

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.835 of 2012 (O&M)

Date of Decision: 16.12.2016

Orient Craft Infrastructure Ltd.

... Petitioner

VS.

Union of India & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

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| 1. Whether speaking/reasoned? | 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 / No |
| 5. Whether the judgment should be reported in the Digest? | Yes / No |

Present: Mr. ML Sarin, Senior Advocate with
Messrs Nitin Sarin & Ritesh Aggarwal, Advocates
for the petitioner

Mr. Karminder Singh, Advocate for respondents No.1&4

Mr. Kamal Sehgal, Advocate for HSIIDC

Mr. RKS Brar, Addl. AG Haryana

SURYA KANT, J. (Oral)

(1) The petitioner is a Company incorporated under the provisions of the Companies Act, 1956. It has laid challenge to the notifications dated 19.02.2010 and 11.02.2011 issued under Section 4&6 of the Land Acquisition Act, 1894 and all acquisition proceedings taken pursuant thereto vide which its land fully described in para 2 of the writ petition situated within the revenue estate of villages Jhund Sarai and Bans Hariya, Tehsil Farukhnagar/Gurgaon, District Gurgaon was sought to be acquired for setting up the Industrial Model Township to be planned as an Integrated Complex for Industrial, Storage Space, Railway Corridor, Railway Siding, Institutional, Public, Semi-Public use and other public utilities and was to be

developed by Haryana State Industrial and Infrastructure Development Corporation (HSIIDC).

(2) The petitioner is part of the Orient Craft Group and has been promoted by M/s Orient Craft Ltd. which is said to have set up 16 manufacturing units in different parts of the country.

(3) The petitioner company was statedly conceptualized to create a Special Purpose Vehicle (SPV) for setting up Special Economic Zone (SEZ) under the Central Act, known as, Special Economic Zones Act, 2005 (in short, 'the SEZ Act'). The petitioner resolved to set up a SEZ for textiles in Gurgaon and for that purpose it purchased large tracts of land measuring 283 acres in villages Bans Hariya, Jhund Sarai and Bhangrola of District Gurgaon. The petitioner formally applied for setting up SEZ on 18.01.2006 and after some correspondence the Central Government granted formal approval vide memo dated 21.08.2006 (P5). The Central Government thereafter in exercise of its powers under Section 4(1) of the SEZ Act issued a notification on 13.04.2007 notifying the petitioner's land for setting up the SEZ. The follow up notifications were also issued.

(4) Meanwhile the State of Haryana vide notifications dated 11.12.2007 and 17.04.2008 issued under Section 4&6 of the Land Acquisition Act, 1894 read with Section 17(2), followed by award dated 24.12.2008 acquired a part of the petitioner's land measuring 23 kanal 18 marla for the public purpose of 'Construction of Toll Plaza connecting National Highway Numbers 1, 10, 8 and 2'.

(5) The petitioners challenged that acquisition before this Court in CWP No.17527 of 2008 in which its dispossession was stayed. The said writ petition has been allowed finally on 05.12.2016 on the ground that the

acquisition in that case is deemed to have lapsed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

(6) The Central Government on 28.01.2008 conveyed Board of Approval for the authorized operations to be carried out in the sector specific SEZ for Textile Sector at Gurgaon. It was followed by yet another order dated 25.04.2008 (P12) whereby Central Government constituted an Approval Committee for the SEZ for the textiles to be set up by the petitioner. Thereafter the State Government also approved the Masterplan of the SEZ of the petitioner on 30.05.2008.

(7) While the petitioner was still obtaining one or the other approvals from Central Government for setting up its SEZ, the State of Haryana issued another notification on 19.02.2010 under Section 4 of the 1894 Act proposing to acquire land measuring 80 acres 7 kanal and 19 marla situated within the revenue estate of villages Babra Bakipur, Patli Hazipur, Jhund Sarai Abad, Tehsil Farukhnagar and village Bans Hariya, Tehsil and District Gurgaon for the purpose already mentioned in para 1 of this order. The proposed acquisition also included the petitioner's land measuring 143 kanal 11 marla, fully described in para 2 of the writ petition.

(8) The aggrieved petitioner filed very comprehensive objections under Section 5-A (P22). Meanwhile, the petitioner also submitted a proposal for the exchange of land in lieu of its land which included its land sought to be acquired in the year 2007-08 also, with the object that the State of Haryana/its agencies could take the petitioner's land which was needed for the notified 'public purposes' and in lieu thereof an equivalent piece of land could be given to the petitioner out of the adjoining land vested with

HSIIDC. The petitioner's case is that without considering its proposal for the exchange or the objections filed under Section 5-A, the State Government issued the second impugned notification dated 11.02.2011 under Section 6 of the 1894 Act.

