

Punjab-Haryana High Court

Eros City Developers Private Ltd. vs State Of Haryana And Ors. on 21 January, 2008

Equivalent citations: (2008) 150 PLR 492

Author: M Kumar

Bench: M Kumar, T Mann

JUDGMENT M.M. Kumar, J.

1. This petition filed under Article 226 of the Constitution prays for quashing notifications dated 8.10.2003 (P-34) and 7.5.2004 (P-37), issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (for brevity, 'the Act'), acquiring the land belonging to the petitioner in village Lakarpur, Tehsil and District Faridabad, for a public purpose, namely, for the expansion and systematic development of the Tourist Complex, Surajkund.

FACTS

2. The case of the petitioner is that it is a Company incorporated under the Companies Act, 1956, and carries on the business of development and colonisation of real estate in the State of Haryana. In early 1990s, the petitioner-company purchased huge chunk of land in village Lakarpur, Tehsil and District Faridabad. The petitioner-company alongwith its other group of companies have been granted licence under Section 3 of the Haryana Development and Regulation of Urban Areas Act, 1975 (for brevity, 'the 1975 Act'), to develop a residential colony, namely, Lakewood City, over an area of more than 125 acres, which they are developing.

3. On 28.5.1993, the petitioner-company purchased 128 Kanals 14 Marlas (16.09 acres) of land in the vicinity of Lakewood City, comprised in Rectangle No. 32, Khasra Nos. 3, 4/2, 7, 8/1, 12, 13, 14, 17, 18, 19, 22, 23, 24 and Rectangle No. 40, Khasra Nos. 2, 3, 4, 7, 8, 9, 12, 13, 18/2, village Lakarpur, Tehsil and District Faridabad. It is appropriate to notice that the aforementioned land is in immediate proximity of Surajkund Complex, which is a Tourist Resort being run by the Tourism Department of State of Haryana. On 9.1.1992, a notification under Section 4 of the Act was issued for acquisition of part of the land belonging to the petitioner for the systematic development of the tourist place close to Surajkund (P1/A). The State Government also resorted to urgency provisions of Sub-section (2) of Section 17 of the Act. However, no further steps were initiated by the Government to complete the acquisition proceedings in pursuance to notification dated 9.1.1992 since the petitioner-company showed its intention to develop the land for recreational, cultural and tourism purposes.

4. On 2.5.1994, the petitioner-company applied for change of land use under the provisions of the Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963 (for brevity, 'the 1963 Act') for developing the land into a recreational, cultural and Hotel Complex (P-2). On 30.5.1994, the petitioner-company submitted another application to the P.W.D. (B&R) Department, Faridabad, for issuance of No Objection Certificate, for construction of an approach road from the main road (P-3). On 22.6.1994, the petitioner-company made an application with the Director (Tourism), Government of Haryana, for grant of approval of Hotel Project, namely, 'Royal Garden Resorts' (P-4).

5. On 23.6.1994, permission for change of land use in respect of land measuring 48206 Sq. Yards was accorded in principle by the Commissioner, Municipal Corporation, Faridabad, subject to fulfilment of certain conditions (P-5). On 31.8.1994, permission for construction of approach road was also accorded to the petitioner- company by the P.W.D. (B&R) Department, Faridabad (P-7). Similarly, approval for the Hotel Project was also granted in favour of the petitioner-company by the Director (Tourism), Haryana, in terms of the decision taken by the State Tourism Promotion Board in its meeting held on 26.9.1994, vide letter dated 14.11.1994 (P-8). Thereafter, on 21.11.1994 an agreement with regard to change of existing use of land measuring 79 Kanals 14 Marlas in the controlled area was entered into between the petitioner-company and the Municipal Corporation, Faridabad (P-9). On 21.11.1994, the petitioner-company deposited an amount of Rs. 96,412/-as conversion charges @ Rs. 2/-per Sq. Yard and on 23.11.1994 an amount of Rs. 48,206/-was deposited towards fee for Zoning Plans in respect of the Hotel Project (P-10). On 12.12.1994, Zoning Plan in respect of site of recreational, cultural and Hotel Complex of the petitioner-company was approved by the Commissioner, Municipal Corporation, Faridabad (P-11).

6. After completion of all the formalities, on 27.1.1995 final permission for change of land use in respect of land measuring 48206 Sq. Yards was issued to the petitioner-company by the Commissioner, Municipal Corporation, Faridabad, subject to fulfilling of certain conditions. Besides other conditions, the petitioner-company was required to deposit a sum of Rs. 44,82,000/ towards external development charges out of which Rs. 11,20,500/ had already been paid by the petitioner-company and the remaining amount of Rs. 33,61,500/-was to be paid in 6 half yearly instalments starting from 16.5.1995 upto 16.11.1995 along with interest @ 15% per annum w.e.f. 15.11.1994 (P-12). On 18.10.1995, the petitioner- company submitted its building plans for the proposed Hotel Royale Garden Resort alongwith an amount of Rs. 82,856/-as security fee and an amount of Rs. 50,000/-for approval of building plans (P-13). The building plans were approved on 12.12.1995, under Section 254 of the Haryana Municipal Corporation Act, 1995 (P-14). On 10.5.1996, the petitioner-company deposited the entire balance outstanding external development charges of Rs. 24,09,075/-for the proposed Hotel Complex (P-15).

