

Court No. - 05**Case :-** WRIT - C No. - 14045 of 2020**Petitioner :-** Vijaypal And 11 Others**Respondent :-** Union Of India And 3 Others**Counsel for Petitioner :-** Kaushal Kumar Singh**Counsel for Respondent :-** C.S.C.,Rajnish Kumar Rai**Hon'ble Surya Prakash Kesarwani,J.****Hon'ble Jayant Banerji,J.**

1. Heard Sri N.P. Singh, learned counsel for the petitioners, Sri Rajnish Kumar Rai, learned counsel for the respondent Nos.1, 2 and 4 and Sri B.P. Singh Kachhawah, learned standing counsel for the State-respondent No.3.

2. This writ petition has been filed praying for the following relief:

*"(i) issue a writ, order or direction in nature of certiorari, thereby quashing the impugned notification i.e. the notification dated 11th February, 2019 (**Annexure P-1**) and the notification dated 6th November, 2019 under Section 20E of the Act of 1989s (**Annexure P-2**), being illegal, arbitrary and is void in law.*

(ii) issue a writ, order or direction in nature of mandamus thereby restraining the Respondents, its officers, agents, servants etc from interfering with the possession of the petitioners from their existing Abadi in village – Chamravali-Boraki and land falling in village Hazratpur;

*(iii) issue a writ or order or direction in the nature of mandamus thereby directing the Respondents, its officers, agents, servants etc to carry out the development of the **"Eastern Dedicated Freight Corridor in District Gautam-budh Nagar in State of Uttar Pradesh"** over the acquired land, as approved by the Central Government in terms of which the acquisition of land was made in terms of Annexure P-5 (colly);*

*(iv) issue a writ order or direction in the nature of mandamus thereby directing the Respondents, its officers, agents, servants etc from producing the entire record pertaining to the special railway project of **"Eastern Dedicated Freight Corridor in District Gautam-budh Nagar in State of Uttar Pradesh"** as approved by the Central Government for issuance of the acquisition notification being annexed as Annexure P-5 (colly);"*

3. Learned counsel for the petitioners submits as under:

(i) By the Railways (Amendment) Act, 2008 (Act 11 of 2008), the provisions of Chapter-IV-A (Section 20A to 20P) were incorporated in the principal Act, i.e. Railways Act, 1989. The aforesaid Amendment Act has been repealed by the Repealing Amendment Act, 2016 (No.23 of 2016) dated 09.05.2016. The impugned notifications have been issued under Section 20A and 20E of the Act, 1989. Since the Amendment Act 11 of 2008 has been repealed by Act 23 of 2016, therefore, the provisions of Section 20A and Section 20E were not available. Consequently, the impugned notifications have been issued without authority of law and,

therefore, they deserve to be quashed.

(ii) Initially, the railways acquired land for "Eastern Dedicated Freight Corridor in District Gautam Buddh Nagar" by notification dated 24.08.2009. At that time, the respondents left the abadi area of the petitioners' villages Chamravali-Boraki and Hazaratpur but by the impugned notification some area of the petitioners' villages has been acquired. This cannot be done since the respondents have earlier not acquired the land in question while issuing acquisition notification dated 24.08.2009. Therefore, the impugned notification suffers from mala fide.

4. Sri Rajnish Kumar Rai, learned counsel for the respondent Nos.1, 2 and 4 submits as under:

(i) The land in question has been acquired for a public purpose, i.e. Eastern Dedicated Freight Corridor and all those persons whose land or houses are affected by acquisition shall get compensation in accordance with the provisions of Chapter-IV-A of the Act, 1989.

(ii) The provisions of Chapter IV-A of the Act, 1989 are not affected by repeal of the Amending Act, 2008 by the Repealing and Amending Act, 2016, which fact is also evident from Section 4 of the Repealing and Amending Act, 2016.

(iii) The acquisition notification dated 11.02.2019 was issued under Section 20A. As per provisions of Section 20B of the Act, 1989, the petitioners or the persons affected by acquisition notification, had liberty to make an objection within 30 days from the date of publication of the notification but neither there is any pleading in the writ petition nor any material has been brought on record to show that the petitioners have submitted any objection under Section 20B. The other impugned notification dated 06.11.2019 has been issued under Section 20E of the Act, 1989 whereby acquisition has been made.

(iv) The entire acquisition has been made well in accordance with law and only for a public purpose i.e. for construction of Eastern Dedicated Freight Corridor.

