HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

****

CWP No.9718 of 2009 (O&M)
Date of Decision: 16.09.2016

****

Vivek Coop. House Building Society Ltd. ... Petitioner

VS.

State of Haryana & Ors. ... Respondents

****

CWP No.1365 of 2011 (O&M)

****

Taranjeet Singh ... Petitioner

VS.

State of Haryana & Ors. ... Respondents

****

CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE DARSHAN SINGH

****

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

****

Present: Mr. Neeraj Kumar Jain, Senior Advocate with
Messrs Pratham Kant & DC Dhaula, Advocates (CWP-9718-2009)
Mr. Sushil Kumar Sharma, Advocate (CWP-1365-2011)
for the petitioners

Ms. Palika Monga, DAG Haryana

Mr. Dhiraj Chawla, Advocate for respondents No.8 to 10

Mr. Arun Jain, Senior Advocate with
Mr. Sunil Sharma, Advocate for respondent No.12

****

SURYA KANT, J.

(1) This order shall dispose of the above-captioned writ petitions in which the petitioners have laid challenge to the notifications dated 31.03.2008 and 03.02.2009 issued under Sections 4&6 of the Land Acquisition Act, 1894 (in short, 'the 1894 Act'). Vide the first notification, State of Haryana proposed to acquire 155.37 acres land within the revenue estate of Village Hisar and land measuring 148.39 acre within the revenue estate of Villages Satrod Khurd and Khas, Tehsil and District Hisar, for the public purpose of 'Commercial Sector 25, Hisar' to be developed by Urban Estates Department, Haryana and vide the second notification, declaration *re:* acquisition of 132.05

acres land of Village Hisar and 148.39 acres land of Villages Satrod Khurd and Khas was notified.

(2) As the above-stated acquisition includes the land measuring 189 kanal 02 marla owned by the petitioner-Society in the first case and land measuring 7 marla (210 sq.yards) of the petitioner in the second case, hence they being aggrieved, have approached this Court.

(3) A brief reference to the facts of both the cases is necessitated.

CWP-9718-2009 (Vivek Coop. House Building Society Ltd. Vs. State of Haryana & Ors.)

(4) The petitioner is a Cooperative House Building Society registered on 06.04.1983 under the erstwhile Punjab Cooperative Societies Act, 1961. The Society purchased vide registered sale deeds dated 07.05.1984 and 13.06.1986 the land measuring 189 Kanal 02 Marla i.e. approximately 24 acres situated within the revenue estate of Village Satrod, Tehsil and District Hisar. The Society wanted to develop the land as a residential colony for its members.

(5) Since the Haryana Development and Regulation of Urban Areas Act, 1975 mandates that the agricultural land cannot be used for a different purpose unless permission for Change of Land Use is obtained and a licence in accordance with the provisions of the Act is granted, the District Town Planner got registered an FIR under the Act against the President of the Society on 23.11.1987. The Society thereafter appears to have applied for sanction of its residential colony on 17.03.1988.

(6) Meanwhile, the subject-land was included within the Municipal limits of Hisar, hence the Society 'applied' to the Chief Executive Officer of the Municipal Council, Hisar on 19.01.1989 to approve and finalise its town planning scheme for the residential colony. The Municipal Council decided to

approve the residential colony subject to payment of Development Charges of ₹25 lacs and further subject to the condition that ownership of common areas will vest in the Municipality. Subject to such conditions, layout plan was approved and the petitioner also deposited the requisite charges on 20.02.1990.

(7) No sooner the Deputy Commissioner, Hisar was apprised with the resolution passed by Municipal Council for regularizing the proposed residential colony, he suspended the resolution dated 22.12.1989 of the Municipal Council in exercise of his powers under Section 246 of the Haryana Municipal Act, 1973 which empowers the Deputy Commissioner to "*suspend the execution of any resolution or order of a committee… if, in his opinion, the resolution, order or act is in excess of the powers conferred by law or contrary to the interests of the public or likely to cause waste or damage of municipal funds…*". The petitioner-Society preferred appeal against the Deputy Commissioner's order dated 01.08.1990 but that was declined. The criminal case registered against the President, nevertheless, was disposed of on 15.10.1992 in which he was discharged.

(8) Thereafter started civil litigation between the parties as the petitioner-Society filed a civil suit for permanent injunction against the Municipal Council as well as State of Haryana to restrain them from obstructing the development of its colony. The suit was decreed on 15.10.1992. The first appeal against that decree was also dismissed. Nonetheless, the Municipal Council declined to carry out the development works which prompted the petitioner-Society to approach the District Consumer Disputes Redressal Forum, Hisar. The Forum passed some

interlocutory orders in favour of the petitioner-Society, directing the Municipality to spend ₹10 lacs within six months on the development works.

