IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 2734 of 2007(O&M)
Reserved on: 28.04.2022
Date of Pronouncement: 29.07.2022

Laxmi Educational Society, Manesar and others

...Petitioners

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present:- Mr. Amit Jain, Senior Advocate with
Mr. Chetan Salathia, Advocate, for the petitioners.

Mr. Ankur Mittal, Addl. Advocate General, Haryana, and
Mr. Saurabh Mago, Assistant Advocate General Haryana
Ms. Kushaldeep Kaur Manchanda, Mr. Shivam Garg,
Ms. Vasundhra Asija and Mr. Abhishek Sharma, Advocates, for the respondent(s).

RAVI SHANKER JHA, C.J.

1. Whether the permission for change of land use/licence/NOC/any other permission granted once, would grant immunity to the said land for all times to come, from its acquisition by the State under the applicable Land Acquisition Act (In the present case, it is land Acquisition Act 1894), even if it is required for the "*Public Purpose*", is the question posed before us to answer in the instant civil writ petition.

2. The genesis of the instant case lies in the era of Land Acquisition Act 1894 (hereinafter to be referred as 1894 Act) which is commonly known as "*era of compulsory acquisition*" whose basic foundation was "*public interest*" which was given supremacy on "*private interest*". It is well known facet of law that when so ever conflict arises between "*public interest and private interest*", the private interest has to make way for public interest and that is

how, the 1894 Act contributed to the development of this country. The 1894 Act was in itself a complete code and had prescribed the procedure so as to raise grievance against the action of the State Government to acquire someone's land and when so ever Courts found any deviation of State/its authorities from settled procedure, the interference has been made so as to come to the rescue of such land owners. Applying the said settled principles to the factual matrix of the present case, where, the land was acquired for setting up of the Industrial Model Township wherein the land in question was not released by the State Govt. on the recommendation of developing agency i.e. HSIIDC as it was seriously affecting the planning of IMT vis-a-vis the case put forth by the petitioner of granting it the NOC to set up the college and land in question (vacant 63K 17M), the question arises is as to whether, the action of the State Govt to acquire the land in question, can be termed to be unreasonable, as being sought to be contended by the petitioner? We find ourselves to agree the same as if we are to hold that once permission is granted/NOC is granted for setting up of college and thereafter, State cannot acquire it for all time to come, this may lead to an anomalous situation which may not be in the larger public interest and would amount to "*public interest*" making way for "*private interest*" which is not permissible at any costs/under any circumstances.

3. The petitioners have questioned the acquisition of their land in question measuring 63k 17M, interalia, on the grounds:- (i) having granted the permission to set up the school and the NOC being issued to set up the B.Ed. college and afterwards State cannot turn around and acquire the land for development of Industrial Model township to be developed as an Integrated complex for industrial, residential, recreational and other public utilities; (ii) the land in question though vacant but being reserved for future expansion will prejudice the future prospects of the educational

institution especially when the claim of planning/developing agency is that the land in question interferes merely in the proposed vehicle testing track which as per the petitioner does not constitute any public purpose and thus, same can be conveniently adjusted in the plan; (iii) recommendations having been made by the land Acquisition Collector u/s 5A of the 1894 Act to release the land, the State cannot proceed to acquire the said land; (iv) Violation of Article 14 of the Constitution of India by referring to certain releases made by the State and setting up the plea of hostile discrimination on the part of the State.

4. Certain elemental facts necessary for adjudication of the controversy involved in the instant writ petition are required to be considered first. The petitioners have laid challenge to the acquisition proceedings initiated vide the notifications dated 25.11.2005 and 24.11.2006 issued u/s 4 and 6 of the 1894 Act respectively; followed by the Award u/s 11 of the 1894 Act dated 24.02.2007, thereby acquiring land for the public purpose namely, for development of Industrial Model township Manesar to be developed as an Integrated complex for industrial, residential, recreational and other public utilities. Even though the petition was filed on 20.02.2007 (as appearing just below the index) but it is not disputed that notice of motion and interim order of stay on dispossession was passed on 26.02.2007 i.e. after the Award having been already announced and the possession having been taken by recording the Rapat Rojnamcha which means after the vesting of the land in question having taken place in the State.

5. Mr. Amit Jain Ld. Senior Counsel appearing for the petitioners would contend that the petitioner nos. 2 to 6 are the owner of land measuring 80K-7M land comprised in Khewat No. 987, Khata No. 1123 and 988/1124, 989/1125, 990/1126, 991/1127, 992/1128, 1103/1380, 1104/1381 and Killa

No. 117//9/2/1 (7-3), 13(6-0), 3/1 (7-12), 8/2(7-12), 4(8-0), 9/2/2 (0-5), 3/2(0-8), 8/1(0-8), 18(8-0), 112//14 (8-0), 15/1 (1-8), 16/2 (1-8), 17 (8-0), 24/2 (6-16), 23/2 (0-8), 24/1 (0-9), 28 (0-18) and 23/1 (7-12) situated at village Kasan, Tehsil and District Gurgaon. It is stated that they being the owner, leased out their land measuring 80K-7M land to the petitioner no. 1 society named Lakshmi Educational Society (Regd.) vide registered lease deed dated 25.05.2003. The petitioner no. 1 constructed 4 storey school building over the land bearing Rectangle No. 117, Killa No. 13 (6-0) and 18 (8-0) measuring 14 Marla wherein it is claimed that more than 500 students are studying and the employment is being provided to more than 50 persons. It has been granted permanent recognition for running Classes 1 to 10th w.e.f. 01.04.2004 vide the letter dated 30.09.2004 by the Director, Secondary Education Haryana.

6. It has further been claimed that the petitioner society is also running Lakshmi College of Education affiliated to Kurukshetra University, Kurukshetra which require additional area which at present though is vacant (Area in question sought to be acquired) but is required for the proposed construction. Besides, they propose to develop an ultra modern sports complex including swimming pool, badminton hall, Indoor Tennis Court, Basket Ball Field, squash Court, football and hockey fields over the land in question, which is sought to be acquired. The society further intends to set up the laboratories of Physics, Chemistry and Biology over the land in question and thus, the school building cannot be said to be confined to 14 M only. The society has further applied for NOC for B.Ed. college and the same is being issued by the competent authority.

7. That Haryana government through Industries and commerce department issued a notification u/s 4 of the 1894 Act dated 25.1.2005 thereby

intending to acquire the land for the public purpose namely, for development of Industrial Model Township Manesar to be developed as an Integrated complex for industrial, residential, recreational and other public utilities, in which, the land of the petitioners measuring 63K 17M was also included (their land measuring 16k 10M including the constructed portion of 14 M was left out from including in the notification issued u/s 4 of the 1894 Act). The petitioners submitted their objection under Section 5A of the 1894 Act thereby raising objection to their land in question and pleading that NOC is being granted to them to set up Bed college over the land in question and further that the land in question is the integral part of the aim and objective of their educational society. It is further contended that the public purpose has already been achieved at the spot and the proposed acquisition would not only shatter the planning of their proposed project. Other more suitable land is available with the State. At the end, it was contended that without prejudice to its rights in any manner, if releasing the land in question is not possible, then the same area be allotted to them for setting up its educational institution, in the area proposed to be developed upon the acquired land.

8. While referring to the recommendations made by the Land Acquisition collector u/s 5A of the 1894 Act, it was contended that taking into consideration the objections raised by the petitioners, the recommendations had been made by the LAC to exempt the land from acquisition. Inspite of positive recommendations having been made, the State Government decided to acquire the land in question and proceeded to issue declaration u/s 6 of the 1894 Act thereby including their land in question as well on 24.11.2006. The petitioners have further contended that the state authorities have completely adopted the pick and choose yardsticks when the substantial area has been left out of the acquisition.