(v) Neither there is any *mala fide* in issuing the impugned notification nor the petitioners have placed any material on record to establish even *prima facie* that there is any *mala fide* on the part of the respondents. The submission of *mala fide* is wholly baseless and without any foundation.

Discussion and Findings:-

5. We have carefully considered the submissions of learned counsels for the parties.

6. In **Jethanand Betab vs The State Of Delhi(Now Delhi Administration)**¹, Hon'ble Supreme Court held as under:

“(5).....

.....
*The substance of the aforesaid provisions may be stated thus: **The Act of 1949 inserted S. 6 (1 -A) in the Act of 1933. The 1949 Act was repealed by the 1952 Act, but the latter Act saved the operation of other enactments in which the repealed enactment has been applied, incorporated or referred to. The first question that arises for consideration is whether the amendments inserted by the 1949 Act in the 1933 Act were saved by reason of S.4 of the 1952 Act.***

(6) *The general object of a repealing and amending Act is stated in Halsbury's Laws of England, 2nd Edition, Vol. 31, at p. 563, thus:*

"A statute Law Revision Act does not alter the law, but simply strikes out certain enactments which have become unnecessary. It invariably contains elaborate provisos."

In Khuda Bux v. Manager, Caledonian Press, A.I.R. 1954 Cal. 484, Chakravartti, C.J., neatly brings out the purpose and scope of such Acts. The learned Chief Justice says, at p.486:

"Such Acts have no Legislative effect, but are designed for editorial revision, being intended only to excise dead matter from the statute book and to reduce its volume. Mostly, they expurgate amending Acts, because having imparted the amendments to the main Acts, those Acts have served their purpose and have no further reason for their existence. At times inconsistencies are also removed by repealing and amending Acts. The only object of such Acts, which in England are called Statute Law Revision Acts,

1.AIR 1960 SC 89

is legislative spring-cleaning and they are not intended to make any change in the law. Even so, they are guarded by saving clauses drawn with elaborate care, . . .".

It is, therefore, clear that the main object of the 1952 Act was only to strike out the unnecessary Acts and excise dead matter from the statute book in order to lighten the burden of ever increasing spate of legislation and to remove confusion from the public mind. The object of the Repealing and Amending Act of 1952 was only to expurgate the amending Act of 1949, along with similar Acts, which had served its purpose.

(7) The next question is whether S.4 of the Act of 1952 saved the operation of the amendments that had been inserted in the Act of 1933 by the repealed Act. The relevant part of S.4 only saved other enactments in which the repealed enactments have been applied, incorporated or referred to. Can it be said that the amendments are covered by the language of the crucial words in S.4 of the Act of 1952, namely, "applied, incorporated or referred to". We think not. Section 4 of the said Act is designed to provide for a different situation, namely, the repeal of an earlier Act which has been applied, incorporated or referred to in a later Act. Under that section the repeal of the earlier Act does not affect the subsequent Act. The said principle has been succinctly stated in Maxwell on Interpretation of Statutes, 10th Edition, page 406:

"Where the provisions of one statute are, by reference, incorporated in another and the earlier statute is afterwards repealed the provisions so incorporated obviously continue in force so far as they form part of the second enactment."

So too, in *Craies on Statute Law, 3rd Edition*, the same idea is expressed in the following words, at p. 349:

"Sometimes an Act of Parliament, instead of expressly repeating the words of a section contained in a former Act, merely refers to it, and by relation applies its provisions to some new state of things created by the subsequent Act. In such a case the "rule of construction is that where a statute is incorporated by reference into a second statute, the repeal of the first statute by a third does not affect the second".

The Judicial Committee in *Secy. of State v. Hindusthan Co-operative Insurance Society, Ltd.* 58 Ind App. 259: (AIR 1931 PC 149), endorsed the said principle and restated the same, at p. 267 (of Ind App): (at p.152 of AIR), thus:

"This doctrine finds expression in a common-form section which regularly appears in the amending and repealing Acts which are passed from time to time in India. **The section runs:** " The repeal by this Act of any enactment shall not affect any Act..... in which such enactment has been applied, incorporated or referred to." **The independent existence of the two Acts is therefore recognized; despite the death of the parent Act, its offspring survives in the incorporating Act. Though no such saving clause appears in the General Clauses Act, their Lordships think that the principle involved is as applicable in India as it is in this country."**

It is, therefore, manifest that S.4 of the 1952 Act has no application to a case of a later amending Act inserting new provisions in an earlier Act, for, where an earlier Act is amended by a later Act, it cannot be said that the earlier Act applies, incorporates or refers to the amending Act. The earlier Act cannot incorporate the later Act, but can only be amended by it. We cannot, therefore, agree with the view expressed by the Punjab High

Court in *Mohinder Singh v. Mst. Harbhajan Kaur*, ILR (1955) Punj 625; ((S) AIR 1955 Punj 141) and in *Darbara Singh v. Karnail Kaur*, 61 Pun LR 702 that S.4 of the Repealing and Amending Act of 1952 applies to a case of repeal of an amending Act.

