

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 06.10.2015

CWP No.24328 of 2014

Daljit Singh & others

....Petitioners

Versus

State of Punjab and others

.....Respondents

CWP No.24332 of 2014

Baljit Singh

....Petitioner

Versus

State of Punjab and others

.....Respondents

CWP No.24353 of 2014

Jaswant Kaur

....Petitioner

Versus

State of Punjab and others

.....Respondents

CWP No.24355 of 2014

Sher Singh & another

....Petitioners

Versus

State of Punjab and others

.....Respondents

CWP No.24598 of 2014

Daljit Kaur & others

....Petitioners

Versus

State of Punjab and others

.....Respondents

CWP No.24600 of 2014

Charan Singh & another

....Petitioners

Versus

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE HARI PAL VERMA**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Ghulam Nabi Malik, Advocate for the petitioners.

Mr. N.D.S.Mann, Addl. AG, Punjab.

HEMANT GUPTA, J.

This order shall dispose of aforementioned six writ petitions, wherein the petitioners have made identical prayer for quashing of the order dated 26.07.2011 transferring the land acquired from the petitioners in favour of respondent No.4.

The State Government issued notifications dated 22.02.1988 & 24.02.1988 under Sections 4 & 6 of the Land Acquisition Act, 1894 (for short 'the Act') respectively acquiring the land of the land-owners including the petitioners for a public purpose namely 'for setting up the Jagraon Cooperative Sugar Mill'. It is the pleaded case of the petitioners that after completion of the acquisition proceedings, the possession of the acquired land was handed over to the Jagraon Cooperative Sugar Mill for development of the acquired land for public purpose i.e. for industrial purpose. It is pointed out that since the land was acquired for industrial purpose, the same cannot be used for any other purpose. The proposal of the State Government to transfer the land to the Punjab Urban Development

Authority (PUDA) is for a commercial purpose, therefore, the same is not permissible. In support of the contention raised, the petitioners rely upon a judgment rendered by the Division Bench of this Court in CWP No.2782 of 2011 titled 'Bipan Sharma, Advocate Vs. State of Punjab & others' on 09.11.2012, wherein a direction was issued that the acquired land shall be used only for industrial purpose.

In the written statement filed on behalf of respondent Nos.1 to 3, it has been pointed out that after acquisition of the land, Jagraon Cooperative Sugar Mill Ltd. was established and it functioned as such for several years. However, when the Mill went in losses, the liquidator was appointed on 21.03.2005. The Cabinet, thereafter, decided to transfer the land to PUDA to develop residential colonies and that there is no stipulation in the notifications that the land will be used only for industrial purpose. It has been also averred that Jagraon Cooperative Sugar Mill Ltd. had to be wound up vide order dated 21.03.2005 passed under Section 57 of the Punjab Cooperative Societies Act, 1961.

On 28.09.2015, learned counsel for the petitioners sought some time to examine the Division Bench judgment of this Court in CWP No.17979 of 2011 titled 'Jagtar Singh & others Vs. State of Punjab & others' decided on 09.02.2012. However, learned counsel for the petitioners today argued that the said judgment is not applicable to the facts of the present case inasmuch as in the said case, the land was sold by the land-owners for setting up the 'Baba Farid University of Health Sciences, Faridkot', but thereafter transferred the same to PUDA.

Having heard learned counsel for the parties, we find that the issue raised by the petitioners is covered by the judgment of this Court in Jagtar Singh's case (supra). Though the land was transferred when the sale

deeds were executed, but the sale deeds were executed after the notification under Section 4 of the Act was published. The Bench examined the issue, whether the land acquired for a public purpose can be used for another public purpose after its acquisition in terms of the Act. It was held that the State Government can always change the public purpose. The relevant extract reads as under:

“.....In fact, one of the earliest judgment on the issue of 'change of public purpose' is *Gulam Mustafa and others Vs. The State of Maharashtra and others* AIR 1977 SC 448, wherein it was held to the following effect:

“5.once the original acquisition is valid and title has vested in the municipality, how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. There is no principle of law by which a valid compulsory acquisition stands voided because long later the requiring authority diverts it to a public purpose other than the one stated in the... declaration.”