(9) The controversy took yet another turn in the year 2005 when the process for identifying the land for acquisition was apparently undertaken by the local administration. President of the Society wrote a letter on 27.02.2007 to the District Town Planner, Hisar not to include the land of the Society in the proposed acquisition.

(10) The afore-stated representation did not find favour with the State Government and as noticed at the outset, the land of the petitioner-Society was also proposed to be acquired under Section 4 of the 1894 Act vide notification dated 31.03.2008 (P-34). The objections filed by the petitioner-Society under Section 5-A (P-35) were rejected and its land was included in the final declaration notified under Section 6 of the Act on 03.02.2009 (P-36).

(11) The aggrieved Society filed the instant writ petition questioning the acquisition on various grounds, like (i) discrimination in the matter of release/exemption from acquisition; (ii) mechanical rejection of its objections under Section 5-A of the 1894 Act; (iii) failure to adhere to the Government's own policy dated 30.09.2007; (iv) the acquisition as an outcome of personal vendetta and colorable exercise of power etc. etc.

(12) The Land Acquisition Collector, Urban Estate, Hisar in his written statement dated 21.10.2009 maintained, *inter alia*, that the acquisition proceedings have been carried out strictly in accordance with law; the Society's objections were duly considered but the same merited rejection as almost entire land of it was lying vacant at the time of issue of notification under Section 4 of the Act "**except few scattered residential constructions which were also not qualifying for the release from acquisition of the land**

to be acquired for a commercial Sector…". It further explained that almost entire land of the Society was lying vacant "**except one 'A' class construction and two 'C' class construction**". Rest of the grounds were also controverted.

(13) The District Town Planner, Hisar has also filed a separate written statement on behalf of respondents No.3&5 explaining, *inter alia*, that the Municipal Committee was not competent to issue licence for setting up a residential colony as the power to issue licence vested only in the Director, Town and Country Planning Department, under Section 3 of the 1975 Act. He has also reiterated that except one or two structures of 'B' or 'C' category, the entire land was vacant and was being used for agricultural purposes.

(14) It is foremost relevant to point out that the petitioner-Society has impleaded M/s Heaven Buildwel Pvt. Ltd. and one Sant Singh s/o Chanchal Singh as respondents No.11 & 12. According to the petitioners, the land/properties of these respondents have been released from acquisition in a pick and choose manner as the land of 11th respondent is stated to be vacant like that of the petitioner-Society. So far as respondent No.12 is concerned, petitioner has placed on record the communication dated 02.07.2007 informing that his land measuring 23K 17M stood released from acquisition.

(15) The record reveals that respondent No.11 was proceeded against *ex parte* on 18.03.2010 whereas respondent No.12, on that day, adopted the reply filed by official respondent No.6. This case was finally heard along with CWP No.9888 of 2010 and a Coordinate Bench dismissed the writ petition and upheld the acquisition vide order dated 21.02.2011.

(16) The aggrieved Society approached the Hon'ble Supreme Court and its Civil Appeal No.1274 of 2013 was allowed on 11.02.2013 whereby the

matter has been remitted to this Court for fresh disposal of the writ petition in accordance with law. The Hon'ble Supreme Court while remanding the case took notice of the grounds pleaded by the petitioner in the writ petition and having found that this Court did not deal with any of the substantive grounds on which the acquisition proceedings were questioned, has set aside the judgment of this Court observing as follows:-

> *"In our view, the impugned order is liable to be set aside because the High Court did not consider the appellant's plea that the acquisition proceedings were vitiated by arbitrariness, gross discrimination and violation of the Government's own policy. The letter written by Additional Director, Urban Estates to the Advocate General, Haryana that the land of the appellant is required for Commercial Sector could not be made the sole basis for non-suiting the appellant which, as mentioned above, had purchased land almost 24 years prior to initiation of the acquisition proceedings and deposited Rs.28 lacs towards development charges. The High Court's failure to consider the grounds on which the appellant had challenged the acquisition proceedings has resulted in manifest injustice.*
>
> *For the reasons stated above, the appeal is allowed, the impugned order is set aside and the matter is remitted to the High Court for fresh disposal of the writ petition in accordance with law."*

(17) It may be noticed at this stage that the petitioner has neither in the writ petition nor in the subsequent affidavits disclosed any material facts regarding the release of land/property of respondent No.11. No such information was divulged during the course of hearing also.

(18) The record further reveals that on 16.07.2013, State counsel sought and was granted time to have instructions whether members of the petitioner-Society could be allotted residential plots of equivalent or nearby sizes in a residential area developed by HUDA at Hisar for the reason that the land of the Society was acquired to develop it as a Commercial Sector and not for residential sector. On 22.10.2013 and 06.11.2013, the Chief Administrator, HUDA appeared in Court and pointed out that the matter was sympathetically considered as a special and exceptional case in the light of the observations made by this Court and it was resolved that all the 167 original members of the Society shall be given plots measuring 150 sq.meter each but where such member has sold his share/plot, the transferee shall be given the plot measuring 90 sq.meter only. He further stated that the solitary house of A-class construction of the President of the Society could be adjusted on payment of allotment price of the plot while the other allotment shall be made as per the Rehabilitation and Resettlement Policy dated 09.11.2010.