Thus, while claiming the notifications issued u/s 4 and 6 of the 1894 Act to be illegal, arbitrary, malafide, ultra vires the provisions of 1894 Act and violative of article 14 of the Constitution of India, prayer has been made to quash the notifications impugned in the petition qua the land in question.

9. The instant writ petition came up for preliminary hearing before this Court on 22.02.2007 when, the matter was adjourned to 26.02.2007, enabling the petitioners to place on record the documents to show that the mandatory requirement mentioned in Annexure P-4 has been fulfilled. The directions issued by this Court were complied with by the petitioners by placing on record the documents vide CM No. 3101 of 2007 which was allowed and Annexures p-19 to p-27 were taken on record. Taking note of the contentions raised that acquired land had been earmarked for construction of Laxmi college of Education, in respect of which, all the formalities are completed so much so 96 students have already been admitted, this Court vide order dated 26.02.2007 issued notice of motion and in the meantime, dispossession of the petitioners was stayed. Suffice to mention here that initially when the petition was filed, the beneficiary department i.e., HSIIDC was not impleaded as party which was impleaded as respondent no. 4 vide order dated 29.11.2007.

10. Pursuant to notice of motion issued, the State Government filed the detailed written statement on behalf of respondent no. 1 and 2 thereby controverting the averments made by the petitioners and justifying the inclusion of land in question in the declaration issued u/s 6 of the 1894 Act after duly considering the recommendations made the Land Acquisition Collector as well as of the recommendations of the Nodal agency to develop the land to achieve the public purpose i.e. HSIIDC. It has also been asserted that the award has already been announced on 24.02.2007 and the possession stands taken. As far as the pleas of pick and

choose/discriminatory release of land as being projected by the petitioners, it was categorically asserted that the said plea of the petitioners is completely baseless and misplaced as even the instances of release of land referred by the petitioners are not from the present acquisition but from the different acquisition.

11. The instant writ petition was admitted vide order dated 05.02.008 with the directions to list the matter for hearing on 07.04.2008. Meantime, the petitioners had also been restrained to raise any construction during the pendency of the petition. The matter remained pending till 09.02.2017 when owing to the factum of one of the issues to be considered in the present petition is the effect of stay of dispossession as was being considered by the Hon'ble Supreme Court, the matter was directed to be listed after the decision in SLP (c) No. 10742 of 2008 vide order dated 09.02.2017. The Hon'ble Supreme Court of India decided the pending issue in the case titled as ***Indore Development Authority versus Manohar Lal and ors. SLP (c) 9036-9038 of 2016*** vide judgment and order dated 06.03.2020 and it is thereafter, the HSIIDC (respondent no. 4) filed CM No. 7891 of 2020 for fixing the instant petition for an actual date of hearing.

12. In the misc. application, it has been pleaded that post the announcement of award, the physical possession of the land in question was taken vide Rapat Roznamcha No. 458 dated 24.02.2007 and even the mutation stands sanctioned in its favour. Once the possession has been taken, the land vests absolutely in the State. As far as the compensation amount is concerned, it has been duly tendered but the same has not been taken by the petitioners and thus, the state has discharged its liability towards the compensation as well. Accepting the request made by the HSIIDC, the instant petition has been taken up for final hearing.

13. Mr. Ankur Mittal Ld. Additional Advocate General Haryana appearing for the State of Haryana as well as the beneficiary department i.e. HSIIDC opened his arguments with vehemence to contend that the instant petition deserves to be dismissed on the sole ground that even before the interim order of dispossession stay was granted by this Court on 26.02.2007, the award had already been announced on 24.02.2007 and the possession had also been taken by duly recording the panchnama and thus, the vesting had already taken place. The petitioners ought to have brought this fact to the notice of this Court at the time of issuance of notice of motion but they did not do so which depicts their malafide intent. He further argued that even if it is assumed that they were not aware of announcement of the award on the said date, the factum of passing of the award was brought on record by filing the written statement in the year 2007 itself, but still, they did not make any effort to assail the award till date which also disentitle them to seek the relief being prayed for.

14. He further argued that permission for change of land use/licence/NOC/any other permission granted once, has no relevance, while considering the validity of acquisition proceedings as if this proposition is allowed to stand, the same would result into a situation which undoubtedly result into hampering the larger public interest and thus, cannot be permitted at any cost. The land is acquired to serve the *public purpose* which has always been considered to be wider than *public necessity*. Development of infrastructure like the present one is legal and legitimate public purpose for exercising power of *eminent domain*. In deciding whether acquisition is for public purpose or not, prima facie, the Government is the best judge. Although the decision of the Government is not beyond judicial scrutiny, normally, in such matters, a writ court should not interfere by substituting

its judgment for the judgment of the Government. He further argued that so far as grant of NOC/CLU/Licence or any other permission by the State Government or any of its instrumentalities and thus invoking the principle of *Promissory Estoppel* or *legitimate Expectation* is concerned, the same cannot stand alone in favour of an individual when mirrored against the public interest as the same doesn't require the fulfilment of the expectation where an overriding public interest require otherwise.

15. As far as the argument raised by the counsel for the petitioners that the Land Acquisition Collector having recommended in their favour for exemption of the land in question from acquisition and thus, the same could not have been acquired, Mr Mittal made his submission to the effect that the said argument being raised by the petitioners is meritless and requires to be rejected. He further argued that no doubt the law is more than settled that the stage of deciding the objections u/s 5A of 1894 Act is not a mere formality but requires objective consideration. It goes without saying that sub section (2) of Section 5 A of the 1894 Act casts an onerous obligation on the collector to consider the objections in a fair, impartial and dispassionate manner and to place the same before State Government for its decision which shall be final. The State Government is supposed to consider the same keeping in view all the relevant factors including the object for which the acquisition is being made. This would imply to take into consideration the objections/suggestions/recommendation of all the stake holders i.e., of the beneficiary department as well, on whose shoulders, the responsibilities lie to develop the land so as to achieve the public purpose which in the case in hand is HSIIDC andhas taken a categoric stand that the land in question is vacant which if released, would interfere in the planning i.e. proposed vehicle testing track, therefore, recommended to acquire the same. Accordingly, the State Government

decided to acquire the land in question which by any stretch of imagination cannot be held to be bad merely because the LAC had recommended for release of the land as this issue is no more res Integra that the report/recommendations made by the LAC are not binding on the state except the same are required to be considered while taking final decision. As against the argument raised by the petitioners that the land in question is required merely for testing track, Mr Mittal has argued that a holistic approach has to be adopted in such matters. The project for which the land in acquired should be taken as a whole and must be judged whether it is in the larger public interest. It can't be split into different components and to consider whether each and every component will serve public good. Public purpose cannot and should not be precisely defined and its scope and ambit be limited as far as acquisition of land for public purpose is concerned, therefore, the petitioners cannot be permitted to plead that since their land is required for merely a testing track, therefore, the same is not required to be judged on the touchstone of public purpose.

16. As regards the plea being raised of adopting pick and choose yardsticks and releases being made in favour of other landowners as being pleaded by the petitioners on the strength of documents brought on record vide Annexure P-15 to p-18, Mr. Mittal while referring to the written statement has urged that the said documents being referred do not relate to the acquisition at hand and pertains to different acquisition for SEZ and thus, are of no help to the petitioner. He further argued that moreover, the plea of discrimination cannot be permitted to be available on the drop of a hat as the same requires to be pleaded and proved that two equals have been treated unequally which is on the higher pedestal than of similarly situated. Further it is well settled that the burden to prove the plea of discrimination is on the petitioners and they have to produce concrete evidence before the

Court to show that their case is identical to other persons whose land had been released from the acquisition proceedings. The finding of discrimination cannot be recorded merely on the basis of vague and bald assertions as has been made by the petitioners in the instant writ petition and that too, in respect of some other acquisition. The concept of equality enshrined in Article 14 of the Constitution of India is a positive concept. The Court can command the State to give equal treatment to similarly situated persons, but cannot issue a mandate that the State should commit illegality or pass wrong order because in another case such an illegality has been committed or wrong order has been passed, even if, it finds that a wrong order has been passed.

