Haryana Urban Development Authority vs Abhishek Gupta Etc on 21 October, 2024

Author: Surya Kant

Bench: Surya Kant

2024 INSC 796 REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 7420-7421 of 2010

Haryana Urban Development Authority …Appellant(s)

Versus

Abhishek Gupta etc. …Respondent(s)

JUDGEMENT

SURYA KANT, J.

1. These appeals have been preferred by the Haryana Urban Development Authority (HUDA, now HSVP) (hereinafter, 'Appellant') against the judgement dated 15.07.2008 of the High Court of Punjab and Haryana (hereinafter, 'High Court'), whereby the land acquisition proceedings initiated by the State of Haryana were annulled by quashing the notifications issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (hereinafter, '1894 Act'). 14:05:46 IST Reason:

A. FACTS

2. A notification was issued on 16.03.1999 under Section 4(1) of the 1894 Act for acquiring 952.18 acres land, of which 748.56 acres fall in Village Saketri and 203.62 acres in Village Bhainsa Tiba, both in Tehsil and District Panchkula, Haryana. The land was being acquired for development and utilization for residential, commercial, institutional and recreational purposes.

3. Located between the Union Territory of Chandigarh and the Shivalik Range, the lands are bordered on one side by the Sukhna Lake, and a designated Forest Area on the other. It is also adjacent to several other residential sectors that the Appellant has fully developed as part of the Mansa Devi Complex in the Panchkula Urban Area.

4. The Respondents submitted their objections under Section 5A of the 1894 Act on 16.04.1999, contending that their portion of the land under acquisition ought to be exempted as they contained fruit trees and the state policy mandates the exemption of such lands from acquisition. Additionally, they claimed that a cattle- shed, greenhouse, and an attendant room were also erected on the land, for which authorization had been granted by the Commissioner, Ambala, on 23.12.1992 under the Punjab New Capital (Periphery) Control Act, 1952 (hereinafter, 'Punjab Periphery Act'). Similarly, a farmhouse was also claimed to have been constructed with the approval of the Additional District Judge, Ambala, (hereinafter, 'ADJ') vide judgement dated 05.04.1994.

5. The Collector accepted these objections, noting that since the Commissioner and the ADJ had authorized the construction on the land, it could be exempted from acquisition. However, the State Government went ahead with the acquisition, asserting that the structures were unauthorized. A declaration under Section 6 of the 1894 Act was issued on 16.03.2000 to acquire both the land and the constructions thereon.

6. Aggrieved, the Respondents approached the High Court, pleading that their objections under Section 5A of the 1894 Act had not been appropriately considered.

7. Subsequently, vide the impugned judgement dated 15.07.2008, the High Court allowed the Respondents' writ petition and quashed the notifications issued under Sections 4 and 6 of the 1894 Act. This finding stood on two primary legs: (i) the Respondents' objections were wrongfully rejected as the constructions were duly authorized; and (ii) it was discriminatory to acquire the Respondents' land when similarly situated land belonging to Maharaja Harinder Singh 'Khalaf' Maharaja Varinder Singh had been exempted from acquisition.

8. Discontented with the quashing of the notifications issued under Sections 4 and 6 of the 1894 Act, the Appellant—beneficiary of the acquisition, is before us in these appeals. This Court, vide order dated 01.09.2008, directed the parties to maintain status quo which is operating till date.

B. CONTENTIONS

9. Mr. Lokesh Sinhal, Learned Senior Additional Advocate General of Haryana, appearing on behalf of the Appellant— beneficiary of the acquisition contended that the High Court erred in quashing the aforementioned notifications. In support of this assertion, he made the following submissions:

> (a) The constructions undertaken by the Respondents were unauthorized. Although permission was granted by the Commissioner, Ambala, it was conditioned on the Respondents submitting the building plan. However, there is no evidence substantiating that such a plan was ever submitted. Hence it cannot be presumed

that the construction was duly authorized, and consequently, the Competent Authority was justified in repudiating the Appellant's objections under Section 5A of the 1894 Act.