7. It is claimed that the petitioner-company had mobilized resources for construction of Hotel Complex. However, before the construction could be commenced, Hon'ble the Supreme Court in the case of M.C. Mehta v. Union of India I.A. No. 29 in Writ Petition (Civil) No. 4677 of 1985, passed an order dated 10.5.1996, imposing a ban on construction of any type within 5 Kms. radius of Badhkhal Lake and Surajkund. It was also ordered that all open areas should be converted into green belts (P-16). After passing of the order dated 10.5.1996 by Honble the Supreme Court, there was exchange of correspondence between the petitioner-company and the concerned authorities as to whether the aforementioned order has any effect on the Hotel Project of the petitioner-company. Ultimately, the petitioner-company moved an application before Honble the Supreme Court for clarification. On 13.5.1998, Honble the Supreme Court passed the following order (P-24):

A modified plan has been placed on record. The area meant to be left for Surajkund and around has been earmarked on the said plan by a zig-zag line. In the fact of these altered boundaries from previous maps, certain areas have come out from the one Kilometre belt as originally proposed. Whatever areas have fallen out and whatever are adjacent thereto, urbanisation thereof will take

place in accordance with the laws, rules and regulations, applicable to those areas as provided by the Faridabad Municipal Corporation.

Certain private areas (marked as 'ABCD'), in which construction is proposed would have to be viewed again. We have desired of the learned Counsel for the State of Haryana to render assistance in that regard so that in the areas adjoining the Surajkund Complex only single storey hutments get permitted to be constructed and not tall buildings as originally conceived.

Small areas as shown red on the plan would require to be acquired for the complex. This means that the State will have to pay compensation on acquisition. But Mr. Salve, learned Senior Counsel, who appears for some of the land-owners says that those land-owners who are owing those two small red (red?) patches, which are within the encirclement would surrender the same to the State without compensation.

This Order shall be in modification or substitution of all earlier orders in that behalf.

8. On 24.7.1998, the Commissioner, Municipal Corporation, Faridabad, withheld the permission/sanction of zoning/building plans granted in favour of the petitioner-company in view of the orders dated 13.5.1998, passed by Hon'ble the Supreme Court. The petitioner-company was directed to submit its fresh building plans as per the orders of Hon'ble the Supreme Court (P-25). Thereafter, the petitioner-company requested the Municipal Corporation, Faridabad, for preparation of fresh zoning plan so that it could furnish its building plans (P-26). However, no action was taken as the matter was still sub judice.

9. In the meanwhile, the petitioner-company carried out extensive development works like levelling of land, filling of pits etc. over an area of 120 acres for development of residential colony in accordance with the license granted to it under the provisions of the 1975 Act. It is claimed that development in the residential colony, namely, 'Lakewood City' in an area measuring 125 acres has already been completed and the area has come up as a potential paradise for residential purposes.

10. On 21.10.2003, a notification dated 8.10.2003, issued under Section 4 of the Act was published in the Haryana Government Gazette for acquiring the land of the petitioner for the public purpose, namely, for the expansion and systematic development of the Tourist Complex, Surajkund (P-34). On 4.11.2003, the petitioner-company filed detailed objections under Section 5-A of the Act against the proposed acquisition (P-35). Subsequently, the petitioner-company filed C.W.P. No. 6263 of 2004, challenging notification dated 8.10.2003 and the same was disposed of vide order dated 16.4.2004 being premature. However, this Court directed the appropriate authority to consider the objections filed by the petitioner and dispose of the same by passing a speaking order (P-36). It is claimed that when the representative of the petitioner-company went to serve a copy of the order in the first week of May 2004 it was told that the objections were already considered and rejected. On 7.5.2004 declaration under Section 6 of the Act was issued (P-37). The aforementioned notifications dated 8.10.2003 and 7.5.2004 are subject matter of challenge in the instant petition.

11. In the written statement filed on behalf of respondent No. 1 the stand taken is that the Surajkund Tourist Complex has become a place of international importance in Haryana. The land of the petitioner-company is adjacent to the existing tourist complex and in order to promote tourism in the State of Haryana and for systematic development of the tourist complex the land has rightly been acquired by following various provisions of the Act.

