IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Reserved on: 03.10.2023
Pronounced on: 10.10.2023

1. **CWP-8881-1989 (O & M)**

LT. COL. INDER SINGH KALAAN (DECEASED) THROUGH LRs. AND OTHERS .....Petitioners

Versus

STATE OF HARYANA AND ORS. ....Respondents

2. **CWP-8883-1989 (O & M)**

RAJPUT SATHANIYA SABHA .....Petitioner

Versus

STATE OF HARYANA AND ORS. ....Respondents

3. **CWP-13086-1990 (O & M)**

J.R. CHHABRA, IPS (Retd.) .....Petitioner

Versus

STATE OF HARYANA AND ORS. ....Respondents

4. **CWP-15934-1990 (O & M)**

SMT. VEENA BINDAL (DECEASED) THROUGH LRs. and OTHERS .....Petitioners

Versus

STATE OF HARYANA AND ORS. ....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI

Argued by: Mr. Keshav Pratap Singh, Advocate with
Mr. Vishal Singh, Advocate and
Mr. D.S.Walia, Advocate
for the petitioner(s)
(in CWP-8881-1989 & CWP-8883-1989).

Mr. Amit Jain, Advocate
for the petitioner (in CWP-13086-1990).

Mr. Nandan Jindal, Advocate and
Mr. Raj Kumar Rathore, Advocate
for the petitioner(s) (in CWP-15934-1990).

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Saurabh Mago, DAG, Haryana.

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SURESHWAR THAKUR, J.

1. Since all the writ petition(s) arise from common theretos notification(s) issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter for short called as the 'Act of 1894', besides also arise from common theretos declaration(s) issued under Section 6 of the 'Act of 1894'. Therefore, all the writ petition(s) are amenable for becoming decided through a common verdict.

2. The said notification(s) became respectively issued on 09.05.1988 and on 04.05.1989.

3. Be that as it may, the facts of each of the writ petition(s) (supra) are yet required to be separately delineated.

Facts of CWP-8881-1989

4. The petitioners are owners and in possession of land bearing khasra Nos. 1869/1, 1870, 1871 and 1872, measuring about three and half acres situated with the Municipal limits of the town of Gurgaon. The land owned by the petitioners is sought to be acquired through the impugned notification(s). It is averred that the notification(s) have been issued without application of mind and

without considering the objections filed by the petitioners. The act of the respondent is alleged to be mala fide and the notification(s) are alleged to become issued only with a view to make profits and that there is no genuine purpose for making the acquisition(s) of the writ lands.

Facts of CWP-8883-1989

5. The petitioner-Sabha is the owner in possession of the land comprised in Khasra Nos. 1874 (1-8), 1875 (1-3), 1876 (0-16) and 1877 (3-0) total measuring 6 bighas 12 biswas pukhta. On the said land, there is an Educational Institution alongwith a Boarding House of the petitioner-Sabha, whereins education is imparted to more than 200 students. The name of the school is Maharana Memorial Public School (English Medium).

6. The respondents without applying their mind and without even considering their objections rather had proceeded to acquire the petition lands, through the makings of the impugned notification(s). The act of the respondent is alleged to be mala fide and the notification(s) are alleged to become issued only with a view to make profits and that there is no genuine purpose for making the acquisition(s) of the writ lands.

Facts of CWP-13086-1990

7. The petitioner purchased 1 bigha 3 biswas of land comprised in khasra Nos. 1869, Hadbast No. 55, in village Gurgaon, Tehsil and District Gurgaon vide registered sale deed dated 20.10.1967. On the said lands, the petitioner had constructed a residential house and a small scale industry.

8. It is averred that the notification(s) have been issued

without application of mind and without considering the objections filed by the petitioners. The act of the respondent is alleged to be mala fide and the notification(s) are alleged to become issued only with a view to make profits and that there is no genuine purpose for making the acquisition(s) of the writ lands.

9. It is apt to mention here that the petitioner herein rather sold the land in dispute to M/s City Crown Hotels and Resorts Pvt. Ltd., thus during the pendency of the instant writ petition through executing sale deed dated 23.01.2008. The said alienee lis pendens has also filed a civil miscellaneous application seeking his being substituted in place of the original petitioner. Through an order drawn, on 03.10.2023, by this Court, the said application is allowed, as the said alienee *lis pendens* is both a just and appropriate party rather for enabling this Court to make an effective adjudication upon the entire gamut of the *lis*.

Facts of CWP-15934-1990

10. The petitioners are the owners in possession of the land included in Khasra Nos. 4257, 4258, 4259, 1881, 1873, 1880, measuring about 32156 sq. yards, situated within the Municipal Limits of Gurgaon. The petitioners raised construction(s) over the said lands. However, the Municipal Committee, Gurgaon wanted to demolish the said construction(s). As such, the petitioners filed a suit claiming therein relief of declaration besides relief of prohibitory injunction, thus for restraining the Municipal Committee, from demolishing the said raised construction(s). However, the said civil suit became dismissed. Moreover, a civil appeal against the same vide judgment and decree dated 24.04.1989, thus became allowed by the Additional District and Sessions Judge concerned.

