



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-6925-2005 (O&M)

Date of Decision: 17.02.2025

Ram Parsad

....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Parvinder Singh, Advocate for the petitioner.

Mr. Maninder Singh, Sr. Deputy Advocate General, Punjab.

Mr. R.S.Khosla, Senior Advocate with
Mr. Yogender Verma, Advocate
for respondent – PUDA.

Sureshwar Thakur, J. (Oral)

1. The writ petition purportedly arises from 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 declaration(s) issued under Section 6 of the 'Act of 1894'.

2. The present petitioner claims the hereinafter extracted reliefs.

Civil Writ Petition under Article 226 of Constitution of India, for quashing:

a) Notification issued by the Secretary, Housing and Urban Development under Sections 4 and 6 of the Land Acquisition Act, 1894 dated 06.09.1997 and dated 17.05.2001.

b) For Declaration that Section 23(1) First of the Land Acquisition Act. 1894 is ultravires of Article 31-A, Second Proviso, because, the said Act does not provide the fixing of



compensation, "at no less than market price", as on the date of acquisition.

AND

c) For seeking declaration that the provisions of Punjab New Capital (Periphery) Control Act, 1952, be declared as ultravires of Second Proviso of the Article 31-A of the Constitution as it imposes illegal and unreasonable restriction on the fundamental rights of the land owners, whose total holdings is within the permissible limits and personally cultivate the same.

AND

d) For declaring that the policy of the government that acquisition shall be done by the department, who is interested in acquiring the land, establishes a procedure which is not fair to the right holders and is void being in contravention of principles of natural justice and Article 14 of the Constitution.

e) The notification under Section 56 of the Punjab Regional and Town Planning and Development Act of 1995 is said to have been issued in the year 1996. That notification is liable to be quashed as Public was kept in dark and no objections as required could be filed. That notification also liable to be quashed.

AND

f) That acquisition is being ordered/notified in violation of the provisions of Punjab Regional and Town Planning and Development Act, 1995 which is mandatory.

AND

g) Civil Writ Petition in the nature of Mandamus directing the respondents to grant the same benefits to the applicants as given to the other khewatdars of the village on the principle of parity as the notification dated 02.02.2001 has already been set aside by the Hon'ble Supreme Court of India, vide judgment dated



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22.01.2015 passed in Civil Appeal No.7424 of 2013 titled as "Karnail Kaur and others vs. State of Punjab and others".

3. Before proceeding to determine the validity of the reliefs (supra), as, espoused in the writ petition, it is necessary to delineate the essential facts.

4. A notification bearing No.6-9/1997-1HG1/566 under Section 4 of the 'Act of 1894' became issued on 09.06.1997 and it became succeeded by a declaration issued under Section 6 of the 'Act of 1894' on 17.05.2001 and subsequently, an award bearing No.481, was made on 17.05.2001.

Contentions of the learned counsel for the petitioner for seeking the writ reliefs.

5. The learned counsel appearing for the petitioner, has with much vigor made a contention, that since those parts of the acquired lands which fall within the '*lal lakir*' and the '*phirni*' of the village, thus become declared in clause (g) of the policy dated 20.01.2006, of the State Government, clause whereof stands extracted hereinafter, to be not amenable for acquisition. Therefore, he contends that qua those portions of the writ lands as are falling in the village *abadi* besides are within the extended *abadi*, besides especially when therebys the said lands are part of the heritage site of the village, thereupons when they are, thus required for maintaining the agrarian cultural ethos of the village. Resultantly, to that extent the acquisition notification be quashed and set aside, besides the consequent thereto award be also quashed and set aside.

(g) Existing Rural Settlements. - Considering the existing as well as future development needs of the villages falling within the Periphery as well as with a view to cater to their increasing population, it would be prudent to provide a sufficiently compact and contiguous belt of land around the village "phirni" for



ensuring the organic growth of these villages. Any area falling between the "lal lakir" and the 'phirni' of the village shall also be treated as part of the extended belt. The area should be allowed to be used primarily for meeting individual residential and *petty commercial needs of the existing and future population of a village. However, charges for change of land use should be levied on prescribed rates, except in the case of bona fide residents. No industry should be permitted in such area. Similarly, formal colonization shall also not be permitted in the extended 'abadi' area on the pretext of this recommendation alone.*

With these caveats, the Committee proposes to allow the village "Abadi" area extension by 60% subject to a minimum of 50 metres and maximum of 100 metres in radial length from the 'phirni'. However, where the existing Abadi Deh or a part thereof is an area which forms a part on the rural/agricultural and afforestation zone of the Outline Master Plan/Draft Comprehensive Master Plan/Comprehensive Master Plan prepared under the Punjab Regional and Town Planning and Development Act, 1995, the extent of such area shall be limited to 50 metres. Permitting construction in the notified forest areas falling in these villages would, of course, be subject to due approval as regards change of land use. No permission should, however, be granted in any area which falls within the Sectoral Grid of SAS Nagar (Mohali), as reflected in the Outline Master Plan. The extent of area where such constructions are to be permitted will be demarcated and certified for each village falling within the Periphery by the Revenue Authorities, subject to the final approval of PUDA. In order to promote planned development, it is proposed that construction in the area should be regulated by a set of simple building norms, subject to payment of Land Use conversion charges and in accordance with other details as contained in Annexure C. However, to avoid



hardship to villages and land owners, the area in the extended abadi deh shall be exempted from the provisions of the Punjab Apartment and Property Regulation Act, 1995.”