12. In the written statement filed on behalf of the Municipal Corporation, Faridabad-respondent No. 2 it has been asserted that the site of the petitioner-company forms a part of the controlled area around municipal town of old Faridabad, declared vide Punjab Government Gazette Notification No. 3826-2TCP-63/35804, dated 19.12.1963, as published in Punjab Government Gazette, dated 17.1.1964 (R-2/1), which is governed as per provisions of Section 4 of the 1963 Act read with Section 29 of the Faridabad Corporation Act, 1971 (?) and Section 346 of the Haryana Municipal Corporation Act, 1994 (for brevity, the 1994 Act). It has further been asserted that development plan for the controlled area was prepared vide notification dated 22.1.1966, which was revised vide notification dated 11.12.1991. As per provisions of Section 7 of the 1963 Act read with Section 348 of the 1994 Act (R-2/2) no land within the controlled area can be put to use without permission of the Director, Town and Country Planning for specified purpose as shown in the development plan. It has further been submitted that after examining the proposal of the petitioner-company permission for development of recreational, cultural and hotel complex was granted under Rule 26-E of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Rules, 1965 (for brevity, 'the 1965 Rules') which was valid for a period of two years in terms of Rule 26-F of the 1965 Rules. The petitioner-company was required to start construction of the proposed project within a period of six months from the date of grant of permission and the same was to be completed within stipulated period of two years. Zoning Plan and building plan for the site of the petitioner-company were issued on 12.12.1994 and 12.12.1995 respectively. However, the petitioner-company could not implement the project within sanctioned period and contravened condition No. 1(f) of CLU-II agreement dated 21.11.1994 (P-9). The factum of orders passed by Hon'ble the Supreme Court banning construction adjacent to the boundary of Surajkund Tourist Complex within radius of 5 Kilometers, subsequent clarification and request made by the petitioner-company for modification of zoning plan etc. has been admitted. However, it has been denied that the petitioner-company has ever submitted revised building plans for approval in accordance with the orders dated 13.5.1998 passed by Hon'ble the Supreme Court. The permission for change of land use, which was granted on 27.1.1995, has already expired in terms of provisions of Rule 26-F of the 1965 Rules.

13. In the written statement filed on behalf of the Senior Town Planner-respondent No. 3 it has been pointed out that the petitioner-company was granted license under the 1975 Act for development of residential colony on land measuring 121.98 acres on 30.12.1995 and on 5.21 acres on 3.3.2000. It has, however, been asserted that grant of license to develop a residential colony has nothing to do with the present case relating to change of land use for construction of a recreational, cultural and hotel complex over land measuring 48206 Sq. Yards. It has been denied that large scale construction activity has commenced in the colony and the land in dispute has any concern with that of Lakewood City being developed by the petitioner-company. It has been asserted that the Government is competent to acquire any land for a public purpose and there is no malafide on the

part of the Government.

14. In the written statement filed on behalf of the Land Acquisition Collector-cum-District Revenue Officer, Faridabad respondent No. 4 it has been claimed that declaration under Section 4 of the Act was issued in order to promote tourism in Haryana and for systematic development of Surajkund Tourist Complex. The objections filed by the petitioner-company under Section 5A of the Act were duly considered by the Land Acquisition Collector and after affording opportunity of hearing to the petitioner-company and other land owners. Subsequently, notification under Section 7 of the Act was issued on 9.7.2004 and Award No. 12 was also passed on 5.5.2006. It has been pointed out that earlier acquisition proceedings in pursuance to notification dated 9.1.1992 were dropped due to some technical grounds, however, the land has been acquired subsequently after following the process of law in larger public interest and the petitioner-company have their own vested interest for profit making being private colonizers.

15. Rebutting the averments made in the written statements filed by the respondents, separate replications have been filed by the petitioner-company. While reiterating the contents of the writ petition and controverting the contents of the written statements filed by the respondents it has been averred that it is because of the development activities being carried out by the petitioner-company, the area has assumed significance and the State Government is trying to take advantage of the same by acquiring the land belonging to the petitioner-company. It has been further submitted that the Municipal Corporation, Faridabad itself owns a huge chunk of land adjacent to the Surajkund Tourist Complex where the proposed expansion plans could be carried out as is shown by a site plan (P-38). In the other replication to the written statement filed on behalf of respondent No. 2 it has been asserted that the respondent Corporation never insisted for commencement of construction within six months or completion thereof within two years and delay was caused on account of directions issued by Hon'ble the Supreme Court. Alongwith the replication, orders dated 12.10.1998 and 30.11.1998 passed by Hon'ble the Supreme Court have been placed on record as Annexures P-39 and P-41 and a copy of the letter dated 25.11.1998, sent by the Director, Town & Country Planning, Haryana to the petitioner- company regarding renewal/revalidation of licence of Lakewood City in village Lakarpur, District Faridabad, has been placed on record as Annexure P-40.

16. On 7.3.2007, an additional affidavit by Shri V.K. Sharma, District Revenue Officer-cum-Land Acquisition Collector, Faridabad, was filed to the effect that ample opportunity of hearing was afforded to the petitioner while deciding objections filed by it under Section 5A of the Act. It has been asserted that after issuance of declaration under Sections 4 on 8.10.2003 and publication thereof in the official Gazette and daily newspapers as also Munadi Mustari through the Chowkidar in the village, notice regarding hearing of objections was issued on 5.12.2003 for 15.12.2003 by the then Land Acquisition Collector. A representative of the petitioner-company appeared on 15.12.2003, whose statement was recorded and he affixed his signature on the statement. On a request made by the said representative, matter was adjourned to 22.12.2003 but nobody turned up on the adjourned date. Detailed report alongwith objections were sent to the Director, Tourism Department Haryana, on 1.1.2004 and it was only thereafter that declaration under Section 6 of the Act was issued. The award was passed on 5.5.2006.