(19) It further transpires that on 14.07.2014, this Court directed that in view of specific allegations made against respondents No.11&12, who were not appearing after the matter was remanded by Hon'ble Supreme Court, they be again served and last opportunity be given to them to file their counter-affidavits, if any.

(20) In deference thereto, respondent No.12, besides adopting the written statement of official respondent No.6, has filed his reply/affidavit

dated 30.11.2014 admitting the fact regarding release of his property and has justified such release explaining that:-

> "*The answering respondent had purchased 45 kanals 17 marlas of land vide registered sale deed dated 04.07.2000. Earlier, the answering respondent was a lessee on the aforesaid land. The answering respondent built a Banquet Hall on the land in question and started running Banquet Hall under the name and style 'Sanjoy Banquet Hall and Farm'. The Banquet Hall was constructed with all modern facilities with considerable expenditure. The constructed area bears Municipal Number No.657/37*".

(21) He has further averred that:-

> *"That the notifications under 4 and 6 of the Act have been issued for establishing a commercial area of Sector 25, Hisar and after due consideration, it was found that 23 kanals 17 marlas of area, owned and possessed by the answering respondent, could be adjusted in the plan and was released whereas 22 kanals of land, owned and possessed by the answering respondent, was ordered to be acquired the answering respondent filed a CWP No.9888 of 2010 seeking release of the 22 kanals land, which was dismissed by this Hon'ble Court on 21.02.2011 and even the Hon'ble Supreme Court dismissed the SLP being Special Leave to Appeal (Civil) No.22788/2011 filed by the answering respondent vide*

order dated 02.09.2011. Since 22 kanals area owned and possessed by the answering respondent stands acquired, the allegations against him, are without any basis and without any justification. The petitioner society is a residential society and it can not claim adjustment in a commercial sector".

(22) Respondent No.11 remained absent and has not appeared despite being served through substituted service.

(23) An additional affidavit dated 22.07.2016 has been filed by the Administrator, HUDA-cum-Additional Director, Urban Estate, Haryana along with the layout plan of commercial Sector 25 (R1) controverting the allegations of the petitioner. It is averred in the additional affidavit that:-

"It is incorrect that the planning is afterthought and actuated with malafide intentions by the answering respondents. Further, while the process of approval of tentative layout plan was going on the Award for sector 25 was announced and after due deliberations, the layout plan of sector 25 commercial, Hisar bearing drawing No.DTP(H) 3563/2012 dated 20.03.2012 was prepared and submitted for approval."

(24) It is further explained that:-

"The land of the petitioner was inadvertently left unplanned in approved layout plan dated 16.01.2015. After coming to know about the discrepancies in the layout plan the same were attended and a fresh layout plan was prepared and has been approved (Annexure

> *D-4). All these facts have been detailed in the previous affidavit. Regarding falling of sector 25, Hisar in residential zone it is submitted that the Revised Draft Development Plan-2021 dated 31.01.2001/18.09.2002 was prepared and the nature of land in dispute was commercial in that plan. <u>It is pertinent to mention here that the revised Draft Development Plan was published in Government Gazette and objections/suggestions were invited from the General Public, however, no objections/suggestions were moved by the petitioner society or anybody else from the General Public</u>. The procedure for publication/finalization of revised draft development plan has been duly followed and it is incorrect that the respondents have been changing the planning at whims and fancies detrimental to the General Public. <u>Later on the final Developmenet Plan – 2021 AD, Hisar bearing drawing No.DTP(H)3416/2006 dated 26.10.2006 was duly approved by the Government and as per this plan also the sector 25 Hisar is commercial sector</u>…"*

(emphasis applied)

(25) The affidavit also reiterates the brief reasons justifying the acquisition of land of the petitioner-Society as para-6 of the affidavit says:-

> *"That in reply to the contents of para no.6 of the reply of the petitioner it is submitted that the petitioner society applied for license but some observations [sic.*

> *objections] were raised which were never attended by the society. In the meantime, the area came under M.C. limits and after that the society did not pursue the case for grant of licence. Further, mere filing of application for grant of license cannot be construed as grant of license colony. In fact, sub division of land into plots without obtaining license is violation of section 7(1) of Act of 1975 and in the instant case petitioner society has already violated provisions of Act of 1975 by carving out plots. Furthermore, the petitioner society has also not obtained sanction for Town Planning Scheme under Haryana Municipal Act, 1973 before carving out plots. As such colony carved out by petitioner society is in violation of both the Acts of 1975 and 1973. The petitioner society has carved out an unauthorized and illegal colony without any permission from the competent authority."*

(26) Since the offer made by HUDA for adjustment of the members of the petitioner-Society by allotting them plots measuring 150 sq.meter in the residential sector, was not acceptable to petitioner-Society, that the case has been heard on merits.

