

Provided that no such order shall be made without affording the person affected an opportunity of being heard.

As the petitioner had filed an application under Section 17(1) of the Haryana Canal & Drainage Act, 1974 for shifting of outlet, therefore an appeal did lie before the Chief Canal Officer against the decision of the Superintending Canal Officer.

4. In this view of the matter, order dated 2.1.2002 (Annexure P-4) passed by the Chief Canal Officer (Haryana) is illegal and is accordingly quashed as the appeal was maintainable before him under Section 20(2) of the Act. The matter is remanded back to the Chief Canal Officer, YWSU, Haryana, Chandigarh for deciding the appeal filed by the petitioner afresh on merits. Persons concerned shall appear before the Chief Canal Officer (respondent No.1) on 13.12.2004.

The writ petition stands allowed.

Petition allowed.

SUPREME COURT OF INDIA

Before Mr. Justice Shivaraj V. Patil & Mr. Justice B.N. Srikrishna

Civil Appeal No. 5591 of 1999

Decided on 10.12.2004

M/s Anand Buttons Ltd.

Petitioner

Versus

State of Haryana and others

Respondents

With Civil Appeal Nos. 5592, 5593, 5594, 5595, 5596 & 5597 of 1999

For the Appearing Parties:

Mr. T.R. Andhyarujina, Mr. Bhimrao N. Naik, Senior Advocates with Mr. S.V. Deshpande, Mr. Sudhanshu Batra, Ms. Anuradha Rustogi, Mr. Neeraj Kumar Jain, Advocates for Ms. Kavita Wadia, Mr. Ravindra Bana and Mr. Prem Malhotra, Advocates.

A. Land Acquisition Act, 1894 (1 of 1894), Section 4, 6 – Land Acquisition – Exemption from acquisition -- The authority, who has to carry out the planned development of the estate, is in the best position to judge as to which land can be exempted from the acquisition without jeopardizing the development scheme -- It is not possible for the court to sit in appeal over the decision of the authority.

The affidavits filed by the Director of Industries and the District Town Planner also suggest that the acquisition of land was for setting up of Phase-IV of Industrial Estate, Kundli, which work was being supervised by the Haryana State Industrial Development Corporation appointed as the nodal agency by the State Government for rapid industrialization of the

State. The High Court pointed out that, in these circumstances, the failure of the State Government itself to file a return would not be fatal, as the nodal agency, who was entrusted with the work, had filed affidavits of the competent officers, who were in the know of facts. It also came to the conclusion that the action of the Director of Industries, Haryana, calling upon for comments from the Haryana State Industrial Development Corporation, and the action of the State Government in considering their comments before taking a final decision for issuance of the notification under Section 6 of the Act, was neither vitiated, nor illegal. The High Court also noticed that the land of the present appellants was sandwiched between Phase-I and Phase-II of the Industrial Estate, Kundli. Consequently, leaving a part of the open land would jeopardize the planned development of the industrial establishment.

This reasoning of the High Court cannot be faulted for the simple reason that the authority, who has to carry out the planned development of the industrial estate, is in the best position to judge as to which land can be exempted from the acquisition without jeopardizing the development scheme. It is not possible for the court to sit in appeal over the exercise of such satisfaction by the authority vested with the task of implementing the development plan.

(Para 10, 11)

B. Land Acquisition Act, 1894 (1 of 1894), Section 4, 6 – Land Acquisition – Exemption from acquisition – Discrimination – Pleas of discrimination cannot be used to perpetuate the illegality -- Land of three other landowners exempted from the acquisition – Even if the grant of exemption to three other parties is considered to be wrong that does not give any right to the appellant to seek similar relief.

If after considering all the circumstances, the State Government has taken the view that exemption of the lands of the appellants would render askew the development scheme of the industrial estate, it is not possible for the High Court or this Court to interfere with the satisfaction of the concerned authorities. We see no ground on which the appellants could have maintained that their lands should be exempted from acquisition. Even if three of the parties had been wrongly exempted from acquisition, that gives no right to the appellants to seek similar relief.

(Para 13)

C. Land Acquisition Act, 1894 (1 of 1894), Section 4, 6 – Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963 (41 of 1963), Section 4,6,7 – Land Acquisition – Acquisition for setting up industrial estate – Appellant already taken steps for establishing an industrial unit – Application of appellant for change of user of land pending before the Government – Representation by Director Town Planning, that upon gift of certain land to the Gram Panchayat for widening of the passage, permission for change of user of land will be granted – Appellant acted

accordingly and gifted the land to Gram Panchayat -- If the appellants are so desirous, they may seek invalidation of the gifts in favour of the Gram Panchayat on the ground of failure of the Director, Town and Country Planning to fulfil his commitment -- That, however, does not render the acquisition proceedings illegal.