17. On 13.12.2007, another additional affidavit of Shri Satish Kumar Sharma, Under Secretary to Government Haryana, Tourism Department was filed highlighting that after 1998 there has been a change in the circumstances and ground realities in the area where the land in dispute is situated. It has been pointed out that Faridabad was developed as an Industrial Town and ideally situated for the purpose of industry, commercial activities as well as residential purposes being contiguously located near capital New Delhi. Development of Surajkund Complex for exhibition of Handloom and Handicrafts has enhanced its importance. It has a vast potential use for the purpose of trade, providing facilities for business discussions, sale of handicrafts & handloom as also for recreation facilities having open air theatre etc. It has further been mentioned that Surajkund Mela has become an annual feature being held from 1st to 15th February every year, which is an internationally acclaimed Mela (carnival/show) now. Not only the craftsmen from India but also from Asia and other countries of the world participate in the Mela. Alongwith the affidavit a number of photographs have been placed on record as Annexure R-2 (Colly) showing Hotel Rajhans constructed by the Tourism Department, Haryana as well as various salient features of the Surajkund Complex. A site plan has also been placed on record as Annexure R-1. It has further been asserted that the Haryana Tourism has also invited tenders for appointment of event managers for organisation of cultural programmes on weekends, holidays, on various festivals viz. Holi, Teej, Lohri, holding exhibitions, food bazaars, craft bazaars etc. in the complex. One such notice has been placed on record as Annexure R-3 alongwith the affidavit. It has, thus, been submitted that acquisition of the land in dispute is not only in public interest but the same is also required to maintain integral development of Surajkund Complex in a unified and planned manner; that after passing of award on 5.5.2006, a sum of Rs. 8,49,60,025/-has been deposited with the Land Acquisition Collector for payment to the petitioner-company as compensation.

18. It is also apposite to mention here that the petitioner- company has filed a Civil Misc. Application 3903 of 2007 for placing on record additional affidavit on behalf of the petitioner so as to raise additional pleas in support of the prayers made in the writ petition. Alongwith the additional affidavit various documents have also been placed on record marked as Annexure P-43 to P-56. In sum and substance, the main thrust of the said application and additional affidavit is that the Government of Haryana has released huge chunks of land from acquisition in different districts in the State of Haryana at different stages and in certain cases even after completion of acquisition proceedings and pronouncement of award. Detailed parawise reply to the aforementioned application has been filed by respondent No. 2 justifying release of land in individual cases cited by the petitioner-company.

ARGUMENTS

19. Mr. Harish Malhotra, learned Counsel for the petitioner has argued that the mandatory provisions of Section 5A of the Act has not been complied with. According to learned Counsel before depriving a person of his immovable property compulsorily an obligation has been cast on the respondents to grant opportunity of hearing to him and then to pass a reasoned order. In support of his submission, learned Counsel has placed reliance on a judgment of Honble the Supreme Court in the case of Munshi Singh v. Union of India . Referring to the facts of the present case, learned Counsel has submitted that the Land Acquisition Collector- respondent No. 4 had invited objections

and accordingly the petitioner filed its objections on 4.11.2003 (P-35), running into 24 pages. It has been emphasised that without dealing with any of the objections, the respondents have proceeded to issue declaration under Section 6 of the Act on 7.5.2004 (P-37). Citing the judgment of Honble the Supreme Court in the case of Hindustan Petroleum Corporation Limited v. Darius Shapur Chennai , it has been submitted that the proceedings under Section 5A of the Act, are quasi-judicial in nature and akin to fundamental rights as envisaged by Article 300A. He has also placed reliance on paras 35 and 36 of the judgment of Hon'ble the Supreme Court in the case of Union of India v. Mukesh Hans .

20. Mr. Malhotra further submitted that the petitioner was granted permission for change of land use vide order dated 23.6.1994 (P-5) and necessary permission for construction of approach road vide order dated 31.8.1994 (P-7). Thereafter the petitioner-company has deposited the requisite fee, as is evident from letter dated 23.11.1994 (P-10), and acquiring the land for the same purpose for which the petitioner is to raise construction is totally arbitrary, malafide and against the principles of fair play. He has emphasised that in similar circumstances a Division Bench of this Court in the case of Busching Schmitz Private Limited v. State of Haryana 1997(1) PLR 183, has set aside the notifications issued under Sections 4 and 6 of the Act. Learned Counsel has further submitted that the petitioner has incurred huge amount for levelling the land and for filling the pits as it was hilly area. He has, thus, submitted that principles of promissory estoppel would also come in play. According to learned Counsel the acquisition in the present case would suffer from legal malice because the petitioner has prepared the land for raising construction and has also built another project known as 'Lakewood City', which is in the adjoining estate. To substantiate his submission, learned Counsel has placed reliance on paras 25 and 26 of the judgment of Hon'ble the Supreme Court in the case of Collector v. Raja Ram Jaiswal . Learned Counsel has then submitted that once the purpose of acquisition is the same for which the permission has been granted to the petitioner then the acquisition under Sections 4 and 6 of the Act would be vitiated, as has been held by Hon'ble the Supreme Court in the case of Ghaziabad Sheromani Sahkari Avas Samiti Ltd. v. State of U.P. , which has been duly followed by this Court in the case of National Fertilizers Employees Co-operative Housing Society Limited v. State of Haryana 1998 (3) PLR 618. Learned Counsel has then referred to the application, namely, C.M. No. 3105 of 2007 whereby award as published by the respondents on 5/8.5.2006 (Annexure 'A') has been brought on record and instances have been quoted in the other application, namely, C.M. No. 3903 of 2007, showing that in similar circumstances land was released.