CWP-1365-2011 (Taranjeet Singh vs. State of Haryana & Ors.)

(27) The petitioner's case is that his land measuring 7 marla i.e. 210 sq.yards whereupon he has constructed a residential house and two shops much before the impugned acquisition process was initiated has been arbitrarily acquired. He too alleges discrimination in the matter of acquisition

or release of properties. Reliance is placed on the Government policy dated 30.09.2007 whereunder the construction existing prior to notification under Section 4 of the Act is permitted to be released. The petitioner has also averred that the subject house is the only residential accommodation owned by him.

(28) The Director, Urban Estate Department, Haryana has filed written statement on behalf of respondents No.2&4. It is claimed that the petitioner has been awarded sufficient and adequate compensation including the amount of annuity for 33 years. Since the land has been acquired to develop a commercial sector, hence the residential structure cannot be adjusted in the development plan, therefore, the policy relied upon by the petitioner is statedly inapplicable. The reply, however, acknowledges that as per the survey report, the petitioner has constructed two shops of 20’x10’ of B-class and a residential house of 20’x30’ of A-class category. Rest of his allegations have been controverted.

<u>Petitioners’ Contentions:</u>

(29) It was vehemently urged on behalf of the petitioners that the subject-acquisition is liable to be annulled, *inter alia*, on the grounds that:-

(i) the petitioner-Society in the first case has got a valid permission from Municipal Council, Hisar to develop its land as a residential colony whereupon some construction has also been raised. The respondents cannot be permitted to acquire to achieve their self-serving afterthought to develop the area as a commercial sector;

(ii) the impugned acquisition is a glaring example of colorable exercise of power as the respondents having lost the legal battle against petitioner-Society before different forums including the

Civil Court, have resorted to the power of *eminent domain* to achieve the same object in which they had earlier failed;

(iii) the action is totally discriminatory as the vacant land as well as unauthorized construction raised by 12^{th} respondent have been released whereas similarly-placed claims of petitioners have been overlooked;

(iv) the objections filed under Section 5-A have been rejected mechanically thereby denying the only legal protection available to an expropriated owner under the 1894 Act;

(v) the development of commercial Sector 25 would not be hampered if the petitioners' land/properties are released, for they are willing to give up their claim for compensation *qua* the land which the respondents require for development of infrastructure like roads or other basic amenities as per the tentative layout plan of the said Sector.

Respondents Counter:

(30) Learned State counsel opposed the petitioners' claim and argued that –

(i) the petitioners' land cannot be released as the acquisition has been made for a 'commercial sector' where 'residential' area cannot be adjusted as per its development plan;

(ii) no residential property in the commercial sector has been released, hence the petitioners cannot complain of discrimination;

(iii) the released property of respondent No.12 is admittedly a banquet hall, namely, a commercial venture as it could be adjusted in the layout plan without causing much hindrance;

(iv) the objections filed by petitioners under Section 5-A were duly considered and the Land Acquisition Collector has assigned reasons for their rejection;

(v) the Government policy dated 30.07.2007 cannot be invoked by the petitioner-Society for out of its 167 members, only 2 or 3 houses were constructed and only one was found to be of A-class category and rest of the land was lying vacant;

(vi) the Municipal Council neither had any power under the Municipal Act nor it was authorized by State Government to accord permission or grant licence to the Society to develop the residential area therefore mere acceptance of development charges by it did not amount a valid licence under the 1975 Act for setting up a residential colony.

<u>Issues for determination:</u>

(31) Having heard learned counsel for the parties at a considerable length and after going through the original record pertaining to consideration of objections filed under Section 5-A as well as of the release of property of respondent No.12, it appears that this Court is required to sail through the following questions:-

(i) Whether the subject acquisition is bad in law for want of appropriate consideration of objections filed under Section 5-A?

(ii) Whether the petitioners have made out a case of discrimination within the ambit of Article 14 of the Constitution, and if so, to what effect?

(iii) Whether the petitioners are entitled to invoke the doctrine of 'promissory estoppel' and 'legitimate expectations' to save their properties from acquisition?

(iv) Whether the acquisition has been made as a colorable exercise of power to reach the object which the respondents earlier failed to achieve?

(v) Whether the respondents have acted within the framework of their policy decision while releasing the 'Banquet Hall' and other properties of respondent No.12?

