

HIGH COURT OF PUNJAB AND HARYANA**Bench: Justice Sureshwar Thakur and Justice Lalit Batra****Date of Decision: 31.1.2024**

CWP No. 14130 of 2004 (O&M)

Mahant Shri Murari Mal Baba Trust ...Petitioner**Versus****Union Territory, Chandigarh and Another ...Respondents****Legislation:**

Land Acquisition Act, 1894

Right to Fair Compensation and Transparency in Land Acquisition,
Rehabilitation and Resettlement Act, 2013

Subject: Challenge against acquisition of land of a religious institution by Chandigarh Administration under the Land Acquisition Act, 1894, including the rejection of the petitioner's representation and the validity of notifications under Sections 4 and 6 of the Act.

Headnotes:

Acquisition of Religious Institution's Land - Challenge against land acquisition of Gita Bhawan Mandir, village Kajheri, U.T., Chandigarh - Petitioner seeks to declare the action of acquiring the area of the religious institution and rejection of representation as illegal and arbitrary - Quashing of notifications dated 4.5.2000 under Section 4 and 3.5.2001 under Section 6 of the Land Acquisition Act, 1894, and the award dated 21.3.2003 sought. [Paras 1, 2]

Invalid Delegation and Signature – Notification under Section 4 of the Act of 1894 signed by the Secretary Engineering, Engineering Department, U.T., Chandigarh, instead of the Administrator, leading to a lack of proper application of mind and invalid delegation of power - Reference to the Apex

Court's verdict in Surinder Singh Brar's case for the necessity of proper authority signature. [Paras 3, 10, 16]

Ex-Post Facto Validation and Repeal of Act of 1894 – Contention on ex-post facto validation of notifications under the repealed Land Acquisition Act, 1894, following the enforcement of the Act of 2013 - The court finds such ex-post facto validation legally impermissible. [Paras 6, 7, 20, 21]

Analysis and Decision – The court accepts the petitioner's submissions, quashes the impugned notifications and award under the Land Acquisition Act, 1894 - Directs petitioner to maintain status quo re: creation of third-party rights for a period of one year for potential re-acquisition by the respondent-State. [Paras 15, 25, 26]

Referred Cases:

- Surinder Singh Brar and others vs. Union of India, (2013) 1 SCC 403
- Raj Kumar Gandhi vs. Chandigarh Administration and others, Civil Appeal Nos. 4265-4266 of 2008

Representing Advocates:

Mr. Amit Jain, Senior Advocate with Mr. Chetan Salathia, Advocate, and Ms. Reetika Sabharwal, Advocate for the petitioner.

Mr. Anil Mehta, Senior Standing Counsel, Chandigarh Administration with Mr. Sumit Jain, Advocate, and Mr. Ashish Rawal, Advocate for the respondent-U.T., Chandigarh.

SURESHWAR THAKUR , J.

1. In the instant writ petition, the petitioner prays for declaring the action of the respondents concerned, in proceeding to acquire the area of religious institution, known as Gita Bhawan Mandir, village Kajheri, U.T., Chandigarh,

and, further for declaring the rejection of the representation of the petitioner-trust, thus to be illegal, and, arbitrary. The petitioner also seeks quashing of the notification dated 4.5.2000, issued under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act of 1894'), besides seeks quashing of a declaration made under Section 6 of the Act of 1894, on 3.5.2001, and, of the award dated 21.3.2003.

Facts of the case

2. One Gurdev Singh vide gift deed dated 10.12.1982 had donated 4 kanals land out of 7 kanals 7 marlas of land, as comprised in khewat No.114, khasra No. 39//19, situated in village Kajheri, Union Territory, Chandigarh, and, the said gift deed was made solely for religious purpose i.e. for construction of Temple, known as Gita Bhawan (Mandir). It is further averred in the petition, that mutation was sanctioned in favour of the petitioner-trust, and, the foundation of Gita Bhawan was laid on 18.9.1983. Thereafter, the petitioner trust collected funds from Chandigarh and the neighbouring States, and, constructed two temples thereon, 15 rooms with pucca flooring, one big hall, one kitchen, toilet, bathroom, and, verandah after spending about Rs. One crore, upon khasra No. 39//19, 12/1, which belongs to the petitioner trust. The Department concerned, has given electricity connection to the said Gita Bhawan in the year 1988. It is further averred therein, that the Chandigarh Administration, vide notification dated 4.5.2000, issued under Section 4 of the Act of 1894, proposed to acquire the petition land. The petitioner trust filed objections dated 28.6.2000 under Section 5-A of the Act of 1894. However, without giving an opportunity of hearing, the objections of the petitioner were rejected ex parte, and, the Chandigarh Administration proceeded to issue notification dated 3.5.2001, under Section 6 of the Act of 1894, and, thereafter award was passed on 21.3.2003.