21. Mr. M.L. Saggar, learned Counsel for the respondents has pointed out that notification under Sector 4 of the Act was issued on 8.10.2003 to acquire land measuring 172 Kanals 19 Marlas. It was also published in Hindi Daily Amar Ujala on 11.10.2003 and English Daily The Hindu on 12.10.2003. A proclamation was also carried on the site on 9.11.2003 and Rapat No. 151 in Rojnamcha Vakyati of village Lakarpur has been entered. He further submitted that no issue concerning non-hearing or defective hearing under Section 5A of the Act would arise because objections under Section 5A of the Act by the petitioner-company were filed on 4.11.2003 (P-35) and the Land Acquisition Collector issued a notice dated 5.12.2003 for hearing of objections on 15.12.2003 when a representative of the petitioner- company Col. G. Wadhwa appeared and asked for some more time. The hearing was accordingly deferred to 22.12.2003 when no body appeared. As a consequence, report dated

30.12.2003 was prepared and submitted to the Government alongwith whole record on 1.1.2004. The Government after thorough examination of the record issued declaration under Section 6 of the Act on 7.5.2004. The factum of declaration has been duly published in the Press on 14.5.2004 and 17.5.2004. Therefore, learned Counsel has urged that it cannot be argued that proper hearing was not granted. According to the learned Counsel all the requirements, which have been laid down in Hindustan Petroleum case (supra) stand strictly complied with. On 31.3.2006, notice under Section 9 of the Act was issued to the petitioner-company for appearance on 17.4.2006 when it claimed huge price of the land. On 5.5.2006, the award under Section 11 of the Act was announced and compensation deposited with the Land Acquisition Collector. He has then referred to various orders passed by Hon'ble the Supreme Court with regard to the area of Badkhal Lake and Suraj Kund. These orders are dated 11.10.1996, 13.5.1998, 1.9.1998 and 2.12.1998 (R-1 to R-4 respectively). Learned Counsel conceded that initially order dated 10.5.1996, passed by Hon'ble the Supreme Court imposed a ban on any type of construction within 5 Kms. radius of Badkhal Lake and Suraj Kund. Learned Counsel has then referred to the site plan filed with the additional affidavit of Shri Satish Kumar Sharma, on 13.12.2007 (R-1) and various photographs, which have been marked as Annexure R-2 (Colly) and document styled as Expression of Interest (R-3). According to learned Counsel, a glance at site plan (R-1) would show that the area which is sought to be acquired is needed for Hermitage Huts and parking. According to learned Counsel there is acute shortage of space and the present acquisition is need of the hour as the Tourism Department of the State is likely to attract international tourists to the spot. The non-availability of land measuring more than 16 acres would result into complete failure of the project. Therefore, he has prayed that equitable jurisdiction of this Court under Article 226 of the Constitution may not be exercised in favour of the petitioner. Learned Counsel has also placed reliance on a Division Bench judgment of this Court in the case of Jai Parkash v. State of Haryana 2007 (2) PLR 263.

22. Having heard learned Counsel for the parties, a close scrutiny of facts would show that there are overwhelming circumstances in favour of the petitioner-company, which may be summarised viz. (a) The petitioner-company had purchased the land in question on 28.5.1993, after the notification issued under Section 4 read with Sub-section (2) of Section 17 of the Act, dated 9.1.1992, had already lapsed. The notification dated 9.1.1992, declared the purpose of acquiring the land to develop the same for recreational, cultural and tourism purposes; (b) The petitioner-company has applied under Section 3 of the 1975 Act as also under the 1963 Act for change of land use to develop the land into recreational, cultural and hotel complex. It has also applied for No Objection Certificate for construction of an approach road to the P.W.D. (B&R) Department, Faridabad; (c) On 23.6.1994, permission for change of land use in principle was granted in respect of land measuring 48206 Sq. Yards by the Commissioner, Municipal Corporation, Faridabad, subject to compliance with certain conditions; (d) On 14.11.1994, the Director (Tourism), Haryana, also accorded approval for hotel project in favour of the petitioner-company; (e) An agreement with regard to change of existing use of land, measuring 79 Kanals 14 Marlas in the controlled area was entered into between the petitioner-company and the Municipal Corporation, Faridabad. The petitioner-company had deposited conversion charges amounting to Rs. 96,412/- on 21.11.1994 and an amount of Rs. 48,206/- for Zoning Plan. The Zoning Plan was also approved by the Commissioner, Municipal Corporation, Faridabad (P-11); (f) On 27.1.1995, finally permission for change of land use in respect of land measuring 48206 Sq. Yards was granted by the Municipal Corporation, Faridabad and