(b) The Collector did not recommend the release of the Respondents' land. He merely stated that the State Government may consider such release. The issue of exemption from acquisition was consequently left open for consideration by the Competent Authority.

(c) Even if it is assumed that the Collector recommended the release of the land, it would not bind the State Government.

After due inspection, the High-Powered Committee had determined that the construction was unauthorized and not in conformity with the Developmental Plan. The State Government, therefore, committed no error on disagreeing with the Collector and proceeding with the acquisition, as buttressed by this Court's decision in Anand Buttons Ltd. v. State of Haryana.1 1 (2005) 9 SCC 164.

(d) The land belonging to Maharaja Harinder Singh 'Khalaf' Maharaja Varinder Singh had also been subsequently acquired through the notification dated 17.05.2007. It could not be acquired earlier on account of pending public interest litigations. It is thus incorrect to assert that the State Government discriminated against the Respondents by releasing similarly placed lands. In any case, the Respondents had also not demonstrated that this land was similarly placed as their own land. Furthermore, the acquisition proceedings do not violate the provisions of the Punjab Periphery Act.

10. Per contra, Mr. Rajive Bhalla, Dr. Bharat Bhushan Parsoon, and Mr. Sanjeev Sharma, Learned Senior Counsels representing the Respondents, have supported the impugned judgement by arguing that:

(a) The burden of proving that the constructions were not supported by the building plan lies on the Appellant. Since the same has not been proved, there cannot be any adverse presumption against the legality of the construction. In any case, as confirmed by the order dated 05.04.1994 of the ADJ, the Appellant was not obligated to seek any permission and hence, non-submission of the building plan is not material.

(b) There is a flagrant violation of Section 5A as the Respondents' objections have not been considered in accordance with law.

Since Section 5A of the 1894 Act provides a valuable safeguard to an expropriated land owner, it warrants mandatory compliance and cannot be treated as an empty formality.

(c) Furthermore, doubt can be cast on the thoroughness of the inspection conducted by the High-Powered Committee constituted by the State Government, given that a vast tract of land is claimed to have been inspected in a very short duration. Additionally, the composition of the

committee formed for the inspection indicates a complete abdication of power by the State government.

(d) Even if the land of Maharaja Harinder Singh 'Khalaf' Maharaja Varinder Singh was re-acquired, it was done at a rate prevalent in 2007, which was higher in comparison to 1999. Denying the higher rate to the Respondents amounts to arbitrary and discriminatory conduct.

(e) In any case, there is a significant subsequent development, as during the pendency of the proceedings, the State of Haryana has agreed on releasing the subject land, provided that the Respondents provide a part of the land for basic amenities free of cost and use the remaining for charitable purposes. Since the Respondents have consented to put their land to such conditional use, this Court should give effect to such a conscionable agreement between the parties and may, therefore, dismiss the instant appeals in light thereof.

(f) Since this Court has dismissed the previous appeals filed by the State of Haryana against the same impugned order, the present set of appeals are not maintainable and attract the auspices of the doctrine of merger.

C. ISSUES

11. Having given our thoughtful consideration to the

submissions at length, we find that the following four issues are to be analysed:

i. Whether the mandatory procedure contemplated under Section 5A of the 1894 Act has been complied with? ii. Whether the land acquisition proceedings deserve to be vitiated on the ground that similarly placed landowners have been treated differently?

iii. Whether the instant appeals are liable to be dismissed as infructuous in view of the subsequent developments like `settlement' between the parties?

iv. Whether doctrine of merger is attracted in view of the fact that State appeals against the same impugned judgment have already been dismissed?

D. ANALYSIS D.1 Evaluation of objections under Section 5A of the 1894 Act

12. The focal contention of the Respondent-landowners is that the acquisition proceedings stand vitiated and ought to be quashed as they were carried out in violation of Section 5A of the 1894 Act, which mandates due consideration of their objections.