17. At the end, he urged that the Hon'ble Supreme Court of India in Indore Development Authority (supra) has added certainty to law by holding that with drawing of Panchnama, it is presumed that the possession is of the State and anyone retaining the possession thereafter is a "trespasser". Such clarity has narrowed down the clouds surrounding the modes of taking possession of the land to almost negligible and has clarified the stance when the land vests in the State. Vesting of the land has been held to mean that the State is endowed with all the benefits that are available to an owner of the land. As reiterated and explained by the Hon'ble Supreme Court of India, vesting of the land happens the moment possession of the acquired land is taken, and on happening of such an event, the title of the landowner ceases in the land for once and all. The law in this regard is well settled that after such vesting even if the land has not been utilized for the public purpose for which it was acquired, erstwhile landowner has no right to seek re-conveyance of the land. Vesting amounts to an absolute and indefeasible right which implies that all bundle of rights which were vested in the erstwhile owner before acquisition fully vests in the State once the

possession of the acquired land has been taken. State becomes the absolute owner of the land and if after such vesting the possession has been retained by the erstwhile landowner or anyone else, they are trespassers on the acquired land. In the case in hand, admittedly the possession of the land in question was taken vide Rapat Roznamcha No. 458 dated 24.02.2007 i.e., prior to passing of interim order in favour of the petitioners on 26.02.2007 and therefore, even thought the land stood vested in the State but yet on the strength of the interim order of this Court, the petitioners have enjoyed the land in question and deprived the State from its utilization and in a way, has hampered the larger public interest which in his submission aloof is sufficient to dismiss the instant petition so that the State/HSIIDC could utilise the land towards the public purpose, for which, it was acquired almost 15 years back.

18. So far as the plea being raised by the petitioners of rehabilitating them with the equal land, he has urged that rehabilitation of the land owner in a case of land acquisition is not the statutory obligation and thus, the same cannot be equated or can be made a precondition to test the validity of the acquisition proceedings for a public purpose where the only touch stone is the larger public interest. The paramount consideration can only be the comparison of the interest of an individual with the larger public interest which is being sought to be achieved by the State with the public money and therefore, any such precondition can only result into hampering into the public interest. Even otherwise, the rehabilitation of the landowner in a case of land acquisition is the policy matter, for which, the State Government has come up with the policies from time to time, thereby, detailing out the eligibility requirements and the extent of rehabilitation. As settled the scope for the writ court to interfere in the policy matter is very limited namely, that where there was a colourable exercise of the power.

The writ court can't make someone eligible who otherwise is not eligible as per the policy decision taken by the State or cannot make the rehabilitation as a precondition of upholding the acquisition as the same would only frustrate the general interest. He further argued that neither there is any law nor any such policy decision of rehabilitating the land owner with the equal land, which had been acquired. Whatever extent is provided in the State rehabilitation policy, the land owner will be entitled to the same only and thus, the plea of rehabilitating them with equal land acquired is totally fallacious and is required to be rejected.

19. In support of his arguments, Mr. Ankur Mittal has placed reliance on the judicial pronouncements in the cases titled as State of Haryana vs. M/s Vinod Oil and General Mills 2014 (15) SCC 410, State of Haryana vs. Eros City developers private Limited and others (2016) 12 SCC 265, Vivek Coop House Building Society Ltd vs. State of Haryana and others 2016 SCC online P & H 15802, Abdul HuseinTayabali and others vs State of Gujrat and others (1968) 1 SCR 597, M/s Balwant Singh Sher Singh Rice Mills vs State of Haryana 2007 (3) RCR (Civil) 839, chunni Lal vs State of Haryana 2007 (3) Law Herald 2080, Rajasthan State Industrial Development and Investment Corporation vs Subash Sindhi Cooperative Housing Society, Jaipur 2013 AIR SC (Civil) 869, Daulat Singh Surana 7 ors. Vs First Land Acquisition Collector 7 ors 2007 (1) RCR (Civil) 260, Sooraram Pratap Reddy 7 ors. Vs Distt. Collector, Ranga Reddy Dist. 7 ors (2008) 9 SCC 552, Shanti Sports Club Vs. Union of India 2009 (15) SCC 705, Indore Development Authority vs Manohar Lal and ors SLP © 9036-9038 of 2016 decided on 06.03.2020 and Assam Industrial Development Corporation Ltd. Vs Gillapukri Tea Company Limited 7 ors etc. SLP © No. 14266-14267 of 2019 decided on 28.01.2021.

20. Having heard Learned counsel for the parties at considerable length, going through the respective pleadings made, grounds raised by the petitioners, arguments put forth on behalf of the State and having bestowed our thoughtful considerations to the judicial pronouncements cited before us, we feel that following issues require consideration of this court: -

I. Whether the permission for change of land use/licence/NOC/any other permission granted once, would grant immunity to the said land for all times to come, from its acquisition by the State under the applicable Land Acquisition Act (In the present case, it is land Acquisition Act 1894), even if it is required for the "*Public Purpose*"?

II. Whether the land in question though vacant but being reserved for future expansion and may prejudice the future prospectus of the educational institution especially when the claim of planning/developing agency is that the land in question interferes merely in the proposed vehicle testing track which as per the petitioner doesn't constitute any public purpose and thus, the same can be conveniently adjusted in the plan, could be a relevant consideration while deciding the validity of acquisition proceedings?

III. Whether recommendations having been made by the land Acquisition Collector u/s 5A of the 1894 Act to release the land, the State cannot proceed to acquire the said land especially when the beneficiary department is of the view that any such release made will affect the planning done to achieve the public purpose, for which, the land is being sought to be acquired?

IV. Whether the petitioners have made out a case of discrimination within the Ambit of Article 14 of the Constitution of India by referring to certain releases made by the State and setting up the plea of hostile discrimination on the part of the State?

V) Whether the land in question has been vested in the State with the recording of Rapat Roznamcha and the status of landowner has become of a "trespasser" as held by the Hon'ble Constitution Bench of the Hon'ble Supreme Court of India in Indore Development Authority Supra), the parameters on which, the writ court shall interfere in the acquisition proceedings at the instance of a "trespasser"?