Submissions of the learned senior counsel for the petitioner

3. The learned senior counsel for the petitioner has submitted, that the impugned notifications have been signed by the Secretary Engineering, Engineering Department, U.T., Chandigarh, though it is stated in the opening of the said annexure, that the application of mind, qua the issuance of the said notification, has been made by the Administrator, U.T., Chandigarh. Therefore, it has been argued, that for lack of occurrence of signatures of the Administrator on the apposite notifications, thereby rather no closest, and, keenest application of mind was made by the Administrator, to the necessity of the acquisitions being made. In consequence, it is submitted, that the said

notification is an ill-informed notification, thus made without the required application of mind to the subject matter.

4. Tritely put, the learned senior counsel for the petitioner has submitted, that the question of law, which is to be answered by this Court relates to whether paragraphs 65 and 66, as carried in the verdict made by the Hon'ble Apex Court in case titled as '**Surinder Singh Brar and others versus Union of India**, reported in **(2013) 1 Supreme Court Cases 403.**, paras whereof become extracted hereinafter, require to be affirmatively applied vis-a-vis, the present petitioner concerned, or are required to be negated by this Court.

“65. The issue deserves to be considered from another angle. While delegating the power, authority or jurisdiction vested in him by or under any law, rules or regulations as applicable to the Union Territory of Chandigarh the Administrator had used the expression "on the date of this notification". This necessarily implies that the power of "the appropriate Government" conferred upon or entrusted to the Administrator by the President under Article 239(1) after 25-2-1988 were not delegated to the Adviser. It is also apposite to note that the Notification dated 14-8-1989 was issued under Article 239(1) in supersession of all previous notifications relating to the exercise of power and functions under the Act by the Administrators of various Union Territories. Therefore, even if it is assumed that vide Notification dated 25-2-1988 the Administrator had authorised the Adviser to exercise the power of "the appropriate Government" under the Act, after the issuance of the Notification dated 14-8-1989, the said delegation will be deemed to have ceased insofar as the exercise of power of "the appropriate Government" under the Act and the Rules framed thereunder is concerned and in the absence of fresh delegation by the Administrator, the Adviser could not have exercised the power of the appropriate Government and sanctioned the acquisition of land for the purposes specified in the Notifications dated 27-6-2006 and 2-8-2006 nor could he symbolically accept the recommendations of the LAO and record his satisfaction on the issue of need of land for the specified public purposes.

66. In view of the above discussion, we hold that the Adviser to the Administrator was not competent to accord approval to the initiation of the acquisition proceedings or take decision on the reports submitted by the LAO under Section 5-A(2) of the Act and record his satisfaction that the land was needed for the specified public purpose.”

5. The learned senior counsel has further contended, that the above extracted paras, do underscore, that the powers of the “appropriate government” are vested solitarily in the Administrator, U.T., Chandigarh, thereupon, when such powers are to be, thus exercised only by him, and, that his Advisor is incompetent to exercise, thus the functional powers of the appropriate government nor is he competent to make a notification, thus under Section 4 or under Section 6 of the Act of 1894 rather under any purported delegation of apposite powers to him.
6. The learned senior counsel for the petitioner further submit, that , as evident from an office noting, which has been reproduced in a decision made by this Court in a case bearing No. **CWP-6274-2015**, titled as **Shri Anandpur Trust versus Union Territory, Chandigarh and others**, and which also becomes reproduced hereinafter, an ex-post facto validation or an ex-post fact delegation was made to the issuance of notifications under Section 4 and under Section 6 of the Act of 1894, so as to validate the same, but the same naturally contravenes a verdict made by the Hon’ble Apex Court in *Surinder Singh Brar’s case (supra)*. Therefore, he argues, that the said Annexure based on the hereafter extracted speakings, is also required to be negated.