13. It would be pertinent to understand the object that Section 5A of the 1894 Act seeks to fulfil. A plain reading of the provision indicates that it codifies the

fundamental safeguard of audi altrem partem. Landowners have the opportunity to demonstrate that the acquisition is against public purpose or marred by mala fides. In the event the landowner presents a cogent case, the appropriate government may exempt such land from acquisition. By enabling landowners to put forward their perspective and elucidate their remonstrances, Section 5A envisions a modus of deliberation and consultation, which must therefore be construed to be mandatory, akin to a right.2

14. Objections under Section 5A of the 1894 Act most often proceed in four distinct stages:

i. The filing stage: Landowners can file objections within thirty days of the notification issued under Section 4 of the 1894 Act;3 ii. The hearing stage: The Collector must provide an oral hearing to the objecting landowners, either in person or through a pleader/authorized representative;4 iii. The recommendation stage: The Collector—after hearing objections and upon further inquiry—makes a report to the 2 Women's Education Trust v. State of Haryana, (2013) 8 SCC 99, para 1. 3 Section 5A (1), 1894 Act.

4 NOIDA v. Darshan Lal Bora, 2024 INS 508.

appropriate government containing their recommendations;

and iv. The decision stage: The appropriate government considers the Collector's report and takes a final decision on the objections.

15. Reverting to the case in hand, although the Respondents have averred that their right under Section 5A has been infringed, however, they have failed to substantiate such claim. Onus was on the Respondents to identify any fault in the procedure adopted by the State, which we find tracks closely with the aforementioned four-stage process. When the Section 4 notification was issued on 16.03.1999, objections were invited from the landowners. These objections were duly heard, and a report was prepared by the Collector. Subsequently, the State Government constituted a High-Powered Committee, and based on its findings and opinion, the Government ultimately took a final decision to acquire the Respondents' land. Section 5A mandates a procedure, not a particular outcome. The landowners in this case were thus certainly guaranteed a hearing and consideration, not relief.

16. Regarding the fourth stage, the Respondents have specifically argued that since the Collector had recommended the release of their land and the State Government deviated from such recommendation without any valid and sufficient reasons, its decision is bad in law. In effect, their claim seems to be that the Collector's recommendation ought to be final and binding on the Government. However, such an interpretation is at odds with the bare text of Section 5A, which states that the Collector shall "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 appropriate Government on the objections shall be final." [Emphasis supplied]

17. The choice of different terminologies for the role of the Collector and the role of the Government makes it evident that the Legislature intended different roles for each of them. The Collector has no power to "decide" the case and can only give "recommendations" to the Government. It is the Government which is the ultimate arbiter for determining whether the land is to be released or not. No other authority can dictate the outcome of Section 5A proceedings—neither the Collector nor the landowner.5 While the Collector's report can form the "basis" of such decision, the Government is free to independently evaluate and take a final decision, of course, based on relevant and lawful considerations.

18. It is therefore patently clear that the State Government possessed the ability to disagree with the Collector's report and decide a different course. This is not to say that the Government's decision cannot be challenged or is beyond judicial review. Indeed, had the Respondents demonstrated that the decision was arbitrary or passed without due application of mind, then they could have been victorious in their challenge. However, the Respondents have not placed any evidence on record to lay such foundation. On the contrary, the State Government/Appellant have demonstrated that their decision was not whimsical but was predicated on the findings of a High-Powered Committee, which comprised qualified individuals, like officers of the Indian Administrative Services, officials working with the Appellant, experts from the Town Planning Department and the Department of Agriculture, etc. Having duly inspected the subject land, this Committee deduced 5 Shri Mandir Sita Ramji v. Lt. Governor of Delhi, (1975) 4 SCC 298, para 5. that the building structures on the land were unauthorized and not in conformity with the Development Plan. Relying on this analysis, the Government deviated from the Collector's recommendation and proceeded with the acquisition. We are of the considered view that such departure was made in public interest, with due application of mind and was fully justified.

