



In the High Court of Punjab and Haryana at Chandigarh

CWP No. 10623 of 1998 (O&M)

Reserved on : 26.4.2024

Date of Decision: 27.5.2024

Mohyal Housing and Welfare Association (Regd.)

.....Petitioner

Versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA**

Argued by: Mr. Gautam Dutt, Advocate and
Ms. Radhika Mehta, Advocate
for the petitioner.

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

SURESHWAR THAKUR, J.

1. Through the instant petition, the petitioner seeks the quashing of the notification dated 1.02.1997 (Annexure P-10) issued under Sections 4 of the Land Acquisition Act, 1894 (for short 'the Act of 1894'), and, also seeks the quashing of the declaration 29.1.1998 (Annexure P-13) issued under Section 6 of the Act of 1894. The petitioner also seeks a mandamus being issued upon the respondents concerned, to release 17.47 acres of land situated in the revenue estate of village Jharsa, District Gurgaon.

Facts and grounds raised in the instant petition

2. It is averred in the instant petition, that the petitioner-association is a company incorporated under the Companies Act, 1956, and, a Certificate of Incorporation dated 17.8.1974 has been issued in the name of the petitioner by the Registrar of Companies, Delhi and Haryana, under the Companies Act, 1956. The registered office of the petitioner-association is



situated at village Jharsa in district Gurgaon, Haryana. The management concerned, in its meeting held on 30.1.1998 resolved to authorize the President and Secretary jointly or severally to file the instant case before this Court.

3. The Memorandum of Association of the company (supra) states therein the objects for which the petitioner-association has been incorporated, objects whereof are extracted hereinafter:-

“(a) To purchase, sell, exchange, mortgage, lease, charge or otherwise acquire or dispose of lands, buildings and other immovable or movable property or any rights or interest or privileges in, over or upon any such property for its members without profits.

(b) To develop land and subdivide the same amongst the members at cost.

(c) To diffuse social, secular and scientific knowledge and to perform works of charity-social, moral and spiritual.

(d) To accept property to be held by the association:

(i) for the general purposes of the association.

(ii) on special trust either as original trustee or new trustee of a trust already existing.

(iii) as bare or passive trustee without undertaking the management or administration of such property.”

4. The petitioner-association comprises of 218 members, who had migrated from Pakistan during the partition of the country, and, most of its members are retired defence personnels, and, some of them are still serving in the army. Furthermore, a majority of the members of the petitioner-association belong to the low income group. In terms of the statement of objects for which the petitioner association became incorporated, thus as a company, the petitioner association purchased 17.47 acres of agricultural land situated in the revenue estate of village Jharsa, District Gurgaon.



Though for the conversion of the said agricultural land into residential area, a licence is required to be obtained from respondent No. 2, rather under Section 7 of the Punjab Scheduled Roads and Controlled Area (Restrictions of Unregulated Development) Act, 1963 (for short '*the Act of 1963*'). Therefore, an application to that effect in the prescribed format, as specified in Rule 11 of the Punjab Scheduled Roads and Controlled Area (Restrictions of Unregulated Development) Act, 1965 (for short '*the Rules of 1965*') is required to be made to respondent No. 2, whereas, Rule 12 of the Rules of 1965 further provides that in the layout plan of the colony, the land reserved for roads, open space and schools etc. shall be 45% of the gross area of the colony, but the same can also become reduced by respondent No. 2 to the extent of 35% only but keeping in view the planning requirements as also the size of the colony.

5. It is further averred in the petition, that prolonged correspondences occurred with respondent No. 1. Moreover, on an appeal-cum-representation dated 28.8.1991 being made by the petitioner-association to respondent No. 1, the said resulted in an order becoming made thereons, on 12.12.1982, whereby the espoused permission became granted to the petitioner-association for developing the colony but, subject to the fulfillment of certain conditions. Though, in the said letter, the terms and conditions, which were to be so fulfilled, were not disclosed, but the petitioner-association was directed to contact respondent No. 2. Copy of the memo dated 1.12.1982 is appended to the instant petition as Annexure P-1.