(9) The aggrieved petitioner has approached this Court taking various pleas like that - the land which has been approved and notified for SEZ by the Central Government cannot be acquired by State Government; the petitioner's objections under Section 5-A have been rejected mechanically; the petitioner has taken several irretrievable steps to develop the SEZ and has spent crores of rupees and that the petitioner has given a fair, just and viable proposal for the exchange of land with HSIIDC but it has not been considered objectively or in its right perspective, and that the impugned acquisition is for the private benefit of M/s Maruti Udyog Ltd.

(10) State of Haryana has filed its written statement through Joint Secretary, Industries and Commerce Department. It is averred in the reply that the petitioner's land measuring 137 kanal 4 marla has been acquired out of necessity for a predominant public purpose, namely, setting up of Industrial Model Township which is being planned as an Integrated Complex. It is explained that the petitioner's acquired land is located on the outer fringe of the boundaries of notified SEZ and it would not cause any impediment against the execution of SEZ project. It is highlighted that the provision of Railway Siding is a pressing infrastructure requirement for transportation of manufactured goods by the industrial units located in IMT Manesar. M/s Maruti – Suzuki Ltd. alone is exporting about 10,000-12,000 cars from its factory to meet their export commitments from the closest seaport. All other manufactured goods are also being transported by road

adding to the heavy traffic congestion on this artery. The railway siding would enable inland transportation of these manufactured goods through Railways which would save the traffic congestion on the already congested NH-8. The petitioner would also, it is averred, benefit from this facility in due course of time. It has been denied that the purpose of acquisition is only to benefit M/s Maruti - Suzuki.

(11) The Land Acquisition Collector, Gurgaon has filed a separate written statement explaining that the objections filed by the petitioner under Section 5-A were duly considered and it was recommended to acquire its land as it was lying vacant.

(12) The Central Government through the Ministry of Commerce and Industry, NOIDA Special Economic Zone has also filed its reply/affidavit acknowledging that “the petitioner has shown the expenditure of ₹ 145.32 crores in its letters dated 25.02.2012 submitted to respondent No.4”.

(13) State of Haryana has filed an additional affidavit dated 04.09.2012 pointing out that the very basis on which the petitioner has challenged the acquisition, namely, setting up of SEZ has become redundant as the petitioner has already applied for de-notification of its SEZ and State of Haryana has given its NDC for that purpose.

(14) The petitioner has in its reply/affidavit dated 04.10.2012 admitted the fact that it had applied for de-notification of SEZ and its application was pending at that time.

(15) When this case was heard on merits on 05.12.2016, learned counsel for Union of India stated at the bar that the petitioner’s SEZ has since been de-notified. Learned counsels for the petitioner as well as

HSIIDC also admitted this fact but learned counsel for the petitioner explained that the de-notification of SEZ is a part of the conditional scheme as the petitioner has to develop an Industrial Park at the site.

(16) We have heard learned counsel for the parties at a considerable length and gone through the record with their able assistance.

(17) Sh. Sarin, learned senior counsel for the petitioner, vehemently urged that the comprehensive objections filed by the petitioner under Section 5A of the 1894 Act have been rejected by way of a one-word cryptic order saying that the land is lying vacant. He urged that such rejection defies any application of mind on the part of the prescribed authority and is *de hors* the principles of *audi alteram partem* which are statutorily embedded in Section 5-A(2) of the 1894 Act. He cited the decisions of Hon'ble Supreme Court in (i) **Raghubir singh Sehrawat vs. State of Haryana & Ors. (2012) 1 SCC 792;** (ii) **Kamal Trading Private Ltd. Vs. State of West Bengal & Ors. (2012) 2 SCC 25;** and (iii) **Surinder Singh Brar & Ors. Vs. Union of India & Ors. (2013) 1 SCC 403** to urge that Section 5-A is the only right given to an expropriated owner hence the Prescribed Authority is obligated to decide the objections in an objective, fair and just manner on consideration of the material from the viewpoint of an aggrieved owner. He also referred to the decision in **Union of India & Ors. vs. Shiv Raj & Ors. (2014) 6 SCC 564** wherein also the obligation to consider the objections filed under Section 5-A in a fair and just manner has been re-stated.

(18) Sh. Sarin then contended that the authorities have failed to consider the proposal given by the petitioner for the exchange of its land, which facilitates the State to achieve the 'public purpose' of acquisition on one hand and the petitioner, on the other, would stand compensated with

equal amount of land. He argued that the rejection of the offer of exchange despite intervention made by this Court simply suggests that the authorities are hell-bent on acquiring the petitioner's land and jeopardizing a prestigious project.