11. Feeling aggrieved, the Municipal Committee, Gurgaon filed a Regular Second Appeal in this Court. However, the same was also dismissed.

12. Subsequently, through makings of the impugned notification(s), thus lawful actions became launched, hence for acquiring the petition lands. It is averred that the acquisition is bad in law, inasmuch as, the acquiring authority in issuing the impugned notification(s) rather not adhering to the provisions as contemplated in the 'Act of 1894'.

13. Moreover, it is also pleaded that the acquisition of a massive constructed area, through the making of the impugned notification(s) per-se exemplifies non application of mind rather by the acquiring authority.

Factual Background

14. The writ petition(s) (supra) were initially allowed through a verdict made on 20.05.2014. The reason for allowing the writ petition(s) on the date (supra), stemmed from this Court, assigning to the land losers concerned, the benefit of 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'). The said relief was planked upon a decision made by the Hon'ble Apex Court in case titled as ***"Pune Municipal Corporation and Others v/s. Harakchand Misirimal Solanki and Others" (2014 (3) SCC 183)***. The aggrieved therefrom State of Haryana made a challenge thereto, through instituting SLP (C) No. 30577-30580 of 2015 (converted into Civil Appeal No. 13 of 2023), thus before the Hon'ble Apex Court.

15. The Hon'ble Apex Court, through its judgment made thereons, on 02.01.2023, reversed the decision (supra), as became made by this Court. The decision (supra) of the Hon'ble Apex Court became premised, upon, a Constitutional Bench verdict rendered in case titled as ***"Indore Development Authority v/s Manoharlal and Ors.", reported in (2020)8 SCC 129,*** whereby the judgment (supra), as became relied upon by this Court, thus to allow the writ petition(s) (supra), rather became overruled.

16. Nonetheless, the Hon'ble Apex Court yet remanded the writ petition(s) (supra) to this Court for deciding the same afresh on merits except the application of Section 24(2) of the 'Act of 2013', vis-a-vis the acquired lands.

17. Therefore, this Court is not required to be either entering into the realm, thus relating to the application or otherwise of the provisions of Section 24(2) of the 'Act of 2013' vis-a-vis the subject matter lands nor this Court is required to be making any adjudication thereons.

Grounds of challenge in writ petition(s) (supra).

18. The challenge as becomes reared to the drawing of acquisition proceedings vis-a-vis the disputed lands are inter-alia founded on the premise :

(i) That the writ lands are situated in a fully developed locality surrounded by factories, residential houses, commercial complex and schools.

(ii) The earlier notification issued on 26.12.1976 under Section 4 of the 'Act of 1894', though included the subject matter lands, yet the said notification was allowed to lapse, thereby the re-issuance of

the instant notification, vis-a-vis, the subject matter lands, thus is manifestative of colorable exercise of the powers of eminent domain rather by the respondent.

(iii) The subject matter lands rather falling within 1000 yards restriction from the crest of the outer parapet of explosive area of Air Force Station, and with the apposite applicable thereto restriction(s), thus relating to use and enjoyment of the lands concerned, when stem from notification(s) issued under Section 3 read with Section 7 of the Indian Works of Defence Act, 1903 (hereinafter for short called as 'the Defence Act'). Therefore, it is contended that if the acquisition proceedings are still launched, vis-a-vis, the subject matter lands, thereby too, with the said restriction(s) operating in the zone concerned, thus would also disable the acquiring authority from fructifying the public purpose. Resultantly the launching of acquisition proceedings vis-a-vis the subject matter lands rather falling within the restricted zone, but also is personificatory of lack of application of mind, to the necessity of the subject matter lands rather being put to acquisition. As a natural corollary, it is argued that the subject matter lands are amenable for becoming released from acquisition.

(iv) Their existing construction(s) over the land prior to issuance of a notification under Section 4 of the 'Act of 1894', therefore, the same should have been exempted from acquisition.

(v) That the subject matter lands fall outside the zone of the layout plans and therefore they are required to be released from acquisition.

(vi) The respondents concerned practicing invidious discrimination, inasmuch as, similarly situated other land owners

estates rather being left out from the acquisition proceedings, whereas, the subject matter lands becoming put to acquisition.

(vii) No personal hearing being granted to the petitioners at the time of hearing of objection(s) as became filed under Section 5A of the 'Act of 1894', besides no detailed order becoming passed thereons.

(viii) The acquisition provisions have not been carried out in accordance with the provisions of the 'Act of 1894', as no proper munadi of Section 4 was conducted nor the substance of the notification became published rather with utmost promptitude, thus in the newspaper(s) concerned.

