HIGH COURT OF PUNJAB & HARYANA

Bench: Justice Sureshwar Thakur and Mrs. Justice Sudeepti Sharma

Date of Decision: 25th January 2024

CWP-23190-2022

ROHTAS AND ORS. **.....Petitioners**

Versus

STATE OF HARYANA & ORS. **....Respondents**

Legislation and Rules:

Land Acquisition Act, 1894

Section 16, 18, 21, 24, 34, 101A of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

Haryana Act No.21 of 2018

Subject: The petitioners sought a mandamus for the release of their acquired lands, based on non-utilization by the respondents, citing clause 7 of the policy dated 14.09.2018 and Section 101 A of the Act of 2013.

Headnotes:

Land Acquisition – Release of Acquired Lands – Petitioners seeking mandamus for release of their acquired lands under clause 7 of the policy dated 14.09.2018 – State of Haryana decided to release lands not utilized by respondents – Petitioners' lands part of public purpose projects, hence non-releasable. [Paras 1, 10]

Land Acquisition Act, 1894 & RFCTLARR Act, 2013 – Application and interpretation of acquisition and compensation provisions – Reference to 'Indore Development Authority Vs. Manoharlal and others' for understanding lapsing provisions under Section 24(2) of RFCTLARR Act, 2013. [Paras 5]

Possession and Compensation – Criteria for lapsing of land acquisition under Section 24(2) of RFCTLARR Act, 2013 – Acquisition not lapsed if possession taken or compensation paid –

Petitioners' claim for lapsing declaration rejected as compensation deposited and possession assumed. [Paras 6]

Section 101 A of RFCTLARR Act, 2013 – Petitioners' reliance on Section 101 A and clause 7 of policy dated 14.09.2018 for release of lands – Lands earmarked for public purpose, thus essential and viable, negating petitioners' argument based on said section and policy. [Paras 9, 10]

Parity Claim – Petitioners' comparison with other land losers for similar releases – Specific case of Mohinder Singh distinguished – Petitioners not entitled to parity due to different circumstances and lack of lapsing declaration under Section 24(2) of RFCTLARR Act, 2013. [Paras 12, 13, 16, 17]

Judicial Precedents – Reference to 'The Press Employees and Friends Co-operative Group Housing Society Ltd. Vs. State of Haryana and Others' – Analysis of issues similar to the instant case concerning Section 101-A of RFCTLARR Act, 2013. [Paras 18]

State Ownership and Utilization of Acquired Lands – State as absolute owner post-acquisition – Utilization or sale of lands for public purpose valid – Petitioners' lands integral to layout plans, rendering them non-releasable. [Paras 19, 20, 21]

Discrimination Claim – Petitioners' allegation of invidious discrimination in releases – Claim rejected based on integral role of petitioners' lands in layout plans, differentiating from other land losers. [Paras 20, 21]

Final Decision – Writ petition lacking merit, dismissed – Acquired lands deemed essential for public purpose, not qualifying for release under RFCTLARR Act, 2013 or state policy. [Paras 22, 23, 24]

Referred Cases:

- Indore Development Authority vs. Manoharlal and others, SLP Nos. 9036-9038 of 2016
- Pune Municipal Vs. Harakchand Misirimal Solanki, reported in 2014 (1) CTC 755
- State of Kerala Vs. M. Bhaskaran Pillai, AIR 1997 SC 2703
- The Press Employees and Friends Co-operative Group Housing Society Ltd. Vs. State of Haryana and Others, 2023: PHHC:106793-DB

Representing Advocates: Mr. Chetan Mittal, Senior Advocate with Mr. Sandeep Sharma, Advocate, Ms. Gitanjali Sharma, Advocate, and Mr. Rohit Johar, 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, Mr.

Shivam Garg, Advocate, Mr. Siddharth Arora, Advocate for respondent - HSVP.

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SURESHWAR THAKUR , J.

1. Through the instant writ petition, the petitioners pray for the making of a mandamus, upon, the respondent concerned, to make an order for release of the acquired lands, thus in terms of clause 7 of the policy dated 14.09.2018 (Annexure P-9), whereunders, the State of Haryana, has made a decision to release those acquired lands, which cannot be utilized by the respondents.

2. It has been averred in the writ petition, that the petitionersare in possession of the land comprised in Khasra No. 37//23, 47//2/2,47//3, situated in village Kanhai, District Gurugram. The petitioners are stated to have constructed residential house(s) on the disputed lands. 3. Moreover, it is also contended that the respondents, have proceeded to adopt the mala practice of invidious discrimination, inasmuch as, the respondents releasing, the lands of other similarly situated land owners, whereas, the respondents yet proceeding to subject the petition lands to acquisition, thus through theirs making the acquisition notification(s).