(19) Learned senior counsel then contended that the renewed decision of the petitioner to denotify the SEZ does not affect the merits of its case as the land in question has been decided to be developed as an 'Industrial Park'.

(20) Sh. Sarin invoked the principle of 'promissory estoppel' against the State, as according to him, the petitioner has already altered its position by making a huge investment of more than ₹ 145 crore. He relied upon two Division Bench judgments of this Court in (i) **Savitri Devi vs. State of Haryana & Ors. (2007) 4 PLR 240**; and (ii) **Eros City Developers Pvt. Ltd. Vs. State of Haryana & Ors. (2008) 2 PLR 492** to contend that where a person has been allowed to develop the site as a factory by granting necessary permission etc. or where huge investment after obtaining necessary approval from the Competent Authority has been made, equitable doctrine of promissory estoppel comes into play. In both the cited cases, the aggrieved owners were permitted to develop/set up industry or a residential colony but those very lands were subsequently sought to be acquired. This Court quashed the acquisition by invoking the doctrine of 'promissory estoppel'.

(21) Sh. Kamal Sehgal, learned counsel for HSIIDC, on the other hand, highlighted the nature of 'public purpose' for which the subject land has been acquired. He urged that the setting up of Industrial Model Township as an Integrated Complex for Industrial, Warehousing, Railway

Corridor and Railway Siding etc. is a boon for the industrial growth and regulated development of the entire area. It would decongest the heavy traffic on National and State Highways and further lead to generation of Revenue as well as employment. He contended that the entire writ petition is founded upon the plea that the petitioner has been accorded permission by Central Government to set up SEZ, hence State Government cannot acquire the land notified under SEZ. Since the SEZ has now been de-notified, the very basis on which the acquisition was challenged has collapsed. Learned counsel argued that since the land was lying vacant, the Land Acquisition Collector rightly rejected the objections and such like adjudication of objections cannot be said to be without application of mind.

(22) Sh. Kamal Sehgal, heavily relied upon a Division Bench judgment of this Court dated 31.10.2013 rendered in **CWP No.3895 of 2012** (**Subhash & Ors. vs State of Haryana & Ors.**) to which one of us (Surya Kant, J) is a member, whereby the same acquisition was upheld. According to Sh. Sehgal, the petitioner's contentions are more or less covered by the said decision against him.

(23) Learned State counsel also reiterated the same submissions as were made on behalf of HSIIDC.

(24) From the rival submissions, we find that the following issues fall for consideration:-

- (i) Whether objections filed by the petitioner under Section 5-A of the 1894 Act have been decided in accordance with law?
- (ii) Whether the State Government or HSIIDC have failed to consider the offer of exchange made by the petitioner, in a fair and just manner?

- (iii) Whether the respondents are estopped by their act and conduct from acquiring the subject-land?
- (iv) Whether the purpose of acquisition is to serve the private cause of M/s Maruti – Suzuki Ltd.?

Point No.1

(25) There is no gainsaying that under the 1894 Act (since repealed) the only limited right given to an affected landowner was to submit his objections under Section 5-A, with a corresponding duty on the Land Acquisition Collector to consider such objections objectively, in a fair and just manner. The recommendations to be made by the Collector must reflect due application of mind in dealing with the objections. Similarly, existence of reasons, be that briefly, in support of such recommendations is also *sine qua non*. The adjudication of objections was not an empty formality, it was rather an onerous duty cast upon the Collector. Section 5-A(2) as an embodiment of the rules of natural justice and its mandatory compliance to avoid the fallout of acquisition proceedings, has been very aptly reiterated by the Supreme Court in **Raghubir Singh Sehrawat, Kamal Trading Pvt. Ltd., Surinder Singh Brar and Ors.** and catena of other decisions which are not being cited to avoid multiplicity.

(26) Whether the Collector, in a given fact situation, has applied his mind or not is essentially a question of fact. It has to be determined keeping in view the nature of objections and the public purpose of acquisition. If the acquisition is made for a genuine purpose and in larger public interest, and acceptance of objections would jeopardize such purpose or when an individual's claim is detrimental to the public interest, the Collector is not expected to write a 'judgment' for not accepting such objections and his

brief reasons to promote the public interest, even at cost of an individual's hardship, would be a sufficient compliance of the doctrine of *audi alteram partem*.

