proposition, since in the present writ petitions also, the acquisition proceedings stood lawfully terminated, as elaborated hereinabove, therefore, since Section 101-A of the Act of 2013, which is only an enabling clause for the State Government/acquiring authority to de-notify the acquired land, but only if it becomes “unviable” and “non-essential” for any efficacious public purpose, thereby the said statutory provision does not endow any right in the erstwhile landowners to either challenge the validity of already lawfully concluded acquisition proceedings, or, to seek release of their acquired lands, on mere oral assertions, without bringing any cogent material on record.*

74. *The power to de-notify lands, by virtue of Section 101-A, can only be invoked when the twin statutory ingredients therein, i.e. the acquired lands becoming “unviable” and “non-essential” for any public purpose, rather are satisfactorily fulfilled. Therefore, the de-notification of acquired lands is only possible when such lands evidently fall within the domain of the above prescribed twin conditions, which are the mandatory pre-conditions for the State Government to form an objective opinion, while taking into consideration the larger public interest.*

75. *Conspicuously, in the formation of the said objective opinion, only the executive has the prerogative to take, or, to form the said objective opinion and the landlooser(s) concerned cannot dictate the manner of making of such objective opinion(s), nor can thrust his standpoint, vis-a-vis, the executive, in the latter taking a view, that the benefits of said statutory ingredients are to be compulsorily assigned to the landlooser(s) concerned. The reason being, that the*

landlooser(s) concerned has an individualistic interest in his seeking exemption of his acquired lands, whereas, the executive in his making objective contemplations about the meteing of benefits thereof to the landlooser(s) concerned, or, not meteing benefits thereof to the landlooser(s) concerned, thus is required to be bearing in mind the larger public interest. Therefore, in the manner(s) of making of objective contemplations, vis-a-vis, meteings or assignments of benefits of the said statutory conditions, to the landlooser(s) concerned, the imperative factor may be the inclusion of the disputed lands in the layout plans concerned. If so, the inclusion of the disputed lands in the layout plans renders them to be working towards a public purpose, and/or, thereby the disputed lands become an insegregable component of an imperative public purpose. Therefore, when even otherwise, this Court is barred in the exercise of its writ jurisdiction, to review or to re-examine the formulation of layout plans, thus by the engineering cell of the acquiring authority concerned. Resultantly, reverence is to be meted to the layout plans concerned, which includes therein the disputed lands. In sequel, the release(s) of acquired lands, but on the above statutory conditions, thus may be barred to be claimed by the landlooser(s) concerned.

76. In making the above inference, this Court finds support from the replies respectively furnished to the writ petitions, wherein, it has been categorically stated, that the acquired lands are essential for facilitating the public purpose(s), as carried in the respectively drawn Final Development Plans concerned. Therefore, when the acquired lands are an insegregable component of emergent public purposes and are also but required for developmental activities, thereby their release would prejudicially affect the relevant public purposes. Therefore, for ensuring that the relevant public purposes are not impeded, thus predominance is to be assigned to public interest, than to the individualistic interest of the erstwhile landowners concerned.

77. Nonetheless, it is also no more res integra that if after utilization of the acquired land for the relevant public purpose,

*rather some lands, yet remain unutilized, thereby they need not be returned to the original landowner, rather they can either be utilized for any other public purpose or it can be sold by way of public auction, so as to achieve the larger public interest. Gainful reference in this regard can be placed upon case titled “**State of Kerala v. M. Bhaskaran Pillai**”, AIR 1997 SC 2703, wherein, the Hon’ble Supreme Court has held as under:-*

“...3. In view of the admitted position that the land in question was acquired under the Land Acquisition Act, 1894 by operation of section 16 of the Land Acquisition Act, it stood vested in the State free from all encumbrances. The question emerges: Whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilised for the public purpose envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act and is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through the public auctions so that the public also gets benefited by getting higher value.....”

78. Also, 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.

79. *Therefore, but obviously, non-utilization(s) of the acquired lands for a prolonged duration of time does not thereby render them to be “unviable” or “non-essential” for the requisite public purpose. The reason being, that public purpose is the cornerstone for acquisition(s) of the disputed lands, and, rather on retention of the acquired lands, than making release(s) thereof to the landlooser(s) concerned, thus the public purpose rather would still remain intact or alive. In consequence, the ever alive public purpose is required to be effectively galvanized. The above would happen only on retention of the acquired lands, than their release(s) or exemption(s) being meted to the landlooser(s) concerned, but, irrespective of the fact, that the disputed lands remain unutilized for an inordinately long spell of time.*

80. *In the non-purveying of enablements, vis-a-vis, the landlooser(s) concerned qua the beneficent grace of the above statutory conditions of “unviability” or “non-essentiality”, thus would be construed to be well exercised, rather by the executive, only upon evident occurrence(s) of vis major or upon exorbitant and excessive sums of compensation monies, becoming determined by the statutory authority, thereby making the relevant project to be financially unviable. Therefore, to the considered mind of this Court, the limits or the domains, besides the functionality of the above statutory conditions, is thus, within the realm of evident emergence(s) of vis major or upon exorbitant and excessive sums of compensation monies, becoming determined by the statutory authority, thereby making the relevant project to be financially unviable.*

81. *The hereinabove elaborately assigned reasons are ample for rejecting the principal argument of the learned counsel(s) for the petitioner(s), which generates from Section 101-A of the Act of 2013, as well as, the policy dated 14.09.2018.”*

9. Moreover, in a verdict rendered by the Hon'ble Apex Court in case **Civil Appeal No.7634 of 2023** titled as '**Nandkishor Babulal**

Agrawal Vs. The State of Maharashtra and Ors', it has been

expostulated by the Hon'ble Apex Court, thus in the relevant paragraph thereof, para whereof is extracted hereinafter, that there cannot be a time limit within which the authorities are expected to utilize the acquired lands.