6. It is further averred in the instant petition, that the legitimate expectation of the members of the petitioner-association, to ensure that they own dwelling units over the subject lands, became boosted when the



petitioner-association received a letter dated 11.1.1983 from the office of the then Minister-in-charge of the Town and Country Planning Department, who agreed to lay the foundation stone of the housing colony of the petitioner-association, on 20.2.1983, and, the foundation stone was in fact laid on the scheduled date by the Minister-in-charge.

7. It is further averred in the instant petition, that respondent No. 2 had declined to issue licence on the ground that the open area left by the petitioner-association was less than 45%, whereas, when for undoing the said premise, the petitioner-association, rather had submitted an appeal-cum-representation to the State Government on 28.8.1981, and, which was accepted vide order Annexure P-1. Therefore, it is contended, that the declining of licence to the petitioner-association for developing the said lands rather on the above premise, is a pretextual or an arbitrary ground, and is required to be discountenanced.

8. Moreover, it is further fortifyingly contended, that the subsequent theretos raising of objections by the respondent concerned, whereby the respondent purportedly declined the espoused licence vis-a-vis the petitioner-association, rather for creating dwelling units over the subject lands, when became rather rested on grounds similar to the ones, as carried in the representation made to the State Government on 28.8.1981, and, which resulted in the drawing of Annexure P-1, thereby the raising of the said objections, but is an ill-personification of the said objections being ill-grounded. Tritely the objections related to the open areas left by the petitioner-association over the subject lands being only 39% against the requirement of 45%. The said insistence is averred to be beyond the purview of the proviso to Rule 12 of the Rules of 1965, provisions whereof become



extracted hereinafter.

“12. Percentage of area under roads and open spaces in the lay-out plans [(Section 25(2)(f)).— In the layout plan of the colony, the land reserved for roads, open spaces, schools, public and community building and other common use shall not be less than forty-five percentum of the gross area of the land under the colony; provided that the Director may reduce this percentage to a figure not below thirty five where in his opinion the planning requirements and the size of the colony so justify.”

Resultantly, the members of the petitioner-association but became obviously disappointed when respondent No. 2 again raised the same objections of open areas left by the petitioner-association over the subject lands, thus being 39% against the requirement of 45%.

9. It is further averred in the instant petition, that while correspondence was going on between the petitioner association, and, respondent No. 1, for re-consideration of the terms and conditions, rather a notification dated 22.3.1990 under Section 4 of the Act of 1894, became issued, thus for acquiring 634.40 acres of land, including the land measuring 17.46 acres owned by the petitioner-society. The petitioner-association preferred objections against the said notifications. After duly considering the said objections, and, after having found the substances therein to be correct, the State Government released 133.72 acres of land including 17.47 acres of land belonging to the petitioner association. Accordingly, the said land was not included in the notification dated 19.3.1991 issued under Section 6 of the Act of 1894. Copy of the objections, and, copy of the declaration issued under Section 6 of the Act of 1894, are appended to the instant writ petition respectively, as Annexure P-4 and Annexure P-5.



10. It is subsequently averred that after leaving an area for metalled roads, parks, primary schools, temple complex and shopping centre, the petitioner-association carved out 217 plots. The possession of these plots were delivered to the members in the year 1986. Out of 217 plots, 71 houses of Class 'A' construction have already been fully built. 38 other houses are nearing completion, whereas, rest of the plot holders/members have started construction or/are in process of starting constructions. The petitioner further averred in the instant writ petition that the releases of the built up constructions were made to the estate holders concerned, thus on the ground, that private housing group societies, alike the present petitioner-association have made developmental activities thereons. Consequently, it is urged in the instant petition, that the petitioner-association was required to be treated at par with those estate holders in whose favour the releases were made, but the respondent concerned, rather has in not making the espoused releases to the present petitioner of the subject lands, thus practiced palpable invidious discrimination against the petitioner-association.