CONCLUSIONS:

Issue No. (I)

21. The issue being raised by the petitioners is no more Res Integra. The question has been effectively answered by the Supreme Court in ***State of Haryana vs Vinod Oil and General Mills*** (supra) wherein, the Supreme Court disapproved the decision of this Court in quashing the acquisition proceedings in similar circumstances on the ground of CLU having been granted by the State, with the following observations: -

> *"....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 rise that for all time to come, the particular area cannot be acquired which may not be in the larger public interest. We are also unable to agree with the view taken by the High Court that the action of the respondents/State in approving setting up of a factory and then acquiring the same is unreasonable. It is not as if the lands where factories are set up are immune from any acquisition. The only effect of permission for such change in land use and approval for construction and developing the area as an industry can be recognised as valid only to the extent as to confer right upon the land owners to recover the appropriate compensation.*
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> *9. The land was acquired for development and utilization of the same for residential and commercial purposes in sector 9 & 11, Hissar. So far as the purpose of acquisition of land is concerned, the High Court observed that "the acquisition is not for essential public services such as development of infrastructure, railways, metro etc...." High Court was not correct in observing that only development of infrastructure, railways or irrigation, water supply, drainage, road etc are primary public purposes. Public purpose includes a purpose involving general interest of community as opposed to the interest of an individual directly or indirectly involved. Individual interest must give way to public interest as far as public purpose in respect of acquisition of land is concerned."*

22. Once again, the similar issue came up for consideration before the Hon'ble Supreme Court of India in the case titled as ***State of Haryana vs Eros City Developers (Supra)*** wherein yet another time, the view taken by this court of quashing the acquisition proceedings by invoking the principle of "promissory estoppel"/doctrine of "legitimate expectation, didn't find favour from the Hon'ble Supreme Court and thus, while reversing the view of this Court, it has been observed:

> *"...15. 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 Ltd. V Union of India, 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 fulfilment 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.*
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> *16. In Hira Tikkoo vs UT Chandigarh, this Court explaining the scope of principle of legitimate expectation has held that the doctrine cannot be presses into service where the public interest is likely to suffer as against the personal interest of a party. In para 22 of this Court has observed as under: (SSS p. 777)*
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> > *"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 expectations" 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 very member of society that his own individua 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."*

23. Following the afore noticed judicial pronouncements, this Court in the case titled as ***Vivek Coop. House Building Society (Supra) decided on 16.09.2016***, has rejected the similar plea set up to challenge the process of acquisition by invoking the principle of promissory estoppel and legitimate expectation by categorically holding that in the statute, there is nothing which could impinge upon the power of the State to acquire the licenced property in the larger public interest.

24. Applying the law laid down by the Hon'ble Supreme Court and agreeing with the view taken by the coordinate bench of this court to the factual matrix of the present case, the plea being raised by the petitioner that having granted the NOC to set up the B.Ed. college, completion of necessary formalities by the petitioner society and even the admission of students thereafter and thus, the land in question deserves to be released from the acquisition proceedings, is liable to be rejected. In ***Daulat Singh Surana*** (supra), the concept of "public purpose" was dealt with in detail by the Hon'ble Supreme Court of India to observe that whether in a particular case, the purpose, for which land was needed was a public purpose or not, was for the Government to be satisfied about. Public purpose cannot and should not be precisely defined and cannot be static. In the case in hand, the categoric stand pleaded by the respondents in the written statement towards acquiring the land for setting up of Industrial Model Township, clearly falls within the guiding principles laid down by the Hon'ble Supreme Court of India to ascertain as to whether a particular purpose can be said to be public purpose or not. That being so, we have no hesitation to hold that even if the NOC to set up college had been granted to the petitioner no. 1 society, the same or for that matter, any permission for change of land use/licence/NOC/any other permission granted once, would not grant any immunity to the said land for all times to come, from its acquisition by the State, if it is required for the "Public Purpose" as the private interest will have to make way for the public interest, on to the touch stone of regard for the public interest is the higher law. Similarly, the doctrine of "*legitimate expectation*" or the principle of "*promissory estoppel*" can't be pressed into service where the public interest is likely to suffer as against the personal interest of a party. This issue is answered accordingly.

Issue No. (II)

25. Another ground on which, the petitioners have chosen to assail the acquisition proceedings is that the land in question even though is vacant but has been reserved for future expansion and setting up B.Ed. college and the acquisition may prejudice its future prospectus especially when, the land in question as per HSIIDC itself will merely effect the testing track which in the assessment of petitioners can't be said to be affecting the public purpose. We find ourselves unable to agree with these submissions made by the petitioners. In ***Somanvanti vs. State of Punjab (Supra),*** the Constitution bench of the Hon'ble Supreme Court of India observed that public purpose must include an object in which the general interest of the community, as opposed to the particulars of individuals, is directly and vitally concerned. Public purpose is bound to change with the times and the prevailing conditions in a given area and therefore, it would not be a practical proposition even to attempt an extensive definition of it. It is because of this reason, the Legislature has left it to the wisdom of State Government. Thus, undisputedly, State is the first judge to determine whether there exists public purpose or not though the said decision is not beyond judicial scrutiny. The Courts have the jurisdiction and it is their duty to determine the matter whenever a question is raised about the particular purpose being in the interest of public or not. The concept of "public purpose" was dealt with in detail by the Hon'ble Supreme Court of India in Daulat Singh Surana (Supra) wherein the Hon'ble Supreme Court has held as under:-

> ***'....73.*** *Public purpose cannot and should not be precisely defined and its scope and ambit be limited as far as acquisition of land for the public purpose is concerned. Public purpose is not static. It also changes with the passage of time, needs and*

requirements of the community. Broadly speaking, public purpose means the general interest of the community as opposed to the interest of an individual.

74. *The power of compulsory acquisition as described by the term "eminent domain" can be exercised only in the interest and for the welfare of the people. The concept of public purpose should include the matters, such as, safety, security, health, welfare and prosperity of the community or public at large.*

75. *The concept of "eminent domain" is an essential attribute of every State. This concept is based on the fundamental principle that the interest and claim of the whole community is always superior to the interest of an individual...'*

26. While determining the question whether the acquisition is for public purpose or not, the facts and circumstances in each case are to be closely examined. The acquisition in the case in hand is for the purpose namely, for development of Industrial Model Township Manesar to be developed as an integrated complex for industrial, residential, recreational and other public utilities. It is categorically pleaded by the State that it is committed to the Ministry of Heavy Industries and Public Enterprises, Government of India to allot 42 Acres of land in continuity to the land already allotted to the existing testing and development centre set up by the Automotive Research Association of India for setting up of Testing and Development Centre for Automotive components at Manesar, Gurgaon by the National Automotive Testing and R & D Infrastructure Project (NATRIP) of Government of India with a project cost of Rs. 400 crores. Apart from it, a large number of multi national companies including Maruti Udyog Ltd, Hero Honda and many other automobile industries are operating in Gurgaon thereby providing employment and attracting domestic and foreign investments. The perusal

of these factual matrix makes it clear that the purpose for which the land in question has been acquired, certainly has the element of general interest of the community and thus, finding no substance in the plea being raised by the petitioners, the same is rejected.

27. The aforesaid conclusion drawn gives rise to another limb of the public purpose to be taken into consideration i.e. whether the public purpose, for which, the land has been acquired, can be said to be static. In our opinion, the answer of this is in negative. As discussed above, the public purpose cannot and should not be precisely defined and it can change with the passage of time, needs and requirements of the community. The challenge made to the acquisition by the land owner on the ground of any change in public purpose or of even planning, the Hon'ble Courts have repelled such challenges, on the touchstone of interest of community. It is so because the 1894 Act does not spell the procedure and manner in which the acquired land is to be utilized, however, the "public purpose" acts as a pole star and a guiding factor for the State in undertaking the steps for utilization of land. The decision as regards the manner in which the acquired land is to be utilized is purely an executive action and a policy decision which is often executed by way of development plans prepared by the competent authority. The change in the plans and manner of utilization of land forms part of planning and expertise of the State government in executing the development works on the acquired land and is purely an administrative action. It is settled law that judicial review of such action is permissible only on the grounds of illegality, irrationality and procedural impropriety. As far as the preparation of the development plans is concerned, the Court cannot substitute its opinion and dictate the terms regarding the manner in which the land acquired for public purpose shall be utilized. Nor can a land owner dispute the acquisition proceedings on the ground of utilization of

land in one manner or other so long such utilization fulfils the touch stone of "public purpose".