CONCLUSIONS:-

Question No.(i)

(32) It goes without saying that sub-section (2) of Section 5-A casts an onerous obligation on the Collector to accord opportunity of hearing to the objector and consider his objections in a fair, impartial and dispassionate manner. Any casual approach or attempt to pre-judge the issue would vitiate the adjudicatory process and invalidate the post-Section 5-A exercise. It necessarily means that the Collector is duty-bound to consider the objections from the standpoint of the affected owner and explore whether such objections deserve to sustain keeping in view all the relevant factors including the avowed object for which the acquisition is being made.

(33) The Collector and for that matter even the superior authorities, cannot be unmindful of the fact that acquisition of one's property, which might be the solitary shelter or source of livelihood, may lead to denial of invaluable fundamental and human rights to such affected person, if the only forum of redressal provided to such affected person under Section 5-A(2) of the Act is marred by ceremonial performance. Section 5-A of the 1894 Act,

as a statutory embodiment of the principle of *audi alteram partem,* has been well recognized, reiterated and re-stated by the Supreme Court in a catena of decisions including (i) ***Kedar Nath Yadav vs. State of West Bengal & Ors. (2016) 8 SCALE 346***; (ii) ***Dev Sharan & Ors. vs. State of Uttar Pradesh & Ors. (2011) 4 SCC 769***; (iii) ***Raghbir Singh Sehrawat vs. State of Haryana & Ors., (2012) 1 SCC 792***; (iv) ***Usha Stud and Agricultural Farms Private Limited & Ors. vs. State of Haryana & Ors., (2013) 4 SCC 210***. *Albeit*, where the landowners are not given any opportunity of hearing in respect of objections raised by them, that in itself is a valid ground to set aside the order of acquisition as ruled in ***Hukam Chand & Ors. vs. State of Haryana & ors., (2013) 11 SCC 578***.

(34) On perusal of the original record of the Collector in the light of above-cited principles, we find that the consideration and consequential rejection of objections filed by petitioners cannot be termed as mechanical or bereft of any application of mind. The objectors were duly heard and a brief summary of objections was also recorded by the Collector. Thereafter, the Collector has given a reasoned opinion saying that there is only one house of A-class category constructed before section 4 notification but since the acquisition has been made for development of 'commercial sector', it would not be appropriate to release such property. Those recommendations have been accepted by the State Government. The brief reasons assigned by the Collector, even if debatable, it cannot be held to be a case of non-application of mind.

(35) The principles enunciated in ***Women's Education Trust & Anr. vs. State of Haryana (2013) 8 SCC 99***, are also thus distinguishable as that was a case where substantial part of the acquired area was under construction

and it was released from acquisition but the objectors were denied such a benefit only because the area of their land under acquisition was much larger than the beneficiaries of release orders. It is in this backdrop the Apex Court observed that:-

> *"We are also of the view that the High Court committed serious error by negating the appellants' plea of discrimination. Admittedly, 95 persons whose land was released from acquisition had raised construction in the area earmarked for the green belt. The appellants had also raised similar construction. The only difference between the constructions made by the appellants and the others was that of the size. In our view, difference in the size of the plots did not constitute a valid ground for discrimination between those who had raised construction on the land which fell within the green belt and the High Court was not at all justified in approving the decision of the competent authority not to release the appellants land ignoring that the other similar parcels of land on which constructions had been made had not been acquired..."*

(36) In view of above, it is held that the subject acquisition is not vitiated on the ground of non-compliance of Section 5-A of the 1894 Act.

<u>Questions No.(ii) & (v)</u>

(37) As has been noticed in <u>para-14</u>, the petitioners allege hostile discrimination on the ground that the land/properties of respondents No.11 & 12 have been released without any distinguishable features but such a benefit has been denied to them. Since no material-particulars in respect of the

alleged released property of respondent No.11 have been furnished, it is not possible to comment thereupon. The petitioners have also given up their claim so far as respondent No.11 is concerned.

(38) Adverting to respondent No.12 (Sant Singh s/o Chanchal Singh), the record of the Collector unveils that his land measuring 45K 17M was proposed to be acquired against which he filed objections under Section 5-A claiming that he has constructed a Banquet Hall (Marriage Palace) on the land measuring 23K 17K and the remaining 22 kanal vacant land was being used for car parking and that his entire property was four-walled with a 9ft. height wall and he has spent crores of rupees on it. The Collector in his recommendations observed that the site was inspected and land measuring 23K 17M where marriage palace was constructed before issue of Section 4 notification is recommended to be released as it was being used 'for commercial purposes'.