11. It is further averred in the petition, that even on the standpoint of providings of potable water or underground sewerage facilities, thus the Mohyal colony has been subjected to discrimination. The petitioner-association filed a civil suit for permanent injunction, wherein, on the application for ad-interim injunction, the learned Court concerned, vide order dated 12.11.1996, restrained the officials concerned including respondents No. 1 and 4 from demolishing or interfering with the houses, shops and Temple etc. of the petitioner-association.



12. It is also averred in the petition, that subsequently a notification dated 1.2.1997 (Annexure P-10) under Section 4 of the Act of 1894 was issued, wherein, the land measuring 17.47 acres falling in the rectangle Nos. 54, 55 and 62 of village Jharsa, was proposed to be acquired. Against the said notification, the petitioner filed objections under Section 5-A of the Act of 1894. In addition, the petitioner-association had also made representations to the Chief Minister Haryana, stating therein the fact that the land in question was released way back in the year 1991, only for the reason, that it was a constructed area. The said representation is appended to the instant petition as Annexure P-12. Thereafter, notification under Section 29.1.1998 (Annexure P-13) was issued under Section 6 of the Act of 1894.

13. It is further averred in the instant petition, that there exist fully developed residential houses, and, other buildings in the colony concerned, and, since the matter regarding issuance of licence, and, to regularize the development of Mohyal Colony, thus is under consideration of the State Government, therefore, the acquisition proceedings could not have been initiated qua the subject lands. Therefore, it is urged that the following issues are required to be answered by this Court.

- (1) Whether the land in question, upon which Mohyal colony has been developed can be acquired when parallel proceedings for regularization of the said colony by issuing a licence are pending consideration ?
- (2) Whether the action of the respondents in acquiring the land of only Mohyal Colony despite the fact that it has been developed as an urban area and in exempting/releasing the lands of unauthorized colonies, thus is violative of Article



14 of the Constitution of India.

- (3) Whether the respondents are estopped by their acts and conduct from acquiring the land in question, when the same had already been exempted from acquisition in pursuance to the notification (Annexure P-3), being constructed area.
- (4) Whether any public purpose can be sought to be achieved by acquiring the land in question.

Reply on behalf of the respondent(s)

14. It is averred in the reply filed on behalf of the respondents concerned, that after considering the appeal filed by the petitioner association, the department concerned, vide letter dated 1.12.1982, intimated the decision of the Government, to the petitioner with regard to grant of licence on fulfillment of certain conditions. However, the petitioner instead of complying with the above said conditions/requirements, kept representing to allow 65% plotted area in the layout plan instead of 55%, and, thus the request of the petitioner association were rejected time and again by the department vide letters dated 22.2.1983, 26.5.1983 and 22.4.1985. The petitioner association instead of obtaining the licence after complying with the terms and conditions, raised unauthorized construction at the site concerned. Thereafter, the petitioner association had applied to compound the offence concerned, but its espousal was declined by the department concerned, vide letter dated 30.10.1990. It is further stated in the reply, that the petitioner association had concealed the material facts from the Court, and, that the entire construction raised by the petitioner association, is an unauthorized construction. It is also stated in the reply (supra), that the



petition land is an essential and integral part of the layout plan. It is further stated, that when upon the earlier issued notification dated 22.3.1990 under Section 4 of the Act of 1894 dated 22.3.1990, thus the layout plans of Sector 39 and 40 were not approved, thereby it is stated, that there is no bar under the Act of 1894, to issue successive notifications, if the land is required for public purposes.

For the reasons to be assigned hereinafter, this Court proceeds to accept the instant writ petition, and, thereby the impugned notifications respectively issued under Section 4 of the Act of 1894, and, under Section 6 of the Act of 1894, and the consequent thereto award, are quashed and set aside. Moreover, the substantial questions of law are answered in favour of the petitioner, and, against the respondents.

