

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

CWP-4558-2018

Reserved on: 19.03.2024

Pronounced on: 18.04.2024

BARKAT RAM AND OTHERS

.....Petitioners

Versus

STATE OF HARYANA AND ORS.

....Respondents

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

Argued by: Mr. Shobit Phutela, Advocate
Mr. Hanarveer Sharma, Advocate
Ms. Sanya Kapoor, 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. Deepak K.Sabherwal, Advocate for
Mr. Rajesh K. Sheoran, Advocate
for respondents No. 3 to 5 and 7.

Mr. Puneet Bali, Senior Advocate with
Mr. Prateek Rathee, Advocate and
Ms. Bhawna Chaudhary, Advocate
for respondent No. 10.
(Appearing through Video Conferencing).

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioners claim that
the hereinafter extracted reliefs be accorded to them.

“ i) Civil Writ Petition under Articles 226/227 of the Constitution of India for
issuance of a writ in the nature of certiorari for quashing of the notification dated
12.12.08 (P-6) u/s 4 of the Act 1894 vide No. LAC (G) NTLA- 2008/1483 and
declaratory notification dated 11.12.09 (P-9 u/s 6 of the Act 1894 vide no. LAC(G)
NTLA-2009/1525 and award no.40 dated 23.11.11 (P-10) qua land falling in
khewat no.1065 khatoni no.1176 mustil no.14//11/2/2 (5K-4M chahi), 12/2 (7-12

chahi) total measuring 12K-16M (notified for acquisition 8K-14M for for commercial belt along southern peripheral road in Sector 62,65 & 66 at Gurgaon as per development plan) as per jamabandi for the year 2005-06;

AND ALSO

ii) For issuance of a writ in the nature of certiorari for quashing the notification dated 15.4.11 (P - 11) u/s 4 of the Act 1894 vide No. LAC (G) NTLA-2011/1614 and declaratory notification dated 10.4.12 (P - 13) u/s 6 of the Act 1894 vide no. LAC (G) NTLA-2012/2776 and award no.45 dated 27.2.13 (p - 14) whereby land of the petitioners falling in khewat no. 1065 khatoni no.1176 mustil no.14//11/2/2 (5K - 4M chahi), 12/2(7-12 chahi) total measuring 12K - 16M (notified for acquisition 4K - 7M for 30 mtr. Road widening and 30 mtr. Green belt along southern peripheral road at Gurgaon as per development plan);

AND CONSEQUENTLY

iii) For quashing of the letter Endst.No.CTP/SB/224309 dated 28.11.17 (P-19) issued by CTP, HUDA (respondent no.7) whereby above acquired land measuring 8K-14M in the first phase for development of commercial belt as per development plan of HUDA (P-6, P-9 & P-10) AND land measuring 1K-2M acquired in the second phase for green belt etc. has been transferred in favour of the builder namely M/s SU Estate (respondent no.10) by showing the same to be exchanged with other piece of land belonging to respondent no.10;

Also for the reason that the said exercise of power in two different phases (ibid) would show complete malafide and colourable exercise at the behest of the official respondents, who have acted on behalf of the private building (respondent no.10) at the cost of the interests of petitioners by acquiring the same under the garb of public purpose; AND

iv) For issuance of a writ in the nature of certiorari to quash the registration of FIR No.0056 dated 2.2.18 (P-22) u/s 147, 148, 149, 323, 447, 506 IPC P.S. Badshapur District Gurugram and subsequent proceedings thereto, got lodged at the instance of respondent no.10 maliciously and in connivance with the local police i.e. respondents no.8 & 9 as the petitioners were forcibly dispossessed and confronted with the criminal case;

AND

v) For issuance of a writ in the nature of mandamus for holding some independent enquiry/ investigation as to how and under what plan and conspiracy land of the petitioners is acquired under the umbrella of public purpose and then same is transferred to the private builder i.e. respondent no.10 and then to further pressurize the petitioners by involving them in criminal case (P-22);

AND/OR

vi) For issuance of any other order or direction which this Hon'ble Court may deem appropriate in the peculiar facts and circumstances of the present case, including the restoration of physical possession to the petitioners by granting the damages/ compensation as per law, in the interest of justice;

AND

For staying further proceedings in consequence to the letter dated 28.11.17 (P-19) and FIR No.56 dated 2.2.18 (P-23), during the pendency of the present petition before this Hon'ble Court.”