(39) What has been unfortunately overlooked or side-tracked by the Collector while recommending the release of commercial property of respondent No.12 is that-

(a) The subject property is admittedly located within the municipal limits and is also regulated by provisions of 1975 Act;

(b) No permission for Change of Land Use was obtained by respondent No.12;

(c) No development charges were paid for the construction of banquet hall-cum-marriage palace;

(d) The building plans were neither presented nor sanctioned by the competent authority;

(e) It was a totally unauthorized and illegally developed commercial empire, obviously, in collusion and connivance with the local administration;

(f) There was no verification done or a report submitted whether the marriage palace fulfilled the requisite and mandatory norms, the non-compliance whereof by such like hundreds of Marriage Palaces came to be later on seriously viewed by this Court from time to time in PIL jurisdiction in ***CWP No.21547 of 2011 (Jagjit Singh vs. State of Punjab & Ors.)*** which was finally disposed of on 21.01.2013.

(40) The Collector in fact recommended the release of property of respondent No.12 on the assumption that it was a lawfully built marriage palace and since it came into existence before Section 4 notification the Government policy dated 30.09.2007 could be applied.

(41) The Government records, dealing with the recommendations of the Collector further reveal that only 14 objections were received under Section 5-A and thereafter a Joint Site Inspection Committee was constituted to visit the area under acquisition and submit its own report to assist the State Government.

(42) The office-notings unfold that the Joint Site Inspection Committee did not approve the release of any house or "Banquet Hall" as according to it, Sector 25 is a commercial sector, hence the entire land notified under Section 4 be acquired except the one which in fact had already been acquired. The Director, Urban Estate approved the recommendations of the Joint Site Inspection Committee on 08.11.2008. The Chief Administrator HUDA also endorsed those recommendations on 12.11.2008.

(43) Thereafter, a draft notification proposing to acquire the entire land including the Banquet Hall/Marriage Palace of respondent No.12 was approved at different levels till 28.11.2008.

(44) It is at this final stage that some invisible force influenced the decision making process and prompted the Director, Urban Estate to put up the following note on 09.12.2008:-

> *"This case relates to issue of notification u/s-6 for land required for commercial sector-25, Hisar. L.A.O. Hsr has recommended release of land measuring 2.98 acres on which a marriage palace/banquet hall stands constructed before section-4 notification. The status of construction as notified at 'x' on NP-19 may kindly be seen. In view of above recommendations of C.A.HUDA, it is proposed to notify 283.29 – 2.98 = 280.31 acres of land u/s-6.*
>
> *For orders please.*
>
> *Sd/- 9.12.2008*
> *(x.x.x.x.)*
> *D.U.E.*

(45) The above reproduced note was then put up before the Chief Minister, Haryana for his final approval and it got a positive nod in following manner:-

> *"CM has approved the proposal*
> *in DUE's note above.*
>
> *Sd/- 23.12.2008*
> *(Y.Y.Y.)*
> *APSCM-I"*

(46) This is how respondent No.12 succeeded in getting his banquet hall released from the acquisition.

(47) It may thus be seen that the recommendations of Land Acquisition Collector to release the property of respondent No.12 did not find favour with none of the senior functionaries at different levels but the final proposal put up for the approval of draft notification under Section 6 of the

Act was derailed at the behest of respondent No.12. The magic vend which came to the rescue of 12th respondent at the final end speaks in volumes of the pulls and pressure of whatever nature exerted by him, whereupon without even ascertaining as to whether or not the property sought to be released was lawfully created, the decision to release 2.9 acres property comprising the Marriage Palace/Banquet Hall was taken on the plea that it was constructed before issue of Section 4 notification.

(48) It would be useful at this stage to briefly notice the scheme of 1975 Act. Section 3(1) of the Act expressly prohibits the conversion of an agricultural land for any other purpose except with the prior permission of change of land use. The applicant is obligated to deposit external and internal development charges besides a hefty amount towards licence fee and then only such permission is accorded under Section 3(3)(a). In the event of any defiance and raising of construction without such permission, not only Section 7 declares it unauthorized, the Act contemplates penal consequences including prosecution of the violator under Section 10.

(49) Here is a case where before ordering the release of property on 23.12.2008, respondent No.12 was not even asked to explain as to how he constructed the marriage palace/banquet hall and who accorded such permission for raising such palatial building? Respondent No.12 who brazenly hoodwinked the law; escaped the statutory charges and who faced no prosecution despite committing *prima facie* offence under the 1975 Act was rewarded with the release of that very property. Is it the avowed object of the State policy to distribute the State's largesse and accord premium to law breakers or affluent class of people? Is it not true that a singular act of such

like nature can send a disturbing message to law abiding citizens that only the 'violations' and not the 'compliances' yield the benefits?

(50) The executive policy which is oftenly used as a shield to cover up such like illegal decisions, has to be construed in conformity with the statutory regime and above all the Constitutional mandate. The policy can neither be a baton to beat the law abiders nor a windfall for the violators. Its benefit can be drawn for only the lawful acts save where the Statute is silent and the policy supplements it.