15. The primary reason for this Court for accepting the instant writ petition ensues from the factum, that the equitable principles of legitimate expectation, as became expostulated in the judgment rendered by the Hon'ble Supreme Court in case titled as *Navjyoti Co-op. Group Housing Society etc. versus Union of India* reported in 1992 (4) SCC 477, relevant paragraph whereof becomes extracted hereinafter, thus require theirs becoming favourably applied to the factual matrix, as available on the record of this case.

16. The Hon'ble Supreme Court, in *Navjyoti's case (Supra)*, has held that the petitioner(s)-Housing Society was entitled to become endowed qua the benefit of the equitable principle of 'legitimate expectation', thus for thereby its making an insistence upon the respondent concerned, to consistently follow the past practice in the matter of allotment. It has been further held that the doctrine of 'legitimate expectation' imposes a duty on



public authority to act fairly by taking into consideration all relevant factors relating to such 'legitimate expectation'. However, the Hon'ble Apex Court on its finding therein, that there was no tangible compelling reason with the respondent therein to alter its procedures, thereby in the decision (supra), the Hon'ble Apex Court favourably applied vis-a-vis the petitioner therein, the doctrine of 'legitimate expectation'.

“16. It may be indicated here that the doctrine of 'legitimate expectation' imposes in essence a duty on public authority to act fairly by taking into consideration all relevant factors relating to such 'legitimate expectation'. Within the conspectus of fair dealing in case of 'legitimate expectation', the reasonable opportunities to make representation by the parties likely to be affected by any change of consistent past policy, come in. We, have not been shown any compelling reasons taken into consideration by the Central Government to make a departure from the existing policy of allotment with reference to seniority in Registration by introducing a new guideline. On the contrary, Mr. Jaitley the learned Counsel has submitted that the DDA and/or Central Government do not intend to challenge the decision of the High Court and the impugned memorandum of January 20, 1990 has since been withdrawn. We therefore feel that in the facts of the case it was only desirable that before introducing or implementing any change in the guideline for allotment, an opportunity to make representations against the proposed change in the guideline should have been given to the registered Group Housing Societies, if necessary, by way of a public notice.”

17. A perusal of Annexure P-1, contents whereof become extracted hereinafter, reveals, that the respondent concerned, had granted permission to the petitioner-association to develop the colony. Annexure P-1 was made in the year 1982, and, the instant notifications for acquisition was published



the interregnum since the making of Annexure P-1, and, the issuance of the impugned notifications, rather through Annexure P-8, the respondents concerned, released the subject lands from acquisitions.

“The Government has decided to grant you licence in respect of the proposed land on fulfilment of conditions laid down by Town and Country Planning for providing the licence. You are, therefore, directed to contact the Director, Town and Country Planning Department, Haryana Chandigarh regarding compliance of conditions etc.”

18. Though, thereins there is no pointed specification(s) of the terms and conditions, which were to be encumbered, upon the petitioner-association by the authority concerned, but the said terms and conditions never became imposed upon the petitioner-association vis-a-vis the colony, whereons the developmental works, but apparently commenced prior to 1990. However, irrespective of omission (supra), yet no coercive action thus was drawable qua the subject land. The reason for making the above conclusion becomes sparked from the factum, that since the objections raised by the petitioner-association under Section 5-A of the Act of 1894 against the acquisition of the petition lands, became premised on the ground, that a colony had been raised thereovers. Consequently, after accepting the said ground, the said colony became released from acquisition in the year 1991.

19. Moreover, when strikingly Annexure P-1 was made in the year 1982, whereby the petitioner-association's appeal-cum-representation for grant of licence to create dwelling units over the subject lands, thus became accepted. Consequently, it but naturally appears, that in the apposite interregnum since the making of Annexure P-1, thus in the year 1982 and the year 1991, whereunders the subject lands became exempted from



acquisition, thus on the ground that thereovers existed a residential colony, qua the said residential colony becoming created on the subject lands but prior to 1991, and, but naturally it also did exist thereover, even when the impugned annexures, became issued much belatedly therefrom, inasmuch as, respectively in the years 1997 and 1998.