2. The espousal for rendition of the above prayers becomes grounded in the hereinafter extracted submissions.

i) That the acquiring authority has arbitrarily and capriciously, and/or, through adopting a pick and choose policy, taken to acquire the subject lands, inasmuch as, despite the land of co-respondent No. 10, becoming made a part of the Section 4 notification, as became issued under the Land Acquisition Act, 1894 (hereinafter for short called as the 'Act of 1894') on 12.12.2008, and also when the said land was included in a declaration made under Section 6 of the 'Act of 1894' on 11.12.2009, yet the said land becoming not included in the award No.40 dated 23.11.2011.

ii) That the subject lands were subject matter of Civil Writ Petition No.11911 of 2011 titled as '**M/s Vishnu Apartments Pvt. Ltd. Vs. State of Haryana**', wherein, this Court after making certain observation(s), observation(s) whereof become extracted hereinafter, proceeded to make inferences that with there being an apparent reduction of the acquired area from the actually acquired area, thereby this Court inferred that as such no objective contemplation became etched in the mind of the acquiring authority to subject the lands concerned, thus to acquisition, rather this Court sounded a note of caution to the State, that the power of eminent domain has been exercised thoughtlessly, thus without any tangible public purpose being sub served.

“We would also like to record that with the reduction of the area proposed to be acquired and the area now being acquired from 207 acres to 43.51 acres, it is difficult to comprehend as to what plan the Government had whether in its mind or on paper when it initiated the proposal for

acquisition. If there was any tangible proposal, it should have found reference either while deciding the objections under Section 5-A or in the replies filed by the State or the HUDA but proceedings under Section 5-A, the record pertaining to consideration of applications for licences and the replies filed by the State and the HUDA, are bereft of any particulars of any such project that the State had in mind while initiating the proposal to acquire the land. We are, therefore, of the prima facie opinion, that acquisition proceedings were but an attempt to collect land and then stampede landowners/builders into applying for licences and get their land released from acquisition but as this part of the controversy is neither before us nor has any such plea been raised, we desist from expressing any further opinion in this regard but issue a note of caution to the State that private land holdings should not be appropriated in a mindless exercise of power of eminent domain so as to deprive a private owner and benefit another private owner except where the government has before it a tangible project or the necessity of the situation so warrants.”

iii) Consequently, the learned counsel for the petitioners contends that when the subject lands were earlier dealt with by this Court, thus with the said note of caution becoming echoed against the acquiring authority. Resultantly, it is contended that as such the petitioner can also make a good ground, that the espoused releases (supra) as became allowed in the writ petition (supra) rather are also required to be accorded to the petitioners.

(iv) That the exchange which has been entered with respect to some part of the subject lands, thus inter-se co-respondent No.10 and the HUDA authorities, thus is also manifestative of the acquiring authority, rather thereby colourably exercising the power of

eminent domain especially when the area acquired for the purpose of widening of road and for green belt has also been included in the said exchange.

(v) That since no commercial development, has commenced on the acquired land nor the road widening process, has been initiated by the respondents, thereby it is contended that the subject lands are no longer required for facilitating the public purpose, rather the acquired lands are to be released from acquisition.

Reasons for rejecting the averments (supra) and for consequently dismissing the writ petition.

3. Earlier to the institution of the instant writ petition by the petitioners they had filed CWP No. 3236 of 2011, wherein, reliefs similar to the reliefs claimed in the instant writ petition were thus canvassed therein. However, uncontrovertedly the said writ petition was dismissed as withdrawn vide order 23.02.2011, but with liberty to file a fresh one with better particulars.

4. Be that as it may, irrespective of the above, the instant writ petition rather became instituted in the year 2018, whereas, the earlier decision made on writ petition (supra), whereby it was dismissed as withdrawn but with liberty to file afresh, thus was made on 23.02.2011, therebys when the instant writ petition became belatedly instituted, since the earlier writ petition becoming dismissed as withdrawn. Consequently, the instant petition rather is hit by a gross pervasive vice of delays and laches.

5. The reason for making the above conclusion becomes sparked from the factum, that the challenge to the afore, has been made thus after almost seven years elapsing, since the passing of the afore

orders. Resultantly, the extant petition ex facie becomes hit by the above vice and as such, the petition deserves becoming rejected.

6. Even the Hon'ble Apex Court in a judgment rendered in case titled "***M/s Star Wire (India) Ltd. V/s State of Haryana and others***", ***reported in (1996) 11 SCC 698***, has in the relevant paragraph of its verdict, paragraph whereof becomes extracted hereinafter, thus declared that any belated challenge, as made to the relevant lawful fully terminated acquisition proceedings, thus is hit by the vices of delay and laches, and thereby too, the said belated motion as existing in the instant petition, is but required to be declared as misconstituted.