“As per delegation of powers by the Administrator to the AA issued in 1987 Land Acquisition is covered under it. The 1989, 14th August notification of MHA, GOI only stated that land acquisition powers of the President of India shall also be exercised by the Administrators of UTs. As per this understanding practically all acquisitions since 1987 have been done at the level of the AA. In case of few major projects like 17 park in principle decision was approved at the level of Administrator. As proposed in the note above as petitioners are taking this as one of the grounds to get acquisition annulled may be worthwhile to get these acquisition ratified at the level of Administrator (post facto)”

7. He has further submitted, that any ex-post facto validation or any ex-post fact delegation, as was made to the issuance of notifications under Section 4 and under Section 6 of the Act of 1894, so as to validate the same, but also naturally contravenes a verdict made by the Hon’ble Apex Court in *Surinder Singh Brar’s case (supra)*. The learned counsel also submitted, that the above ex-post facto approval is apparently meted on a date when the relevant provisions of the Act of 1894 were made dysfunctional or became repealed. Uncontrovertedly the said Act was made dysfunctional or became repealed, upon coming into force the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short ‘the Act

of 2013'). Resultantly, it is submitted, that thereby the ex-post facto validation or ex-post facto delegation of power, by the Administrator to the signatory of the notification, who is not even Advisor, but is the Secretary Engineering, Engineering Department, U.T., Chandigarh, but prima facie has been impermissibly re-activated.

8. The learned counsels for the contesting litigants are, however, *ad idem*, that the legal conundrum, which is required to be engaging the attention of this Court, and, is also required to be receiving an adjudication from this Court, is not, in relation to a lapsing declaration being made, rather in terms of Section 24(2) of the Act of 2013. On the other hand, the learned counsels are *ad idem*, that the challenge, as made to the launching of the acquisition proceedings under Section 4 of the Act of 1894, is strictly confined to the trite factum, that the notification for acquisition, as became issued under Section 4 of the Act of 1894, becoming so issued either within or outside the domain of the declaration of law made by the Hon'ble Apex Court, in *Surinder Singh Brar's* case (*supra*).

Analysis of the submission of the learned senior counsel for the petitioner 9. Be that as it may, the Act (*supra*) became repealed, thus prior to the issuance of the validating order, whereby any ex-post facto delegation, as was made subsequently on 7.12.2015. It thereby appears, that the said delegation of any ex-post facto validation made to a statutory function done under the repealed Act, thus is an ill-stratagem deployed by the respondent concerned, thus to overcome the efficacy of the verdict, recorded by the Hon'ble Apex Court in *Surinder Singh Brar's* case (*supra*), wherein, in the above extracted paragraph, it has been clearly expostulated that the power of the appropriate government conferred, upon or entrusted to the Administrator by the President under Article 239(1) after 25.2.1998, rather were not required by the Administrator, to be delegated to the advisor or to any other Head of the Department of the Union Territory, Chandigarh. Furthermore, when in the said judgment, it has been declared, that the assigning of such delegations of powers by the Administrator to the Advisor or to any other Head of the Department of U.T., Chandigarh, whereby, the latter proceeded to issue notification under Section 4 of the Act of 1894, and, the declaration under Section 6 of the Act of 1894, thus being construable to be flawed delegation, resultantly thereby, the relevant notification(s) for acquisition being made to the petition land(s), thus become disrobed of their legal worth.

10. The learned senior counsel for the petitioner submitted, that the expostulation of law (supra), as made in *Surinder Singh Brar's* case (supra), is with aplomb applicable to the impugned notification issued under Section 4 of the Act of 1894. He submits, that though in the opening of the said notification, a speaking occurs, that the said notification has been drawn on satisfaction being made by the Administrator to the U.T., Chandigarh. However, yet the said notification carries the seal, and, signature of the Secretary Engineering, Engineering Department, U.T., Chandigarh. Consequently, it is contended, that when in the judgment (supra), as made by this Court, it has been explicitly expounded, that when the Administrator is solitarily required to effectively function, as “appropriate Government” in his, thus making an application of mind, with respect to the necessity of launching of acquisition proceedings. Therefore, it is submitted, that the delegation, if any, of the said powers by the Administrator, thus to any other subordinate to him, rather does not assign any aura of validity to the notification issued under Section 4 of the Act of 1894.

