Uddar Gagan Properties Ltd vs Sant Singh & Ors on 13 May, 2016

Equivalent citations: AIR 2016 SUPREME COURT 2526, AIR 2016 SC (CIVIL) 1937, (2016) 3 RECCIVR 131, (2016) 1 LANDLR 81, (2016) 4 ALL WC 3976, (2016) 2 KER LT 118, (2016) 5 MAD LJ 82, (2016) 5 SCALE 546, (2016) 2 WLC(SC)CVL 71, (2016) 2 CLR 114 (SC), (2016) 132 REVDEC 393, (2016) 4 KCCR 499, (2016) 117 ALL LR 216, (2016) 2 CURCC 225, 2016 (11) SCC 378, (2016) 163 ALLINDCAS 133 (SC)

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Bench: Adarsh Kumar Goel, Anil R. Dave

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5072 OF 2016
(ARISING OUT OF SLP (Civil) NO.5455 OF 2014)

UDDAR GAGAN PROPERIES LTD. …APPELLANT

VERSUS

SANT SINGH & ORS. ...RESPONDENTS

WITH

CIVIL APPEAL NOs. 5073-5077 OF 2016
(ARISING OUT OF SLP (Civil) NOS.5630-5634 OF 2014)

WITH

CIVIL APPEAL NOs. 5079-5085 OF 2016
(ARISING OUT OF SLP (Civil) NOS.5641-5647 OF 2014)

WITH

CIVIL APPEAL NO. 5086 OF 2016
(ARISING OUT OF SLP (Civil) N.5656 OF 2014)

WITH

CIVIL APPEAL NO. 5100 OF 2016
(ARISING OUT OF SLP (Civil) NO.25843 OF 2014)

WITH

CIVIL APPEAL NOs. 5087-5099 OF 2016
(ARISING OUT OF SLP (Civil) NO.19931-19943 OF 2014)

J U D G M E N T

ANIL R. DAVE, J.

1. Leave granted. Principal question which has fallen for consideration is whether the power of the State to acquire land for a public purpose has been used in the present case to facilitate transfer of title of the land of original owners to a private builder to advance the business interest of the said builder which is not legally permissible. Further question is whether on admitted facts, the acquisition of land is entirely or partly for a private company without following the statutory procedure for the said purpose. Further question is how in the facts and circumstances relief could be moulded.

2. Vide notification dated 11th April, 2002, 850.88 acres of land was proposed to be acquired for residential/commercial Sector 27-28, Rohtak, Haryana by the Haryana Urban Development Authority under the Haryana Urban Development Authority Act, 1977 ('the 1977 Act'). However, the final notification dated 8th April, 2003 under Section 6 of the Land Acquisition Act, 1894 ('the 1894 Act'), according to the impugned order of the High Court, was in respect of 441.11 acres. Award dated 6th April, 2005 was for 422.44 acres. Appellant –Uddar Gagan Properties Limited ('the Builder') who is a Builder-cum-Developer entered into collaboration agreements with some of the farmers – owners whose land was under

> acquisition on 02nd March, 2005 for development of a Colony in accordance with the Haryana Development and Regulation of Urban Areas Act, 1975('the 1975 Act'). The Builder made applications on and around 21st March, 2005 to the Director, Town and Country Planning, Chandigarh, Haryana for grant of licence to develop a colony on land covering about 280 acres. The licences were granted on and around 12th June, 2006 and corresponding land was released from acquisition. The licences were addressed to the owners but remitted to the builder. This was followed by execution of sale deeds in favour of the builder through power of attorney holder of the land owners.

3. It was on these undisputed facts that the High Court was called upon to examine the questions on a group of petition/s by the land owners which are framed in the impugned judgment as follows :-

[i] Whether the object behind the subject-acquisition was to achieve a bona- fide public purpose or to use it as a cloak for the private benefit of Builder-cum-Developer?

[ii] Whether the power of 'eminent domain' has been exercised in violation of Articles 14, 21 and 300-A of the Constitution?

[iii] Whether it is lawful to enter into 'Agreement to Sell' or 'Collaboration Agreement' in respect of the land under acquisition and can an instrument of sale be executed in respect of such land?

[iv] Whether a writ court in exercise of its powers under Article 226 of the Constitution is competent to annul a sale-transaction executed in violation of and on playing a fraud on the Statute?

[v] Whether the orders granting Licenses or releasing the acquired land have been passed in favour of 11th respondent in accordance with provisions of 1975 State Act?

[vi] Whether the petitioners have got locus standi to challenge the 'licences' or the orders of release of the acquired land in favour of respondent No. 11?

[vii] Whether writ petitions suffer from inordinate delay and latches?"