Contentions of the learned counsel for the petitioner(s)

19. The learned counsel appearing for the petitioner(s) in making an argument, that with evidently the subject matter lands, falling within the restrictive zone, thereby their utilizations, thus by the acquiring authority, rather for theirs purportedly facilitating the public project, but would not leverage their facilitations vis-a-vis the public purpose concerned, thus has premised the same, upon a judgment, made by this Court in case titled as ***'B.B.Yadav Vs. State of Haryana and Others reported in 2007 (3) Land L.R. 585.*** The challenge made in the writ petition(s) (supra) was rested on a premise similar to the one which becomes addressed by the learned counsel for the petitioner(s).

20. In paragraph No. 16 and 17 of the verdict (supra), paras whereof becomes extracted hereinafter, this Court had opined, that the acquiring authority, in view of the said restriction(s), rather cannot facilitate the public purpose, reiteratedly in view of the subject matter lands but falling within the restricted zone. Therefore, this Court

concluded that the launching of acquisition proceedings vis-a-vis thereins subject matter lands, thus being imbued with a vice, inasmuch as, the power of eminent domain becoming colourably exercised.

> *16. We have perused the aforementioned provision carefully and are of the considered opinion that the State of Haryana cannot make use of the land for residential and commercial purposes in view of the restrictions imposed under Section 3 read with Section 7(b) of the Indian Works Defence Act, 1903. No construction activity would be carried out within 900 meters from the crest of the outer parapet of Explosive Area of 54, ASP, Air Force Station, Gurgaon. The State has not denied that a part of the acquired land is not within the aforementioned restricted zone. The proviso to Section 7 also shows that it is only the huts, fences or other constructions of wood or other material which can easily be destroyed or removed that can be allowed to be maintained and erected.*
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> *17. In the present case, as the residential, commercial and institutional purpose could not be achieved because of the restrictions imposed by Section 3 sub-section 7 on the part of the land acquired therefore, we are of the considered opinion that the acquisition of the land of the petitioner in the present case is a colourable exercise of power.*

21. Therefore, in the operative part of the judgment (supra), the challenge as became made, to the launching of acquisition proceedings in case (supra), thus was declared to be a validly raised challenge.

22. The above made opinion by this Court, though emanates from a Bench strength of this Court, which is co-equal, to the Bench strength of this Court, thereby unless for valid reasons, it requires becoming departed from, thereby it has binding and conclusive effect also upon this Court.

23. Be that as it may, since the exception to the principle, that the ratio decidendi (supra), as becomes expostulated in the verdict (supra), especially when the Judge Bench strength of the Court which rendered the verdict (supra), thus is co-equal to the extant Bench strength, whereby the verdict (supra) is required to be revered, rather is encapsulated, in the fine principle that departings therefrom, but can be made, in case there are sound reasons, thus for making such departures therefrom.

24. Consequently, this Court for hereinafter assigned reasons, deems it fit and appropriate to depart from the ratio decidendi (supra), as becomes enunciated in the verdict (supra), as becomes relied upon by the learned counsel for the petitioner(s).

Reasons for not applying the ratio decidendi of the verdict rendered in *B.B.Yadav case (supra) vis-a-vis* the case in hand.

25. The stark distinguishing fact as becomes unfolded, inter-se the facts thereins vis-a-vis the facts at hand, is embodied in the factum, that the petitioner therein, was a recipient of a Gallantry Award and but in lieu of his valor on the battle field, he had been assigned the petition lands in the petition (supra). Significantly when the petitioner herein (petitioner no. 1 in CWP-8881-1989), though also is a recipient of a Gallantry Award, but in contradistinction to the petitioner in the writ petition (supra), he has not been allotted the petition lands, in lieu of the said honours becoming conferred upon him. Therefore, the emergence(s) of the stark distinctivity (supra) inter-se the facts germane to the verdict (supra) with the facts at hand, does thereby coax this Court to rather not apply the expostulations of law (supra), as carried in the verdict (supra), thus to the facts at hand.

Reasons for rejecting the submissions and averments made in the writ petition(s).

26. The ire issue which makes its stark emergence(s), is that, whether in the light of the existence of the subject matter lands, thus in the vicinity of a military zone, and when thereby, thus in terms of the relevant statutory provisions, as become engrafted in 'the Defence Act', rather restriction(s) become echoed vis-a-vis the utilization and enjoyment of the petition lands, whether thus the power of eminent domain, is yet required to be also extending or being exerciseable qua such restrictive zones.

27. If the answer to the above issue is in the affirmative thereby this Court would proceed to negate the writ relief(s).