20. Conspicuously, when this Court entwines the above surging forth evident facts, thereby the inference(s) which generate therefrom, is that, the residential dwelling units, and/or plots becoming created over the subject lands post the making of Annexure P-1, and, prior to the issuance of the impugned notifications. The further sequitur of the above inference, is that, in terms of the verdict (supra), the beneficent effect of the principle(s) of legitimate expectation, thus does require becoming endowed qua the petitioner-association, and, therebys the petitioners do have an able cause to insist, that the respondents may be mandated to not depart from the promise, as conferred upon the petitioner-association, rather through Annexure P-1, when post thereto, thus developmental activities became completed over the subject lands.

21. Furthermore, when the earlier completed constructions over the subject lands also led the respondents concerned, to release the subject lands from acquisition, thus also fortifyingly constrains this Court to endow qua the present petitioner, the beneficent grace of the principle of legitimate expectation, as becomes expostulated in verdict (supra). Resultantly, the petitioner-association becomes empowered to make an able challenge to the issuance of the impugned notifications.

22. Moreover, despite over subject lands, construction activities becoming undertaken by the allottees, yet the above developmental



activities, as undertaken over the subject lands, rather become evidently ill-overlooked by the respondent concerned, through its yet putting the petition lands to re-acquisition rather for the purported purpose of creating a housing project thereovers, which purpose is similar to the one which becomes already completed over the subject lands. Therefore, it can be forthrightly concluded, that the power of eminent domain has been exercised with a vice of *sub coloris officio*, and, thereby the said power of eminent domain can be candidly stated to be exercised most unreasonably, and, capriciously.

23. It is averred in the petition, that the learned Civil Court of competent jurisdiction had restrained the respondent concerned, from prohibiting the petitioner-association from undertaking the development activities over the subject lands. Moreover, when even this Court had granted the order of status quo against the allottees over the subject lands becoming dispossessed therefrom. However, though the status quo order passed by this Court became challenged by the respondent concerned, by filing an application No. CM-16004-CWP-2021, but the said application is yet subjudice.

24. The legal import of the above, is but naturally that, qua thereby when the said orders are not unfolded by any cogent material placed on record, to become vacated. Resultantly, when no endeavour did become made by the acquiring authority concerned, to vacate the order passed by the Civil Court of competent jurisdiction, whereby the respondents were restrained from prohibiting the petitioner-association from undertaking developmental activities on the subject lands. The sequel of non-recoursings



of the above endeavour by the respondent concerned, thus tantamounts to abandonments at their instance qua their remedy of ensuring the vacation of the ad interim order passed by the Civil Court of competent jurisdiction against the respondents concerned, thus prohibiting the latter from restraining the petitioner-association from undertaking developmental activities over the subject lands. The natural corollary thereof, is that, the respondents concerned, thus acquiescing to the completion of developmental activities over the subject lands at the instance of the petitioner-association. Consequently, therebys the respondent concerned, becomes estopped to claim, that the impugned notification for acquisition be yet enforced, and, therebys the constructions raised over the subject lands be ordered to be demolished, so that therebys, re-constructions are made over the subject lands at the instance of the beneficiary department concerned, so that subsequently fresh dwelling units, as become raised thereovers become allotted to the allottees concerned. In case, the above is countenanced, thus it would but be antithetical to the petitioner being supra declared to be an able recipient of the expostulation of law (supra), besides would lead to gross disturbance(s) of equities, as thereby the raised dwelling units by the members of the petitioner-association, over the subject lands, when subserve(s) the fundamental right of life, as enshrined in Article 21 of the Constitution of India, rather would make the said right to become most unjustifiably whittled down.