Later, a three Judges' Bench in *Mangal Oram and others Vs. State of Orissa and another* AIR 1977 SC 1456 reiterated the same view. Still later, another three Judges' Bench in *State of Maharashtra Vs. Mahadeo Deoman Rai @ Kalal and others* (1990) 3 SCC 579 has observed under:

“6. Besides, the question as to whether a particular scheme framed in exercise of statutory provisions is in the public interest or not has to be determined according to the need of the time and a final decision for all times to come cannot be taken. A particular scheme may serve the public purpose at a given point of time but due to change of circumstances it may become essential to modify or substitute it by another scheme. The requirements of the community do not remain static; they indeed, go on varying with the evolving process of social life. Accordingly, there must be creative response from the public authority, and the public scheme must be varied to meet the changing needs of the public. At the best for the respondent, it can be assumed that in 1967 when the resolution in his favour was passed, the acquisition of the land was not so urgently essential so as to call for his dispossession. But for that reason it cannot be held that the plots became immune from being utilized for any other public purpose for ever. ...”

In *Collectors of 24 Parganas and others Vs. Lalith Mohan Mullick and others*, (1986) 2 SCC 138, at page 144:

“16. Our considered view in this matter is that establishment of a hospital for crippled children falls within the idea of settlement and rehabilitation of displaced persons and the notification cannot be faulted on the ground that the purpose disclosed in the letters is one different from the public purpose disclosed in the notification. The Division Bench of the High Court was in error in quashing the notification.”

In *Union of India and others Vs. Jaswant Rai Kochhar and others* (1996) 3 SCC 491, the Hon'ble Supreme Court held to the following effect:

“4.Therefore, when the notification has mentioned that the land is sought to be acquired for housing scheme but it is sought to be used for District Centre, the public purpose does not cease to be public purpose and the nomenclature mentioned in the notification under Section 4(1) as housing scheme cannot be construed to be a colourable one. The notification under Section 4(1) could not have been quashed on the ground that the land is sought to be used for District Centre, namely, for commercial purpose. It is obvious that the lands acquired for a public purpose should serve only the public purpose of providing facilities of commercial purpose, namely, District Centre as conceded by the learned counsel in fairness to be a public purpose. The notification under Section 4(1) cannot be quashed on the ground of change of user. The High Court was wholly wrong in quashing the notification on the ground of change of user.”

In *Municipal Corporation of Greater Bombay Vs. Industrial Development Investment Co. Pvt. Ltd. and others* (1996) 11 SCC 501, the Hon'ble Supreme Court considered the entire case law and returned the following findings:

“22. It is thus well-settled legal position that the land acquired for a public purpose may be used for another public purpose on account of change or surplus thereof. The acquisition validly made does not become invalid by change of the user or change of the user in the Scheme as per the approved plan. It is seen that the land in Block ‘H’ which was intended to be acquired for original public purpose, namely, the construction of Sewage Purification Plant, though was shifted to Block ‘A’, the land was earmarked for residential, commercial-cum-residential purposes or partly for residential purpose etc. It is the case of the appellant that the Corporation intends to use the land acquired for construction of the staff quarters for its employees. It is true that there was no specific plan as such placed on the record, but so long as the land is used by the Corporation for any designated public purpose, namely,

residential-cum-commercial purpose for its employees, the later public purpose remains to be valid public purpose in the light of the change of the user of the land as per the revised approved plan..... It would not, therefore, be necessary that the original public purpose should continue to exist till the award was made and possession taken. Nor is it the duty of the Land Acquisition Officer to see whether the public purpose continues to subsist. The award and possession taken do not become invalid or ultra vires the power of the Land Acquisition Officer. On taking possession, it became vested in BMC free from all encumbrances including tenancy rights alleged to be held by the respondents. Possession and title validly vesting in the State, becomes absolute under Section 10 of the Act and thereafter the proceedings under the Act do not become illegal and the land cannot be revested in the owner.”

In ***Bhagat Singh Vs. State of U.P. and others*** (1999) 2 SCC 384, it was observed as under:

“22. As pointed out in the above judgments, there is no need that the land proposed to be acquired by the Government for a particular public purpose should be for the same purpose or use mentioned in the Master Plan or Zonal Plan for the said area. Nor will the acquisition be invalid merely because the land proposed to be acquired is for a purpose other than the one permitted by the Master Plan or Zonal Plan applicable to that locality. Acquisition will be valid if it is for a public purpose even if it is not for the type of user permitted by the Master Plan or Zonal Plan in force at the time the acquisition is made. ...”