28. For the reasons to be assigned hereinafter, the mere existence of the subject matter lands, in the militarized zone, whereins there may be statutory restriction(s), vis-a-vis, the utilization of the subject matter lands, thus for the relevant public purpose, yet does not thereby restrict the power of eminent domain, thus vested in the acquiring authority, besides nor in its exercising by the acquiring authority, rather would invite any conclusion, from this Court that even upon its becoming potentialized, qua thereby the said power being colourably exercised.

29. This Court in a decision rendered on 31.10.2013, in writ petition bearing No. ***CWP-13543-1990***, titled as ***'Krishan Chand Jain and Others Versus State of Haryana and Ors.'*** has while dealing with the above conundrum made reliance, upon, two decisions rendered respectively in [***Shanti Sports Club and Anr. Vs. Union of India and Ors. 2009 (15) SCC 705*** *and* ***CWP Nos. 15171-18679 of 2010 [Suresh***

Goel and Ors. Vs. Union of India and Ors.] and had thereins proceeded to unequivocally hold, that the provisions of 'the Defence Act', are required to be assigned over-riding effect upon local laws or vis-a-vis executive policies, and that other private interests are required to be made subordinate or subservient to the national security interests as embedded in the Defence Act.

30. Though this Court had thereby assigned an over-riding effect to the Act (supra), vis-a-vis the local laws or to the executive policies, but this Court yet had not made, the power of eminent domain, as exercised by the respondent, through its launching the acquisition proceedings under the 'Act of 1894', rather subject to or subservient to the Act (supra). Therefore, the existence of the subject matter lands, in the vicinity or within the militarized zone or in an area of extreme strategic military importance, thus would not restrict the power of eminent domain, as, vested in the acquiring authority. However, in the said exercisings of the power of eminent domain, the acquiring authority is also to ensure, that the lands as become brought to acquisition rather not compromising with the national security and safety.

31. In the above regard, this Court had declared, that within the said sensitive zone, the subject matter lands are to be kept free from all types of construction(s), besides the subject matter lands are to be developed as an open green area, as thereby the national security and safety would thus, rather not become compromised.

32. Since this Court would make alike therewith direction(s). Therefore, any argument erected on the plank of the verdict (supra) i.e. ***B.B.Yadav's case,*** *as,* made by this Court which also but for the above

reasons is distinguishable from the facts at hand, rather is not amenable for becoming accepted.

33. Even otherwise, the construction(s) raised by the private individuals, thus within the militarized zone or sensitive zones, though become declared to become acquired through a notification issued in terms of the 'Act of 1894', but yet such acquired construction(s) rather are to be treated on a principle different, to the ones, as would govern the acquisition of titles over unacquired construction(s), thus by private individuals. Assuredly if a private individual raises unacquired construction(s) within the declared sensitive zone, thereby he would invite the wrath of the apposite statutory provisions as embodied in 'the Defence Act'. Such privately raised unacquired construction(s) within the militarized zones or zones of strategic military importance, rather may also require theirs becoming lawfully demolished. Moreover, on acquisition(s) of construction(s) raised, thus in the militarized zones, thereby, they would require in terms of expostulations (supra), as made by this Court, qua theirs being lawfully demolished, so that on such acquired lands, rather green areas become maintained, for thereby thus national security becoming not compromised.

34. Since thereby the power of eminent domain, to acquire lands falling within restrictive zones, thus would become rationalized and/or the acquired lands rather thereby would become aligned with the national security interests, whereas, in the event of unacquired construction(s) becoming raised by private individuals, in the restricted areas, thereby such construction(s) would definitely jeopardize the national security and safety. Therefore, too, on the above plank, the acquisition(s) made by the acquiring authority, thus of lands falling in

the sensitive zones, rather would become legitimized.

35. Since the power of eminent domain also requires compensation becoming determined. Therefore, only on compensation becoming determined, but also in respect of lawfully raised acquired construction(s), rather also within the sensitive zones, thus would assign sanctity to the exercising of power of eminent domain, thus by the acquiring authority, and/or, thereby acquisition thereofs, but would not be construable to be expropriatory.

36. Therefore, it has to be determined from the evident facts, whether on the subject matter lands, the apposite construction(s) were legal or were authorized, inasmuch as, such construction(s) being raised prior to the coming into force of 'the Defence Act' and concomitantly whether the land-losers concerned, were respectively entitled or did not become entitled, qua compensations becoming determined qua such lands/construction(s).

37. In the above regard, the objections raised under Section 5A of the 'Act of 1894' by each of the petitioner(s) in the writ petition(s) (supra) thus in respect of the acquired lands and also the recommendations of the Land Acquisition Collector, but are required to be extracted hereinafter.

CWP-8881-1989

Sr. No.	Petitioner	Objections filed under Section 5-A of the 'Act of 1894'	Recommendations of Land Acquisition Collector
1.	Lt. Col. Inder Singh Kalaan	Petitioner prayed for release of land	**Land was found to be vacant at site** and therefore, it was recommended for acquisition.

