
(2022) 03 P&H CK 0107

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 3071 Of 2022 (O&M)

Kishan Chand And Others

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 25-03-2022

Acts Referred:

Right To Fair Compensation And Transparency In Land Acquisition Rehabilitation And Resettlement Act, 2013 — Section 24(2), 101A
Land Acquisition Act, 1894 — Section 4, 4(1), 6

Citation : (2022) 03 P&H CK 0107

Hon'ble Judges : Ritu Bahri, J; Ashok Kumar Verma, J

Bench : Single Bench

Advocate : Sahil Gupta, Ankur Mittal, Saurabh Mago, Kushaldeep Kaur

Final Decision : Dismissed

Judgement

Ritu Bahri, J

Petitioners are seeking quashing of the order dated 12.11.2021 (Annexure P-17) passed by the Principal Secretary, Town and Country Planning-cum-Principal Secretary, Urban Estate Department, whereby representation made by the petitioners under Section 101-A of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short '2013 Act'), has been dismissed. Further prayer has been made for quashing of the notification dated 24.08.2000 (Annexure P-9) issued under Section 4 (1) of the Land Acquisition Act, 1894 and Award dated 21.07.2003 (Annexure P-12).

On 18.02.2022, when this case was taken up for hearing, learned counsel for the petitioners had sought time to get necessary information, whether the plot of the petitioners was surrounded by other plots, which were carved out in Sector 57, Gurugram.

Today, learned counsel for the petitioners has informed that the earlier writ

petitions i.e. CWP-13332-2007 and CWP-11330-2007, challenging the notifications issued under Sections 4 and 6 of the Land Acquisition Act, 1894, were dismissed by this Court on 28.10.2013. A perusal of the said judgment shows that the petitioner(s) (in those petitions) had challenged the notification on two counts. The first ground was that the land was being acquired for residential purpose and the petitioners/builder had already requested for grant of CLU for that very purpose and secondly, the acquisition had been made without application of mind and the plea that the acquired land would be used for by carving out residential plots was an after thought plea taken at the time of filing of the written statement. The said petitions were dismissed by observing that the land had been acquired for multiple purposes like commercial, residential and institutional. 2953 plots were planned and floated for allotment, but due to non-availability of land, Haryana Urban Development Authority had not been able to offer plots to 236 allottees. It was further observed that the petitioner/builder had purchased the land on 16.12.2003 i.e. after issuance of notification under Section 4 of the Land Acquisition Act, on 09.06.2003. Since the land had been acquired for public purpose and after floating out the plots, offer could not be made to 236 allottees, the notifications issued under Sections 4 and 6 of the Act were upheld.

Larned State counsel states that the petitioner had challenged the acquisition by filing CWP-13735-2004, titled as "Amar Singh vs. State of Haryana, which was disposed of by this Court vide order dated 18.07.2005 by directing the HPC to decide his representation. However, the claim was rejected by the High Powered Committee on 29.05.2007 on the ground that the application had been submitted by the petitioner for setting up of commercial colony. There was no representation for relase of residential structures, which showed that the land in question was not being used for residential activity. Another ground for rejection was that the land was under acquisition and the licence was applied for after acquisition. The order rejecting the claim of the petitioner was challenged thereafter, in CWP-11330-2007 and the said petition was dismissed vide order dated 28.10.2013 by observing that the land in question was acquired by the State for public purpose.

Now, this Court is to examine the order dated 12.11.2021 (Annexure P-17), which has been passed on the representation for release of land under Section 101-A of the 2013 Act. A perusal of this order shows that petitioner-Kishan Chand and others had made a representation for release of their land under Section 24 (2) of 2013 Act and vide speaking order dated 24.07.2017, Chairman, Zonal Committee-cum-Zonal Administrator, HSVP, Gurugram, rejected the case for release of land. The above said order was challenged by the petitioners by filing CWP-20037-2017. This petition was decided in favour of HSVP. Against that order, the petitioners filed SLP (C) No.14980-2020 before Hon'ble the Supreme Court, which was converted into an appeal i.e. Civil Appeal No.771 of 2021 and vide order dated 02.03.2021, a direction was given to decide the representation of the applicants. It was further observed that possession of the land was handed

over to HSVP vide Rapat Roznamcha No.569 dated 21.07.2003. The amount of compensation to the tune of Rs.53,95,500/-, in the shape of cheque No.527047 dated 09.06.2005, had been sent to the Court of Additional District Judge vide letter dated 2728 dated 02.08.2005. As per the planning of HSVP, the land was to be utilized for planned development of Sector 57-II, Gurugram. The land in question was essential for the intended purpose of acquisition and it was not covered under the provisions of Section 101-A of 2013 Act, where the sine qua non is that the acquisition is "unviable or non-essential." With these observations, the representation of the petitioners was rejected.