19. The Respondents have also assailed that the State Government's decision was at odds with the earlier orders of the Commissioner and the ADJ, who had authorized such constructions. We find this submission disingenuous. These orders of the Commissioner and ADJ permitted constructions that were to be erected specifically for agricultural purposes, not residential. The order dated 23.12.1992, specifically notes that only structures like cattle sheds and green houses would be permitted, as they are subservient to agricultural activities, whereas a modern farm house would be unauthorized under the Punjab Periphery Act. Similarly, the order dated 05.04.1994 noted that no such authorization would be necessary, provided the land was to be utilized for agricultural purposes. However, the submissions proffered by the Respondents undermine their own case. While attempting to attack the public purpose element of the acquisition proceedings, they admitted that the usage of the land was not limited to 'agricultural purposes' and that it was intended to be 'residential' in nature as well. This disharmony is visible in the Respondents' Section 5A objections:

> "6. That the above said land of the objector is situated adjacent to sector 4 Mansa Devi Complex and the objector has purchased this costly land with a view to set up a

> farm house thereon, since the purpose of Acquisition is also residential, it would be against the principal of natural justice to uproot the objector first and then to develop the same land for residential purpose meaning thereby the State would be providing residential accommodation to one of after taking away the residential land from the objector, which would serve no public purpose as stated in the notice. Hence, the notice under section 4 of the Land Acquisition Act is liable to be withdrawn qua the above said land of the objector." [Emphasis supplied]

20. Given how the Respondents have themselves admitted to the intention of developing their lands and structures for non- agricultural activities, we do not wish to second guess the fact- finding exercise conducted by the High-Powered Committee. We must also note that the orders of the Commissioner and ADJ were caveated approvals for prospective construction of the agricultural structures. We do not see how these would preclude the State Government from conducting an actual on-ground inspection and coming to a different conclusion as to their actual use. It is indeed possible that following the said orders, the land may have had unauthorized structures, which were being used beyond mere agricultural purposes. This possibility is only further enhanced by the Respondents' own stated intention of putting the lands to residential use.

21. Regardless, we may also hasten to add here that there are serious doubts on the jurisdictional competence of the Civil Court, in holding that agriculture related structures could be raised without prior permission. Such a hasty declaration by the ADJ was ex facie uncalled for and beyond its jurisdictional authority, given that it was expressly barred under the Punjab Periphery Act.

22. However, the Respondents' strategy of arguing that their constructions were authorized (being agricultural), while simultaneously seeking exemption from acquisition on the ground that their lands were subserving the same intention as the acquisition (being residential), is not only contradictory but also ill-advised. Furthermore, in first placing themselves at par with the object of acquisition, and then vitiating that very purpose by claiming that it contravenes the Punjab Periphery Act, the Respondents have effectively shot themselves in the foot.

23. The Respondents have also failed to discharge their burden of proof. They have not produced any reliable material to prove that the constructions on their land were authorized, and if anything, have further created doubts, as to whether these structures are indeed permitted under the auspices of the Punjab Periphery Act.

24. On the contrary, there is ample material on record to show that the High-Powered Committee comprised of senior officials, made their assessment after having properly inspected the site. This Committee emphatically recommended that the whole of the land, including the unauthorized structures, be acquired for the proposed regulated development. Such a decision, in our considered view, is in conformity with the legislative object behind the Haryana Development and Regulation of Urban Areas Act, 1975, whereunder no construction on an agricultural land is permissible save and except when the change of land use is granted by the appropriate authority, in accordance with the procedure prescribed therein.

25. In any case, even if the constructions were to be authorized, it would not materially affect our outcome. As has been held by this Court on several occasions, exempting lands bearing constructions from acquisition is a matter of State Policy, and not of law.6 In case the Government finds that exempting such lands would adversely affect the larger Development Plan or any other purpose behind the acquisition, then it can still continue with the acquisition.7 Private interest of a few, should give way to the public interest of the many. Prior authorization of the constructions is also not the definitive saving grace that the Respondents imagine it to be. In fact, this Court has repeatedly allowed acquisitions even in cases where the construction was specifically authorized by the government beforehand, as was the case in State of Haryana v. Vinod Oil & General Mills:8 "8. Acquisition of the respondents' lands was held to be vitiated on the ground that the State having granted permission to the respondents for change of land use and develop the area as an industry cannot turn around after twenty-six years to acquire the land saying that the same is required to be developed for residential purposes and the action of the respondent State was held to be arbitrary. Of course, the Director of Town and Country Planning, Haryana earlier granted permission to the respondents herein for change of land use for construction of Oil and General Mills in their lands in 23 kanals 6 marlas in Khasra Nos. 148/1, 148/2 and 149/10. The fact that the factory and building was put up in the land with the approval of the authority cannot be a bar for acquisition of the land. Public interest overrides individual 6 NOIDA v. Darshan Lal Bohra, 2024 SCC Online SC 1690. 7 Anand Buttons Ltd. v. State of Haryana, (2005) 9 SCC 164. 8 (2014) 15 SCC 410, para 8.