2.	Raj Kalaan	Petitioner claimed to have constructed houses, shops and quarters for servants on the land in question prior to Section 4 notification	As per report the construction was found on land of **B Class Category.** **The construction was found prior to Sector 4 notification.** However, the same was found to be against the sector planning and hence was recommended for acquisition.
3.	Sanjay Kalaan	Petitioner claimed to have constructed shops and clinic before Sector 4 notification and prayed for releasing the same.	As per report the construction was found on land of **B Class Category.** **The construction was found to have been raised unauthorizedly** and was recommended for acquisition.
4.	Surekha Arora	Petitioner prayed for release of land	**Land was found to be vacant at site** and therefore, it was recommended for acquisition.
5.	Rashmi Gahlaut	Petitioner prayed for release of land	**Land was found to be vacant at site** and therefore, it was recommended for acquisition.

CWP-8883-1989

Sr. No.	Petitioner	Objections filed under Section 5-A of the 'Act of 1894'	Recommendations of Land Acquisition Collector
1.	Rajput Sathaniay Sabha	Petitioner claimed that since a school has been constructed wherein classes takes place and play ground has been constructed for children, therefore, same be exempted from acquisition proceedings.	After conducting survey, the construction was found on the land in question, whereupon **9 rooms and one hall was found to be constructed and rest of the land was found to be vacant.** Since the land in question affected the planning of sector, accordingly it was recommended for acquisition.

CWP-13086-1990

Sr. No.	Petitioner	Objections filed under Section 5-A of the 'Act of 1894'	Recommendations of Land Acquisition Collector
1.	J.R.Chhabra, IPS (Retd.)	Petitioner claimed that there exists a residential house, factory and labour quarters, therefore, same be released from acquisition proceedings.	After conducting survey upon the acquired land, **11 rooms of B Class construction were found in existence.** However, the said construction was against the planning of the Sector and accordingly it was recommended for acquisition.

CWP-15934-1990

Sr. No.	Petitioner	Objections filed under Section 5-A of the 'Act of 1894'	Recommendations of Land Acquisition Collector
1.	Smt. Veena Bindal and Others	Petitioners claimed that the land in question was being developed by the petitioners, therefore, the same be left out from the acquisition proceedings.	Survey was carried out and it was found that the construction was in existence on the land in question of **which 5 rooms and 2 chambers 4 storied were constructed before Section 4 notification and rest of the construction was after Section 4 notification.** Since the land falls in commercial sector and the construction raised was against the planning, accordingly it was recommended for acquisition.

38. A reading of the above reveals, that construction(s) were found on some part of the acquired lands, whereas, sizeable portion of the acquired lands was found to be vacant. Even otherwise, the construction(s) rather are stated by the Land Acquisition Officer, to be against the planning of the sector concerned, and, further that the said

construction(s) being un-authorized. Noticeably, the said fact becomes recorded in the recommendation(s) of the LAC, while his deciding the objections as filed under Section 5-A of the 'Act of 1894'.

39. Therefore, qua the acquired lands, which were evidently vacant at the time of their lawful acquisition(s) being made and whereafters' construction(s) became raised thereons, thereby the land-losers concerned would not become entitled to compensation, thus for those construction(s) which became evidently raised post the launching of lawful acquisition proceedings. Moreover, the said construction(s) would be un-authorized and would become subject to theirs becoming lawfully demolished.

40. Nonetheless, if the relevant construction(s) which were evidently raised prior to the launching of the acquisition proceedings, thereupon, such construction(s) are amenable for determination of compensation. However, subject to such construction(s) being raised but prior to the coming into force of 'the Defence Act'.

41. Moreover, if the said construction(s) exist within the militarized zone or in the restricted zone, thereupon, the acquiring authority may not in terms of the verdict (supra) raise construction(s) thereons, but shall maintain it as a green area, so that thereby the national interests and security, thus do not become compromised.

Further contention(s) of the learned counsel for the petitioner(s) and reasons for rejecting the same.

42. The learned counsel for the petitioner(s) have argued, that since the award has been pronounced, beyond a period of two years since the making of a declaration under Section 6 of the 'Act of 1894', therefore, the award is vitiated.

43. However, the above argument is merit-less, as evidently, through orders made on 14.07.1989 (in CWP-8881-1989 and CWP-8883-1989), on 11.12.1990 (in CWP-15934-1990) and on 10.10.1990 (in 13086-1990), this Court had stayed the further proceedings, as well as, obviously had restrained the respondent concerned from passing an award, thereby the acquiring authority became precluded to make an award. The period within which the order (supra) remained in operation, is to be, thus within the domain of the explanation carried in Section 11-A of the 'Act of 1894', provisions whereof are extracted hereinafter, rather excluded from the ordained period of two years hence commencing from the date of making of a declaration under Section 6 of the 'Act of 1894', thus for the makings of the apposite computations. Therefore, after excluding the said period, rather for making the relevant computations, thereby the rendition of the award, cannot be construed to be, thus made beyond the period of two years, post the issuance of declaration of Section 6 of the 'Act of 1894' nor thereby the award is vitiated.