"Shri P.P. Rao, learned senior counsel for the petitioner, contends that the petitioner had no knowledge of the acquisition proceedings; as soon as it came to know of the acquisition, it had challenged the validity of the acquisition proceedings and, therefore, it furnishes cause of action to the petitioner. He further contends that the writ petition could not be dismissed on the ground of laches but was required to be considered on merits. We find no force in the contention. Any encumbrance created by the erstwhile owner of the land after publication of the notification under Section 4(1) does not bind the State if the possession of land is already taken over after the award came to be passed. The land stood vested in the State free from all encumbrances under Section 16. In Gurmukh Singh & Ors. vs. The State of Haryana [J] 1995 (8) SC 208], this Court had held that a subsequent purchaser is not entitled to challenge the legality of the acquisition proceedings on the ground of lack of publication of the notification. In Y.N. Garg vs State of Rajasthan [1996 (1) SCC 284] and Sneh Prabha vs. State of U.P. [1996 (7) 325], this Court had held the alienation made by the erstwhile owner of the land after publication

of the notification under Section 4(1), do not bind either the State Government or the beneficiary for whose benefit the land was acquired. The purchaser does not acquire any valid title. Even the colour of title claimed by the purchaser was void. The beneficiary is entitled to have absolute possession free from encumbrances. In U.P. Jal Nigam, Lucknow through its Chairman & Anr. vs. M/s Kalra Properties (P) Ltd., Lucknow & Ors. [(1996) 1 SCC 124], this Court had further held that the purchaser of the property, after the notification under Section 4(1) was published, is devoid of right to challenge the validity of the notification or irregularity in taking possession of the land before publication of the declaration under Section 6. As regards laches in approaching the Court, this Court has been consistently taking the view starting from State of Madhya Pradesh & Anr. vs. Bhailal Bhai & Ors. [AIR 1964 SC 1006] wherein a Constitution Bench had held that it is not either desirable or expedient to lay down a rule of universal application but the unreasonable delay denies to the petitioner, the discretionary extraordinary remedy of mandamus, certiorari or any other relief. The same was view reiterated in catena of decisions, viz., Rabindranath Bose & Ors. vs. The Union of India & Ors. [(1970 (1) SCC 84]; State of Mysore & Ors. vs. Narsimha Ram Naik [AIR 1975 SC 2190]; Aflatoon & Anr. vs. Lt. Governor of Delhi [(1975) 4 SCC 285]; M/s. Tilokchand Motichand & Ors. vs. H.B. Munshi, Commissioner of Sales Tax, Bombay & Anr. [AIR 1970 SC 898]; State of Tamil Nadu & Ors. etc. V. L. Krishnan & Ors. etc. [JT 1995 (8) SC 1]; Improvement Trust, Faridkot & Ors. vs. Jagjit Singh & Ors. [1987 Supp. SCC 608]; State of Punjab & Ors. vs. Hari Om Co-operative House Building Society Ltd., Amritsar [1987 Supp. SCC 687]; Market Committee, Hodal vs. Krishan Murari & Ors. [JT 1995 (8) SC 494] and State of Haryana vs. Dewan Singh [(1996 (7) SCC

394] wherein this Court had held that the High Court was not justified in interfering with the acquisition proceedings. This Court in the latest judgement in Municipal Corporation of Great Bombay vs. The Industrial Development & Investment Co. Pvt. Ltd. & Ors. [JT 1996 (8) SC 16], reviewed the entire case law and held that the person who approaches the Court belatedly will be told that laches close the gates of the Court for him to question the legality of the notification under Section 4(1), declaration under Section 6 and the award of the Collector under Section 11. ”

7. From a perusal of reply, on affidavit, it is revealed that the land of the petitioners was acquired in two phases.

8. Firstly, in pursuance to the award No. 40, as made in respect of land measuring 35.22 acres, award whereof was pronounced on 23.11.2011, thus possession of the acquired lands was delivered through rapat possession No. 382, to the department (HSVP).

9. Secondly, in pursuance to the award No. 45, as made in respect of land measuring 10.94 acres, award whereof was pronounced on 27.02.2013, thus possession of the acquired lands was delivered through rapat possession No. 827, to the department (HSVP).

10. Moreover, when it is further indicated in the reply, on affidavit, furnished to the writ petition, by the respondent concerned that out of total amount of assessed compensation, thus in the awards (supra), amounts respectively comprised in a sum of Rs. 4,24,84,881/- (award No. 40) and Rs.13,55,02,073/- (award No. 45) rather have been released to the land owners, whereas, the balance amount has been deposited in the Court of ADJ, Gurugram, for therebys it becoming available for becoming released to the land losers concerned.

