

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

CWP No. 489 of 2015 (O&M)

Date of decision: 5.9.2017

Ompal and others

.. Petitioners

VS

The State of Haryana and others

.. Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Gurvinder Singh Gill**

Present: Mr. M. L. Sarin, Senior Advocate with
Mr. Ritesh Aggarwal and
Mr. Amir Z. Singh Pasrich, Advocates,
Mr. Arun Jain, Senior Advocate with
Mr. Sunil Sharma, Advocate,
Mr. Sandeep Sharma, Advocate,
Mr. Aakash Dalal, Advocate for
Mr. Rajesh Lamba, Advocate, for the petitioners.

Mr. Ankur Mittal, Additional Advocate, General, Haryana and
Mr. Manoj Dhankhar, Assistant Advocate General, Haryana.

Mr. Anil Kumar Rana, Advocate for
Mr. Lokesh Sinhal, Advocate, for respondent-HSIIDC
in CWP No. 921/2015.

Mr. Rajesh K. Sheoran, Advocate, for HUDA
in CWP No. 489/2015.

Rajesh Bindal, J.

This order will dispose of writ petitions bearing CWP Nos. 489,
921, 17264 of 2015 and 3249 of 2016, and 2691 of 2017, as common
questions of law and facts are involved therein.

The petitioners herein have challenged the acquisition of land for which notifications under Sections 4 and 6 of the Land Acquisition Act, 1894 (for short, 'the 1894 Act') were issued on 6.12.2013 and 3.12.2014, respectively. The land situated in the area of village Ghatta, Hadbast No. 81, village Ullahwas, Hadbast No. 83, Tehsil Sohna, and village Medawas, Hadbast No. 85, village Nangli Amarpur, Tehsil and District Gurgaon was sought to be acquired for Sector Roads, Sector 58 to 67 at Gurgaon (now Gurugram).

Learned counsel for the petitioners submitted that the acquisition in question has lapsed as only notification under Section 4 of the 1894 Act had been issued prior to the enactment of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, 'the 2013 Act'). In terms of Section 24(1) of the 2013 Act, initiation of acquisition has to be there under the old Act, namely, the 1894 Act, which is with issuance of notification under Section 6 thereof. In the present case, notification under Section 6 of the 1894 Act was issued on 3.12.2014. The issue has been gone into by a Full Bench of this Court in CWP No. 4371 of 2015 -Deepak Aggarwal and another vs State of Haryana and others-. Vide judgment dated 31.8.2017, it has been opined that only the cases where notification under Section 6 of the 1894 Act had been issued prior to 1.1.2014, that further proceedings can be carried on in terms of the 2013 Act, after the repeal of 1894 Act.

Section 24(1) of the 2013 Act is reproduced hereunder:-

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 (1 of 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.”

The final opinion expressed by the Full Bench of this Court in Deepak Aggarwal's case (supra), is extracted below:-

(a) The proceedings in pursuance of notification under Section 4 of the Old 1894 Act are limited only for purposes of conducting a preliminary inquiry for carrying out the survey and suitability of the land proposed to be acquired. Besides, apprise the landowners of the appropriate Government’s intention to acquire the land so that they can file objections, if any and also hear the objections.

(b) For the purpose of payment of compensation, the date of notification under Section 4 of the Old 1894 Act is to be taken for the purpose of fixing the rate to be paid as after publication of a notification the land prices freeze and there are no further transactions, besides, if there are sales at the said stage, these are mostly distressed sales. Therefore, even though the date of notification under Section 4 of the Old 1894 Act is taken as the date for the determination of the rate of compensation but nevertheless is not to be taken as the date of initiation of proceedings under the

Old 1894 Act. The proceedings for acquisition of land can be said to be initiated only after due application of mind which is the stage of declaration under Section 6 of the Old 1894 Act.

(c) The Legislature by Section 24 (1) of the New 2013 Act has provided for the land acquisition process deemed to have lapsed in certain cases under the Old 1894 Act. It is provided that notwithstanding anything contained in the New 2013 Act in any case the land acquisition proceedings 'initiated' under the Old 1894 Act where no award under Section 11 thereof had been made, then all the provisions of the New 2013 Act relating to determination of compensation are to apply. The applicability of the provisions of the New 2013 Act for payment of compensation would only be if proceedings under the Old 1894 Act had been initiated before 01.01.2014 which is the appointed day for the enforcement of the New 2013 Act.

(d) The applicability of Section 114 of the New 2013 Act which deals with repeal and savings is clear to the extent it envisages that the Old 1894 Act shall stand repealed. The effect of Sub Section (2) is that save as otherwise provided in the New 2013 Act, the repeal under Sub Section (1) shall not be held to prejudice or effect the general application of Section 6 of the 1897 GC Act. Repeal is not a matter of mere form but is of substance depending on the intention of the Legislature. If the intention indicated either expressly or by necessary implication in the New 2013 Act was to abrogate or wipe off the Old 1894 Act wholly or in part then it would be a case of total or *pro tanto* repeal. The repeal in respect of the Old 1894 Act is total insofar as Sub Section (1) of Section 114 of the New 2013 Act provides; however, by Sub Section (2)

it does not prejudice or affect the general application of Section 6 of the 1897 GC Act.