(Provisions of Section 11-A of the 'Act of 1894')

> *[**11A. Period within which an award shall be made**. - The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceeding for the acquisition of the land shall lapse:*
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> *Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984), the award shall be made within a period of two years from such commencement.*

> ***Explanation - In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.]***

44. Moreover, in case no award is pronounced uptil today and the non passing of the award is a sequel of orders of stay becoming granted by this Court, thereby too, in tandem with the above assigned reasons, the acquiring authority may proceed to make lawful award both in respect of vacant lands besides in respect of the acquired construction(s), but bearing in mind as to whether such construction(s) were raised post or prior to the making of notification under Section 4 of the 'Act of 1894' besides bearing in mind that such construction(s) were raised prior to coming into force of 'the Defence Act'.

45. In adopting the above view, this Court finds support from a verdict made by the Hon'ble Supreme Court, in case titled as ***'The State of Maharashtra and Others Vs. M/s Moti Ratan Estate and Another'*** ; ***2019 AIR (SC) 4149***, whereins, in paragraphs no. 7.5 and 7.8 thereofs, paras whereof become extracted, it has been enunciated, that the period during which there is a stay over the action or proceedings by a Court of law, thereupon, that period has to be excluded in computing the statutory period of two years in passing of an award under Section 11 of the 'Act of 1894'.

> *7.5 On considering catena of decisions of this Court, referred to hereinabove, the following propositions of law can be culled out:*
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> *(i) when the scheme of the acquisition is one, interim stay granted in respect of one pocket of land would operate even with respect to other pockets of land and in such a*

situation the authorities are justified in not proceeding with the acquisition proceedings and therefore the acquisition proceedings would not lapse;

(ii) interim order of stay granted in respect of one of the land owners would have a complete restraint for the authorities to proceed further;

(iii) when the stay has been granted in one matter and where the scheme was one, the authorities were justified to stay their hands;

(iv) the extended meaning of the words "stay of the action or proceedings under Section 11A of the Act" would mean that any interim effective order passed by the court which may come in the way of the authorities to proceed further;

(v) Explanation to Section 11A of the Act is in the widest possible terms and there is no warrant for limiting the action or proceedings, referred to in the explanation, to actions or proceedings preceding the making of the award under Section 11 of the Act and therefore the period of injunction obtained by the land holders staying the acquisition and authorities from taking possession of the land has to be excluded in computing the period of two years.

7.8 In meeting out a complex situation, the conclusion which emerges is that if there is any stay over the action or proceeding by a Court of law, in one or the other matter arising from the selfsame acquisition proceedings in reference to Section 4 followed with Section 6 of the Act, the authorities are said to be justified in the given facts and circumstances to stay their hands and await the decision of the Court and ***such a period during which there is a stay over the action or proceeding by a Court of law in a matter, that has to be excluded for all practical purposes, in computing the statutory period of two years in passing of an award under Section 11 of the Act.***

46. Further support is derived from a judgment made by the

Hon'ble Supreme Court in case titled as ***'Faizabad-Ayodhya Development Authority, Faizabad Versus Dr. Rajesh Kumar Pandey and Others ; 2022 Live Law (SC) 504,*** whereins, the relevant expostulations of law have been made in paragraphs No. 10.12 and 10.13, 17 (i) thereofs, paras whereof are extracted hereinafter.

> *10.12 Thus, it is necessary to dwell into the reasons as to why no award has been made. As discussed aforesaid, if there is an order of restraint on the Collector or on the acquiring authority and as a result of which, the Collector or the Land Acquisition Officer is not in a position to make an award for reasons beyond his control and in compliance of the interim order granted by a court of law at the instance of the land owner or any other person who may have questioned the acquisition, the period during which the interim order has operated has to be reckoned and if on the date of enforcement of Act, 2013 i.e., 01.01.2014, no award has been made owing to the operation of such an interim order granted by a Court in favour of the land owner, then the provisions of the 2013, Act cannot straightaway be made applicable in the determination of the compensation. This is because, but for the operation of the interim order, the award could have been made under the provisions of the Act, 1894 until 31.12.2013 and then provisions of Act, 1894 would have applied as per clause (b) of sub-section 1 of Section 24. But on the other hand, owing to the operation of the interim order granted by a Court in favour of land owner, the award would not have been made as on 01.01.2014 when the Act, 2013 was enforced.*
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> *10.13 In our view in such a situation the acquiring authority cannot be burdened with the determination of compensation under the provisions of the Act, 2013. In other words, the land owner cannot, on the one hand, assail the acquisition and seek interim orders restraining*