*“ 11. In our considered view, the High Court would be extremely circumspect to issue a mandamus in the exercise of its extraordinary jurisdiction under Article 226 of the Constitution, directing to release a lawfully acquired land only on the premise that such land has not been utilized for the public purpose for which it was acquired. **There is no gainsaying that once the land vests in the State or its authorities, the ‘public purpose’ of its acquisition can be changed at a later stage. All that is required is that such land should be utilized for public purposes only. In fact, there cannot be a time limit within which the authorities are expected to utilize the acquired land. The Municipalities or such other agencies are expected to have long-term plans for regulated development of urban areas and for that purpose, certain pockets of land are required to be kept vacant as reserve pool to cater the future needs.***

10. Therebys, also even if the acquired lands remained unutilized for a prolonged duration of time, or yet remain un-utilized, therebys also it has also been declared in the verdict made by this Court in **Anil Suri's case (supra)**, that the dynamics of the public purpose are ever changing and there can be yet a change from the public purpose, as enshrined in the notification for acquisition, rather to some other public purpose. Resultantly as such the factum of the land being yet unutilized cannot give any leverage to the counsel for the petitioners to contend that they are unviable or un-essential for furthering the

requisite public purpose nor he can argue that thereby they be released from acquisition.

11. Moreover, on reading of para No. 5 of the reply furnished to the writ petition, it is revealed that Sh. Rulda Ram, father of petitioners No. 14 and 15 and Sh. Barkha Ram, father of petitioners No. 9 and 10 had filed objections under Section 5-A of the 'Act of 1894' and the same were heard by the Land Acquisition Collector. That as per report prepared by the Land Acquisition Collector, there was one room with veranda of sub standard structure and boundary wall, four rooms, one kitchen, one dehlis and one cattle shed constructed over khasra No. 218 and the rest of the land was vacant. Therefore, it was accordingly recommended for acquisition and even supplementary award for existing structures was announced on 27.05.1987.

12. Resultantly, since the objections as preferred by the land losers concerned became rejected but after an opportunity of hearing to the objectors, thus the acquisition notification(s) and subsequent thereto passed award do not require any interference.

13. From a perusal of reply on affidavit, it is also revealed that some of the land owners earlier filed CWP-3943-1986 for quashing the acquisition notification(s). The said petition became dismissed by this Court vide order dated 14.09.1993. The said dismissal order became challenged in an LPA. However, the said LPA became dismissed as withdrawn vide order dated 04.09.2015 but with liberty to the petitioners to file representation before the respondents under Section 24 (2) of the 'Act of 2013'. The said representation became rejected by the respondent through a speaking order dated 16.10.2017 (Annexure

14. Also, on a reading of para No. 13 of the paper book, it is revealed that enhancement proceedings were initiated before the Reference Court under Section 18 of 'Act of 1894' and during the said proceedings, the respondents got inspected and evaluated the houses and structures.

15. In sequel, the effect of the above, is that, thereby the petitioners are deemed to accept the validity of the launching of the acquisition proceedings, whereby they are rather estopped from challenging the validity of the launching of the acquisition proceedings.

16. Thereafter, some of the petitioners/predecessors of petitioners also filed writ petition(s) bearing Nos. CWP-30077-2017 titled as Barkha Ram Vs. State of Haryana and CWP No. 30078-2017 titled as Rajeev Kumar Vs. State of Haryana, praying for relief qua the launching of acquisition proceedings qua the subject lands becoming declared lapsed rather in terms of Section 24(2) of the 'Act of 2013'. The said writ petition(s) became dismissed by this Court vide order dated 01.02.2022.

17. Thereby also the petitioners herein are barred by the principle of estoppel created by Order 2 Rule 2 of the CPC. The reason being that though the writ petition(s) (supra) became filed in the year 2017, but when it became decided on 01.02.2022. Resultantly when during the pendency of the said writ petition(s), Section 101-A (supra) became inserted by the Haryana Act No. 21 of 2018. In sequel, when the petitioners therein could well with the leave of the Court, thus amend the writ petition to the extent (supra). However, when neither the said leave became asked for nor it became granted. Therefore, for

the phase when the earlier writ petition(s) were subjudice, results in an inference that therebys they become estopped by the principle enshrined in Order 2 Rule 2 CPC to raise the said omitted plea in the instant writ petition.

18. Moreover, the averment as to the respondent concerned practicing discrimination(s), thus arising from its releasing lands of similarly situated land losers, is also merit-less, as the petitioners have not given any specific instance, rather to thereby establish that they have been subjected to discrimination(s) by the respondent concerned, in its releasing the apposite lands of the land losers concerned.

19. Furthermore, the plea of the petitioners qua theirs lawfully retaining the possession over the subject lands, is a mis-founded plea, as, the occupation of the petitioners, over the subject lands rather is as trespassers thereovers and the petitioners are required to be lawfully evicted therefrom. The above becomes sparked from the factum that on issuance of a notification under Section 4 of the 'Act of 1894', the land owner(s) became divested of any right, title or interest over the acquired lands, whereas, complete investment of right, title and interest over the acquired lands, rather became thus conferred, upon, the acquiring authority.

Final Order of this Court.

20. In aftermath, this Court finds no merit in the writ petition, and, with the above observations, the same is dismissed. The impugned notification(s), and consequent thereto award are maintained and affirmed.

21. No order as to costs.

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

(SURESHWAR THAKUR)
JUDGE

06.05.2024

(LALIT BATRA)
JUDGE

kavneet singh

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