11. The learned senior counsel for the petitioner also submitted, that the ex-post facto validation, as became assigned to the prior thereto, but impermissibly assigned delegation of powers by the Administrator, to the author of the notification issued under Section 4 of the Act of 1894, thus also invites, the wrath of the estopping mandate recorded by the Hon'ble Apex Court, in *Surinder Singh Brar's* case (supra). He further submitted, that the said ex-post facto validation, to the yet impermissible delegation made by the Administrator to the Union Territory, Chandigarh, to his subordinate, in the latter, drawing the notification under Section 4 of the Act of 1894, rather also has been made, but after the coming into force of the Act of 2013, inasmuch as, it has been made on 7.12.2015, whereas ,the Act of 2013 came in force on 1.1.2014. Therefore, it is contended, that the said expost facto validation of delegation of powers, as, made by the Administrator to the U.T., Chandigarh, thus to an officer subordinate to him, whereby the latter took to issue a notification under Section 4 of the Act of 1894, thereby too, also does not confer any aura of any validity thereto, significantly when the initially made notification was but legally infirm.

Analysis of the submissions of the learned counsel for the respondents-U.T.

12. The learned counsel for the respondents-U.T., has argued, that irrespective of the Act of 1894, becoming repealed, but yet there is an

empowerment in the authority concerned, to assign ex-post facto validity to the notification issued under the Act of 1894, and/or they submit, that any ex-post facto delegation of powers conferred, through an office noting to the Secretary Engineering, Engineering Department, U.T., Chandigarh, thus overcomes the inefficacy, if any, or the defect, if any, in the Secretary Engineering, Engineering Department, U.T., Chandigarh, to in purported exercise of power of delegation, as made to him by the Administrator concerned, rather making the notification under Section 4 of the Act of 1894.

13. They also submit, that in paragraph 19 of the verdict recorded by the Hon'ble Apex Court in case titled as ***Raj Kumar Gandhi versus Chandigarh Administration and others***, to which ***Civil Appeal Nos. 4265- 4266 of 2008*** becomes assigned, para whereofs, becomes extracted hereinafter, rather the Hon'ble Apex Court, has endorsed the ex-post facto approval made, to the award of the Collector, thus by the Advisor to the Administrator, thereby in terms of said paragraph, the above ex-post facto delegation of powers or the ex-post facto validation, as, made to the notification issued under Section 4 of the Act, which otherwise was signed by the Secretary Engineering, Engineering Department, U.T., Chandigarh, rather is also required to be validated.

“In view of the various decisions rendered in the same matter which have attained finality, it would not be appropriate to take a different view. Reliance has been placed by learned counsel for the appellant on the decisions of this Court in Surinder Singh Brar & Ors.v. Union of India & Ors. (2013) 1 SCC 403 and Gurbinder Kaur Brar &Anr. v. Union of India & Ors. (2013) 11 SCC 228. In both the cases, the matter was with respect to sanction for land acquisition which was not granted by the appropriate Government i.e., the Administrator. In the instant case, the Advisor had approved the award. Since there is ex-post facto approval and a large number of other matters have already been dismissed, it is not considered appropriate to make interference in this matter on the aforesaid ground, particularly when sanction for acquisition had been granted by the appropriate authority, is not in dispute in the instant matter.”

14. It is also submitted, before this Court, that thereby when in the above extracted paragraph of the verdict (supra), as made by the Hon'ble Apex Court, especially when readings thereof, make clear voicings, that thereby the Hon'ble Apex Court, rather had after dismissing the challenge made by the land losers concerned, to the dismissal of their writ petitions by the High Court, rather had validated the ex-post facto approval, as became made to

the acquisition proceedings. Consequently, thereby the instantly made ex-post facto also is strived to be validated.