> *the authorities from proceeding further in the acquisition, and on the other hand, contend that since no award has been made under Section 11 of Act, 1894 on 01.01.2014, the provisions of the Act, 2013 should be made applicable in determining the compensation.*
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> *17. In view of the above and for the reasons stated above, it is observed as under:-*
>
> *(i) It is concluded and held that in a case where on the date of commencement of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, no award has been declared under Section 11 of the Act, 1894, due to the pendency of any proceedings and/or the interim stay granted by the Court, such landowners shall not be entitled to the compensation under Section 24(1) of the Act, 2013 and they shall be entitled to the compensation only under the Act, 1894.*

47. The import of the above expostulations, is that, the non rendition of awards under the 'Act of 1894', when arises from stay orders becoming granted by the Courts of Law, thereby the launching of acquisition proceedings under the 'Act of 1894', thus would not become lapsed, rather the Collector concerned, may in terms of Section 11 of the 'Act of 1894' thus make an award.

48. Therefore, this Court concludes that in respect of those tracts of lands qua which no award has been passed, but owing to the operation of the apposite orders of stay, thus becoming granted by this Court. Thus, the Collector concerned, may in terms of Section 11 of the 'Act of 1894' thus proceed to make the awards.

Contention qua their being a bar against the re-drawing of the acquisition proceedings by the acquiring authority despite prior theretos the acquiring authority de-notifying them, and, reasons for rejecting the same.

49. The learned counsel for the petitioner(s) also argue, that since earlier the acquisition proceedings vis-a-vis the subject matter lands rather became dropped, thereby there was a complete bar, against the re-drawing of the acquisition proceedings vis-a-vis the writ lands.

50. The reason for rejecting the above argument becomes rested upon a verdict made by the Hon'ble Apex Court in case titled as ***State of Haryana Vs. M/S Vinod Oil and General Mills and Another 2015 (4) SCC 410,*** whereins, in the relevant paragraph thereof, para whereof is extracted hereinafter, the Hon'ble Apex Court has declared, that the earlier made de-acquisition notification of the subject matter lands, thus does not preclude, the acquiring authority, through its exercising the power of eminent domain, from re-drawing a fresh notification, thus for re-subjecting the writ lands to fresh acquisition(s). Consequently, if the earlier launched acquisition proceedings were dropped by the acquiring authority, thereby the latter was not precluded to re-draw or re-launch the acquisition proceedings vis-a-vis the writ lands.

> *"15. As regards contention of the learned counsel for the respondents that the land once released cannot be subsequently reacquired, in our view, there is no bar to the subsequent acquisition of the land nor is there a bar for issuance of successive notification for acquisition of the land. It would not be right to contend that because the land was already released, it cannot be acquired by subsequent notification. If it is to be held that land already released cannot be reacquired, an anomalous situation may arise that the land cannot be acquired for all time to come even if it is genuinely required. It is not in dispute that the earlier notification is issued by the State for the development of the land for residential and commercial*

> *purposes which is same purpose for subsequent acquisition as well. When the State felt that the land sought to be acquired cannot be adjusted in the development of the Plan, there is no bar for issuance of notification for acquisition of the land."*

Contention as to grant of permission for change of land use/license/NOC, would grant immunity to the said land for all times to come, from its acquisition by the State, and, reasons for rejecting the same.

51. Further, this Court in a verdict made on 29.07.2022, upon, **CWP-2734-2007**, titled as ***Laxmi Educational Society, Manesar and Others Vs. State of Haryana and others,*** considered the proposition as to whether the according of permission(s), thus for change of land use/license/NOC, rather would grant immunity to the land-losers, and/or whether thereby the land-losers rather can claim an indefeasible right against the launching of acquisition proceedings in respect of the said lands, even if it is required for facilitating the public purpose.

52. This Court after dismissing the said petition, thus had in the relevant paragraph thereof, rather held that **any permission for change of land use/license/NOC/any other permission granted once, would not grant any immunity to the said land for all times to come, from its acquisition by the State, if it is required for the "Public Purpose" as the private interest will have to make way for the public interest, on to the touch stone of regard for the public interest is the higher law.** Therefore, also on the above ground, rather the petitioner(s) are not entitled for release(s) of the acquired lands.

53. Further, the respondents in their reply-affidavits, in all the writ petition(s) (supra), as well as in their arguments, firmly contend

that the writ land(s), were acquired for furthering the requisite public purpose and that the petition lands are an integral component of the layout plans relating to the completion of the relevant public purpose.

54. Since predominance is to be assigned to the public purpose than to individual interests of the estate holders concerned. Therefore, in doing so, this Court refrains to allow the petitioner(s) claim for the acquired lands becoming released from acquisition.