4. It is apparent on a reading of the reply furnished to the writ petition, that through rapat roznamcha bearing no. 425, dated 23.03.1993, thus rapat possession became assumed on the acquired lands. Furthermore, it is also evident from a perusal of the reply, on affidavit, that the compensation amount as became determined in respect of the acquired lands, became deposited before the authority concerned rather for the same being available to become disbursed, to the land losers concerned.

5. The effect of the above, is that, thereby the apposite discharging evidence becomes adduced by the acquiring authority, thus in satiation, of the duo of parameters (supra), as spelt out by the Hon'ble Apex Court in judgment rendered in '*Indore Development Authority Versus Manoharlal and others*', to which *SLP (Civil) Nos. 9036-9038 of 2016*, has been assigned, and, whereins, in the relevant paragraphs thereof, paras whereof stands extracted hereinafter, it becomes propounded, that when in respect of acquisition proceedings, as become launched, under the Land Acquisition Act, 1894 (hereinafter for short called as the 'Act of 1894'), rather upon the acquiring authority begetting affirmative compliance, with both the contingencies, spelt therein, thus thereby the attraction of the lapsing provisions to the acquired lands, hence as required under Section 24(2) 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'), whereby there occurs lapsing of the earlier launched acquisition proceedings under the 'Act of 1894', rather becoming unavailable for becoming recoursed by the estate losers.

363. In view of the aforesaid discussion, we answer the questions as under:

1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1.1.2014 the date of commencement of Act of 2013, there is no lapse of proceedings. Compensation has to be determined under the provisions of Act of 2013.

2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.

3. The word 'or' used in Section 24(2) between possession and compensation has to be read as 'nor' or as 'and'. The deemed lapse

of land acquisition proceedings under Section 24(2) of the Act of 2013 takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

4. The expression 'paid' in the main part of Section 24(2) of the Act of 2013 does not include a deposit of compensation in court. The consequence of non-deposit is provided in proviso to Section 24(2) in case it has not been deposited with respect to majority of land holdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the Act of 1894 shall be entitled to compensation in accordance with the provisions of the Act of 2013. In case the obligation under Section 31 of the Land Acquisition Act of 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the Act of 2013 has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4of the Act of 1894.

5. In case a person has been tendered the compensation as provided under Section 31(1) of the Act of 1894, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). Land owners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2)of the Act of 2013.

6. *The proviso to Section 24(2) of the Act of 2013 is to betreated as part of Section 24(2) not part of Section 24(1)(b).*

7. *The mode of taking possession under the Act of 1894 and as contemplated under Section 24(2)is by drawing of inquest report/ memorandum. Once award has been passed on taking possession under Section 16 of the Act of 1894, the land vests in State there is no divesting provided under Section 24(2)of the Act of 2013, as*

once possession has been taken there is no lapse under Section 24(2).

8. *The provisions of Section 24(2)providing for a deemedlapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the Act of 2013 came into force, in a proceeding for land acquisition pending with concerned authority as on 1.1.2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.*

9. *Section 24(2) of the Act of 2013 does not give rise tonew cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the Act of 2013, i.e., 1.1.2014. It does not revive stale and timebarred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition.*

6. The effect thereof, is that, the petitioners are not entitled to the making of a lapsing declaration, thus in terms of Section 24(2) of the 'Act of 2013'.

7. Predominantly, also when the petitioners evidently filed a reference petition under Section 18 of the 'Act of 1894', whereby they sought enhancement of compensation, from the learned Reference Court concerned. Resultantly thereby the petitioners are deemed to acquiesce to the launching of the acquisition proceedings. Therefore, they are estopped from making any challenge, to the but validly launched and validly concluded acquisition proceedings.

8. Moreover, on a reading of para no. 7 of the reply, on affidavit, it is revealed that the petitioners had earlier approached, this Court, by filing CWP-9029-2017, whereby they sought release(s) of their land from acquisition, thus through theirs invoking the mandate of

Section 24 (2) of the 'Act of 2013'. The said petition was dismissed by this Court, through an order made thereons, on 25.02.2021.

9. Nonetheless, the learned counsel appearing for the petitioners, has now planked his submission, on anvil of Section 101 A of the 'Act of 2013' as well as, on 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.19 of the reply, on affidavit, as furnished to the petition by the respondent concerned, contents whereof are extracted hereinafter.

"19. ....., the land involved in the petition affects the planning of 15 nos. Plot of 6 marla category, 14 nos. Plot of 4 marla category, 46 nos. Plot of 2 marla category, primary school site, 7 nos. of 10 m wide internal road and park."

10. 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, thus premised, on the provisions of Section 101 A of the 'Act of 2013' or on the policy dated 14.09.2018. Contrarily, post the valid termination of the earlier launched acquisition proceedings rather 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 trite 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.