It is rightly pointed out by the High Court that, merely because a representation was made by the Director, Town and Country Planning, that upon gift of certain land to the Gram Panchayat for widening of the passage, permission for change of user of land would be granted, such a promise is not one capable of being enforced against the State Government. The High Court has rightly pointed out that, if the appellants are so desirous, they may seek invalidation of the gifts in favour of the Gram Panchayat on the ground of failure of the Director, Town and Country Planning to fulfil his commitment. That, however, does not render the acquisition proceedings illegal.

(Para 14)

Cases referred:

1. Union of India and Anr. v. International Trading Co. and Anr.

JUDGMENT

B. N. SRIKRISHNA, J.-- These seven appeals by special leave impugn the common judgment rendered by the Division Bench of the Punjab & Haryana High Court dismissing a group of writ petitions challenging the acquisition proceedings under the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act'). The principal contention in the writ petitions before the High Court was that the acquisition proceedings were vitiated by discrimination and arbitrariness and, thus, violative of the Fundamental Rights under Article 14 of the Constitution of India. Although, seven appeals have been filed in this Court, the arguments were addressed by the learned senior counsel appearing for the appellant in Civil Appeal No. 5591 of 1999 in the matter of **M/s Anand Buttons Ltd. v. State of Haryana & Ors..** The counsel for the other appellants have adopted the arguments addressed in the said case.

Facts:

2. With a view to achieve the goal of rapid industrialization of the State, the State of Haryana constituted the Haryana State Industrial Development Corporation as a nodal agency for the development of industrial infrastructure in the State. New integrated industrial parks and estates were developed by the state-Corporation keeping in view the Functional Plan prepared by the Planning Board for the National Capital Region in accordance with the provisions of the National Capital Regional Planning Board Act, 1985.

3. In order to fulfil the objective set out in the Functional Plan over an area of 30,242 Sq. Kms., of which 13,413 Sq. Kms. fell within the Haryana sub-region, 41 Industrial Estates of Haryana were targeted for rapid

industrial development. Kundli Industrial Estate was developed in phases by acquiring land in accordance with the provisions of the Act. For development of Phase-IV, which is located along National Highway No. 1, the Government of Haryana (Industries Department) issued a preliminary notification under Section 4 of the Act for acquisition of 93 kanals 10 marlas of land (including the lands of the appellants) situated in Village Kundli. The appellants filed objections under Section 5A of the Act, opposing the acquisition of their lands on several grounds. The objections raised by the appellants were considered by the Land Acquisition Collector, Sonapat, who by his report dated 17.1.1997, recommended that the lands of these appellants be exempted from acquisition. Being not satisfied with this report, the State Government forwarded a copy of this report to the Director of Industries, Haryana and asked for his comments. Simultaneously, the District Town Planner of the Haryana State Industrial Development Corporation was also entrusted with the task of examining the report of the Land Acquisition Collector. As a result of this exercise, it was recommended by the Director of Industries, Haryana as well as the District Town Planner of the Haryana State Industrial Development Corporation that the lands of M/s Dinar Spinning Mills (P) Ltd., M/s Amar Elastomers (P) Ltd. and M/s K.C. Fibre Ltd. may be exempted but the lands of the other persons affected by Section 4 notification be acquired. The Director of Industries also addressed a memo dated 23.4.1997 to the Commissioner and Secretary to the Government of Haryana, Industries Department, recommending acquisition of land except in the aforesaid three cases. The State Government, after considering the reports submitted to it under Section 5A of the Act, made a declaration under Section 6 of the Act. As a result of the decision taken by the State Government, the lands of only three industrial units, namely, M/s Dinar Spinning Mills (P) Ltd., M/s K.C. Fibre Ltd. and M/s Industrial Rollers Co. were exempted from acquisition and the lands of all the present appellants were included in the declaration under Section 6 for acquisition. The present appellants challenged the acquisition of their lands by individual writ petitions before the High Court of Punjab & Haryana.