25. The effect of the above acquiescence, is that, the respondent concerned, reiteratedly becomes estopped to make any possible agitation against the quashing of the impugned annexures. Conspicuously when the



stated public purposes for making acquisitions of the subject lands are similar to the one which have been already successfully engaged into by the petitioner-association.

26. Importantly, the developmental activities pioneered by the association for the welfare to its members in extenso delineated in (i) metalled roads, (ii) underground drinking water pipeline, (iii) underground water storage tank, (iv) tubewell for supplying drinking water to the residents, (v) underground sewerage with manhole lines with manholes septic tanks, (vi) shopping centre, (vii) parks and open spaces, (viii) a primary school for children of the colony (ix) external electrification and (x) a temple complex, becoming established over the subject lands.

27. The undertakings of the above developmental activities over the subject lands cannot be, as, undone at this belated stage, through accepting the validity of the impugned notifications which, as stated (supra), reek of the vice of theirs becoming issued *sub coloris officio*.

28. Obviously, when a licence, as became issued to the petitioner-association, therebys the said licence prima facie did not make the undertaking of developmental activities over the subject lands, to be either illegal nor the constructions, as became made thereovers are wanting in any legality.

29. Nonetheless, it appears, that since in Annexure P-1, contents whereof became extracted hereinabove, the terms and conditions of the licence granted to the petitioner-association remained unsettled, and, were to be settled by the competent authority concerned, that therebys a contention becomes raised on the part of the respondent, that merely on the above score,



the developmental activity, as has been completed on the subject lands, rather is an illegal activity. Moreover, it has also been argued, that since the impugned notifications are issued for subjecting the petition lands to the requisite public purposes, thereupon, the writ petition requires to be dismissed.

30. Initially in the light of the above expostulation of law, as carried in the relevant paragraphs of the judgment (supra), wherein, the equitable principle of legitimate expectation becomes enshrined, thereby the issuance of Annexure P-1 to the petitioner, does naturally create a legitimate expectation in the petitioner-association, and, thus bars the respondents to act unfairly, and, unjustly against the petitioner-association, as it has done on the following counts; that (a) despite the petitioner-association(s) but completed constructions rather evidently prior to the year 1991 becoming released from acquisition yet the very same constructions being subjected to acquisition through the issuance of impugned notifications, (b) assuming that the relevant terms and conditions became not settled therein, and, were to be settled by the competent authority concerned, but yet the subsequent thereto, thus raising of objection(s) at the instance of respondent No. 2, to the extent, that the open area left by the petitioner-association, rather was merely only 30% against the requirement of 45%, but is naturally a spuriously raised objection, and, (c) that since for dispelling the legality of the said objection as plainly discernible from the factum, qua the said alike earlier objection, rather led the petitioner-association to successfully make an appeal-cum-representation on 28.8.1991, before the State Government, and, which resulted in the issuance of Annexure P-1.



31. Resultantly, as stated (supra), when the objections (supra), thus became dispelled through the issuance of Annexure P-1 by the authority concerned, besides through issuance of release order (Annexure P-8), thereupon the similar thereto raised objections by respondent No. 2, who is an authority subordinate to respondent No. 1, was naturally ridden with the vice of malafide, or with the vice of vendetta reared against the petitioner-association, especially when in respect thereof, there is an affidavit existing in the instant writ petition.

32. Since ex-facie, developmental activity over the subject lands, became completed thereovers in 1986, thus in terms of Annexure P-1, issued on 1.12.1982. Therefore, therebys the present petitioner forthrightly becomes well armed to claim the benefit of the expostulation of law, as embodied in the verdict (supra), made by the Hon'ble Apex Court.