accordingly a sum of Rs. 44,82,000/-towards external development charges were to be paid by the petitioner-company in six half yearly instalments starting from 16.5.1995 to 16.11.1995 alongwith interest @ 15% per annum w.e.f. 15.11.1994. Out of the aforementioned amount Rs. 33,61,500/-remained to be paid as Rs. 11,20,500/-stood already paid by the petitioner-company; (g) On 18.10.1995, building plans for the hotel project were submitted alongwith a sum of Rs. 82,856/-as security fee and an amount of Rs. 50,000/-for approval of building plans. The building plans were approved on 12.12.1995 under Section 254 of the 1995 Act and the entire balance outstanding amount of external development charges, amounting to Rs. 24,09,075/-was paid on 10.5.1996 (P-15). The permission for change of land use is still in operation, which has not been withdrawn. Even the huge amount belonging to the petitioner- company remains deposited with the respondents; (h) On 10.5.1996, directions were issued by Hon'ble the Supreme Court in M.C. Mehta's case (supra), imposing a ban on construction of any type within 5 Kms. radius of Badhkhal Lake and Surajkund Tourist Complex. On 11.10.1996, another order was passed by Hon'ble the Supreme Court that no construction of any type was to be permitted in the area outside the green belt upto 1 Km. radius of Badhkhal Lake and Surajkund. The direction was not to apply to plots already sold/allotted prior to 10.5.1996 in the developed area. The construction on the remaining plots was permitted upto 2 storeys (ground, first floor and second half floor), subject to the building byelaws/rules operating in the area. Then the petitioner-company also filed an application proposing site plans 'A', 'B' and 'C'. The options at 'B' and 'C' were objected being contrary to the Rules, however, site plan 'A' was not objected. Accordingly, a direction was issued by Hon'ble the Supreme Court on 12.10.1998 that option plan A of hotel complex was to be accepted subject to the condition that the petitioner-company was to contribute towards the maintenance of the greenery and landscaping on and around the land in question in accordance with the agreement with the Municipal Corporation, Faridabad and the Forest Department (P-39). Accordingly, a request was made to the Municipal Corporation, Faridabad, for preparation of fresh zoning plan to enable the petitioner-company to furnish its revised building plans. It is, thus, evident that from 10.5.1996 when the petitioner-company was granted licence for change of land use it could not have started construction in the wake of the order passed by Honble the Supreme Court and the period from 10.5.1996 to the date of renewal of licence was to be treated as zero period; (i) The petitioner-company has put in efforts to level the land by filling up pits and by removing the hillocks; and (j) the respondents could acquire the land belonging to Municipal Corporation, Faridabad, for expansion plan, as is evident from site plan (P-38).

23. It is, thus, established that the petitioner-company was granted permission for change of land use on 27.1.1995 and it has deposited a sum of Rs. 44,82,000/-towards external development charges. The permission for change of land use continues to be in operation and the deposit made by the petitioner-company has not been refunded. Thereafter, the petitioner-company has various orders of Hon'ble the Supreme Court in its favour. A perusal of order dated 13.5.1998 (P-24) shows that a modified plan was placed on record and the area meant to be left for Surajkund and around was earmarked by a zig-zag line. On account of altered boundaries as compared to the previous map, certain area was spared from one kilometre belt as originally proposed. Accordingly, their Lordships observed that such area which has fallen out or adjacent thereto was to be governed by the laws, rules and regulations as urbanisation was likely to take place. The matter did not rest there and the petitioner-company filed an application and submitted three proposals. The site plan A was

accepted by the respondents. Accordingly, on 12.10.1998 (P-39), Hon'ble the Supreme Court passed the following order:

We have heard learned Counsel for the parties. In response to Court's order dated 31.08.98, Mr. Harish N. Salve, learned Senior Counsel has submitted three plans viz. Option 'A', Option 'B' and Option 'C'. The plans contained in Options 'B' and 'C' are being objected to by the respondents on the ground that they are contrary to the Rules. Plan 'A', however, is not objected to either by Mr. Desai, Senior Counsel for the Faridabad Municipal Corporation or by Mr. K.T.S. Tulsi, appearing for the State of Haryana and it is stated that Option Plan 'A' will not involve any relaxation or exemption from the Rules. Having regard to these facts, we direct that Option Plan 'A' of Hotel Complex shall be accepted subject to the condition that the applicant shall contribute towards the maintenance of the greenery and landscaping on and around the land in question in accordance with the agreement with the Municipal Corporation, Faridabad and the Forest Department. The matters are accordingly disposed of.

24. However, fresh zoning plan were not furnished by the Municipal Corporation, Faridabad. There are further orders of their Lordships of the Supreme Court to the effect that the period from 10.5.1996 till the date of renewal of licence was to be considered as zero period. The order dated 30.11.1998 (P-41), passed by Honble the Supreme Court on an interlocutory application, reads as under:

Mr. H.N. Salve, learned senior counsel for the applicant states that he has received a letter dated 25.11.98 from the office of Director, Town & Country Planning, Haryana that the licence period from 10.05.1996 to the date of renewal of licence shall be treated as zero period and in view of this, the I.A. 445 is not pressed. The I.A. is dismissed as not pressed. I.A. No. 448 is adjourned by four weeks.

25. It is in the light of the aforementioned background that the respondent State proceeded to acquire land by issuing notification under Section 4 of the Act on 8.10.2003 (P-34) and then under Section 6 of the Act on 7.5.2004 (P-37).