11. Conspicuously also when it has been stated by the learned Additional Advocate General, Haryana that withdrawal of the policy (supra) is under active consideration of the respondent and that very shortly the policy (supra) is likely to be re-called.

12. Further, the averment relating to the petitioners being treated at par with a purportedly similarly situated land loser concerned, namely one Mohinder Singh, also is a claim which is required to be rejected.

13. The reason for drawing the above inference, becomes galvanized, from the factum that the release as was made, in favour of the said Mohinder Singh, was through an order made on 29.05.2019. The said order became banked upon the factum, that the said Mohinder Singh, was a recipient of an order made on 03.08.2015 by this Court in CWP-15666-2015, whereins, the said Mohinder Singh claimed the makings of a lapsing declaration in terms of Section 24 (2) of the 'Act of 2013'.

14. It also appears that through an order made on 29.05.2019, the apposite representation of the said Mohinder Singh was decided

and in respect of land comprised in Khasra No. 36//25, letter of intent dated 21.11.2017 was issued with the condition, that in lieu of the land qua which the acquisition proceedings, had lapsed, rather the petitioner was to give land measuring 914.09 sq. mtrs. free of cost to HSVP, thus for construction of roads and further 98 sq. mtrs of land would also be given free of cost to HSVP.

15. Therefore, when at the relevant stage, the petitioner concerned, was entitled to a lapsing declaration in terms of Section 24 (2) of the 'Act of 2013', rather in view of the mandate recorded by the Hon'ble Apex Court in **Pune Municipal Vs. Harakchand Misirimal Solanki, reported in 2014 (1) CTC 755**. Moreover, when the said lapsing declaration was also made in favour of the said Mohinder Singh. Consequently, therebys besides when the said order of release was a conditional order and the apposite conditions became complied with. Therefore, the said order cannot be construed to be also made applicable to the petitioners herein also.

16. Contrarily, also when the claim of the petitioners herein relating to the making of a lapsing declaration in terms of Section 24 (2) of the 'Act of 2013', became declined in an earlier petition CWP9029-2017, as became filed by them. As but a natural corollary, thereto, given the facts (supra), relating to the releases made in favour of one Mohinder Singh, thus being completely contra distinct to the facts at hand, inasmuch as, the claim of the present petitioners herein for a lapsing declaration being made, rather becoming conclusively rejected, whereas, unlike the petitioners herein, rather qua the petitioners in case (supra), thereins their claim for the making of a lapsing declaration rather becoming accepted.

17. In sequel, with the above apparent inter-se distinctivity inter-se the release(s) made qua one Mohinder Singh and the release(s) claimed by the present petitioners, rather emerging to the fore, thereby, it eclipses the claim for release(s), thus in terms thereof, as made by the present petitioners, nor obviously the petitioners are entitled to claim parity with the said Mohinder Singh.

18. Moreover, in a judgment recorded by this Court in case titled as ***'The Press Employees and Friends Co-operative Group Housing Society Ltd.*** Vs. ***State of Haryana and Others', 2023: PHHC:106793-DB***, this Court had in length dealt with similar issues as in the instant writ petition. The relevant paragraphs of the verdict (supra) are extracted hereinafter.

"17. From the above facts and the legal submissions, as made by the learned counsels for the parties, the following issues arise for determination and adjudication, for arriving at a just decision upon the present lis:-

(i) Whether the intent of the legislature behind insertion of Section 101-A in the Act of 2013 is to release the "unutilized" acquired lands, or, its aim and object is to enable the State Government to de-notify only such lands, which become "unviable" and "non-essential" for the State Government, as acquired under the Act of 1894?

(ii) Whether the insertion of Section 101-A in the Act of2013 can give rise to a new cause of action, in favour of the landowner concerned, to challenge the lawfully concluded acquisition proceedings, under the Act of 1894?

(iii) Whether the landowner concerned has a vested rightto assert that the acquired land has become "unviable" and "nonessential", on the ground, that the land has not been utilized, or, the land continues to be his possession, even after pronouncement of the award ?

27. Though Section 101 of the Act of 2013, contemplated the return of the land acquired under this Act, but it mandated the said land to have remained unutilised for a period of five years from the date of taking over the possession. Moreover, this provision is applicable only to the lands acquired under the Act of 2013, but, it does not have any applicability qua the lands acquired under the Act of 1894.

28. Therefore, faced with the impediment of de-notificationof the lands acquired under the Act of 1894, the State legislature inserted the provisions of Section 101-A in the Act of 2013, through Haryana Act

No.21 of 2018, thereby empowering the acquiring authority/State Government to denotify the lands acquired under the Act of 1894, acquisition proceedings whereof stand lawfully terminated, but only if such lands have become "unviable" or "non-essential". However, at this stage, we are not examining the constitutional validity of insertion of Section 101-A in the principal Act, through the State Amendment Act (supra), leaving this issue to be decided in an aptly instituted lis.