Fortifying reasons for endowing the benefits of the equitable principles of legitimate expectations to the petitioner-associations

33. Be that as it may, post 1986 when allotments of the carved plots in the society were made by the petitioner-society to its members, a notification for the acquisition of the subject lands was issued on 22.3.1990 under Section 4 of the Act of 1894 (Annexure P-3), which became succeeded by a declaration made on 19.3.1991 under Section 6 of the Act of 1894, (Annexure P-5). However, the said made notifications resulted in objections thereto becoming raised by the petitioner-association, objections whereof become appended to the instant writ petition as Annexure P-4. On the said raised objections, an order (Annexure P-8) became rendered by the Deputy Commissioner, Gurgaon, whereby the covered therein land,



measuring 133.72 acres became exempted from acquisition, thus on the ground, that the constructions made thereons were already existing. The effect of Annexure P-8, is that, thereby the Government accepting the validity of the earlier thereto issuance of Annexure P-1, whereby the licence for making developmental activities over the subject land became granted to the petitioner-association. Moreover, the further import thereof, is that, the developmental activity which became undertaken on the subject land, thus was a legitimate developmental activity, dehors the apposite terms and conditions remaining unsettled thereins.

34. However, reiteratedly irrespective of no terms and conditions becoming settled in Annexure P-1, yet the terms and conditions, which were to be settled vis-a-vis the licence (Annexure P-1), which became issued to the petitioner-association, thus were to be in alignment with the proviso to Rule 12 of the Rules of 1965, provisions whereof become extracted hereinabove, whereunders a discretion is vested in the Director to reduce the percentage of vacant space in the subject lands from 45% to 35%, but if in his objective opinion, the planning requirements, and, the size of the colony so justify.

35. If so, irrespective of no terms and conditions becoming settled in Annexure P-1, thereby the competent authority was required to, after making the measurements of the subject lands, by an independent qualified engineer, but imperatively in the presence of the petitioner association, thus make an objective decision, that the open spaces left in the colony were less than 45%. If so, subsequently too, to avoid the ill-consequences of the petitioner-association rather becoming condemned unheard, as may arise



from may be, a demolition order becoming served upon the petitioner association, for thereby ensuring that the open spaces in the colony are within 45%, thus a notice for the parties being heard personally, but was required to become issued, thereby asking the present petitioner to cause personal appearance through its authorized representative. However, prima facie neither any such objective independent measurement activity became undertaken by the respondent concerned, vis-a-vis the colony, nor assumingly if the open spaces in the colony were less than 45%, nor thereby any effectively served show cause notice became issued, upon the petitioner society. The omissions (supra) are grave, as in the event of the said measurements being evidently objectively carried out in the presence of the members of the petitioner-association, and, theirs revealing, that the open spaces left within the colony, are assumingly less than 45%, thereupon, on a show cause notice becoming imperatively required to be issued to the petitioner-association, so that thereby through its authorized representative it becomes well facilitated to adduce cogent material, thus for availing the benefit of the proviso to Rule 12 of the Rules 1965, with an echoing therein, that the Director may thereby, rather reduce the said percentage to a figure not less than 35%, thus on the ground that the planning requirements, and, the size of the colony so justify.

36. Enigmatically, even the benefit of the said proviso remains but without any well founded reasons, rather unaccorded to the petitioner-association, thereby but obviously the petitioner-association has been most unfairly treated, besides for the reasons to be assigned hereinafter has been discriminated against, as no objective decision qua the supra has been made but after most effectively hearing the petitioner-association. The sequel



thereof, is that there is a gravest non-application of mind by the Director vis-a-vis the discretion vested in him to reduce the open space in the colony to less than 45%, despite may be the evident conditions, thus for the exercising of the said discretion favourably vis-a-vis the petitioner, rather noticeably surfacing, whereupons naturally there is an investment of jurisdiction in this Court to judicially review the woeful letters, whereby the respondent concerned, has yet arbitrarily failed to exercise the said invested jurisdiction, thus for reducing the extent of the open space from 45% to 35%, and, that too despite the issuance of Annexure P-1. As such, the letters (supra) are unworthy of any credence being meted thereto.