4. It was held that in view of the scheme of the 1977 Act, the notified public purpose for acquisition was covered by Section 3(f)(ii) and (iv) of the 1894 Act, but the events following the notification for acquisition unfolded different story. After receipt of notices by the land owners under Section 9 of the 1894 Act, calling upon them to appear before the Collector for determination of compensation, the builder suddenly surfaced in March, 2005 and applied for grant of licences for setting up colony on the land covered by the notification and paid full sale consideration to the land owners. The Government files deceptively projected the initiative to release land at the instance of farmers and owners while the real fact was to transfer the title of land to the builder. Factual matrix based on record noticed in the judgment of the High Court is as follows :-

"[60]. Awards No. 1, 2 and 3 were admittedly passed on 06th April, 2005 i.e. a day before the expiry of the statutory period of two years. As per the categoric stand taken by the Land Acquisition Collector in the written statement initially filed, he took over the possession of land and handed- over it to the Estate Officer, HUDA, Rohtak on that very day, i.e., 06th April, 2005. The official record also substantiates this plea of the respondents. On doing so, the acquired land stood vested absolutely in the State Government, free from all encumbrances by virtue of Section 16 of the 1894 Act.

xxx xxx [62]. The Government Files pertaining to the grant of licence or release of land in favour of 11th respondent have been deceptively captioned as if the entire initiative to seek the release of land is at the instance of the farmer–owners of the

acquired land. That very record, however, falsifies this facade. The application dated 21st March, 2005 [receipt No. 2461] is on the letter-head of respondent No. 11. It is signed by one of its Directors. Form 'LC-I', however, earlier thumb impressions of previous owners along with the attested copies of 'Power of Attorney' and 'Collaboration Agreements' executed by them in favour of respondent No. 11. The Application Forms refer to deposits of demand drafts of lacs of rupees. Who paid that requisite fee or statutory charges? Was it by the farmers whose land already stood acquired and who had not received even a single penny of compensation? OR was it deposited by respondent No. 11? The copies of Demand Drafts answer this query as every penny was deposited by respondent No. 11 only. The illiterate or semi-illiterate farmers had no knowledge except that their land was under acquisition and there was a Builder willing to pay them a price which was much more than the Government compensation.

[63]. It is quite unfortunate and misleading that every relevant Government file recites, say for example, that "Shri Surat Singh and other individuals have submitted request on LC-I for setting up of Residential Plotted Colony over an area measuring 84.04 Acres..... the applicants have deposited an amount of '`34,09140/- towards Scrutiny Fee and `42,02000/- towards Licence Fee'. The said application was dealt with first time vide office note dated 19th August, 2005 yet no where it is disclosed that the land had already been acquired, award passed and it stood vested in the State free from all encumbrances. In the subsequent notings, the so-called 'applicants' disappeared and all the Officers starting from the District Town Planner onwards, have worked over-board to contribute in favour of the claim of 11th respondent."

5. It was concluded :-

"[69]. From the facts noticed above, there can be no different conclusion but to infer that though the proposal to acquire land for the development of Urban Sectors at Rohtak was mooted, approved and was taken to a logical conclusion for a bona-fide public purpose. However, during the interregnum and before passing the Award, an unholy nexus to promote the private interest of respondent No. 11 sprouted which de-railed the public purpose of acquisition and led to the misuse of power under Section 48 of the 1894 Act. Respondent No. 11 exploited the moments of suspense and succeeded in entering into distress-sale agreements with the desperate owners who were sandwiched and had no other choice but to give in for a comparatively better offer.

[70]. To say that the landowners entered into varied contracts with Respondent No.11 voluntarily, willingly or without undue pressure is too farcical to be believed. There is a natural and conventional bondage between the land and its tiller. A farmer seldom sells the land save for the compelling reasons. Agricultural being their only source of survival, the loss of land is a terrible nightmare for any farmer. The Land Acquisition Collectors never assess the compensation as per actual market value of the land and

the only yardstick to be followed is the Collector's rate fixed for the purpose of registration charges. The farmer can not sell the land in open market as on issuance of Section 4 notification all sale transactions are invariably banned. These moments of fear and anxiety must have prompted respondent No. 11 to indulge in the best bargain. For the farmers the offer was like 'better you give the wool than the whole sheep'. There was no free trade for the farmers. Their choice was limited : to accept the State compensation at the Collector's rate or a better offer given by State sponsored private builder. There was inequality of bargaining power. The determination of land value was not at all in the control of farmers. They were gropping in the dark. They had no clue that the land will be released. They accepted the unreasonable and unfair unilateral terms and lost their land.

[71]. The sale price of the land was determined by respondent No. 11 and not by the market forces. Given a choice between retaining their land or selling it to the Builder for the offered-price, not a single farmer would have agreed to sell it. The circumstances forced the landowners to accede to the offer made by 11th respondent made. It is a proven case of unconscionable bargain exerted through undue influence and fraud, both. The sample 'agreements' on record truly reveal that illiterate/semi-literate farmers were asked to sign the documents on dotted-lines forcing them to sell out most of their ancestral holdings. The en-mass 'Agreements' conclusively belie the plea of need-based bona-fide sales. How the Courts should deal with the unconscionable contracts which are injurious to public good and public interest, has been eloquently answered by the Supreme Court in Central Inland Water Transport Corporation Limited & Anr. Vs. Brojo Nath Ganguly & Anr. [1986] 3 SCC, 156 saying that "……Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of laws……..This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power……For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties……..It will also apply where a man has no choice or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be…..".