4. The case made out by M/s Anand Buttons Ltd. (Appellant in Civil Appeal No. 5591 of 1999) was that, it had taken several steps in order to establish an industry and had expended considerable amount of time, energy and money in pursuing its objective of establishment of an industrial unit. It was pointed out that on 4.3.1994 the appellant had purchased land in Village Kundli, Tehsil and District Sonapat for establishing a large and medium sector industrial unit for manufacturing of polyster buttons. On 8.3.1994, the appellant applied to the Director of Industries for grant of permission for change of land use from agriculture to industrial. The Director of Industries required from the appellants that before grant of such permission, a path way of 33 feet wide strip of land for widening the road, had to be necessarily given up in front of the land in order to enable a connecting road to the industrial estate. This condition was complied with by the appellant company which gifted the said land to the Gram Panchayat, as required by the Director of Industries. On 22.12.1995, the

Director of Industries, Haryana, granted land use justification certificate in favour of the appellant. On 2.7.1996, the appellant was granted permission for change of user of land from agriculture to industrial purpose. On 13.8.1996, the appellant submitted building plan for approval of construction of its factory building to the District Town Planner, Sonapat. On 26.8.1996, the District Town Planner called upon the appellant to pay certain processing fee for clearance of the building plans. While this matter was under process, on 14.10.1996, a notification under Section 4 of the Act was issued for acquisition of land, which included the land of the appellant, proposed to be developed for the purpose of setting up an industrial unit. On 23.11.1996, the appellant submitted a fresh set of building plans along with requisite processing fee to the District Town Planner. The appellant also raised its objections under Section 5A of the Act. The Land Acquisition Collector recommended exemption of the appellant's land and submitted his report to the Director of Industries. This report was considered and rejected in the case of the appellant. The appellant challenged the acquisition proceedings by its writ petition, C.W.P. No. 4135 of 1998. As already said, this writ petition came to be dismissed by the common judgment of the High Court. The cases of the other appellants are also similar.

5. All the appellants had raised objections under Section 5A, mainly on the following two grounds:

- (a) That each of them had been persuaded to gift 3 Kanals 11 Marlas of land to the Gram Panchayat, Kundli for increasing the width of the passage with an understanding that they will be granted permission to change the user of land. Hence, the Director of Industries and the State Government were estopped from acquiring the land in question.
- (b) Each of the appellants objected to the acquisition on the ground that they are desirous of setting up an industrial unit and, since the acquisition was itself intended for setting up of an industrial estate, no purpose would be served by acquiring their lands when all the formalities had been completed.

6. The principal contention advanced by the appellants against the acquisition proceedings before the High Court was that the decision of the State Government, not to grant exemption from acquisition to their lands, was arbitrary, discriminatory and violative of Article 14 of the Constitution.

7. The appellants contended that, in the case of M/s K.C. Fibres and M/s Amar Elastomers, exemption had been granted from acquisition, although, they were guilty of raising construction on their lands in violation of the provisions of Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963. It was urged that the appellants, who had strictly followed the law and applied for requisite permission and were granted permission, were being discriminated against. A subsidiary contention urged was that the State Government should be estopped from acquiring the land after having persuaded the

appellants to give up certain land for a passage as a condition for granting for change of user or land.

8. The High Court has carefully considered and evaluated the contentions urged by the petitioners-appellants in the light of the material placed before it. The High Court noticed that the cases of all the seven units were examined and recommended for exemption from acquisition by the Land Acquisition Collector, who was of the view that, each one of the units had taken considerable steps towards establishment of an industrial unit. The General Manager, District Industries Centre, Sonapat, after examining the individual cases, reported that the facts found in the report of the Land Acquisition Collector were correct, but made no recommendation with regard to the acquisition proceedings. He reported: "all the parties have been heard in person except the representative of M/s Anand Buttons Ltd., who did not turn up for verification of the facts on the given date." The General Manager, District Industries Centre pointed out: "all the parties have expressed their desire to set up an industry on this land within a period of two years, if released. *But none of them has so far taken up a tangible step on the land. The land of all these parties put together, is surrounded by Industrial Area already existing at HSIDC, Kundli.* These parties have also stated that they would not sell the plot further but will themselves set up an industry on it." In the case of M/s Kundli Agro Pvt. Ltd., however, he suggested that its case deserves a "sympathetical attitude", in view of the land of 3 Kanals and 11 Marlas gifted by it for making a path way. Finally, it was reported, "keeping all these things in view, the Headquarter may take a suitable action."

9. The State Government did not file an affidavit in reply to oppose the writ petitions, but, instead, authorized the Director of Industries and the District Town Planner of the Haryana State Industrial Development Corporation to do so. The affidavits filed by these officers showed that M/s Dinar Spinning Mills, M/s Industrial Roller Co. (who were the subsequent purchasers of land from M/s Amar Elastomers) and M/s K.C. Fibres had, not only constructed the factory building after obtaining the permission, but had also started manufacturing of goods. In all other cases, including the case of M/s Anand Buttons Ltd., there were no tangible steps taken for erection of factory building, much less had industrial production commenced. The State Government took the view that there was justifiable difference between the cases of M/s Dinar Spinning Mills, M/s Industrial Roller Co., M/s K.C. Fibres on the one hand and those of the present appellants on the other. Although, M/s K.C. Fibres was alleged to have carried out a construction in violation of the provisions of the Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963 and the Rules framed thereunder, the said illegality appears to have been compounded and the construction had been regularized.