55. 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 discrimination(s) vis-a-vis the land losers concerned. 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.

The petitioner (in CWP-13086-1990) being a subsequent purchaser has no locus standi to challenge the acquisition proceedings.

56. Furthermore, (in CWP-13086-1990), it has been revealed that the petitioner concerned, has sold the disputed lands, rather during the pendency of the extant writ petition, to M/s City Crown Hotels and Resorts Pvt. Ltd., who has filed a miscellaneous application bearing no. CM-650-CWP-2012, for its becoming substituted in its place. The said application is allowed through an order made by this Court on 03.10.2023. It is but evident, that the said sale deed, thus became

executed, on 23.01.2008, i.e. when the matter was pending before this Court. Therefore, neither the original owner/petitioner nor the subsequent purchaser, thus hold any *locus standi,* to challenge the acquisition proceedings, given the said deed of conveyance being vitiated, inasmuch as, on the legal stand point, that on the launching of the acquisition proceedings, the vendor 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. Resultantly also the present petitioner (in CWP-13086-1990) has no *locus standi* to maintain the instant petition.

Contention as to delay in publication of the substance of notification under Section 4 of the 'Act of 1894' and reasons for rejecting the same.

57. Moreover, the averments, as to delay in publication of the notification (supra), is merit-less, as on reading of replies, on affidavit, to the writ petition(s), by the respondent, it is revealed that the notification under Section 4 of the 'Act of 1894' rather was published in Haryana Government Gazette, on the same day. Moreover, an entry qua the notification was made in the patwari Halqa Roznamcha Wakayati vide rapat No. 1270 dated 31.05.1988 vis-a-vis the land situated in the revenue estate of village Gurugram. In addition, the substance of the notification under Section 4 of the Act becoming published in two daily newspapers i.e. The Hindustan (Hindi) dated 22.06.1988 and Times Tribune (English) dated 22.06.1988. The substance of the said notification was also pasted on the notice board of Halqua Patwar Khana and Tehsil Office. Munadi was also done through village

chowkidar by beating of empty drum in the villages and in the vicinity of the land to be acquired.

58. Furthermore, on reading of the replies, it is revealed that the substance of issuance of declaration under Section 6 was published in the Haryana Gazette on the same day and was also published in the daily newspapers as per the requirement of the 'Act of 1894'. The substance of the declaration (supra) was pasted on the notice board of the Halqa Patwar Khana and Tehsil office.

59. Therefore, there is complete adherence to all the mandatory statutory prescription(s) thereby launching of the acquisition proceedings cannot be construed to become vitiated.

Contention as to not granting of an opportunity of personal hearing while deciding the objections under Section 5A of the 'Act of 1894'.

60. Also, on reading of replies, to all the writ petition(s) (supra) reveals that the petitioners were granted opportunity to file objections under Section 5-A of the 'Act of 1894' and the petitioners also availed the said opportunity, through theirs filing objections to the acquisition proceedings. However, the objection(s) as became filed by the petitioners became decided against the petitioners, thus leading to the makings of the impugned notification/declaration. Thus any averments/contention that no opportunity of personal hearing was granted, is merit-less.

Final order of this Court.

61. In aftermath, this Court finds no merit in the writ petition(s), the same being completely frivolous, thus are required to be dismissed with costs. Therefore, the same are dismissed with costs of Rs. 50,000/- vis-a-vis each of the petitioner(s) in each of the writ

petition(s) to be forthwith deposited by them in the hereinafter extracted manner.

a) Each of the petitioners (in CWP-8881-1989) to deposit the same with the '***Himachal Pradesh Aapada Raahat Kosh - 2023'*** for mitigating the natural disaster in the State concerned.

b) Each of the petitioners (in CWP-15934-1990) to deposit the same with the Treasurer of the **"Punjab and Haryana High Court Employees Welfare Association".**

c) Both the petitioner(s) respectively (in CWP-8883-1989) and (in CWP-13086-1990) to deposit the same with the Treasurer of **the Punjab and Haryana High Court Bar Clerks Association**.

62. The impugned notification(s) are maintained and affirmed.

63. However, direction(s) is made upon the acquiring authority that the acquired lands, if they are falling within the militarized zone or restricted zones, thereby they shall be kept free from all types of construction(s) and rather they shall be developed as an open green area but without compromising with the national security and safety.

64. Moreover, the acquiring authority may proceed to make lawful awards both in respect of vacant lands besides in respect of the acquired construction(s) but bearing in mind as to whether such construction(s) were raised post or prior to the making of a notification under Section 4 of the 'Act of 1894', besides bearing in mind that the said construction(s) became raised prior to the coming into force of 'the Defence Act'.

65. Since the main case itself has been decided, thus, all the pending application(s), if any, in the cases (supra), also stand(s)

disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

10.10.2023

kavneet singh

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