interests. In our view, the High Court was not justified in saying that the acquisition is bad since permission was earlier granted for change of land use and developing the area as an industry and that the Government is estopped from initiating acquisition proceeding" [Emphasis supplied]

26. The existence of constructions on the Respondents' land, whether authorized or not, legal or not, cannot be by themselves an absolute embargo on the Government's power of eminent domain. The challenge brought by the Respondents on the anvil of Section 5A of the 1894 Act, therefore, falls flat. D.2. Discrimination and Article 14 of our Constitution

27. In addition to seeking refuge under Section 5A of the 1894 Act, the Respondents contend that the acquisition of their land was violative of Article 14 of the Constitution. They claim that the land of Maharaja Harinder Singh 'Khalaf' Maharaja Varinder Singh had been exempted from the acquisition. This contention was also accepted by the High Court, which held the subject-acquisition to be discriminatory in nature, for leaving out lands of similarly placed owners from the process of acquisition.

28. We find this patently erroneous, for three reasons. First, the High Court overlooked the fact that the total land proposed to be acquired through the Section 4 notification was 952.18 acres, out of which land admeasuring 950.14 acres eventually stood acquired. The acquisition of 99.78% of the initially notified land demonstrated the intention of the State to acquire the land uniformly, and not pick and choose individual parcels of land.

29. A mere plea regarding differential treatment is insufficient; the claimant must instead demonstrate that similarly placed classes had been treated dissimilarly, unjustifiably.9 The burden

lies on the Respondents to not only prove disparate treatment of equals, but that it amounts to hostile discrimination as well.

30. Second, we disagree with the remedy, even if discrimination was to have been established. The solution to some lands being unjustifiably left out is to direct their acquisition, not encourage the exclusion of more lands. The latter approach only furthers the discrimination and creates more aggrieved landowners. Moreover, it is settled law that Article 14 cannot be ordinarily employed as a ground to claim negative equality, i.e., it cannot be used for claiming illicit benefits simply because someone else has been allowed such an undue favour, especially when doing so would 9 State of Madhya Pradesh v. Bhopal Sugar Industries Ltd., 1964 SCC Online SC 121, para

11. jeopardize the entire acquisition by undermining its contiguity.10 Therefore, instead of multiplying the illegality, the High Court ought to have exercised its writ jurisdiction to annul such illicit benefit received by the similarly placed person.11

31. Third, and most crucially, the illegality, if any, has since been remedied. It could not be disputed before us that the land of Maharaja Harinder Singh 'Khalaf' Maharaja Varinder Singh had been subsequently acquired through notifications dated 16.05.2007 and 27.03.2008. The very basis of discrimination, thus, stood denuded of its factual foundation as of the date the High Court passed the impugned judgement on 15.07.2008. The High Court ought to have taken note of this material subsequent event which took place during the pendency of the proceedings before it, considering its serious impact on the outcome of the entire acquisition process.

D.3. Events before this Court

32. We may now advert to certain unpalatable events which occurred during the pendency of these appeals before this Court. On 10.05.2023, when the matter was posted for hearing, a joint 10 Gurcharan Singh & Ors. v. New Delhi Municipal Committee & Ors., (1996) 2 SCC 459 11 Vivek Coop. House Building Society Ltd. v. State of Haryana, 2016 SCC OnLine P&H 15802; Chandigarh Administration v. Jagjit Singh, (1991) 1 SCC 745. request was made to list these matters for final hearing on 26.07.2023. On the date fixed, learned Senior Additional Advocate General of Haryana bona fidely conveyed the State's consent to drop the acquisition process qua the Respondents' land only, if they were to agree, to provide a part of the subject land for the building of roads and other public amenities free of cost, along with an undertaking that the remaining land shall be utilized only for charitable purposes, i.e., non-commercial activities. Learned Senior Counsel for the Respondents was consequently directed to seek formal instructions in this regard. Respondents meanwhile filed a formal undertaking stating that they would use the land only for non-profit and charitable purposes.