(e) The New 2013 Act provides for several contemporary, progressive and socially beneficial legislative measures breaking away from the confines of the past archaic law and provides mechanisms for determination of social impact and public purpose which is not there in the Old 1894 Act. The New 2013 Act is to be leaned towards providing for the beneficial provisions of legislation to the landowners whose land is sought to be acquired so that they get the benefits of the new legislative dispensation.

(f) The notification issued under Section 4 of the Old 1894 Act before the appointed day i.e. 01.01.2014 under the New 2013 Act would continue to remain operative in terms of Section 6 and Section 24 of the 1897 GC Act only if the proceedings under the Old 1894 Act have been 'initiated' before 01.01.2014 which would be that there has been due application of mind followed by declaration under Section 6 of the Old 1894 Act.

(g) A notification published under Section 4 of the Old 1894 Act in the official Gazette but in the newspaper later after the commencement of the New 2013 Act on 01.01.2014 would not be sustainable in law as the last dates of such publication and the giving of such public notice is to be taken as the date of the publication of the notification. It is only on the publication of the last of the notification that it can be said that there was notice to the affected parties so as to enable them to file objections.

(h) The hearing of objections under Section 5-A and the publication of notification under Section 6 of the Old 1894 Act would not be permissible after its repeal

and after commencement of the New 2013 Act from 01.01.2014 as the proceedings cannot be said to have been 'initiated' under the Old 1894 Act in case the declaration under Section 6 thereof had not been issued and it is only when the declaration is issued that the land acquisition process can be said to have been 'initiated'. In other words, in case a declaration in terms of Section 6 of the Old 1894 Act is not notified before 01.01.2014, the land acquisition proceedings cannot be said to have been initiated and therefore, would lapse by virtue of Section 24 (1) of the New 2013 Act."

Learned counsel for the State does not dispute the aforesaid legal position. However, he further submitted that in the present set of cases, the award was announced by the Land Acquisition Collector on 6.9.2016, except in CWP No. 2691 of 2017, in which award was announced on 2.12.2016. Number of landowners have already received the compensation, some of them may be even satisfied with the amount of compensation awarded by the Collector. In some cases, the landowners may be satisfied with the amount of compensation awarded by the State, as despite having knowledge of filing of petition to challenge the acquisition, they have received compensation. In case acquisition is to be set aside, they will have to return back the compensation. He further submitted that in CWP No. 921 of 2015, the petitioners are not the owners of the land acquired.

However, considering the fact that some of the petitioners have already received the amount of compensation in terms of the award announced by the Collector before or after filing of the writ petitions, they are at liberty to return back the compensation to the Collector within a

period of three months along with interest @ 8% per annum calculated from the date when the compensation was received by them till its repayment. In case of failure, the acquisition qua that portion of land shall be deemed to be upheld subject to their right to seek enhancement of compensation in terms of the provisions of applicable law.

Further in case the State finds that only small part of the land is left with the State, where the amount of compensation has not been returned and the same is of no use to the State, it can drop the acquisition qua that land as well and shall be at liberty to recover the amount of compensation paid to those landowners along with interest as mentioned above. It is made clear that the amount of compensation to be recovered by the State along with interest shall remain as first charge against the land acquired for which compensation was paid and shall be recoverable as arrears of land revenue. Entry to this effect shall be made in the revenue record.

Wherever the amount of compensation has not been withdrawn by the landowners from the Collector or court, the State shall be at liberty to withdraw the amount if the landowners do not accept the same. Final decision in that regard shall be taken by the State within six months thereafter.

After hearing learned counsel for the parties and considering the submissions noticed above and the view expressed by Full Bench of this Court in Deepak Aggarwal's case (supra), in our view, the notification under Section 4 of the 1894 Act, dated 6.12.2013, has lapsed qua the petitioners, as no declaration under Section 6 of the 1894 Act had been issued before repeal of the 1894 Act and enactment of the 2013 Act on 1.1.2014. In the

present set of cases, notification under Section 6 of the 1894 Act was issued on 3.12.2014.

However, the State shall be at liberty to either initiate fresh proceedings for acquisition of land or negotiate with the landowners for purchasing/ retaining the land in accordance with law, in case the land in question is required for completion of any project or otherwise. The petitioners shall maintain status quo regarding the land in question for a period of six months to enable the State to take decision. All other issues raised in the writ petitions are left open as this Court has not expressed any opinion thereon.

The writ petitions are disposed of accordingly.

(Rajesh Bindal)
Judge

5.9.2017
vs

(Gurvinder Singh Gill)
Judge

Whether speaking/ reasoned

Yes/No

Whether Reportable

Yes/No