10. The affidavits filed by the Director of Industries and the District Town Planner also suggest that the acquisition of land was for setting up of Phase-IV of Industrial Estate, Kundli, which work was being supervised by

the Haryana State Industrial Development Corporation appointed as the nodal agency by the State Government for rapid industrialization of the State. The High Court pointed out that, in these circumstances, the failure of the State Government itself to file a return would not be fatal, as the nodal agency, who was entrusted with the work, had filed affidavits of the competent officers, who were in the know of facts. It also came to the conclusion that the action of the Director of Industries, Haryana, calling upon for comments from the Haryana State Industrial Development Corporation, and the action of the State Government in considering their comments before taking a final decision for issuance of the notification under Section 6 of the Act, was neither vitiated, nor illegal. The High Court also noticed that the land of the present appellants was sandwiched between Phase-I and Phase-II of the Industrial Estate, Kundli. Consequently, leaving a part of the open land would jeopardize the planned development of the industrial establishment.

11. This reasoning of the High Court cannot be faulted for the simple reason that the authority, who has to carry out the planned development of the industrial estate, is in the best position to judge as to which land can be exempted from the acquisition without jeopardizing the development scheme. It is not possible for the court to sit in appeal over the exercise of such satisfaction by the authority vested with the task of implementing the development plan.

12. The learned counsel for the appellants urged that the decision taken for exempting M/s Dinar Spinning Mills (P) Ltd., M/s Amar Elastomers (P) Ltd. and M/s K.C. Fibre Ltd. was not a principled one and that there was no uniform yardstick applied for exemption of the said units from acquisition. It was urged that, although the State Government had ostensibly decided to exempt the said three units on the basis of construction put up and industrial units being set up, this was really not true in the case of these three units. In our view, it is unnecessary for us to enter into this controversy. Even if we assume that the three units, who were exempted, did not qualify under the standard adopted by the State Government for exemption, at the highest, it would make the exemption granted to them vulnerable. None of them was made party to the writ petitions filed before the High Court, nor was any relief claimed against them. Even assuming that the exemption granted to the said three units was erroneous and illegal, Article 14 does not mandate that the appellants should be granted similar illegal and unjustified relief. As said by this Court in **Union of India and Anr. v. International Trading Co. and Anr.**, to which one of us, (Shivaraj V. Patil, J.) was a party, (vide Para 13):

"..It is not necessary to deal with that aspect because two wrongs do not make one right. A party cannot claim that since something wrong has been done in another case direction should be given for doing another wrong. It would not be setting a wrong right, but would be perpetuating another wrong. In such matters there is no discrimination involved. The concept of equal treatment on the logic of Article 14 of the Constitution of India (in short "the Constitution) cannot

be pressed into service in such cases. What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs on a par. Even if hypothetically it is accepted that a wrong has been committed in some other cases by introducing a concept of negative equality the respondents cannot strengthen their case. They have to establish strength of their case on some other basis and not by claiming negative equality."

13. It is trite law that not only land but also structure on land can be acquired under the Act. As to whether in a given set of circumstances certain land should be exempted from acquisition only for the reason that some construction had been carried out, is a matter of policy, and not of law. If after considering all the circumstances, the State Government has taken the view that exemption of the lands of the appellants would render askew the development scheme of the industrial estate, it is not possible for the High Court or this Court to interfere with the satisfaction of the concerned authorities. We see no ground on which the appellants could have maintained that their lands should be exempted from acquisition. Even if three of the parties had been wrongly exempted from acquisition, that gives no right to the appellants to seek similar relief.

14. It is rightly pointed out by the High Court that, merely because a representation was made by the Director, Town and Country Planning, that upon gift of certain land to the Gram Panchayat for widening of the passage, permission for change of user of land would be granted, such a promise is not one capable of being enforced against the State Government. The High Court has rightly pointed out that, if the appellants are so desirous, they may seek invalidation of the gifts in favour of the Gram Panchayat on the ground of failure of the Director, Town and Country Planning to fulfil his commitment. That, however, does not render the acquisition proceedings illegal.

15. No other ground has been made out. In our view, therefore, no fault can be found with the judgment rendered by the Division Bench. We find no merit in the appeals, which are hereby dismissed.

16. No order as to costs.

Appeals dismissed.

PUNJAB AND HARYANA HIGH COURT

Before Mr. Justice Ajay Kumar Mittal

Civil Writ Petition No. 1923 of 1986

Decided on 06.10.2004

Messrs Partap Steel Rolling Mills (1935) Limited

Petitioner

Versus

Municipal Corporation of Amritsar and Another

Respondents