33. On 13.09.2023, we directed the State Government / Appellant to file an affidavit responding to the following queries:

> (a) Why the State Government is agreeable to release the land of the Respondents from acquisition?

(b) Whether such release of land will affect the acquisition of adjoining lands or not?

(c) Whether the subject-land falls within or near the Sukhna Lake catchment area?

(d) Whether the land in dispute falls in any non-construction zone?

(e) If not, what type of construction is permissible in and around the area of subject-land?

34. In response thereto, the State of Haryana filed an affidavit stating, inter alia, as follows:

(a) The land can be released because the acquisition proceedings for the same were quashed by the High Court and are under abeyance in view of the status quo order passed by this Court and because the Respondents undertake to utilize the land for charitable purposes;

(b) The present case has unique circumstances;

(c) The site does not fall within the Sukhna Catchment Area, however, the exact area that falls under Eco Sensitive Zone would be known once the notification for such zone is finalized; and

(d) Construction is permissible in the land.

35. The Respondents also, without any delay, filed their affidavits in consonance and agreement with the State Government's affidavit. Since the parties have reached a 'settlement' during the pendency of these appeals, we are introspecting as to whether or not to allow the Government to make such exemption for the Respondents' land.

36. We are not oblivious to ground realities. This Court is aware that the subject land is prime real estate. The proposed acquisition and development is located between the Shivalik Range and the Union Territory of Chandigarh. One side touches the Sukhna lake, while the other side abuts a notified forest. The land is contiguous with well-developed residential areas like the Mansa Devi Complex. Its idyllic natural surroundings and strategic proximity to urban areas and limited supply of similarly placed alternative areas, makes the land priceless.

37. Furthermore, we are also aware of the fact that the acquisition, in its entirety, was under challenge before the High Court, with a batch of writ petitions pending at the stage of final hearing, at the time when the State Government agreed to release the subject land. The High Court has meanwhile dismissed those petitions, upholding the acquisition, and presently, Special Leave Petitions (hereinafter 'SLPs') are pending before this Court.

38. Be that as it may, given the land's premium nature, and its criticality to the subject acquisition, it is rather intriguing why the State Government has opted to enter into a compromise, knowing full

well that doing so would weaken its case in defending the major chunk of the acquisition. We, therefore, in order to satisfy ourselves that the State Government has considered thoroughly all the pros and cons and acted in a bona fide manner to serve the public interest, before making the offer of release, deemed it imperative to delve deeper.

39. A perusal of the original record casts a cloud of doubt on the legal necessity of the entire exercise and has disappointed us regarding the manner in which the State Government's decision to release the land has been taken. The record reveals that this issue was first discussed in the letter dated 08.09.2023, in which the Appellant (HUDA) noted on record that the land in question cannot be spared. Nevertheless, the Appellant deferred the final decision to the State government. This note was authored by an official in the rank of an Assistant. Following this, the file moved with remarkable celerity and received approval from various departments and officials, including as high as the office of the Additional Chief Secretary, Urban Development on the very same date. Unfortunately, none of the officers thought it appropriate to write even a single word while agreeing with the proposal to release the land. This rapid progression raises questions on whether all relevant factors were considered before recommending such approval. The only so called self-speaking note is of the Director General, Urban Estate of the even date, i.e., 08.09.2023, which noted that the file may be "submitted to govt. for approval so that Honorable Apex Court may be informed about view of state…". The proposal was reportedly approved by the State Government within a period of 3 days only, i.e., on 11.09.2023. Res ipsa loquitor.

40. Even the responses to the questions posed by this Court in its order dated 13.09.2023, moved with extraordinary swiftness, securing approval at an astonishingly expedited pace upwards, without the addition of even a single word at any level. The responses the record shows, were drafted by an Assistant.

