

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

CWP No.5548 of 2009 (O&M)
Date of decision: February 08, 2017

J.B.Industries

-----Petitioner

Versus

State of Haryana and others

-----Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
 Hon'ble Mr. Justice Harinder Singh Sidhu**

Present: Mr.N.C.Kinra, Advocate
 for the petitioner.

Ms.Palika Monga, DAG, Haryana
for respondents No.1 to 4.

Mr.Kamal Sehgal, Advocate
for respondent No.5.

HARINDER SINGH SIDHU, J.

1. This petition has been filed praying for quashing of notifications dated 13.2.2008 (Annexure P-9) and 31.12.2008 (Annexure P-16) issued under Section 4 and 6, respectively, of the Land Acquisition Act, 1894 (for short, '1894 Act') whereby, the land of the petitioner was sought to be acquired.

2. The petitioner, a sole proprietorship firm, claims to be running a wood based industry since long which is located near Railway Level Crossing, Jhajjar Road, Rohtak. It holds a license for the same which is valid upto 31.3.2017. With a view to expand the industry, he purchased 18

Kanals 19 Marlas of land situated in Mauja Kehrawar through sale deeds dated 10/15.3.1995, dated 30.11.1995/6.12.1995 and 8.10.1997.

3. On 14.5.2007, it applied to the Director, Town and Country Planning Department, Haryana – respondent No.3 for permission to change the existing use of land for the purpose of development of the land into building for residential / industrial/ commercial/ other purpose. Respondent No.3 granted permission for Change of Land Use vide his letter dated 19.03.2008 and 03.04.2008 (Annexure P-11 and P-11/1), subject to various conditions. One condition was regarding gifting 13 Marlas of land to Village Panchayat Kehrawar for making a path, a condition which was complied with by donating 19 Marlas to the Panchayat by way of gift deed dated 24.3.2008. The application dated 10.4.2008 submitted to the District Town Planner-cum-Chairman of the Building Plans Approval Committee for Controlled area, Rohtak for approval of building plan was accepted and vide letter dated 7.8.2008, the building plan was approved subject to the condition of Change of Land Use granted by the Director, Town and Country Planning Department, Haryana.

4. State of Haryana issued notification under Section 4 of the 1894 Act dated 13.2.2008 for acquiring land for setting up of Industrial Model Township, Rohtak to be planned and developed as an integrated complex for industrial, transport and other public utilities by the Haryana State Industrial and Infrastructure Development Corporation Limited (HSIIDC). The petitioner filed objections under Section 5-A of 1894 Act dated 07.03.2008, wherein exemption from acquisition was sought on the

ground that permission for change of land use had been applied for. It was

also pleaded that the petitioner proposes to use the land for the same purpose as envisaged by the acquisition. i.e. industrial. Finding merits in the objections, the Land Acquisition Collector, Rohtak recommended release of the land of the petitioner from acquisition. Despite the aforesaid recommendation declaration under Section 6 of 1894 Act was issued on 31.12.2008, which included the land of the petitioner. Aggrieved the petitioner has filed the present petition.

5. In the written statement filed on behalf of the State, it has been stated that the State government decided to acquire the land situated in the revenue estates of villages Bohar, Garhi Bohar, Baliana, Kehrawar and Kheri Sadh, Tehsil and District Rohtak for a public purpose namely – setting up of an Industrial Model Township, Rohtak to be planned and developed as an integrated complex for industrial, transport and other public utilities, etc. by the HSIIDC. Notification under Section 4 of the 1894 Act for acquisition of 1951 Acres 7 Kanals 7 Marlas was issued on 13.2.2008. Number of land owners filed objections under Section 5A of the 1894 Act. The District Land Revenue Officer-cum-Land Acquisition Collector, Rohtak considered these objections and submitted his recommendations to the Government. The HSIIDC being the project development and implementation agency, comments of HSIIDC were sought on the recommendation of the District Land Revenue Officer-cum-Land Acquisition Collector, Rohtak as it alone was competent to comment on its requirements for integrated development of the facilities from the point of view of its plans. A team of the officers led by the Financial Commissioner

Commerce Department, also comprising the Managing Director of HSIIDC, the Director, Industries and Commerce, Haryana, the Deputy Commissioner, Rohtak and the District Revenue Officer-cum-Land Acquisition Collector, Rohtak visited each of the sites in respect of which objections had been filed on 26.7.2008 and the proposal under Section 6 of the 1894 Act was formulated based on fair assessment of the said team.