37. As stated (supra), through Annexure P-8, the earlier launched acquisition proceedings became dropped, as therebys the subject lands became released from acquisition. However, post the issuance of Annexure P-8, and, also post the makings of developmental activities, thus over the subject lands, significantly also despite the issuance of Annexure P-1, and, also despite the omissions (supra) becoming made by the competent authority concerned, whereby the petitioner-association may have become well facilitated to draw sustenance from the proviso (supra), yet the respondent concerned, issued another notification dated 1.2.1997 under Section 4 of the Act (Annexure P-10), whereunders the subject lands were re-brought to acquisition. The said notification became succeeded by a declaration issued under Section 6 of the Act of 1894 (Annexure P-13).

38. The above puttings of the subject lands to re-acquisition, despite all the above stated events occurring prior thereto, appears to become spurred by some malice or vendetta reared by the officer concerned, working in the respondent department. It is in the backdrop of all the events (supra),



preceding the issuance of notification (Annexure P-10), that this Court proceeds to reiteratedly favourably attract to the instant case, the principles of legitimate expectation, as become expostulated in the relevant paragraphs of the judgment (*supra*).

39. The petitioner-association has also raised grounds in the instant petition qua the respondent concerned, thus qua the other colonies, existing over the other subject lands, making order of releases from acquisition, besides the basic amenities like potable water and underground sewerage becoming provided to those colonies, whereas, the said facility remained unaccorded to the dwelling units raised over the subject colony. Therefore, it is contended, that thereby, the respondent concerned, has practiced blatant invidious discrimination against the petitioner-association.

40. Since evidently the subject lands appertaining to other colonies, have been exempted from acquisition, therefore, the petitioner-association was also required to be treated at par with those estate holders in whose favour the releases were made. However, the respondent concerned, has in not making the claimed releases of the subject lands to the present petitioner, rather has practiced invidious discrimination against the petitioner-association, especially when earlier theretos thus constructions, as made thereovers were almost complete, whereby the subject lands were excluded from acquisition, and, theirs yet being re-acquired thereby makes the impugned notifications to be ridden with a vice of *sub coloris officio*.

41. The denial of the basic amenities (*supra*) by the respondent concerned, to the petitioner's colony, also does generate an inference from this Court, that thereby, when the said basic amenities are an integral component of the right to life, enshrined in Article 21 of the Constitution of



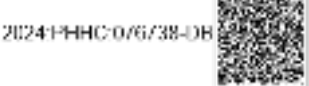
India. Resultantly, the denial of the said amenities, but infringes the above fundamental right endowed, upon the present petitioner.

42. The ground raised by the respondents concerned, in the reply, that the subject lands are an integral component of the layout plans, and, that they be not released from acquisition, also pales into significance. The reason for drawing the above conclusion becomes sparked from this Court rather favourably applying to the factual matrix prevailing in the instant case, the principle of legitimate expectations, and, also its applying against the respondents concerned, the principle of promissory estoppel, whereby but necessarily the respondents become estopped to issue the impugned notifications.

Final order

43. In aftermath, this Court finds merit in the instant petition, and, with the above observation, the same is hereby allowed. The impugned notifications for acquisition are quashed and set aside.

44. However, the respondent concerned, is directed to after making lawful objective measurements of the subject lands, importantly in the presence of the authorized representative of the petitioner, but by an independent qualified engineer, issue notice, if direly required, to the petitioner-society, so that it can be heard qua whether in terms of Rule 12 of the Rules of 1965, it can avail the benefit of the proviso (supra) and Rule (supra). Moreover, if required, if the conditions carried in the proviso (supra), occurring in Rule 12 of the Rules 1965 are cogently satisfied, thereupon the discretion vested in the Director to reduce the open areas in the colony from 45% to 35%, thus be considered to be expeditiously exercised in favour of the petitioner-association.



45. Moreover, a mandamus is passed, upon the respondent concerned, to forthwith purvey all the basic amenities (supra) to the petitioner’s colony.

46. The pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

May 27, 2024
Gurpreet

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