41. We hasten to add here that we have no intention to suggest that bureaucratic swiftness necessarily undermines the thoroughness of the process. Indeed, our administrative setup can do with more such alacrity. Rather, the confluence of circumstances— the land being prime real estate and yet suddenly and inexplicably being excluded from acquisition, crucial policy decisions with wide ranging public interest of enormous financial ramifications being discussed and finalized by very junior officials, files receiving approval at exceptional speed, etc.—collectively do not inspire confidence as to the objectivity of the entire process.

42. Despite meticulously analyzing all relevant documents appended with the file, including the cryptic brief notes of the Assistant, we are unable to get any qualitative assistance from the government record. As noted above, there is little discussion about: (i) the effect of release of the Respondents' land on the remaining acquisition, in light of the challenge pending before the High Court or this Court; (ii) the cascading effect that this compromise would have on the other landowners along with the arguments it would invite on the question of hostility of Article 14, and if so; (iii) the basis of such classification and whether it would be reasonable; (iv) whether the release of the land would affect the contiguity of the land under acquisition and if so, would it impair the planned development of the area under acquisition; and (v) whether the State was competent to release the land in purported exercise of its powers under Section 48 of the 1894 Act when the

matter was sub judice before this Court.

43. None of these issues have been discussed, considered, or analyzed. The decision regarding release of the Respondents' land is, therefore, manifestly arbitrary. While the State Government undoubtedly possesses the power to release the land for lawful considerations, it cannot do so whimsically, irrationally, without any application of mind, or selectively. Condoning such action would encourage further monocratic release of other lands in complete disregard of the consequences and impact on public interest. This would likely result in the creation of small islands of unacquired lands within large swathes of acquired land. These private enclaves would undoubtedly upset the effectiveness of the rest of the acquisition—making it patently unfair for all other landowners, laying to waste perhaps the very purpose for which their lands were acquired in the first place. Turning futile the acquisition would also render mindless dissipation of the State Exchequer, already expended earlier in the process—reducing returns for all. Although the State Government possesses acknowledgeable power in the lifecycle of the acquisition process, it also bears great responsibility of ensuring its judicious exercise. We cannot, therefore, treat the compromise or release lightly.

44. Keeping in view the entirety of the exercise and the sum totality of all factors, both apparent and others more insidious, we are unable to accept the parties' compromise, in terms whereof the disposal of instant appeals is suggested.

45. Having held so, we are not enthused by the Respondents' conduct either. These unusual events create more than just suspicion that the Respondents have been able to influence the representations of the many, as well as twist and undermine institutions and process meant for the protection of public interest. In their hurry to curry favour with the Respondents, the senior bureaucrats have unfortunately failed to visualise the serious ramifications their actions could have had on the entire acquisition of more than 950 acres land and the law in general.

46. We are thus, of the considered view that this is a case where the bureaucracy abdicated its duty and failed to objectively assist the Decision-Making Authority, in arriving at a just and fair conclusion in conformity with larger public interest. Had the senior officers flagged all the relevant issues on file, we have no reason to doubt that the Competent Authority would have never approved the proposal to release the subject land.

D.4 Doctrine of merger

47. We must also note that the previous Civil Appeals preferred by the State Government, challenging the same impugned order were dismissed on account of non-prosecution. Hence, there arises an important question with regard to the maintainability of the present appeals. This issue may be conclusively determined by examining the applicability of the doctrine of merger to the peculiar set of circumstances of the instant case.

48. In this respect, in the landmark case of Kunhayammed v. State of Kerala12, it was held that:

> "44. To sum up, our conclusions are:
>
> (i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law [...]
>
> (vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation." [Emphasis supplied] 12 (2000) 6 SCC 359

49. The same principle was reiterated in the case of Khoday Distilleries Limited v. Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal13, where this Court held that merger would result if the SLPs were dismissed after granting leave, irrespective of whether reasons were given or not:

> "20. The Court thereafter analysed number of cases where orders of different nature were passed and dealt with these judgments by classifying them in the following categories:
>
> (i) Dismissal at the stage of special leave petition—without reasons—no res judicata, no merger.
>
> (ii) Dismissal of the special leave petition by speaking or reasoned order—no merger, but rule of discipline and Article 141 attracted.
>
> (iii) Leave granted—dismissal without reasons—merger results." [Emphasis supplied]

50. In the instant case, leave to appeal was granted vide the order dated 27.08.2010, and the Civil Appeals preferred by the State of Haryana were then dismissed on 16.11.2016. Therefore, since the previous SLPs arising out of the same impugned judgement were dismissed after granting leave, arguably, the doctrine of merger would be attracted.