In ***Northern Indian Glass Industries*** case (supra), it was held to the following effect:

“9. ...It is a well settled position in law that after passing the award and taking possession under Section 16 of the Act, the acquired land vests with the Government free from all encumbrances. Even if the land is not used for the purpose for which it is acquired, the landowner does not get any right to ask for revesting the land in him and to ask for restitution of the possession.”

In ***Dev Sharan and others Vs. State of Uttar Pradesh and others*** (2011) 4 SCC 769, it was held as under:

“10. It is neither debated nor disputed as regards the valid acquisition of the land in question under the provisions of the Land Acquisition Act and the possession of the land had been taken. By virtue of Section 16 of the Land Acquisition Act, the acquired land has vested absolutely in the Government free from all encumbrances. Under Section 48 of the Land Acquisition Act,

Government could withdraw from the acquisition of any land of which possession has not been taken. In the instant case, even under Section 48, the Government could not withdraw from acquisition or to reconvey the said land to the respondent as the possession of the land had already been taken. The position of law is well settled.”

In *Ravi Khullar and another Vs. Union of India and others* (2007) 5 SCC 231, the Hon'ble Supreme Court held as under:

“23.The purpose for which the lands are being utilized by a governmental agency is also a public purpose and as we have noticed earlier, would come within the ambit of the public purpose declared in Section 4 notification. Therefore, the acquisition cannot be challenged on the ground that the acquired lands are not being utilized for the declared public purpose. Having regard to the facts of the case it cannot be contended, nor has it been contended, that the notification under Section 4 of the Act was issued mala fide.”

In *Sulochana Chandrakant Galande Vs. Pune Municipal Transport and others* (2010) 8 SCC 467, the Hon'ble Court observed as under:

“12. The provisions of Section 10(3) of the 1976 Act are analogous to Section 16 of the Land Acquisition Act, 1894 (hereinafter called “the 1894 Act”). Acquisition proceedings cannot be withdrawn/abandoned in exercise of the powers under Section 48 of the 1894 Act or Section 21 of the General Clauses Act, 1897 once the possession of the land has been taken. [*Vide State of M.P. v. Vishnu Prasad Sharma AIR 1966 SC 1593, Lt. Governor of H.P. v. Avinash Sharma AIR 1970 SC 1576, Pratap v. State of Rajasthan (1996) 3 SCC 1, Mandir Shree Sita Ramji v. Collector (L.A.) (2005) 6 SCC 745, Bangalore Development Authority v. R. Hanumaiah (2005) 12 SCC 508 and Hari Ram v. State of Haryana (2010) 3 SCC 621.*]

13. The meaning of the word “vesting” has been considered by this Court time and again. In *Fruit & Vegetable Merchants Union v. Delhi Improvement Trust AIR 1957 SC 344*, this Court held that the meaning of the word “vesting” varies as per the context of the statute in which the property vests. While considering the case under Sections 16 and 17 of the 1894 Act, the Court held as under: (AIR p. 353, para 19)

“19. ... the property acquired becomes the property of Government without any conditions or limitations either as to title or possession. The legislature has made it clear that the vesting of the property is not for any limited purpose or limited duration.” (..emphasis added)

14. “Encumbrance” actually means the burden caused by an act or omission of man and not that created by nature. It means a burden or charge upon property or a claim or lien on the land. It means a legal liability on property. Thus, it constitutes a burden on the title which diminishes the value of the land. It may be a mortgage or a deed of trust or a lien of an easement. An encumbrance, thus, must be a charge on the property. It must run with the property. (*Vide Collector of Bombay v. Nusserwanji Rattanji Mistri AIR 1955 SC 298, H.P. SEB v. Shiv K. Sharma AIR 2005 SC 954 and AI Champdany Industries Ltd. v. Official Liquidator (2009) 4 SCC 486.*)

15. In *State of H.P. v. Tarsem Singh (2001) 8 SCC 104*, this Court held that the terminology “free from all encumbrances” used in Section 16 of the 1894 Act, is wholly unqualified and would encompass the extinguishing of “all rights, title and interests including easementary rights” when the title vests in the State.

16. Thus, “free from encumbrances” means vesting of land in the State without any charge or burden in it. Thus, the State has absolute title/ownership over it.