6. In consequence, they argue that on makings of acquisition(s) of the above lands, there would be effacement of the sacrosanct site of the village.

Contentions of the learned State counsel.

7. The learned State counsel has placed on record, written synopsis, wherein, he contends that in case the writ reliefs are allowed, thereby this Court would be proceeding to untenably accord to the petitioners, the benefit of the lapsing provisions, as carried in sub section (2) of Section 24 of the 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'), despite, adduction of the relevant discharging evidence, thus in satiation of the twin parameters enshrined therein, inasmuch as, despite rapat possession becoming evidently assumed, of the acquired lands, but prior to the coming into force of the 'Act of 2013', and, also despite compensation but before the coming into force of the 'Act of 2013', thus becoming deposited in the Government Treasury, for thereby it becoming available for being disbursed to the land-losers concerned.

8. In making the above submission, the learned counsel for the respondents, thus has made reliance, upon, paragraph No. 363 of the verdict rendered by the Hon'ble Supreme Court, in case titled as 'Indore Development Authority Versus Manoharlal and others', to which SLP (Civil) Nos. 9036-9038 of 2016, has been assigned, para whereof is extracted hereinafter.



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 4 of 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 be treated 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 deemed lapse 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 to new 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 time-barred 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.

For the reasons to be assigned hereinafter, the submission made by the learned counsel for the petitioner are rejected and the contentions raised by the learned State Counsel is accepted.

9. Even, if assumingly the benefit of the lapsing provision, as enshrined in the mandate carried in Section 24 (2) of the 'Act of 2013' may not be available to become assigned to the land-losers concerned. However, irrespective of the above, the launching of the acquisition proceedings at the very inception were, *prima facie*, rather in contravention of the above extracted clauses, as exist in the relevant policy, as becomes framed by the Government of Punjab.

10. This Court in planking thereons, a *prima facie* inference, for therebys it *prima facie*, tentatively declaring non est the issuance of the notification(s) (supra), in-so-far as, they relate to evident infraction being made to the above extracted clause, rather becomes led to do so on the hereinafter premise(s).

a) The *abadis* within the declared *abadi deh* zones of the village concerned, but are an integral part of the agrarian ethos.



- b) The *abadis* or the *abadi* homes of the *abadi* owners which fall within the *abadi deh* are a sacrosanct heritage of the village or of the *mohal*. Therefore, they are to be preserved as such, through ensuring that on urbanized planing taking place, thus the heritage *abadi deh*, which rather is the sacrosanct site of the village, does not either disappear nor becomes effaced.
- c) The earmarkings of *abadis* do take place during the consolidation operations and the reservation of *abadi dehs* by the consolidation officer, does also advance, the agrarian character of the village.
- d) Since the agrarian character of the village, is to be maintained and/or is to be preserved, thereby the acquisition of *abadis* or acquisition(s) of adjacent thereto lands, may be avoided, especially when in times to come, the extensions of the *abadi* areas, thus may be required, for accommodating, the increasing population in the *mohal*, thus for enabling the increased population to create *abadis*, on such extended *abadi* belts.
- e) Though in the column of ownership *abadi deh* lands are described to be owned by the *abadi deh*. However, the person who raises *abadis* within the *abadi deh*, are yet not interdicted to amongst themselves alienate possessions through execution of deeds of conveyance. Therefore, if so, the records of rights which in the column of ownership thereof, declare the *abadi deh* land to be owned by the *abadi deh*, thereupon they rather appear to be antithetical to the concept of ownership, which but obviously inheres in the *abadi* raiser on *abadi deh*. As such, in the column of ownership appertaining to lands designated as *abadi deh*, *abadi* owners are to be considered to be included in the apposite column of ownership.
- f) The above would facilitate, that thereby the principles of succession apply, especially when in absence of the above



declaration(s) in the column of ownership, thereby the possession of the *abadi* homes, would be the relevant principle, rather for succession thereto becoming assumed by the surviving possessor thereof. Resultantly thereby the rules of succession may become whittled down, unless a testamentary disposition is made by the deceased *abadi* owner concerned.

g) In sequel, for overcoming the above, this Court recommends to the State of Punjab to make orders for updating the revenue records, relating to the ownership column of *abadi deh* lands, thus through in substitution therein qua the extant designation of *abadi deh*, rather their occurring in the ownership column of *abadi deh lands*, thus the name of the raiser of the *abadi* on the *abadi deh*.

h) The above may also facilitate the entitlement of the *abadi* holders concerned, to receive compensation which they otherwise may, *prima facie*, become dis-entitled to, but on a mis-presumption, that the *abadi* owners who have raised *abadi* on the *abadi deh* land, are not reflected in the column of ownership, to be owning such raised *abadis*, on *abadi deh* lands.