28. More often the acquisition proceedings are challenged on the ground of change in planning or on the ground of change of public purpose, and vague pleas are raised that land is no more fit for utilization. A very pertinent question which arises here is that whether it can be made a ground to challenge the acquisition proceedings afresh. In our opinion, in view of settled law, answer is in negative. The genesis lies in the fact that after the vesting of land, it is the State who is owner of the land, accordingly, the decision to utilize the land rests with the State only. The landowner is no one to dictate the terms in which the acquired land shall be utilized. The only touchstone against which the action of the State while dealing with acquired land is that of "public purpose" i.e., land acquired can be utilized in any manner so long it falls within the parameter of "public purpose". The pleas with respect to change in planning and change in public purpose are not the grounds on which the acquisition proceedings can be challenged or interfered with. Such an approach reflects rigidity and is nothing less than an obstruction in the development process. This aspect has been considered by the Courts on numerous occasions and has affirmed the action of the State in changing the utilization of the land acquired for a public purpose to another public purpose. The reference in this regard can be made to the following precedents

a. In ***Govt. of A.P v. Syed Akbar AIR 2005 SC 492***, the Hon'ble Supreme Court of India held as follows:-

> *'..13. From the position of law made clear in the aforementioned decisions, it follows that (1) under Section 16 of the Land Acquisition Act, the land acquired vests in the Government absolutely free from all encumbrances; (2) the land acquired for a public purpose could be utilised for any other public purpose; and (3) the acquired land which is vested in the Government free from all encumbrances cannot*

be re-assigned or reconveyed to the original owner merely on the basis of an executive order....'

b. In ***Union of India and others Vs. Jaswant Rai Kochhar and others (1996) 3 SCC 491*** the Hon'ble Supreme Court of India while dealing with the challenge to the acquisition proceedings on the ground of its utilization of land for another public purpose held as under:-

'....It is contended for the respondents that since the acquisition is for housing scheme, the land cannot be used for commercial purpose, namely, District Center. Therefore, the learned single Judge and the Division Bench have rightly disapproved the change of the user contrary to the purpose notified in section 4(1) of the Land Acquisition Act. We find no force in the contention. It is conceded by the learned counsel that the construction of the District Center for commercial purpose itself is a public purpose. No doubt it was sought to be contended in the High Court that in a housing scheme, providing facilities for commercial purpose is also one of the composite purposes and that, therefore, acquisition was valid in law. However, the contention was rejected by the High Court. We need not go to that part. ***Suffice it to state that it is a well-settled law that land sought to be acquired for public purpose may be used for another public purpose. Therefore, when the notification has mentioned that the land is sought to be acquired for housing scheme but it is sought to be used for district Center, the public purpose does not cease to be public purpose and the nomenclature mentioned in the notification under section 4(1) as housing scheme cannot be construed to be a colourable one. The notification under section 4(1) could not have been quashed on the ground that the land is sought to be used for District Center, namely, for commercial purpose. It is obvious that the lands acquired for a public purpose should serve only the public purpose of providing facilities of commercial purpose, namely, District Center as conceded by the learned counsel in fairness to be a public purpose****. The notification under section 4(1) cannot be quashed on the ground of change of user. The High Court was wholly wrong in quashing the notification on the ground of change of user..'*

29. The law is settled even to the effect that if after achieving public purpose, some land is left unutilized, it can be utilized for any other public purpose or it can be sold by way of public auction to fetch higher money which ultimately will be utilized for public purpose and it is not to be re-conveyed

to the original land owner. The reference in this regard is made to the law settled by the Hon'ble Apex Court in the following judgments:-

(i) In ***State of Kerala v. M. Bhaskaran Pillai AIR 1997 SC 2703***, the Hon'ble Court held that after vesting of land and utilization for the public purpose for which it was acquired, if still land remains unutilized, it is not to be returned to erstwhile owners. The reference in this regard is made to the following:-

> *'.....3. In view of the admitted position that the land in question was acquired under the Land Acquisition Act, 1894 by operation of Section 16 of the Land Acquisition Act, it stood vested in the State free from all encumbrances. The question emerges : Whether the Government can assign the land to the erstwhile owners ? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilised for the public purpose envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act and is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through the public auctions so that the public also gets benefited by getting higher value....'*

(ii) Similar observations were made in the case of ***Leela Wanti and others v. State of Haryana and others AIR 2012 SC 515***.

The relevant observations are reproduced herein below:-

> *'.....17. A reading of the above reproduced Paragraph of the Land Administration Manual nowhere suggests that the State Government is duty-bound to restore the acquired land to the owners after the purpose of acquisition is accomplished. It merely mentions that as a matter of grace the Government is usually willing to restore agricultural and pastoral land to the owners on their refunding the amount of compensation. If Paragraph 493 is read in the manner suggested by the learned counsel for the appellants then in all the cases the acquired land will have to be returned to the owners irrespective of the time gap between the date of acquisition and the date on which the purpose of acquisition specified in Section 4 is achieved and the Government will not*

> *be free to use the acquired land for any other public purpose. Such an interpretation would also be contrary to the language of Section 16 of the Act, in terms of which the acquired land vests in the State Government free from all encumbrances and the law laid down by this Court that lands acquired for a particular public purpose can be utilised for any other public purpose....'*

30. Therefore, the scope of judicial review as regards the manner in which acquired land is to be utilized is narrow and limited only to the aspect that it shall be utilized for a "*public purpose*". Change in planning, change in user and use of land for another public purpose does not call for interference by the Courts and these can certainly be no ground to challenge the acquisition proceedings. As a conspectus of above discussion, the issue no. 2 raised is answered in negative. The land in question has undoubtedly been acquired for "*public purpose*" and thus, the private interest of the petitioners surely will have to make way and thus, while rejecting the claim being put forth by the petitioners, we unresistingly upheld the acquisition of the land in question of the petitioners.

Issue No. (III)

31. As regards the plea that despite recommendations having been made by the Land Acquisition Collector u/s 5A of the 1894 Act to release the land, the State proceeded to acquire the said land and thus, the acquisition proceedings at hand are colourable exercise of power, the Learned counsel for the petitioner seems to have missed the point that the Land Acquisition collector does not decide the objections. What has been entrusted upon the collector by the statute, is to make its recommendations, either in favour or against the objector. No doubt the law is more than settled that the stage of deciding the objections u/s 5A of 1894 Act is not a mere formality but requires objective consideration. It goes without saying that sub section (2) of Section 5 A of the 1894 Act casts an onerous obligation on the collector to

consider the objections in a fair, impartial and dispassionate manner and to place the same before State Government for its decision which shall be final. The State Government is obligated to consider the same keeping in view all the relevant factors including the object for which the acquisition is being made. This would imply to take into consideration the objections/suggestions/recommendation of all the stake holders i.e., of the beneficiary department as well, on whose shoulders, the responsibilities lie to develop the land so as to achieve the public purpose. The decision of State Government in proceeding with the acquisition by no stretch of imagination can be held to be bad merely because the LAC had recommended for release of the land as this issue is no more res Integra that the report/recommendations made by the LAC are not binding on the state except the same are required to be considered while taking final decision.