13 (2019) 4 SCC 376

51. However, we may hasten to add that in Kunhayammed (supra), this Court held that the doctrine of merger is neither a doctrine of constitutional law nor of statutory recognition. Since it is a common law principle directed towards judicial propriety, the same should not be applied in a straitjacket manner, and the nature of facts and circumstances of that particular case should be considered.

52. Still further, a three-judge bench of this Court—to which one of us (Surya Kant, J.) was a member—in GNCTD v. BSK Realtors,14 analyzed the aforementioned exception to the doctrine of merger and held that the exercise of powers under Article 142 of the Constitution, which enables the Court to do complete justice, would fall under the four corners of such exception.

53. Applying the afore-cited principle to the facts and circumstances of the instant case, we have found that the impugned judgement of the High Court is patently unjust and could adversely affect the subject acquisition, leading to significant harm to the public at large. In light of this, we find it a fit case to invoke our powers under Article 142 of the Constitution and carve 14 GNCTD v. BSK Realtors, 2024 INSC 455.

out an exception to the doctrine of merger so as to do complete justice to the parties.

E. CONCLUSION AND DIRECTIONS

54. We, thus, deem it appropriate to allow these appeals and dispose of the matter in the following terms and directions:

> i. The Appeals are allowed; the impugned judgment dated 15.07.2008 of the High Court, which is under challenge in this batch of appeals, is hereby set aside;

ii. If there is any other judgement or order of the High Court which is passed following the main judgement dated 15.07.2008, thereby quashing or adversely impacting the subject acquisition, such judgements or orders are also deemed to be set aside;

iii. In case no 'award' for the land owned by the Respondents was passed earlier, the same shall be passed expeditiously, and in any case within a period of 3 (three) months in accordance with the provisions of the 1894 Act;

iv. If an award in respect of the Respondent's land has already been passed under the 1894 Act, in that event, there will be no necessity to pass a fresh award. However, liberty is granted to the Respondents to avail their remedy under Section 18 of the 1894 Act, if so advised. Such reference, if moved by the Respondents within a period of 2 (two) months from the date of uploading of this order on the website, the Reference Court will not dismiss it on the ground of limitation and shall proceed to decide the same on merits and in accordance with law;

v. In case the land of the Respondents is found to have same potentiality and utility as that of Maharaja Harinder Singh 'Khalaf' Maharaja Varinder Singh (i.e., land which was acquired vide the notifications dated 16.05.2007 and 27.03.2008), the Respondents will also be entitled to seek compensation at the same rate as has been granted for the said similarly located land; and vi. The State of Haryana and the HSVP are directed to take possession of the subject-land in accordance with law and commence development works without any delay. The land shall be utilized for the public purposes for which it has been acquired.

55. We are sanguine that the State Government is conscious of the principles evolved by this Court in a catena of decisions in regard to the violation of public trust doctrine15 and will thus ensure that the acquired land is utilised in public interest in accordance with provisions of the Haryana Development and Regulation of Urban Areas Act, 1975. Consequently, the HSVP will take on the responsibility to develop the entire acquired land strictly in accordance with the public purpose of its acquisition.

56. In this regard, compliance report shall be filed before this Court after six months i.e. before 30.04.2025.

57. Ordered accordingly.

..... J.

(SURYA KANT) .....J. (K.V. VISWANATHAN) NEW DELHI DATED: 21.10.2024 15 Uddar Gagan Properties v. Sant Singh and others, (2016) 11 SCC 378; Greater Noida Industrial Development Authority v. Devender Kumar and others, (2011) 12 SCC 375.