11. Though this Court has made the hereinabove inferences, but since there are plain speakings in the reply, on affidavit, furnished to the writ petition CWP-17658-2006, by the respondents, as well as, in the written synopsis filed by the respondent-State, that the relevant sites are vacant, besides when thereto, thus determined compensation amount comprised of



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Rs.9,23,213/-, especially qua the acquired land of the purported *abadi deh*, qua **petitioners in CWP-1568-2007**, standing deposited, by the Land Acquisition Collector, Urban Development, S.A.S. Nagar, in Government Treasury vide RD No. 80 dated 07.10.2008, whereas, in respect of the **petitioners in CWP-17658-2006**, compensation to petitioner No.1 standing paid vide cheque No.141 dated 03.11.2010. Further, when it is revealed thereins, that out of total amount of compensation of Rs.1,39,98,730/- an amount of Rs.1,21,72,372/- has been paid vide voucher no.141 dated 03.11.2010 and the balance amount of Rs. 18,26,358/-, standing deposited, in Government Treasury vide RD No. 80 dated 07.10.2008, for the same being available to be disbursed to the land-losers concerned. Moreover, since it is also stated in the written synopsis filed by the learned State Counsel, that the compensation, in respect of the other petitioners, stands deposited in Government Treasury vide RD No. 81 dated 07.10.2008, for therebys it being available to become released to the land-losers concerned. Consequently, when therebys, the parameters spelt in the judgment supra, become satiated at the instance of the respondent therebys, the petitioner is not entitled to the making of the espoused lapsing declaration.

12. Furthermore, also it evidently emerges that, prima facie, the existence of any purported *abadi* on any purported *abadi deh*, rather is a mis raised contention. Moreso, when in the earlier round of litigation, the above contention became not raised. Resultantly therebys, in terms of order 2 Rule 2 CPC, the present petitioners are barred to raise the said contention, which was not raised earlier.



13. Moreover, since the above contention is raised upon the relevant entry existing in the relevant jamabandi, but yet conclusive and cogent evidence, but was required to be adduced by the petitioners, thus displaying that the said entry also relates to the acquired lands. However, the said evidence is grossly amiss. Resultantly therebys, the apposite acquisition, as made under the subject award, is deemed to be made in respect of open spaces or lanes within the abadi deh, which obviously fall within the inclusionary clause of the definition of shamilat deh. The said inclusionary clause is envisaged in Section 2(g)(4) of the Punjab Village Common Lands (Regulation) Act, 1961 as applicable to Punjab & Haryana, provisions whereof becomes extracted hereunder:

“2 (g) “Shamilat deh” includes

- (1) Land described in the revenue records as Shamilat deh excluding abadi deh.*
- (2) Shamilat Tikkas,*
- (3) Land described in the revenue records as shamilat, Tarafs, Pattis Pannas and Tholas and used according to revenue records for the benefit or the village community or a part thereof for common purposes of village.*
- (4) Lands used or reserved for the benefit of the village, community including, streets, lanes, playgrounds, schools, drinking wells, or ponds within abadi deh or gora deh and*



14. In consequence thereof the supra contention, thus becomes a disputed question of fact. Therefore, irrespective of the makings of hereinabove inferences, this Court does not deem it fit and appropriate to clinch here, the disputed question of facts (supra), nor thereby the petitioners are entitled to seek a mandamus rather for enforcing the Government Policy (supra).

15. Further, since the respondents in their reply-affidavit, as well as in their arguments, thus 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. Therefore, since this Court is not well enabled to review or re-call the layout plans. Resultantly this Court refrains from doing so.

16. Furthermore, since predominance is to be assigned to the larger public purpose than to individual interests of the estate holders concerned. Therefore, in doing so, this Court also refrains from allowing the petitioner claim for the acquired lands becoming released from acquisition.

Final Order of this Court.

17. In aftermath, this Court finds no merit in the writ petition, the same being completely frivolous, thus is required to be dismissed with costs. Therefore, the same is dismissed with costs of Rs.25,000/-, upon the present petitioner to be forthwith deposited by him with the Treasurer of the **“Punjab and Haryana High Court Employees Welfare Association”**.

18. The impugned notification(s) and the consequent thereto award



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are maintained and affirmed.

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

(SURESHWAR THAKUR)
JUDGE

(VIKAS SURI)
JUDGE

February 17, 2025

Varinder

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No