32. As regards this argument raised by the petitioner with regard to the recommendations of the Land Acquisition Collector to exempt the land from acquisition and yet the State Government not accepting the same, a reference to the provisions of Section 5A of the 1894 Act is necessary. Section 5A of the 1894 Act reads as under:

> ***5-A. Hearing of objections***.—*(1) Any person interested in any land which has been notified under Section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a Company may,* [12]*[within thirty days from the date of the publication of the notification], object to the acquisition of the land or of any land in the locality, as the case may be.*
>
> *(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard* [11]*[in person or by any person authorised by him in this behalf] or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary,* [13]*[either make a report in respect of the land which has been notified under Section 4, sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the*

> *objections, together with the record of the proceedings held by him, for the decision of that Government]. The decision of the [14][appropriate Government] on the objections shall be final.*
>
> *(3) For the purposes of this section, a person shall he deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.*

33. A perusal of sub section (2) of Section 5A of the 1894 Act itself makes it clear that "*the decision of the appropriate Government on the objections shall be final*". Therefore, there is no gainsaying that although the recommendations were made in favour of the petitioners, yet the same have not been accepted thereby rendering the acquisition proceedings bad. Reference in this regard to the observations made by this Court in Balwant Singh Sher Singh Rice Mills (supra). In another judgment passed by this Court in Vivek Coop. House Building Society (supra), this Court in unequivocal terms has held that sub section (2) of Section 5A is not merely a formality and casts an onerous obligation on the Collector to accord opportunity of hearing to the objector and consider his objections in a fair, impartial and dispassionate manner from the stand point of the affected owner keeping in view all the relevant factors including the object for which the acquisition is being made. We are in respectful agreement with the view taken by this Court.

34. To our mind, the consideration cannot be solitary from the stand point of the objector as the agency which has been tasked by the State Government to develop the land acquired to achieve the public purpose cannot be ignored which is very much essential for the purpose of taking final decision by the State Government as it is also an essential stake holder in the process of development of land. In the case in hand, we cannot loose sight of the fact that pursuant to the recommendations made by the Land Acquisition Collector to exempt the land in question from acquisition, the HSIIDC i.e. the implementing agency made its recommendations to the

effect that the land in question is vacant and will interfere in the planning i.e. it interferes in the proposed vehicle testing track. The scheme of the 1894 Act clearly lays down that a declaration to the effect that land in required for public purpose is made after the Government is satisfied that a particular piece of land is needed. Thus, taking into consideration the recommendations made by the Collector as well as by the implementing agency i.e. HSIIDC, the State Government proceeded to include the land in question in the declaration issued and thereafter, acquiring the land in question, by announcing the award which by stretch of imagination cannot be held to be bad merely because the LAC had recommended for release of the land as this issue is no more res Integra that the report/recommendations made by the LAC are not binding on the state except the same are required to be considered while taking final decision. Accordingly, we approve the decision of State Government to acquire the land in question, after considering the report of Collector as well as HSIIDC.

Issue No. (IV):-

35. As regards the plea of release of land in favour of other land owners is concerned, we noticed that the said plea has been raised in an absolutely vague manner wherein no particulars what so ever has been given and moreover, as pleaded by State the said instances do not even pertain to the acquisition at hand and relates to another acquisition of SEZ. How and in what manner, the same has been relied upon to set up the plea of discrimination and pick and choose yardsticks adopted by the State, lead only towards the hollow claim of the petitioners. Even otherwise, the plea of discrimination cannot be raised on the drop of hat and every release made by the State Govt. does not give rise a cause of action to others to plead discrimination. The law in this regard is well settled that firstly if the plea of

discrimination/parity is to be raised, it is required to be raised within the close proximity of the event taken place, based upon which the discrimination/parity is being sought to be alleged. Secondly, to raise such plea, the person raising such plea must be identically placed to the one, with whom, the discrimination plea is being raised. Thirdly, the burden to prove the plea of discrimination is on the landowner by producing concrete evidence before the Court to show that their case is identical to other persons whose land had been released from the acquisition proceedings.

36. The finding of discrimination cannot be recorded merely on the basis of vague and bold assertions as has been made by the petitioners in the instant writ petition especially when, the instances of release given are not even from the acquisition at hand what else would be the proof of vagueness of such plea being sought to be set up. Last but not the least, while claiming discrimination, the important factor to plead is that the action of the State Government with which discrimination is being pleaded, is legal and within the for-corners of law because if the action itself is against the law or wrong, the parity or discrimination cannot be pleaded with any such action. The reference in this regard, can be made to the judgment of the Hon'ble Supreme Court of India in the case of ***Shanti Sports Club Vs. Union of India (Supra)*** wherein the Apex Court held as under:-

> *"...The plea of discrimination and violation of Article 14 of the Constitution put forward by the appellants is totally devoid of substance because they did not produce any evidence before the High Court and none has been produced before this Court to show that their land is identically placed qua the lands on which Hamdard Public School, St. Xavier School, Scindia Potteries, etc. exist. In the representations made to different functionaries of the Government and DDA, the appellants did claim that other parcels of the land have been de-notified and before the High Court a copy of notification dated 6.9.1996 issued under Section 48(1) was produced, but the said assertion and notification were not sufficient for recording a finding that their case is identical to those whose land had been denotified. The burden to prove the charge of*

discrimination and violation of Article 14 was on the appellants. It was for them to produce concrete evidence before the court to show that their case was identical to other persons whose land had been released from acquisition and the reasons given by the Government for refusing to release their land are irrelevant or extraneous. Vague and bald assertions made in the writ petition cannot be made basis for recording a finding that the appellants have been subjected to invidious or hostile discrimination. That apart, we are prima facie of the view that the Government's decision to withdraw from the acquisition of some parcels of land in favour of some individuals was not in public interest. Such decisions had, to some extent, resulted in defeating the object of planned development of Delhi on which considerable emphasis has been laid by the Full Bench of the High Court and this Court. This being the position, Article 14 cannot be invoked by the appellants for seeking a direction to the respondents to withdraw from the acquisition of the land in question. Article 14 of the Constitution declares that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. The concept of equality enshrined in that Article is a positive concept. The Court can command the State to give equal treatment to similarly situated persons, but cannot issue a mandate that the State should commit illegality or pass wrong order because in another case such an illegality has been committed or wrong order has been passed. If any illegality or irregularity has been committed in favour of an individual or a group of individuals, others cannot invoke the jurisdiction of the High Court or of this Court and seek a direction that the same irregularity or illegality be committed in their favour by the State or its agencies/instrumentalities…."

37. Similar views were expressed by the Hon'ble Supreme Court in the case of ***Basawaraj& ANR. Vs. The Special Land Acquisition Officer***Civil Appeal No. 6974 of 2013. Therefore, in view of the principle of law laid down by the Hon'ble Supreme Court, the vague and bald assertions made by the petitioners in the petition are of no avail especially when, the instances recorded are not even from the acquisition at hand and thus, the plea been sought to be setup of discrimination by the petitioners must fail and is accordingly rejected.

Issue No. (V):-

38. In the case in hand, another issue arises for consideration which indeed is a vital aspect to decide the process of acquisition when the same is being

sought to be tested before the writ Court i.e. the stage, when the landowner chooses to lay challenge to it. Time and again, the Courts have put emphasis on to the fact that the challenge to the acquisition proceedings must be immediate and without any loss of time. The Courts have consistently rejected the challenge to the acquisition proceedings if it is challenged post announcing the Award. There is a clear reason behind it as by passing the award, the authorities proceed to take possession and the land vests in the State. This results into changing the title of the land in favour of the State and the title of the landowner ceases to operate. If the landowners' let the land vest in the State free from all encumbrances, they cannot thereafter claim that such vesting which is otherwise as per law, should be reversed. Such an approach towards acquisition is neither intended in the scheme of 1894 Act nor is approved by the Courts owing to the fact that such approach would ultimately have an effect of frustrating the entire public purpose for which land was acquired.