6. With specific reference to the petitioner it is stated that it filed objections under Section 5-A of the 1894 Act before the District Revenue Officer-cum-Land Acquisition Collector, Rohtak for release of its land parcels measuring 24 Kanals 16 Marlas comprising in Khasra Nos.12//4/1/1(3-11), 4/1/2(3-11), 4/2/1(0-9), 4/2/2(0-9), 7/1/1(4-3), 7/1/2(3-8), 8/1/1(3-8), 8/2/1(4-3) and 9/1/1(1-14) situated in the revenue estate of village Kehrawar, Tehsil and District Rohtak. The District Revenue Officer-cum-Land Acquisition Collector, Rohtak, visited the site of the objector and recommended to release the land of the petitioner as the petitioner had obtained permission for change of land use from the competent authority. The HSIIDC, the implementing agency of the project recommended releasing land measuring 178.09 sq. meters for which CLU had been granted to the petitioner and recommended to acquire the remaining vacant land. The team of officers led by the Financial Commissioner and Principal Secretary to Government of Haryana, Industries and Commerce Department, visited the site of objectors in the instant land acquisition, and recommended to acquire entire land of the petitioner as it was lying vacant and further proposed that the petitioner could make a request for allotment

to the petitioner on priority. The State Government, after considering the recommendation of District Revenue Officer-cum-Land Acquisition Collector, Rohtak, the comments of the HSIIDC and the recommendations of the team of senior officers decided to acquire the entire land measuring 24 Kanals 16 Marlas of the petitioner situated in revenue estate of village Kehrawar, Tehsil and District Rohtak as the same was lying vacant and essentially required for the integrated planning and contiguity of the project.

7. In the written statement filed on behalf of the Director, Town and Country Planning, Haryana, it has been stated that the petitioner applied for change of land use under the provisions of Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963 (for short '1963 Act') on 13.7.2007 for setting up of small scale industrial unit in land measuring 24 K 16 M i.e. 12,545 square meters in village Kehrawar District Rohtak. As per the revised Draft Development Plan of Rohtak, the site was situated partly in 150- metre green belt along National Highway- 10 and partly in Industrial Zone. Only 213 square yards, (178.09 square metres) i.e. about 1.42% of the total land was falling in Industrial Zone. Thus the application for change of land use was rejected on 4.2.2008. The petitioner submitted a review application under Section 10B of the 1963 Act on 26.2.2008 requesting that the requirement of his project can be fulfilled in area measuring 213 square yards. He also offered to donate 11 feet wide strip of land to the Gram Panchayat, so that he could avail the access from 33 feet wide revenue rasta. On re-consideration, the petitioner was granted permission for change of land use for area measuring 213 square yards vide

Gram Panchayat for availing access from 33 feet wide revenue rasta, the condition regarding the gift was incorporated in the letter of Intent dated 19.3.2008.

8. Ld. Counsel for the petitioner contends that petitioner is to establish an industry on the land. He holds a valid licence and has also been granted permission for change of land use. The purpose of acquisition by the State is also the same. He argued that the permission for change of land use having been granted and the petitioner having fulfilled the condition of grant of change of land use of gifting 19 Marlas of land to the Panchayat for the path, the State Government being estopped by its act and conduct cannot be permitted to acquire the land pertaining to which permission for change of land use has been granted.

9. Ms.Palika Monga, appearing on behalf of the State of Haryana contended that the grant of permission for change in land use cannot come in the way of acquisition of land for a public purpose. She argued that in the memo granting CLU (Annexure P-11/1), condition No.11 was incorporated expressly stating that the permission would not provide any immunity from any other Act/Rules/Regulations, applicable to the land in question. She further argued that Section 24 of the 1963 Act specifically saves the power of the Government or any other authority to acquire land or impose restrictions upon the use and development of land comprised in the controlled area under any other law for the time being in force. She argued that as the land is being acquired by the State Government for the public purpose to be utilized by the HSIIDC for developing integrated complex for

to acquire the land. She argued that it has been settled by Hon'ble the Supreme Court in ***State of Haryana v. Vinod Oil & General Mills and another***, (2014) 15 SCC 410 and ***State of Haryana v. Eros City Developers Pvt. Ltd. and others*** AIR 2016 SC 451 that permission for change of land use and developing of an area as an industry has no relevance in considering the validity of an acquisition.

10. Shri Kamal Sehgal, appearing for the HSIIDC, with reference to the averments in the written statement that the petitioner could make a request for allotment of industrial plot to HSIIDC and that HSIIDC would allot the plot to the petitioner on priority, stated that the offer was still open and the HSIIDC would be bound by it.

11. Heard Ld. Counsel for the parties and perused the relevant referred record.

12. The sole contention of the Ld. Counsel for the petitioner while seeking to avoid the acquisition is that the petitioner has been granted permission for change in land use in respect of 213 square yards for construction of industrial building. The purpose of the acquisition i.e., for developing integrated complex for industrial, transport and other public utilities, is similar to what the petitioner intends to use his land. Further, the petitioner had, as a pre-condition, for grant of permission for change in land use gifted 19 Marlas of land to the Gram Panchayat.

13. Ld. Counsel for the petitioner has thus not questioned that the acquisition is not for a public purpose. His only ground for exclusion from acquisition is that he has already been granted change of land use permission by the State Government for setting up an industry.