(27) Applying these principles to the facts of the case in hand, it may be seen that the public purpose of acquisition is to set up an Industrial Model Township which has been conceptualized as an Integrated Complex for industrial, warehousing, railway corridor, railway siding, institutional and other public utilities etc. The township on being set up would surely not only generate large scale employment and fetch revenue for the State, it would also decongest the National and State Highways from heavy traffic. As against it, the petitioner-company owns a big chunk of land measuring more than 283 acres. Merely 17 acres of the petitioner's land which is on the extreme western side of its entire holding (site plan P28) has been decided to be acquired for a public purpose which shall surely benefit the petitioner as well. The petitioner's entire land was vacant and it being at a corner only, it is difficult to accept the plea that its original project of SEZ or the stated new project of 'Industrial Park' would be affected in any manner. Had it been a case of dismantling of structures, uprooting of commercial activities or frustrating the third party rights created by way of allotment etc., it could still be argued that the petitioner would suffer immense loss as a result of the acquisition. Since the entire land is lying vacant, the Collector has rightly recommended to acquire the same as the petitioner's project would remain unaffected while the public purpose of acquisition would also be achieved. We are thus not inclined to accept the petitioner's contention that its objection filed under Section 5-A have been rejected without any application of mind.

Point No.(ii)

(28) The petitioner's plea that it submitted a fair proposal for the exchange of land with HSIIDC or that rejection of its proposal is based upon totally whimsical and arbitrary considerations, has to be noted and rejected only. There is no scheme contemplated under the 1894 Act or any other law which might obligate the respondents to accept the offer for exchange. The authorities have rightly opined that if such like offer is accepted, then other landowners may also put up similar claims and it would be difficult to accept or deny such offers on pick and choose basis. Exchange is a mutual agreement. It can take place only when both the parties are willing. Neither the petitioner can force the respondents to enter into any bargain nor a writ court can compel the respondents to accept the exchange agreement. The Court can only facilitate the process to enable a party to consider the offer of the other and if found mutually beneficial, such offer can be accepted. Since the acceptance of the petitioner's offer would necessarily reduce the total acquired area, the very project for which acquisition is made might not remain viable. There is thus no merit in the second contention as well.

Point No.(iii)

(29) As regard to the plea of 'promissory estoppel' urged on behalf of the petitioner, the very foundation of it lies on the premise that the petitioner decided to set up SEZ after its project was approved by Central Government under the 2005 Act for which the State Government also expressly consented. The petitioner thereafter is said to have invested over ₹ 145 crores thereby changing its position. We, however, do not find any substance in the contention. The acquisition of land by invoking the power of *eminent domain* under the 1894 Act was statutory in character. The

principle of estoppel cannot hold the field when the action is taken expressly in exercise of powers under a Statute. The State Government's 'no objection' given to the petitioner to set up SEZ is not a 'promise' not to invoke powers under the 1894 Act. Petitioner's SEZ, in any case, is now history. The petitioner is still left with sufficient landholding to develop the Industrial Park, if it so desires.

(30) The heavy reliance placed on behalf of the petitioner on two Division Bench decisions of this Court in **Savitri Devi** and **Eros City**, (supra), is wholly misconceived as both these decisions did not lay down correct law and have been expressly set aside by Hon'ble Supreme Court in **State of Haryana vs. M/s Vinod Oil and General Mills & Anr. (2014) 15 SCC 410** and **State of Haryana vs. Eros City Developers Pvt. Ltd. & Ors. (2015) 1 SCALE 356**.

(31) In **M/s Vinod Oil and General Mills & Anr.**, the Apex Court has viewed that:-

“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 recognized as valid only to the extent as to confer right upon the land owners to recover the appropriate compensation.”

(32) Similarly, in **Eros City Developers Pvt. Ltd.** (supra), the Hon’ble Supreme Court has held that:-

*“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.”*

(emphasis applied)

Point No.(iv)

(33) The allegation that the subject acquisition has been made for the benefit of an individual entity and not to serve the public cause, has already been rejected by this Court in **CWP No.3895 of 2012 decided on 31.10.2013**

(Subhash & Ors. vs. State of Haryana & Ors.) observing as follows:-

“14. The contention that the land of the petitioners is being acquired for private limited companies which is not permissible without invoking provisions of Part IV of the Act is also not made out from the fact and document on record. The purpose of acquisition is not to provide any land for exclusive use by any particular industry. There are about 1500 industries in IMT Manesar. The vision behind providing Railway Siding is to decongest

the National Highway No.8 from heavy traffic, which carries raw material and finished products of industries in this area. The factory of one of the major auto giant Maruti Suzuki Ltd. is also situated in the zone with the manufacturing capacity of three lakh vehicles annually. All these vehicles are transported through trucks by road and providing the railway siding will not only decongest the traffic on National Highway No. 8 but will also cater to the transport requirements of all the industrial units in that area. This facility is being provided by HSIIDC, as such, it is not an acquisition for a particular industrial unit.”

(34) For the reasons afore-stated, we do not find any merit in this writ petition which is accordingly dismissed.

(Surya Kant)
Judge

16.12.2016
vishal shonkar

(Harinder Singh Sidhu)
Judge