In the present case, even way-back in the year 2013 when writ petition challenging the above said notification had been dismissed vide order dated 28.10.2013, it had been observed that 236 allottees could not be offered the plots. Hence, utility of the acquired land was there and in no circumstances, it can be said that the acquisition was not made for public purpose. Reference, now, can be made to the judgment dated 02.07.2021 passed by this Court in Ram Swaroop and another vs. State of Haryana and others, CWP-11625-2021. In that petition, the petitioners were seeking direction to the respondents not to interfere in their continued, peaceful and complete possession over the land in question, as the land had been remained unutilized for a period of five (05) years. The said petition was dismissed by examining the provisions of Section 101-A of the 2013 Act along with the notification dated 14.09.2018 and it was observed as under:-

"The claim of the petitioners has attained finality with regard to reopening of the case of acquisition under Section 24(2) of the Act of 2013. With respect to claim made for release of land under Section 101-A of the Act of 2013, the notification dated 14.09.2018 (Mark 'A') culled out the procedure to be followed by the Government in case the opinion is given by the acquiring department that the land acquired under the Land Acquisition Act is unviable or non-essential for the public purpose for which it has been acquired. No procedure has been laid down whereby a private person whose land has been acquired, can make the claim for denotifying the acquired land. Moreover, in Raghubir Singh's case (supra), this Court has examined this issue in detail and held that it is the Government, who has to denotify the land and such principle is not to be exercised on the asking of the person whose land stands acquired. As per proviso to Section 101-A of the Act of 2013, the land owner can be compensated by providing alternative land along with payment of damages, if any, as determined by the State Government. The notification dated 14.09.2018 (Mark A) lays down the procedure to be followed by the Government and hence the petitioners who had lost the case with respect to acquisition proceedings in the earlier round of challenge, their acquisition proceedings stood upheld. Now the concluded proceedings cannot be reopened by taking an aid of Section 101-A of the Act of 2013."

The aforesaid judgment was challenged by the petitioners by filing SLP (Civil No.16421 of 2021), titled as Ram Swaroop (Dead) through LRs & Anr. vs. State

of Haryana & Ors. However, the same was dismissed by Hon'ble the Supreme Court vide judgment dated 15.11.2021. Reference was made to a decision given in Raghbir Singh & another vs. State of Haryana and others, Civil Appeal No.2714-2715 of 2021 (decided on 15.07.2021), wherein it was observed that it was the bounden duty of the State to examine the relevant facts and form suitable opinion as may be advised, regarding lands having become unviable or non-essential or not. The opinion of the State Government cannot be disputed by landowner at the drop of the hat. In para nos. 9 and 111 of the judgment passed in Ram Swaroop's case (supra), Hon'ble the Supreme Court observed as under:-

"9. This Court in Raghbir Singh has held that it is the bounden duty of the State to examine the relevant facts and form suitable opinion as may be advised regarding the lands having become unviable or non-essential or not. The opinion of the State Government, whether the land is unviable or non-essential cannot be disputed by landowner at the drop of the hat. The principles of judicial review of an administrative action as laid down by this Court in Tata Cellular vs. Union of India, (1994) 6 SCC 651 are illegality i.e. decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it; irrationality namely Wednesbury unreasonableness; and procedural impropriety. This Court held as under:

"94. The principles deducible from the above are:

- (1)The modern trend points to judicial restraint in administrative action.
- (2)The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.
- (3)The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.
- (4)The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract.

Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers.

More often than not, such decisions are made qualitatively by experts.

(5)The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6)Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure. Bases on these principles we will examine the facts of this case since they commend to us

as the correct principles.

10. xx xx xx

11. The claim of the appellants for release of land on account of Section 24 (2) had been rejected by the State Government on 12.09.2016. The writ petition against the said order stands dismissed on 12.10.2020. Thus, the present appeal is merely an attempt to continue to be in possession of the land on one pretext or the other so as to defeat the public purpose of acquisition of the land for development and utilization of residential, commercial and institutional area, Sector-51, Gurugaon (now Gurugram). This Court in Raghbir Singh has held that Section 101-A does not give a vested right to the landowner to seek denotification or even that upon denotification, the land in question must return to the erstwhile owners only. The State Government is at liberty to pass such order other than release of land in favour of the landowners."

In the facts of the present case, land vests in the State and the same is being utilized for allotment of plots. Moreover, while dismissing the earlier writ petition (CWP-13332-2007), it was observed that 236 plots were less, which could not be offered to the allottees. Hence, keeping in view the judgment passed by Hon'ble the Supreme Court in Ram Swaroop's case (supra), the impugned order dated 12.11.2021 (Annexure P-17), whereby representation for release of land under Section 101-A of 2013 Act, has been rejected, does not require any interference by this Court.

Resultantly, finding no merits, the present petition is dismissed.