26. A perusal of the record shows that the acquisition process was started on the initiation of the Director, Tourism, Haryana, when he addressed a letter dated 26.5.2003 to the Deputy Commissioner, Faridabad, expressing the desire and necessity of acquiring the land in question. The aforementioned communication does not reveal any of the factors like issuance of permission for change of land use, approval of hotel project of the petitioner- company, deposit of huge amount by the petitioner-company and various orders passed by Honble the Supreme Court in favour of the petitioner-company. On 13.6.2003, the Deputy Commissioner, Faridabad, furnished the revenue record to the Director, Tourism Department. After completing various other formalities, notification under Section 4 of the Act was issued on 8.10.2003 (P-34). Thereafter objections were filed by the petitioner-company under Section 5A of the Act and a report dated 30.12.2003 was sent by the Land Acquisition Collector to the Government alongwith his letter dated 1.1.2004. The Land Acquisition Collector has observed that the objections have been filed by the petitioner-company but no one has put in appearance on their behalf. It has been clarified that Col. G. Wadhwa had appeared on 15.12.2003 on behalf of the petitioner-company and on his request hearing of objections was

deferred to 22.12.2003 when no one appeared. In his report, the Land Acquisition Collector has commented on the proposal of the hotel project belonging to the petitioner-company that it is for its own private use not in public interest. Similar comments have been offered with regard to change of land use and deposit of money. In respect of directions issued by the Division Bench of this Court in C.W.P. No. 6263 of 2004, dated 16.4.2004 (P-36), the comment is that the orders were to be complied with by the Tourism Department. It has also been mentioned that on the spot there is boundary well on East-North side, which is 8 to 5 feet high. In the end of his report, the Land Acquisition Collector has recommended acquisition of land as it is in the public interest. Even this report or the Government file does not reflect that any of the factors noticed above like permission for change of land use and various orders passed by Hon'ble the Supreme Court were considered by the respondents.

27. The principle of estoppel are closely interlinked with the principle of legitimate expectation. In fact, the concept of legitimate expectation has grown from two separate roots, natural justice/fairness and promissory estoppel, as per the opinion expressed by Shri Tapash Gan Choudhury in his book *Penumbra of Natural Justice*. The learned author has quoted Halsbury's *Laws of England*, 4th Ed., vol. 1(1), para 81, p. 151, as A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice. It appears to be well settled that the doctrine of legitimate expectation imposes in a sense a duty on a public authority to act fairly by taking into consideration all relevant factors. Any unreasonableness is considered as unfairness and violation of the principles of natural justice. Therefore, if there is a positive order passed by a public authority and such an order is source of a legitimate expectation then repository is bound to have regard to such an order in exercising the power. In that regard reliance may be placed on the judgment of Hon'ble the Supreme Court in the case of *Union of India v. Hindustan Development Corporation* .

28. The equitable doctrine of promissory estoppel also comes in play because it has been evolved to avoid injustice. It is not merely a shield but can be used as a sword and would, thus, be applicable against the Government in exercise of its governmental, public or executive functions. The principle of promissory estoppel have been developed, applied and followed by Hon'ble the Supreme court in a series of judgments including *Union of India v. Godfrey Philips* ; *M.P. Sugar Mill v. State of U.P.* ; *P.T.R. Exports (Madras) Pvt. Ltd. v. Union of India* ; and *Jit Ram Shiv Kumar v. State of Haryana* . The basic principle of estoppel is that a person who by some statement of fact causes another to act to his detriment in reliance on the truth of it, is not allowed to deny it later even though it is wrong. But the principle of equitable estoppel has been developed, which has been applied to public authorities. It is true that promissory estoppel cannot legitimate actions which are ultra vires nor it would operate at the Government policy.

29. It was in somewhat similar circumstances that a Division Bench of this Court in the case of *Busching Schmitz Private Limited (supra)*, has set aside the notifications issued under Sections 4 and 6 of the Act by the respondent State. In para 22, the Division Bench invoked the principle of promissory estoppel to rescue the citizen who were subjected to acquisition proceedings despite the

fact that change of land use was allowed and the land was not acquired when a notification was earlier issued. The aforementioned position is explicit from para 22, which reads as under:

22. Petitioners were allowed to continue at the place where they had built their factory and with the permission of the respondents, petitioners invested huge money on buildings and machinery. State Government cannot repudiate those acts to the detriment of the petitioners. Land of the petitioners had been released from the acquisition earlier and they were allowed change of the user of the land. Petitioners were allowed to raise further construction on an express permission granted by the authorities. Petitioners sunk lacs of rupees in the factory and altered their position to their prejudice. State Government having permitted the petitioners to use the land for a purpose other than the one which was shown in the Master Plan cannot be permitted to resile in order to nullify the effect of the permission granted validly and legally earlier.