Reasons for accepting the submissions made by the learned senior counsel for the petitioner and for rejecting the submissions made by the learned counsels for the respondent-U.T.

15. For the reasons to be assigned hereinafter, the submissions addressed before this Court by the learned senior counsel for the petitioner, are accepted, and, the submissions (supra) as made before this Court, by the learned counsel, for the respondents-U.T., are rejected.
 - 9 It is not in dispute that the notification issued under Section 4 of the Act of 1894, though became drawn to the satisfaction of the Administrator to the U.T., Chandigarh, but the said notification rather has been signatored by the Secretary Engineering, Engineering Department, U.T., Chandigarh. The above uncontested fact, but leads this Court, to employ thereons, the declaration of law, as made by the Hon'ble Apex Court in Surinder Singh Brar's case (supra), wherein, the Hon'ble Apex Court has tritely emphasized, that when the Administrator, thus is to effectively function, as "the Appropriate Government", besides when it is impermissible for him, to delegate, the function of "the Appropriate Government", thus to any subordinate to him. Resultantly, when in the said case, a notification, alike to the instant case, was thus issued in the name of the Administrator, but when it became signatored by the Advisor. In the face of the said admitted factum, the Hon'ble Apex Court had annulled, the further launched acquisition proceedings. In sequel, when alike to the notification at hand, thus a notification became challenged, and, also became annulled, thus on the plank of its also suffering from an alike defect, inasmuch as, the same becomes impermissibly signatored by the Secretary Engineering, Engineering Department, U.T., Chandigarh, through purported delegation of powers of "the Appropriate Government" by the Administrator, to the signatory thereof. In consequence, with the said likeness, this Court applies even to the instant notification, the expostulation of law, as, made in *Surinder Singh Brar's* case. Resultantly, this Court quashes, and, sets aside the said notification, besides also proceeds to consequentially set aside, and, annul the subsequent thereto embarked upon acquisition proceedings, which ultimately led to the making of the award, which also but necessarily is also required to be quashed, and, set aside.
16. However, since law is not required to be pleaded, as a ground for any valid onslaught, being made to the otherwise defectively launched acquisition

proceedings. Therefore, any non-pleadings or omissions in the raisings of the said otherwise raisable legal ground, but availed, upon, the expostulation of law, made by Hon'ble Apex Court in *Surinder Singh Brar's* case (supra), rather cannot but necessarily attract qua the said omission the relevant estopping principle. Therefore, the said submission is rejected.

17. The submission, as addressed before this Court by the learned senior counsel for the petitioner, as anchored upon the judgment made by the Hon'ble Apex Court in *Raj Kumar Gandhi's* case, also is of no avail to the learned counsel for the respondent-U.T. The reason for drawing the above conclusion, but stems from the factum, that the ex-post facto validation or ex-post facto sanction, rather made by the Administrator, to the discharging of delegated functions, by an officer subordinate to him, rather was an expost facto sanction, but only to the awards concerned, but evidently was not in respect of the defectively launched acquisition proceedings, as, comprised in the making of a defective notification under Section 4 of the Act of 1894.

¹⁰ Be that as it may, in paragraph 19 of the verdict (supra), the Hon'ble Apex Court, has not departed from the expostulation of law, as made in *Surinder Singh Brar's* case (supra), nor has set at naught, the trite expostulation, as made therein, insofar as relating to the issuance of a notification under Section 4 of the Act of 1894, thus by an officer subordinate to the Administrator, through the latter making impermissible delegation of apposite functions to him. Moreover, for reasons (supra), the invalidation to such impermissible delegation(s), as, made by the Administrator to the officer subordinate to him, in the latter making a notification under Section 4 of the Act of 1894, did lead, the Hon'ble Apex Court, to thereby annul the launched acquisition proceedings. Therefore, when, as stated (supra), this Court has aligned the facts therein with the facts at hand, and, which but obviously are almost similar. In consequence, when no departure is made by the Hon'ble Apex Court, in *Raj Kumar Gandhi's* case, thus to the expostulation (supra), as, made in *Surinder Singh Brar's* case (supra). Therefore, the therein expost facto sanction granted by the Administrator, but only to the awards, and, not to the issuance of the apposite notification, does not thereby constrain this Court, to yet conclude that the verdict (supra), does also overcome the defectively launched acquisition proceedings, through the makings in the mode (supra), thus of a defective notification under Section 4 of the Act of 1894.