39. The Hon'ble Supreme Court of India in Indore Development Authority (supra) has added certainty to law by holding that with drawing of Panchnama, it is presumed that the possession is of the State and anyone retaining the possession thereafter is a "trespasser". Such clarity has narrowed down the clouds surrounding the modes of taking possession of the land to almost negligible and has clarified the stance when the land vests in the State. The reference in this regard is made to the following paragraphs from the judgment:-

> ***'....342.*** *Section 24(2) is sought to be used as an umbrella so as to question the concluded proceedings in which possession has been taken, development has been made, and compensation has been deposited, but may be due to refusal, it has not been collected. The challenge to the acquisition proceedings cannot be made within the parameters of Section 24(2) once panchnama had been drawn of taking possession, thereafter re-entry or retaining the possession is that of the trespasser.* ***The legality of the proceedings cannot be challenged belatedly, and the right to challenge***

> ***cannot be revived by virtue of the provisions of Section 24(2). Section 24(2) only contemplates lethargy/inaction of the authorities to act for five years or more. It is very easy to lay a claim that physical possession was not taken, with respect to open land. Yet, once vesting takes place, possession is presumed to be that of the owner, i.e., the State Government and land has been transferred to the beneficiaries, Corporations, Authorities, etc., for developmental purposes and third-party interests have intervened. Such challenges cannot be entertained at all under the purview of Section 24(2) as it is not what is remotely contemplated in Section 24(2) of the Act of 2013****...'*
>
> ***343.*** *In matters of land acquisition, this Court has frowned upon, and cautioned Courts about delays and held that delay is fatal in questioning the land acquisition proceedings. In case possession has not been taken in accordance with law and vesting is not in accordance with Section 16, proceedings before Courts are to be initiated within reasonable time, not after the lapse of several decades...'.*

40. The entire genesis of the aforesaid conclusion lies in the "concept of vesting of land" in the State. Vesting of the land has been held to mean that the State is endowed with all the benefits that are available to an owner of the land. As reiterated and explained by the Hon'ble Supreme Court of India, vesting of the land happens, the moment possession of the acquired land is taken, and on happening of such an event the title of the landowner ceases in the land for once and all. The law in this regard is well settled that after such vesting even if the land has not been utilized for the public purpose for which it was acquired, erstwhile landowner has no right to seek re-conveyance of the land. Vesting amounts to an absolute and indefeasible right which implies that all bundle of rights which were vested in the erstwhile owner before acquisition fully vests in the State once the possession of the acquired land has been taken. State becomes the absolute owner of the land and if after such vesting the possession has been retained by the erstwhile landowner or anyone else, they are trespassers on the acquired land.

41. In view of the settled proposition of law, especially in terms of Indore Development Authority (Supra) wherein the Apex Court has held that once the possession of the land is taken by the State, person retaining the possession is merely a "*trespasser*", a very pertinent question arises as to on what parameters the Courts shall interfere in the acquisition proceedings at the instance of a "*trespasser*". A trespasser is a person who enters or remains in the possession of land of another without a privilege to do so. In law, a trespasser certainly can neither challenge the title of the rightful owner nor can claim any better right that the owner might have in the land. Such a person neither has any animus to take the property and to control it nor can he aver his title over the property against the State. The Apex Court has extensively explained the aspect of possession, vesting and how after vesting the person in possession of the property is considered as trespasser. As regards the meaning and concept of trespasser, the reference was made to Mitra's "Law of Possession and Ownership of property". The relevant extract is reproduced herein below:-

> ***'...248.*** *Mitra's "Law of Possession and Ownership of Property", 2nd Edn., expressions 'trespass' and 'trespasser' have been dealt with by the learned Author with the help of Words and Phrases, Permanent Edition, West Publishing Co. which has also been quoted with respect to who is a trespasser:*
>
> > *"A "trespasser" is a person who enters or remains upon land in the possession of another without a privilege to do so created by the possessor's consent or otherwise. In re Wimmer's Estate, 182 P.2d 119, 121, 111 Utah 444."*
> >
> > *"A "trespasser" is one entering or remaining on land in another's possession without a privilege to do so created by possessor's consent, express or implied, or by law. Keesecker v. G.M. Mckelvey Co., 42 N.E. 2d 223, 226, 227, 68 Ohio App. 505."*
>
> ***249. <u>One who enters or remains in possession on land of another without a privilege to do so, is also treated as a trespasser.</u>*** *On the strength of Full Bench decision of Patna High Court in S.M. Yaqub v. T.N. Basu AIR 1949 Pat 146, Mitra, has referred to the observation that the possession should not be confused with occupation. A person may be in actual possession of the property without occupying it for a considerable time. The person who has a right to utilise the whole in any way he likes.*

Possession in part is good enough to infer that the person is in possession of the rest. Learned Author has referred to Jowitt's Dictionary of English Law, Ed. 1969, so as to explain what constitutes possession.

> *"There are three requisites of possession. First, there must be actual or potential physical control. Secondly, the physical control is not possession unless accompanied by intention hence if a thing is put into the hand of a sleeping person he has no possession of it. Thirdly, the possibility and intention must be visible or evidence by external signs for if the thing shows no signs of being under the control of anyone, it is not possession."*

xxxxx xxxxxx xxxxxx

251. *A person with title is considered to be in actual possession. The other person is a trespasser. The possession in law follows the right to possess as held in Kynoch Limited v. Rowlands (1912) 1Ch 527 .Ordinarily, the owner of the property is presumed to be in possession and presumption as to possession is in his favour. In Superintendent and Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja&Ors., (1979) 4 SCC 274 , this Court observed that possession implies a right and a fact; the right to enjoy annexed to the right of property and the fact of the real intention. It involves the power of control and intent to control. Possession is annexed to right of property.*

> ***"13.*** *"Possession" is a polymorphous term which may have different meanings in different contexts. It is impossible to work out a completely logical and precise definition of "possession" uniformally applicable to all situations in the contexts of all statutes. Dias and Hughes in their book on Jurisprudence say that if a topic ever suffered from too much theorising it is that of "possession." Much of this difficulty and confusion is (as pointed out in Salmond's Jurisprudence, 12th Edn., 1966) caused by the fact that possession is not purely a legal concept. "Possession," implies a right and a fact; the right to enjoy annexed to the right of property and the fact of the real intention. It involves power of control and intent to control. (See Dias and Hughes, ibid.)*
>
> ***14. According to Pollock and Wright,***
>
> *"when a person is in such a relation to a thing that, so far as regards the thing, he can assume, exercise or resume manual control of it at pleasure, and so far as regards other persons, the thing is under the protection of his personal presence, or in or on a house or land occupied by him or in any receptacle belonging to him and under his control, he is in physical possession of the thing."*
>
> ***15.*** *While recognising that "possession" is not a purely legal concept but also a matter of fact, Salmond (12th Edn., p. 52) describes "possession, in fact", as a relationship between a person and a thing. According to the learned Author the test for determining "whether a person is in possession of anything is whether he is in general control of it"*

42. By referring to the aforesaid treatise of law, it has been clarified that the person with title is presumed to be in possession of the property. Considering the fact that there can be a case where property may be occupied by a person other than an owner, the Apex Court distinguished between the concept of "possession" and "occupation" of the land and observed that the possession amounts to holding of property as owner and occupation amounts to keeping the possession by being present in it. The reference in this regards is made to the following paragraphs from Indore Development Authority (supra):-

> ***252.*** *In Ram Dass v. Davinder (2004) 3 SCC 684 , this Court stated that possession and occupation in common parlance may be used interchangeably, but in law possession amounts to holding property as an owner, while to occupy is to keep possession by being present in it. In Bhinka&Ors. v. Charan Singh, Bhinka&Ors. v. Charan Singh164, this Court considered the dichotomy between taking and retaining possession. They are mutually exclusive expressions and apply to two different situations. The word 'taking' applies to a person taking possession of a land otherwise than in accordance with the provisions of the law, while the word 'retaining' applies to a person taking possession in accordance with the provisions of the law, but subsequently retaining the same illegally. In Bhinka&Ors. (supra), as to retaining possession, it was observed:*
>
> ***"14.*** *If the appellants did not take possession of the disputed lands, did they retain possession of the same in accordance with the provisions of the law for the time being in force? The dichotomy between taking and retaining indicates that they are mutually exclusive and apply to two different situations. The word "taking" applies to a person taking possession of a land otherwise than in accordance with the provisions of the law, while the word "retaining" to a person taking possession in accordance with the provisions of the law but subsequently retaining the same illegally. So construed, the appellants' possession of the lands being illegal from the inception, they could not be described as persons retaining possession of the said lands in accordance with the provisions of any law for the time being in force, so as to be outside the scope of Section 180 of the Act."*