30. We are further of the view that hearing of objections filed by the petitioner-company under Section 5A of the Act has not been as per the requirements of law. The hotel project of the petitioner-company was approved on 14.11.1994 by the Director, Tourism, Haryana. It was thereafter that the petitioner-company had changed its position by depositing huge sum of money for change of user and on account of external development charges. The site plans of the petitioner-company were approved by the Municipal Corporation, Faridabad. However, in the wake of binding directions issued by Hon'ble the Supreme Court, the work could not be undertaken. It is in this situation that the principles of promissory estoppel and legitimate expectation would apply to the present case, especially when it is at the instance of the Director, Tourism, Haryana, that the acquisition proceedings have been initiated when he wrote letter dated 26.5.2003 to the Deputy Commissioner, Faridabad, in that regard. It was incumbent upon the Director, Tourism, Haryana, to highlight all the relevant facts concerning the petitioner- company. It is, thus, obvious that none of various facts, which are vital to the acquisition, were highlighted by the Director, Tourism. Therefore, hearing of objections under Section 5A of the Act is also not in accordance with law.

31. The right under Section 5A of the Act has been considered to be akin to fundamental rights, as it has been incorporated under Article 300A of the Constitution. It has been held that the function of hearing of objections is not purely administrative function but a quasi judicial function. Reliance in that regard may be made to State of Mysore v. V.K. Kangan and Darius Shapur Chennai (supra).

32. We are further of the view that impugned notifications in the present case also suffer from legal malice. The petitioner- company having been given permission for change of land use and laying of approach road by the respondents has not been treated fairly by the respondents. In pursuance to the permission granted to the petitioner-company, it has deposited huge amount. Orders have also been passed by Honble the Supreme Court in favour of the petitioner-company. The petitioner-company has also levelled the land by removing hillocks and filling pits. The exercise of power of acquisition in such circumstances must be held to suffer from malice in law. In the case of State of Punjab v. Gurdial Singh , acquisition of land for construction of grain market was challenged on the ground of legal malice. Honble the Supreme court has sustained the challenge and proceeded to explain the legal malafide, which reads thus:

Pithily put, bad faith which invalidates the exercise of power sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated: "I repeat that all power is a trust that we are accountable for its exercise that, from the people, and for the people, all springs, and all must exist.

33. The aforementioned observations have been approved by Hon'ble the Supreme Court in the case of Raja Ram Jaiswal (supra). Another factor which has weighted with us is that in para No. 22 of Civil Misc. Application No. 3903 of 2007, the petitioner- company has made a specific averment that 170 acres of land belonging to the Municipal Corporation, Faridabad, which is contiguous to the existing Surajkund Tourist Complex, is available. A site plan Annexure P-54 has also been placed on record. In the reply filed on behalf of respondent No. 1 the aforementioned averment has not been controverted rather it has been mentioned that approximately 45 acres of land belonging to the Municipal Corporation Faridabad, which is adjoining to the Surajkund Tourist Complex is also being acquired by the Tourism Department. No reply to the aforementioned application has been filed by the Municipal Corporation, Faridabad-respondent No. 2.

34. It is true that the acquisition is for a public purpose, namely, for the expansion and systematic development of the Tourist Complex, Surajkund. The land appears to be adjacent to the area where Surajkund Mela is held, as is evident from the site plan (R-1) attached with the affidavit of Shri Satish Kumar of the office of respondent No. 1. The whole process of acquisition i.e. issuance of notification under Section 4 of the Act, hearing of objections and issuance of declaration under Section 6 of the Act stands completed. Even the award has been passed on 5.5.2006. Mr. M.L. Sagar, during the course of arguments has even offered to refund the amount paid by the petitioner-company for change of land use and for external development charges. The public purpose which is sought to be served by acquisition of land would be fulfilled by the petitioner-company and it is well settled that once the same purpose is being achieved for which the land is sought to be acquired, then coupled with many other circumstances as exist in the present case, the respondents could not be permitted to acquire the land for similar purpose for which permission for change of land use has already been granted. The petitioner-company has also deposited huge amount. In that regard reliance may be placed on a judgment of Hon'ble the Supreme Court in the case of Ghaziabad Sheromani Sahkari Avas Samiti Ltd. (supra) and the same has been followed by this Court in the case of National Fertilizers Employees Co-operative Housing Society Limited (supra). Therefore, we do not find any substance in the argument raised on behalf of the respondents. We are also unable to accept the request made by the learned Additional Advocate General that the amount deposited by the petitioner-company could be refunded.

35. No argument has been raised regarding the commencement and completion of construction as per condition No. 1(f) of CLU-II agreement dated 21.11.1994 (P-9), presumably for the reason that there are already orders passed by Hon'ble the Supreme Court, dated 30.11.1998 (P-41) for treating the period as zero period commencing from 10.5.1996 when first directions were issued by their Lordships of Hon'ble the Supreme Court, till the date of renewal. Moreover, thereafter site plan Option 'A' has been accepted by the respondents, as is evident from order dated 12.10.1998, passed by Hon'ble the Supreme Court.

36. No other argument has been raised.

37. As a necessary corollary of the aforementioned discussion, impugned notifications dated 8.10.2003 (P-34) and 7.5.2004 (P-37) and the award, dated 5.5.2006, in respect of the land of the petitioner-company, are hereby quashed. The Municipal Corporation, Faridabad-respondent No. 2 is directed to furnish the zoning plan to the petitioner-company to enable it to undertake its construction activity in accordance with law. The petitioner-company is held entitled to cost, which is quantified to Rs. 20,000/-.

38. The writ petition stands disposed of in the above terms.