14. We are of the view that this ground is of no avail to the petitioner.

15. Firstly, in the memo granting change of land use permission, it is specifically stated that the permission does not provide any immunity from any other Act/Rules/Regulations applicable to the land in question. It was further condition of the permission for CLU that the petitioner would not object the acquisition of the land measuring 1082.40 sq.yard falling under road widening & 13708.60 sq.yard falling under 150 wide green belt. The statute under which the permission for CLU has been granted i.e. the 1963 Act specifically saves the powers of the Government to acquire the land or impose restrictions on the use and development of land comprised in the controlled area. Section 24 thereof reads as under:-

“24. Savings.— Nothing in this Act shall affect the power of the Government or any other authority to acquire land or to impose restrictions upon the use and development of land comprised in the controlled area under any other law for the time being in force, or to permit the settlement of a claim arising out of the exercise of powers under this Act by mutual agreement.”

Hon'ble the Supreme Court has held that grant of permission for change of land use has no relevance in considering the validity of acquisition and the principle of promissory estoppel is not attracted in such a case.

16. In ***Vinod Oil & General Mills' case (supra)***, it was observed :

“8. Acquisition of the respondents' lands was held to be

vitiated on the ground that the State having granted permission to the respondents for change of land use and develop the area as an industry cannot turn around after twenty-six years to acquire the land saying that the same is required to be developed for residential purposes and the action of the respondent/State was held to be arbitrary. Of course, the Director of Town and Country Planning, Haryana earlier granted permission to the respondents herein for change of land use for construction of Oil and General Mills in their lands in 23 kanals 6 marlas in Khasra Nos. 148/1, 148/2 and 149/10. The fact that the factory and building was put up in the lands with the approval of the authority cannot be a bar for acquisition of the land. Public interest overrides individual interests. In our view, the High Court was not justified in saying that the acquisition is bad since permission was earlier granted for change of land use and developing the area as an industry and that the Government is estopped from initiating acquisition proceedings.”

The same view was reiterated in **Eros City Developers Pvt.**

Ltd's case (supra). The relevant observations are as under:

11. In State of Haryana and Others v. Vinod Oil and General Mills and Another, 2014(6) Recent Apex Judgments (R.A.J.) 285 : (2014) 15 SCC 410, this Court has held that permission for change of land use has no relevance while considering the validity of acquisition. It is further observed in said case that there is no bar to the subsequent acquisition of a land, after the land was released from earlier acquisition.

12. In A.P. Pollution Control Board II v. M.V. Nayudu (Retd.) and Others, 2001(1) R.C.R.(Civil) 412 : (2001) 2 SCC 62, this Court has observed in para 69 as under:

"69. The learned Appellate Authority erred in thinking that because of the approval of plan by the Panchayat, or conversion of land use by the Collector or grant of letter of intent by the Central Government, a case for applying principle of "promissory estoppel" applied to the facts of this case. There could be no estoppel against the statute....."

*13. 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 v. 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.*

*14. In **Hira Tikkoo v. Union Territory, Chandigarh and Others, 2004(3) R.C.R (Civil) 130 : (2004) 6 SCC 765**, this Court explaining the scope of principle of legitimate expectation has held that the doctrine cannot be pressed into service where the public interest is likely to suffer as against the personal interest of a party. In paragraph 22 this Court has observed as under:*

"22. In public law in certain situations, relief to the parties aggrieved by action or promises of public authorities can be granted on the doctrine of "legitimate expectation" but when grant of such relief

is likely to harm larger public interest, the doctrine cannot be allowed to be pressed into service. We may usefully call in aid the legal maxim: "Salus Populi est suprema lex: regard for the public welfare is the higher law." This principle is based on the implied agreement of every member of society that his own individual welfare shall in cases of necessity yield to that of community. His property, liberty and life shall under certain circumstances be placed in jeopardy or even sacrificed for the public good."

15. In view of the principle of law laid down by this Court as above, in our opinion the High Court has erred in quashing the acquisition of land in question, by applying doctrine of promissory estoppel and legitimate expectation, in the facts of the present case. We have no hesitation in holding that the purpose i.e. for expansion and systematic development of Surajkund Tourist Complex, is a public purpose. It included development of parking area adjacent to Surajkund Tourist Complex near annual Surajkund Fair. We are of the view that the High Court is incorrect in holding that the State has not acted bonafide, after 1992 acquisition proceedings were dropped. It is apparent from the record that earlier proceedings were dropped in the light of orders passed in M.C. Mehta's Case in the year 1996, restraining construction in the area, and after modification in the said order in the year 1998, the State took fresh decision to acquire the land for public purpose and there is no illegality in the same."

17. We are also satisfied that the gift of land to the Panchayat by the petitioner was of its own volition and the offer was made by it in its own interest in order to secure access from the revenue *rasta*. This would not affect the validity of the acquisition.

18. Accordingly, there is no merit in the petition and the same is dismissed.

19. It is, however, clarified that the respondents would be bound by their undertaking in the written statement of considering the request, if any, made by the petitioner for allotment of a plot to it by the HSIIDC on priority.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

February 08, 2017
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Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No