(51) Having held that the action of the authorities in releasing the property of respondent No.12 is patently arbitrary, illegal and a glaring example of improper favouritism, the question that arises for further consideration is whether the petitioners' can draw any mileage out of it?

(52) One cannot lost sight of the fact that a huge chunk of land measuring more than 200 acres has been acquired for development of a 'Commercial Sector'. Except the land measuring less than 3 acres released in favour of respondent No.12, the entire acquired property lies with the State to achieve the 'public purpose' of acquisition. If the solitary instance of illegal release of property in favour of respondent No.12 is accepted as the foundation of 'discrimination' and the resultant 'equality' is ordered to be restored in favour of petitioners, it would completely derail and defeat the very object of acquisition made in public interest. Such a recourse cannot be resorted to eliminate the discrimination or promote the equality.

(53) It is by now well settled that the 'discrimination' *per se* cannot be used as a perennial source to perpetuate illegality. Merely because the authorities have acted illegally in extending undue benefits to one party does not empower this Court to compel the authorities to repeat such illegalities

time and again. There is no gainsaying that the guarantee of equality before law flowing from Article 14 is a positive concept and it cannot be enforced in a negative manner. To put it differently, if an illegality or irregularity has been committed in favour of any individual, others cannot invoke the discretionary jurisdiction of this Court to multiply such illegality.[1]

(54) What should then be the recourse to be followed by this Court? This question, in our considered view, has been effectively answered by the Supreme Court in ***Gurcharan Singh & Ors. v. New Delhi Municipal Committee & Ors., (1996) 2 SCC 459*** laying down that persons like "*the* ***petitioners can question the validity of orders which are said to have been passed in favour of persons who were not entitled to the same, but they cannot claim orders which are not sanctioned by law in their favour on principle of equality before law****...*".

(55) The petitioner-Society has in so many words questioned the action of State Government in releasing the property of respondent No.12 and denying such benefit to it. While the petitioner may not be entitled to claim equality as the very genesis of discrimination lies in impropriety, illegitimacy and abuse of power for the private benefit of respondent No.12. This Court nevertheless possesses ample powers to eliminate the very cause of discrimination and withdraw the illicit benefit extended to respondent No.12. We are thus of the view that the decision of State Government in surpassing the recommendations of the Joint Site Inspection Team and in ordering the release of property of respondent No.12 in a manner which can hardly boast bona fide, is liable to be struck down with a further direction to the official

---

[1] Ref. (1) Chandigarh Administration & Anr. v. Jagjit Singh & Anr., (1995) 1 SCC 745
(2) Gurcharan Singh & Ors. v. New Delhi Municipal Committee & Ors., (1996) 2 SCC 459
(3) Chaman Lal v. State of Punjab & Ors., (2014) 15 SCC 715
(4) Kulwinder Pal Singh & Anr. v. State of Punjab & Ors., (2016) 2 SCC 532

respondents to proceed further to acquire the left out property of respondent No.12 and take such acquisition proceedings to a logical conclusion within six months. As a necessary corollary, the claim put forth by the petitioners for the release of their acquired properties on the plea of discrimination is hereby rejected.

Question No.(iii)

(56) As far as the invoking of doctrine of 'legitimate expectation' or the principle of 'promissory estoppel' against the State, suffice it to mention that the competent authority under the 1975 Act never granted any licence or permission to the petitioner-Soceity to develop its land as a residential colony. No provision under the Municipal Act or any delegation of power to the Municipal Council at the relevant time, to accord such permission, has been brought to our notice. There is thus nothing to urge that the respondents are estopped by their acts or conduct. Assuming that such a permission was accorded yet it does not impinge upon the power of the State to acquire the licensed property in larger public interest. The question has been effectively answered by the Supreme Court in ***State of Haryana vs. M/s Vinod Oil and General Mills and Anr. (2014) 15 SCC 410***, where this Court had quashed the acquisition on the ground that the State had granted permission for Change of Land Use and develop the area as an industry hence it cannot turn around after 26 years to acquire the land for development of a residential sector. The Supreme Court disapproved the decision of this Court holding as follows:-

> *"8. Permission for change of land use and developing the area as an industry, in our view, has no relevance while considering the validity of acquisition. If we are to hold that once permission is granted for change of land use for*

> *developing the area as an industry and thereafter State cannot acquire it, then a situation may arise that for all time to come, the particular area cannot be acquired which may not be in the larger public interest. We are also unable to agree with the view taken by the High Court that the action of the respondents/State in approving setting up of a factory and then acquiring the same is unreasonable. It is not as if the lands where factories are set up are immune from any acquisition. The only effect of permission for such change in land use and approval for construction and developing the area as an industry can be recognised as valid only to the extent as to confer right upon the land owners to recover the appropriate compensation."*