29. *Section 101-A has been inserted by the Statelegislature 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 "nonessential" 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 denotify 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.*

34. Furthermore, 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 denotification is "unviability" or "non-essentiality" of the acquired lands for being put to ***any efficacious public purpose****. **(emphasis supplied)***

38. As a natural corollary of the hereinabove discussions as well as the propositions of law, as laid down by the Hon'ble Supreme Court, it can be safely concluded that the intent of the legislature, behind the insertion of Section 101-A in the Act of 2013, is not the release of unutilized acquired lands, rather its aim and object is to empower the State Government to de-notify only such lands, which have been acquired under the Act of 1894 and which have become "unviable" and "non-essential" for it, based upon tangible evidence, for executing any "public purpose".

44. Therefore, in the light of the legal propositions (supra), it is abundantly clear that though the landowners can approach the State Government seeking denotification of the acquired lands, in exercise of powers conferred under Section 101-A of the Act of 2013, however, this Section does not give them any vested right to seek a mandamus for denotification of the acquired lands. A writ of mandamus can be issued only for the enforcement of any right conferred upon a person by law. In the absence of any vested right conferred by law, a mandamus cannot be passed upon the authority(ies) concerned. Therefore, we refrain ourselves from passing any mandamus upon the authority(ies) concerned to examine the representation of the petitioner-Society for denotification of the acquired lands.

47. Once the land is lawfully acquired, it vests in the State Government/acquiring authority concerned, free from all encumbrances, and thereafter, the landowner concerned does not have any concern in respect of the user of his acquired land, i.e. whether the land has been used for the purpose for which it was acquired or for any other purpose.

49. Therefore, in view of the hereinabove elaborately made discussions, the issues, as formulated above, are reiteratedly answered in the hereinafter extracted manner:-

*"**QUA ISSUE NO.(I):***
The intent of the legislature, behind insertion of Section 101-A in the Act of 2013, is not to release the "unutilized" acquired lands, rather its aim and object is to enable the government to de-notify only such lands, as acquired under the Act of 1894, and, which have become "unviable" and "non-essential" for facilitating any public purpose.

QUA ISSUE NO.(II):
The answer to the issue No.(ii) is also in negative. The insertion of Section 101-A does not give rise to any new cause of action, in favour of the landowners concerned, to challenge the lawfully concluded acquisition proceedings, under the Act of 1894.
QUA ISSUE NO.(III):
The answer to this issue is also in negative. The landowners do not have any vested right to asset that the acquired lands have become "unviable" and "nonessential", on the ground, that such lands have not yet been utilized, or, that such lands yet continues to be in possession of the landowners, even after pronouncement of the award."

19. Furthermore, upon vesting of ownership over the acquired lands, in the respondent concerned, thus happening on issuance(s) of notification(s) of acquisition, thereby when the State becomes absolute owner of the acquired lands. Resultantly the investment of complete or absolute ownership over the acquired lands in the respondent-State, thus makes it well empowered to within the ambit of the verdict rendered by Hon'ble Apex Court in the case of ***"State of Kerala Vs. M.Bhaskaran Pillai", AIR 1997 SC 2703,*** **even make sale of the acquired lands through public auction**. Thus, when in the event of it being not utilized, the exercisings of the above power by an absolute owner, rather is tenable, as thereby the auction monies as become fetched by the State of Haryana, thus would also result in theirs subserving some other public purpose(s).

Therefore, except in a very rare or exceptional circumstances, inasmuch as, upon occurrence of *vis major* or upon exorbitant sums of compensation monies being determined, thus making their liquidations, to cause an onerous burden to the State exchequer, thus, thereby the statutory parameters of unessentiality or unviability of retention of the acquired lands, may become adopted by the State of Haryana. However, the above exceptions are not available on the records of the case.

20. Moreover, the averment as to the respondent practicing invidious discrimination(s), vis-a-vis the petitioner(s) herein, though also makes allusions to specific instances of perpetration of discrimination(s) vis-a-vis the land losers concerned, inasmuch as, the said being done through Annexures P-5 to P-8.

21. However, since this Court for reasons (supra) has made a firm conclusion that the acquired lands are an integral component of the layout plans. Thus, the said conclusion also ousts the land-losers concerned to claim parity with other purportedly similarly situated estate holders concerned qua whom release(s) were made, but on the premise that their released lands were not an integral component of the layout plans. Thus, the argument (supra) is merit-less, and, is rejected. **Final Order of this Court.**

22. In aftermath, this Court finds no merit in the writ petition, and, with the above observations, the same is dismissed.

23. No order as to costs.

24. Since the main cases itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.