11. Therefore, the effect of the above, is naturally that the respondent concerned, has adduced adequate discharging evidence in respect of the hereafter duo of parameters, as, spelt by the Hon'ble Apex Court in its verdict rendered in case titled as 'Indore Development Authority Versus Manoharlal and others', to which SLP (Civil) Nos. 9036-9038 of 2016, has been assigned,

a) Rapat possession becoming assumed over the acquired lands by the acquiring authority before the coming into force of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter for short called as the 'Act of 2013') ;

b) the assessed compensation amount becoming deposited for thereby it becoming released to the land losers concerned, especially when the said deposits have been made prior to the coming into force of the 'Act of 2013'.

12. Resultantly the petitioners also thereby cannot claim the making of a lapsing declaration in terms of Section 24 (2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

13. That since it has also been indicated in the reply, on affidavit, that the subject lands are an integral component of the layout plans, thereby when this Court is interdicted from making an interference with the layout plans. Resultantly the petitioners cannot claim that the notification(s) for acquisition(s) are required to be quashed nor they can claim that the acquired lands are not an integral component of the layout plans nor they can claim that as such the

14. Predominantly, also when after making of awards (supra) and delivery of possession of the subject lands to the acquiring authority, besides when a substantial portion of the compensation amount has been released to the land losers, thus there is complete vestment of right, title and interest over the acquired lands in the acquiring authority, and, with a concomitant complete divestment of right, title and interest thereovers in the land losers concerned. Resultantly, the petitioners cannot contend that at this belated stage their acquired lands/estates be released from acquisition(s).

15. Since, it is also manifestative in the reply, on affidavit, that the objections as became preferred by the present petitioners under Section 5A of the 'Act of 1894' for therebys their acquired estates becoming released from acquisition, objections whereof became founded upon the factum that their residential structures existed on the acquired lands, rather became dismissed, but only after the said objections becoming well considered. Moreover, when the order rejecting the said objections became premised on the ground that the alleged construction(s) were not existing on the acquired lands prior to the issuance of notification under Section 4 of the 'Act of 1894' but were raised subsequently.

16. In sequel when after the issuance of a notification under Section 4 of the 'Act of 1894' there is a complete vestment of right, title and interest in the acquiring authority, and, a concomitant divestment of right, title and interest, in the land losers concerned, thereupon, when the said alleged construction(s) became raised on the acquired lands post the issuance of notification under Section 4 of the 'Act of 2013'.

subject lands as the subject lands then vested in the acquiring authority. Therefore, the petitioners infirmly projected in their objections (*supra*), that the subject lands were amenable for becoming released besides concomitantly the order denying the relief of releases of such construction(s)/acquisitions, thus was a well founded declining order.

17. That since it is indicated in the reply, on affidavit, furnished to the writ petition on behalf of co-respondent No. 10, that the exchange which occurred inter-se the land of the said respondent, and, the department concerned, thus was in terms of the relevant policy besides was in terms of enabling the locked or inaccessible estate of HUDA, to become facilitated with an access thereto. Resultantly when the exchange which became entered inter-se respondent No. 10 and the department concerned, thus appears to be a well ground in a solemn public purpose and/or cannot be construed to be infringing any public policy. Therefore, the said exchange is deemed to be facilitating a public purpose. In sequel, the said exchange is un-impugnable at the instance of the petitioners. Moreover especially when the policy whereunders it became entered into rather remains unchallenged at the instance of the petitioners.

18. That though the learned counsel for the petitioners has depended upon the above observation(s) and inferences, as became recorded by this Court in case **M/s Vishnu Apartments (*supra*)**, and, thereby has forcefully contended that the power of eminent domain, as became exercised in respect of the subject lands rather has been colourably exercised.

19. However, for the reasons to be assigned hereinafter, the

20. The reasons for makings of the above inference, becomes groved in the trite factum, that the observations (supra) as became passed in the said writ petition were merely obiter.

21. Moreover, the petitioners in that case, thus became granted the espoused reliefs relating to the untenability of rejections of their application(s) for licenses, inasmuch as, this Court making an order vis-a-vis the said application(s) becoming re-considered within the ambit of Section 48 of the 'Act of 1894', and, also within the ambit of the relevant policies.

22. Therefore, when as stated (supra), the observation(s) (supra) were merely obiter and did not ultimately result in the quashing of the impugned notification(s) rather when the petitioners in the said case were granted relief to the extent that the rejection of their applications for the according of licenses, thus becoming reconsidered in terms of the relevant policies and in terms of Section 48 of the 'Act of 1894'. Therefore, too, no reliance whatsoever could be placed on the *obiter dicta* (supra) as is spoken in the above extracted paragraphs carried in the judgement (supra) made by this Court.

23. Paramountly also when the petitioner(s) do not claim any re-consideration of their rejected application(s) for licenses, thus being made in terms of Section 48 of the 'Act of 1894' or in terms of the relevant policies.

Final Order of this Court.

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

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

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

18.04.2024

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