17. In *Satendra Prasad Jain v. State of U.P. (1993) 4 SCC 369*, this Court held that once land vests in the State free from all encumbrances, it cannot be divested. The same view has been reiterated in *Awadh Bihari Yadav v. State of Bihar (1995) 6 SCC 31, U.P. Jal Nigam v. Kalra Properties (P) Ltd. (1996) 3 SCC 124, Pratap case (supra), Chandragauda Ramgonda Patil v. State of Maharashtra (1996) 6 SCC 405, Allahabad Development Authority v. Nasiruzzaman (1996) 6 SCC 424, State of Kerala v. M. Bhaskaran Pillai (1997) 5 SCC 432, M. Ramalinga Thevar v. State of T.N. (2000) 4 SCC 322, Printers (Mysore) Ltd. v. M.A. Rasheed (2004) 4 SCC 460, Bangalore Development Authority v. R. Hanumaiah case (supra) and Govt. of A.P. v. Syed Akbar (2005) 1 SCC 558.*

18. So far as the change of user is concerned, it is a settled legal proposition that once land vests in the State free from all encumbrances, there cannot be any rider on the power of the State Government to change user of the land in the manner it chooses.

19. In a similar situation, in *Gulam Mustafa v. State of Maharashtra case AIR 1977 SC 448*, this Court held as under: (SCC p. 802, para 5)

“5. ... once the original acquisition is valid and title has vested in the municipality, how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. There is no principle of law by

which a valid compulsory acquisition stands voided because long later the requiring authority diverts it to a public purpose other than the one stated in the ... declaration.”

20. Reiterating a similar view in *C. Padma v. Govt. of T.N. (1997) 2 SCC 627*, this Court held that if by virtue of a valid acquisition of land, the land stands vested in the State, thereafter, the claimants are not entitled to restoration of possession on the grounds that either the original public purpose has ceased to be in operation or the land could not be used for any other purposes.

21. In *Bhagat Singh v. State of U.P. (1999) 2 SCC 384*, *Niladri Narayan Chandradhurja v. State of W.B. (2002) 9 SCC 682* and *Northern Indian Glass Industries v. Jaswant Singh (2003) 1 SCC 335*, this Court held that, the land user can be changed by the statutory authority after the land vests in the State free from all encumbrances.

22. In view of the above, the law can be summarised that once the land is acquired, it vests in the State free from all encumbrances. It is not the concern of the landowner how his land is used and whether the land is being used for the purpose for which it was acquired or for any other purpose. He becomes persona non grata once the land vests in the State. He has a right to get compensation only for the same. The person interested cannot claim the right of restoration of land on any ground, whatsoever.”

In view of the aforesaid judgments, though the land was not acquired under the provisions of the Act, but still applying the principles of acquisition under the Act, the public purpose for which the land is acquired can always be changed to another public purpose by the State Government for optimum utilization of the land. The requirements of the community keep on varying. The schemes can be varied to meet the changing needs of the public.”

In the said case also the land was transferred to PUDA for development of residential colony. Such is the present case. Housing is also one of the public purposes, as mentioned in Section 3(f) of the Land Acquisition Act, 1894.

In Bipan Sharma's case (supra), 92 Kanals 18 Marlas of land was acquired for public purpose namely expansion of paper making plant at Malerkotla. Out of the land acquired, 78 Kanals 8 Marlas of land was

transferred to M/s Vinod Paper Mills Ltd. The said company went into liquidation and the property was sold in an auction. It was purchased by M/s Parsvnath Developers Limited. The purchaser sought permission for development of the residential colony, which was declined by this Court, when it was held that since the land was acquired for industrial purpose, it has to be used for the industrial purpose only. In the said case, the land was purchased by the private developer. The development of a land by a private developer is not a public purpose, whereas in the present case, the land acquired has been transferred to PUDA, which is an agency and instrumentality of the State. Therefore, the transfer of the land to PUDA is for another public purpose. Thus, we find that the said judgment does not provide any assistance to the argument raised by the learned counsel for the petitioners.

In view of the above, we do not find any merit in the present set of writ petitions. Consequently, all the writ petitions are dismissed.

(HEMANT GUPTA)
JUDGE

06.10.2015
Vimal

(HARI PAL VERMA)
JUDGE