(57) Similarly, the doctrine of legitimate expectation cannot stand alone in favour of an individual when mirrored against the public interest. In the recent decision in ***State of Haryana vs. Eros City Developers Pvt.Ltd. & Ors., 2016 AIR (SC) 451***, their Lordships of the Supreme Court turned down such a plea observing as follows:-

> *"As far as the argument advanced on behalf of the respondent relating to the promissory estoppel and legitimate expectation is concerned, in* ***Monnet Ispat and Energy Limited vs. Union of India and Others (2012) 11 SCC 1****, this Court while enumerating the principles relating to doctrine of promissory estoppel and legitimate expectation has clearly held that the protection of legitimate expectation does not require the fulfillment of*

> *the expectation where an overriding public interest requires otherwise. In other words, personal benefit must give way to public interest and the doctrine of legitimate expectation cannot be invoked which would block public interest for private benefit."*

(58) This contention thus must fail and is accordingly rejected.

Question No.(iv)

(59) The petitioner-Society in the first case though has highlighted the chequered history of one after the other round of litigation successfully fought by it against the State of Haryana or the Municipality but to hold that its land has been acquired only to wriggle out of the consequences of that litigation, would be preposterous. The Government records sufficiently unfold that there was a proposal to acquire huge chunk of land for the development of two residential and one commercial sectors. The authorities firstly proceeded to acquire land for commercial sector only, for which more than 200 acres land has been acquired. The land of the Society is only a small part of the total chunk. There is no allegation of *mala fide* against any one in specific or general. In the absence of even a remote nexus between the acquisition or the previous trivial litigation, we are unable to accept the plea that the Society's land has been acquired as a punitive measure.

(60) Having held so, the only irresistible conclusion would be to dismiss the writ petitions; set aside the release order passed in favour of respondent No.12 with a follow up direction to the State to acquire his property. We are, however, not oblivious of the fact that on 22.10.2013 and 06.11.2013, the State agency, namely, HUDA came up with an offer for allotment of 150 sq.meters plot to the members of petitioner-Society in the

first case. It may be true that the decision was taken by the authorities on the asking of this Court, but having volunteered to make such an offer, which otherwise does not put the State with any additional financial burden, it appears fair, just, reasonable and equitable to direct the State of Haryana and HUDA to honour that decision to the extent of allotment of plots provided that the terms and conditions of such offer are acceptable to the members of petitioner-Society.

(61) Identical benefit will have to be extended to the petitioner in the second case also i.e. CWP No.1305 of 2011, as he has a better case then the members of Society in the first case. He had constructed a residential house much before Section 4 notification was issued.

(62) If the petitioners in both the cases accept the terms and conditions of allotment, they shall not be entitled to any further benefit under the Resettlement and Rehabilitation Policy of the State Government except the payment of compensation for the acquired properties in accordance with law.

(63) It is further directed, in no uncertain terms, that since we have accepted the unequivocal stand taken by the respondents that Sector 25 is being developed exclusively as a commercial sector, the residential house of the President of petitioner-Society (of A-class construction) or other two houses of B&C class shall not be released/adjusted as no residential activity can be permitted, directly or impliedly, by adjusting such properties. Otherwise also, no undue favour can be extended to any individual and all the members of petitioner-Society including its President etc., shall be treated equally.

(64) In the light of the above discussion, we dispose of these writ petitions in the following terms:-

(i) The notifications dated 31.03.2008 and 03.02.2009 and the consequential acquisition proceedings are upheld. Both the writ petitions, so far as challenge to the acquisition is concerned, are hereby dismissed.

(ii) The release of banquet hall-cum-marriage palace of respondent No.12 is declared illegal and consequently the release order to that extent or any other Government order to this effect is hereby set aside. The official respondents are directed to acquire the released property and conclude the acquisition proceedings within a period of *six months* from the date of receipt of certified copy of this order.

(iii) The State of Haryana as well as Haryana Urban Development Authority are directed to honour their decision produced before this Court on 22.10.2013 and 06.11.2013 and offer allotment of residential plots at the allotment price of 2013 to all the members of the petitioner-Society/their successors strictly in accordance with the offered terms and conditions provided that each member/successor accepts the terms and conditions and give up his/her claim for any other benefit except the compensation for the acquired land/ property.

(iv) The petitioner in the second case, namely, Taranjeet Singh s/o Satnam Singh (CWP No.1305 of 2011) shall also be allotted a residential plot measuring 150 sq.meters in a residential sector developed by HUDA on the same terms and conditions as have been determined for similar allotment in favour of members of petitioner-Society in first case, at the rate which was prevalent in the year 2013 when decision for such allotment was taken. He shall also abide by same terms and conditions.

(v) Directions No.(iii) to (iv) shall be complied with within a period of *six months* from the date of receipt of certified copy of this order.

(65) Ordered accordingly.

(Surya Kant)
Judge

16.09.2016
vishal shonkar

(Darshan Singh)
Judge