43. As regards the Scheme of acquisition, the Hon'ble Supreme Court of India by making reference to Section 16 of 1894 Act categorically held that vesting of title in the government takes place immediately upon taking possession of the land and the State becomes the owner of the property

without any condition or limitation either as to the title or to the possession. After taking of possession of the acquired land and vesting of the land in State, the person who retains the possession is a "trespasser". The reference is made to the following:-

> *'...**253.** Under section 16 of the Act of 1894, vesting of title in the Government, in the land took place immediately upon taking possession. Under Sections 16 and 17 of the Act of 1894, the acquired land became the property of the State without any condition or limitation either as to title or possession. Absolute title thus vested in the State.*
> *XXX XXXXX XXXX*
>
> ***256.** Thus, it is apparent that vesting is with possession and the statute has provided under Sections 16 and 17 of the Act of 1894 that once possession is taken, absolute vesting occurred. It is an indefeasible right and vesting is with possession thereafter. The vesting specified under section 16, takes place after various steps, such as, notification under section 4, declaration under section 6, notice under section 9, award under section 11 and then possession.* ***The statutory provision of vesting of property absolutely free from all encumbrances has to be accorded full effect. Not only the possession vests in the State but all other encumbrances are also removed forthwith. The title of the landholder ceases and the state becomes the absolute owner and in possession of the property. Thereafter there is no control of the land-owner over the property. He cannot have any animus to take the property and to control it. Even if he has retained the possession or otherwise trespassed upon it after possession has been taken by the State, he is a trespasser and such possession of trespasser enures for his benefit and on behalf of the owner...'***

44. Once the vesting in the aforesaid manner takes place, the petition laying challenge to the acquisition proceedings on any ground is not maintainable and rightly so as the landowner has no title to assert his claim as regards the acquired land as being a trespasser he loses any locus to challenge the acquisition proceedings since he loses any title in the acquired land itself. This in fact is the reason why the Courts have consistently refused to entertain any challenge to the acquisition proceedings after vesting of the land. Thus, erstwhile landowners are precluded from questioning the legality of acquisition proceedings after vesting of land as they are only

trespassers and no more owners who can asset any sort of right over the land of which the State is owner.

45. Applying the aforesaid principle laid down by the Hon'ble Supreme Court of India to the factual matrix of the case in hand, it becomes an additional if not only ground to reject the challenge made to the acquisition proceedings at the hands of the petitioners. As noticed above, even though the petition was filed on 20.02.2007 (as appearing just below the index) but it is not disputed that notice of motion and interim order of stay on dispossession was passed on 26.02.2007 i.e. after the Award having been already announced and the possession having been taken by recording the Rapat Rojnamcha No. 458 dated 24.02.2007 (as stated by HSIIDC in CM No. 7891 of 2020) which means after the vesting of the land in question having taken place in the State. So much so, even though, the written statement was filed in the year 2007 itself, bringing on record the factum of award having been announced, but still, till date and that too, for good 15 long years, the petitioners have chosen to not to lay challenge the award so announced. Be as it may be, the fact that the vesting had already taken place even before this court issued notice of motion, disentitles the petitioners additionally, to get the relief being prayed for, hence, the claim of the petitioners require to be rejected and is thus being rejected.

46. In the wake of the conspectus of what all has been discussed above, the issues framed are being answered in the following terms:

Issue 1:- The factum of grant of NOC for establishing the college would not be an impediment for the State Government to acquire the land in accordance with the provisions of the applicable land acquisition act. The grant of NOC/ licence/ CLU or any other permission would not give the

landowner a right to set up a plea of "promissory estoppel" against the State.

Issue 2:- The definition of public purpose is not capable of being given a static and definite definition. The state is the first judge to decide the "public purpose" for which the land is required to be used, though such decision is subject to judicial scrutiny. The land in question is required for development of industrial infrastructure which constitutes "public purpose". It can be utilized for any allied or connected or even other public purpose for its optimum utilization. The vague pleas that the use of the land is not for public purpose are not sufficient to question the validity of the acquisition proceedings. Since long time has lapsed from the date of acquisition, even if due to change in the planning, if the land in question is sought to be utilised for any other public purpose, there would no impediment for the acquiring agency to proceed with the same in view of the settled proposition of law.

Issue 3:- The recommendations made by the Land Acquisition Collector to exempt land from the acquisition proceedings or even to acquire the land are not binding on the State except that same have to be considered by the State Government while forming the opinion. In the case at hand, though the recommendation made by the Land Acquisition Collector was to exempt the land from the acquisition proceedings, however, since the release would have affected the planning of the township and especially the proposed vehicle testing track, we do not find any reason to question the decision of the State Government to acquire the land of the petitioners.

Issue 4:- In order to plead discrimination, the onus is on the petitioners to show that they are identically situated to such persons in whose favour discrimination is being pleaded. In case at hand, except making vague assertions of discrimination and making reference to instances which does not even relates to the instant acquisition proceedings, the petitioners have

not placed on any material to support its contention of discrimination. Further, it is pertinent to add that the withdrawal from acquisition is impressible in the scheme of Act of 1894 after the possession of the land stands taken. Even if there is any order vide which the land was released from the acquisition proceedings after taking its possession by way of rapat or otherwise, such an order is per se illegal and no parity can be claimed with illegality having been committed by the State, more so, when in case at hand the possession of the land stands taken and land stands vested in the State.

Issue 5:- The undisputed position in the case at hand remains that the status quo was granted by this court after the award was announced and possession of the land was taken. This fact was not even brought to the notice of the court when notice was being issued. In such circumstances, the fact remains that the possession of the land had already been taken by the State and as such the land stood vested, therefore, amongst other grounds as discussed above, the petitioners deserves to be non-suited on the ground that the land stands vested in the State.

47. Before parting, we would like to refer to yet another aspect which we noticed in the objections filed by the petitioners under section 5-A of Act of 1894 that in case the land is required for the acquisition purposes, they shall be rehabilitated and equal land shall be allotted to them. Such kind of relief neither is envisaged in the Scheme of Act of 1894 nor can such directions be issued as a condition precedent for upholding the validity of the acquisition proceedings. Rehabilitation is a matter of State policy and is governed by the parameters laid down therein and also by the judgment passed by this court in Rajiv Manchanda and others Vs. Haryana Urban Development Authority and another 2018 (4) RCR (Civil) 508. The landowners cannot claim rehabilitation as a condition precedent for either

dispossessing them from the acquired land or for upholding the validity of acquisition proceedings, neither can court pass such directions given the legislative scheme of Act of 1894.

48. For the reasons aforesaid and finding that the land in question is very much required for a public purpose in the interest of community at large, the vesting having been already taken place even before the issuance of notice of motion, the fair decision taken by the State Government to proceed with the acquisition of land in question and finding, no case of discrimination at all, we have no hesitation to hold that the instant writ petition, being devoid of any merits, is requires to be rejected and the same is accordingly dismissed. All pending applications if any, stand disposed of. The interim order passed in favour of the petitioners is hereby vacated.

49. Ordered Accordingly.

(Ravi Shanker Jha)
Chief Justice

(Arun Palli)
Judge

29.07.2022
Rajan

Whether speaking / reasoned: YES
Whether Reportable: NO