18. Furthermore, since the ex-post facto approval became granted post the coming into force of the Act of 2013, besides, when the Act of 1894 became repealed, and, thus lost its efficacy for all relevant purposes. Therefore, thereby too, the ex-post facto validation, as made on 7.12.2015, thereby approving the impermissible exercising of the delegated powers by the apposite signatory, but necessarily, does not overcome nor erases, the initially occurring defect in the notification issued under Section 4 of the Act of 1894.
19. Even otherwise, the application of mind to the necessity of launching of acquisition proceedings, was required, as mandated in Surinder Singh Brar's case (supra), to be thus made by the Administrator concerned, whereas, when at the relevant stage, no application of mind was made, by the Administrator concerned, to the necessity of launching of acquisition proceedings, thereby lack of application of mind by the Administrator concerned, thus at the relevant stage, rather his making an ex-post facto application of mind, thereby also the said ex-post facto application of mind, is of no legal worth. Conspicuously also, when the Administrator concerned, who made the ex-post facto delegation or ex-post facto validation but on 7.12.2015, may be not the one, nor is shown to be the same Administrator in whose name the apposite notification became initially drawn. Therefore, too, there is no personal application of mind by the Administrator concerned, who made the relevant ex-post facto delegation or the ex-post facto validation, thus in the year 2015 to the necessity of the launching of the acquisition proceedings in the year 2000, whereas, personal application of mind, as mandated in the Surinder Singh Brar's case (supra) is a prima donna necessity, rather for validating the issuance of the apposite notification. Predominantly also when the said ex-post facto validation is made to the statutory provisions, carried in the apposite repealed Act.
22. Moreover for the further reason to be assigned hereafter, there cannot be any retrospective assigning of validation to the initially defectively issued notification under Section 4 of the Act of 1894.
- ¹³ The prime reason for making the above inference stems, from the factum, that it is a cardinal principle of construction, that every statute is prima facie prospective, unless it is expressly or by necessary implication thus assigned a retrospective effect. Therefore, unless there are words in the statute, sufficient to show the intention of the legislature, to affect the existing rights,

thereby it is deemed to be prospective only. Moreover, presumption against retrospectivity is also to be rebutted by necessary implication, inasmuch as, especially when a new law is made.

23. Therefore, since the initially defectively made notification under Section 4 of the Act of 1894, which has assigned untenable validity through the making of the above office noting, is made subsequent to the coming into force of the Act of 2013, thereby the rights against the vesting of the acquired lands, thus in the land losers concerned, would but become gravely prejudiced. Moreover, when the legally impaired notification, as made under the earlier relevant statute, which however, has been repealed on the coming into force of the Act of 2013, thereby too, there cannot be any retroactivity or retrospective assignments of validity, thus to the notifications (supra), as became issued under the relevant repealed Act, as thereby a disfunctional or a dead statute, would rather assume untenable force, and, revitality.

Final order

24. Accordingly, this Court finds merit in the instant petition, and, is constrained to allow it. Consequently, the instant petition is allowed. The impugned notifications as well as the impugned award, are quashed, and, set aside.

¹⁴ Since Section 24(2) of 2013 Act itself, in so many words contemplates, the possibility of re-acquisition of the land/property, in respect whereof the previous acquisition has lapsed. Therefore, it is necessary to direct the petitioner to maintain status quo re: creation of third party rights; to keep the land/property free from all types of encumbrances, and, not to change the nature of land/property for a period of one year, so that meanwhile, the respondent-State may, if such property is needed for a “public purpose”, again acquire it. Such a direction is necessitated also for the reason that in numerous cases State or its agencies have taken possession in part and development works have been executed except over that land/property in litigation. Those development works ought to be completed in public interest and the only consequence of lapsing of previous acquisition, mostly due to fault of the Government Officers/ Officials, would be that the owners of such land/property will be entitled to compensation and other benefits admissible under the 2013 Act.

25. The pending application(s), if any, is/are also disposed of.

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