11. For the aforesaid reasons, we hold that S.6 (1 -A) of the Act continued to be on the statute book even after the amending Act of 1949 was repealed by Act XLVIII of 1952, and that it was in force when the offence was committed by the appellant.”

7. In Mohd. Junaid Ajaz and others vs. Union of India and others², a

Division Bench of this court held as under:.

“6. The effect of these provisions is that where any enactment has been applied, incorporated or referred to in any Act, the repealing provisions shall not affect the Act in which such enactment has been applied, incorporated or referred to. As a result of the provisions of Amending Act No.27 of 2013 with effect from 1 November 2013, sub-sections (1) and (4) of Section 83 were substituted. Sub-section (1) expanded the jurisdiction of the Waqf Tribunal. Prior to the amendment, the jurisdiction of the Waqf Tribunal was to determine any dispute, question or other matter relating to a waqf or waqf property under the Act. In addition to this, the substituted provisions of sub-section (1) also empower the Waqf Tribunal to determine matters relating to eviction of tenants or determination of rights and obligations of a lessor and lessee in respect of property under the Act. Moreover, under sub-section (4), the Tribunal is, in terms of the substituted provisions, to consist of three members. Earlier, the Act had contemplated a one member Tribunal consisting of a judicial officer. **Once the amendment was notified and came into force on 1 November 2013, the amendment was incorporated into the provisions of the parent Act. Hence, the provisions of Section 4 of the Repealing and Amending (Second) Act, 2015 (Act No.19 of 2015) would stand attracted and the repeal of the Amending Act would have no effect on the incorporation of the provisions of the Amending Act which had already been effected prior to the repeal.**

7. The legislature adopts the device of repealing enactments which amend the parent legislation with a view to ensure that they do not crowd the statute book. The principle which however, emerges from a provision such as Section 4, is that the repeal of the amending legislation will not affect the amendments which have already been incorporated in the parent legislation. This principle has also been enunciated in the judgment of the Supreme Court in *Jethanand Betab Vs State of Delhi*. In that case, in the Indian Wireless Telegraphy Act, 1933, as it original stood, there was no specific provision making the possession of a wireless transmitter an offence. By an Amending Act, Section 6 (1-A) was inserted by which, the possession of a wireless transmitter was constituted as a separate offence. The Amending Act was repealed by a Repealing and Amending Act 1952. The submission was that as a result, on the date of the alleged commission of the offence the said section was not on the statute book. The Repealing and Amending Act contained a provision by which, the legislature clarified that the repeal of any enactment by the Act shall not affect any other

enactment in which the repealed enactment has been applied, incorporated or referred to. The Supreme Court explained the import of Section 4 of the Repealing and Amending Act in the following terms:

"6. ...

*It is, therefore, clear that **the main object of the 1952 Act was only to strike out the unnecessary Acts and excise dead matter from the statute book in order to lighten the burden of ever increasing spate of legislation and to remove confusion from the public mind.** The object of the Repealing and Amending Act of 1952 was only to expurgate the amending Act of 1949, along with similar Acts, which had served its purpose."*

10. Following these principles, it is clear that once the provisions of the amending legislation, namely, Amending Act 27 of 2013 had been brought into force and the amendments have been incorporated in the provisions of the Waqf Act, 1995, the subsequent repeal of the amending legislation would not affect the amendments which had already been effected."

8. The Railways (Amendment) Act, 2008 (Act 11 of 2008) incorporated Chapter IV-A (Sections 20A to 20P) in the principal Act, i.e. The Railways Act, 1989. By the Repealing Amending Act, 2016 (Act 23 of 2016), the Amendment Act, 2008 has been repealed with a saving clause in Section 4 as under:-

"4.Savings.- The repeal by this Act of any enactment shall not affect any other enactment in which the repealed enactment has been applied, incorporated or referred to;

and this Act shall not affect the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred, or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing;

nor shall this Act affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed or recognized or derived by, in or from any enactment hereby repealed;

nor shall the repeal by this Act of any enactment revive or restore any jurisdiction, office, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not now existing or in force."

9. The principles laid down by Hon'ble Supreme Court in **Jethanand Betab** (supra) and by this court in **Mohd. Junaid Azad and others** (supra) and reading of the Repealing Amendment Act, 2016 make it clear that the main object of the Repealing Amendment Act, 2016 was

only to expurgate the Amendment Act 2008 along with similar Acts, which had served its purpose. Once the provisions of the amending legislation, i.e. the Amendment Act, 2008 had been brought into force and the amendments have been incorporated in the principal Act, i.e. the Railways Act, 1989, the subsequent repeal of the amending legislation by the Repealing Amendment Act 2016 would not affect the amendments which had already been effected. Thus, the first submission of learned counsel for the petitioners that Section 20A and 20E are not available after the Repealing Amending Act, 2016, is legally incorrect and baseless. Therefore, the first submission of the learned counsel for the petitioners is rejected.

10. The second and the last submission of learned counsel for the petitioners is that initially the respondents have not acquired the land in question, therefore, the acquisition by the subsequent notification dated 11.02.2019 under the Railways Act, 1989, suffers from mala fide. This submission has no force and deserves to be rejected. Under Section 20B of the Act, 1989, the person affected by the acquisition notification has the right to make an objection within 30 days from the date of publication of the notification but there is nothing on record to show that the petitioners have submitted any objection. After about one year of the acquisition notification, the petitioners have filed the present writ petition and made baseless allegation of mala fide. No evidence has been brought on record to establish that the impugned notification suffers from mala fide.

Burden of Proving Mala Fide:-

11. It is well settled that the burden of proving mala fide is on the person making the allegations and the burden is 'very heavy'. There is presumption of exercise of power bonafidely and in good faith. The

allegation of mala fide are often more easily made than made out and the very seriousness of such allegation demands proof of high degree of credibility. The allegation of mala fide made by the petitioners is wholly vague and without proof. The petitioners have failed to discharge the burden of proving mala fide. Our conclusions on principles of law as afore-noted are also supported by the law laid down by Hon'ble Supreme Court in **Ajit Kumar Nag vs. General Manager (PJ), Indial Oil Corpn. Ltd.**³ (Para-56) and **E.P. Royappa vs. State of Tamil Nadu and another**⁴, (para-92).

12. In the case of **Dhampur Sugar (Kashipur) Ltd. vs. State of Uttaranchal and others**⁵, (para-83), Hon'ble Supreme Court considered the question of mala fide and held as under:

*“83. Allegations of mala fide are serious in nature and they essentially raise a question of fact. It is, therefore, necessary for the person making such allegations to supply full particulars in the petition. If sufficient averments and requisite materials are not on record, the court would not make fishing or roving inquiry. Mere assertion, vague averment or bald statement is not enough to hold the action to be mala fide. It must be demonstrated by facts. Moreover, the burden of proving mala fide is on the person levelling such allegations and the burden is very heavy. The charge of mala fide is more easily made than made out. As stated by Krishna Iyer, J. in **Gulam Mustafa v. State of Maharashtra**, (1976) 1 SCC 800 : AIR 1977 SC 448], it is the last refuge of a losing litigant. In the case on hand, except alleging that the policy was altered by the Government, to extend the benefit to respondent No. 4, no material whatsoever has been placed on record by the appellant. We are, therefore, unable to uphold the contention of the learned counsel that the impugned action is mala fide or malicious.”*

13. The principles laid down in the aforesaid case have been reiterated by Hon'ble Supreme Court in the case of **Chandra Prakash Singh and others vs. Chairman, Purvanchal Gramin Bank and others**⁶, (paras-15 and 16).

14. In the case of **Tara Chand Khatri vs. Municipal Corporation of**

3.(2005) 7 SCC 764

4.(1974) 4 SCC 3

5.(2007) 8 SCC 418

6.2008 (2) ESC 177 (SC)

Delhi and others⁷, (para-27), Hon'ble Supreme Court held that the High Court would be justified in refusing to carry on investigation into the allegations of mala fides if necessary particulars of the charge making out a prima facie case are not given in the writ petition. The burden of establishing mala fide lies very heavily on the person who alleges it.

15. In view of the discussion made above, we find that the petitioners have completely failed to prove the allegations of mala fide. The impugned notification does not suffer from any error of law or mala fide. Therefore, the second submission made by learned counsel for the petitioners, is rejected.

16. For all the reasons afore-stated, **the writ petition is dismissed.**

Order Date :- 18.09.2020

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