[72]. If there were good and justifiable reasons, though conspicuously missing from the record, for not proceeding with the subject-acquisition, the State Government as a guardian of people's rights could shelve off its previous plan to develop Sector 27-28 at Rohtak through the State agency and release the land to its owners. It, however, did not do so. Rather, the State unleashed the threat of its mighty power under the ruse of eminent domain and created a psycho-fear in the mind of poor farmers that they would, if did not agree, lose the land and its value both.

[73]. We may now also deal with yet another vigorously argued plea that the land was as a matter of fact released from acquisition or most of the licences were granted to respondent No. 11 under the directions of this Court. The official respondents in the written statements have repeatedly referred to CWP Nos. 14451 to 14453 of 2010 which were allowed by a learned Single Judge on 06th December, 2010 directing the State and its authorities to extend the benefit of Section 48 of the 1894 Act to the landowners and grant them licences. It is pertinent to mention that while CWP No. 14451 of 2010 was filed by M/s Uddar Gagan Properties Private Limited – respondent No. 11 along with some land-owners represented it, in the 2nd case also the said Builder-cum-Developer was one of the writ petitioner and the other farmers were also impleaded "THROUGH THEIR POWER OF ATTORNEY HOLDER – SHRI SANJAY JAIN...", namely, the authorised representative of respondent No.

11. All the three writ petitions were, thus, filed by respondent No. 11 only. It is interesting to note that the learned Single Judge in his order dated 06th December, 2010 has said that "Two sets of replies have been filed by respondents no. 1 and 2. While admitting the entire factual averments made in the writ petitions regarding the ownership of the acquired land by the petitioners, their applications for grant of licence and release of the part of the land and grant of licence to the petitioners in CWP No.14452 of 2010 and 14451 of 2010, it is stated that possession of the land where the Rabi crop was standing could not be taken over by the Estate Officer, HUDA, Rohtak/Land Acquisition Collector, Hissar as the land owners were granted time upto 30.4.2005 at their request. Subsequently, the matter was referred to the Deputy Commissioner, Rohtak who vide his report dated 17.3.2006 confirmed the possession of the land owners upto October, 2005. Thereafter on account of status quo issued by the High Court in CWP Nos.1893 and 1894 of 2006, possession of tracts of land for which licence was granted could not be taken over from the petitioners". [Emphasis applied].

[74]. It may be seen that 'the public purpose' of acquisition, the factum of taking possession of the acquired land on 06th April, 2005, non- existence of any Government policy or a provision in the Statute to grant Licence for an acquired land etc. etc. were not disclosed before the learned Single Judge. Only selective information convenient to the cause of respondent No. 11 was brought on record. There is a serious doubt on the nature of contest given by the official respondents who took it like a 'friendly match'. The collusion between respondent No. 11 and the senior functionaries is writ large in the fact that despite unambiguous opinion given by the Advocate General, Haryana that it was a fit case to file Letters Patent Appeal, the Department secured a contrary opinion from the office of LR, Haryana and allowed the judgment of learned Single Judge to attain finality. In this entire process, the Constitutional Office of the Advocate General was also belittled. We fail to understand as how the opinion given by the Advocate General could be over-ruled by securing a tailor-made opinion from an inferior authority.

[75]. The names of landowner-farmers were kept at the forefront in the Government files or before the Court to hide the identity of respondent No. 11 wherever possible and to give a misleading

impression as if the real beneficiaries of State largess were the small time landowners. The fact of the matter is that the farmers have not got even an inch of the released land, which has been formally transferred in favour of respondent No. 11 through the Sale Deeds executed in January, 2007, again by General Power of Attorney holders of the farmers, namely, authorised representatives of respondent No. 11. The only irresistible conclusion can be that the farmers stood ousted from the scene since March/April, 2005 and it was the 11th respondent who masqueraded for them, otherwise where was the occasion for the landowners to execute Sale Deeds on 25th January, 2007 through the Power of Attorneys obtained from them in March, 2005?

xxx xxx [79]. The Vendors and the Vendee both had full and informed knowledge of the fact that the transacted land had since been acquired and Award also passed. The Vendee was aware of the fact that the Vendors did not possess a clean title, yet the Sale Deeds were presented and got registered, after about two years of the passing of the Awards, on 06th April, 2005. Every such transaction in respect of the acquired land was indeed null and void having no existence in the eyes of law.

[80]. ..... Secondly, it is not a case of challenging the Sale Deeds for the breach of any bilateral terms and conditions or on the conventional grounds where a question of fact has to be proved. The incidental relief to declare the Sale Deeds as null and void is an offshoot of the broader issues raised by the petitioners including those hovering around the systematic colourable exercise of power by the State apparatus. A Constitutional Court while performing its solemn duty as a Trustee of the fundamental rights of the citizens shall thus be well within its right to lift the veil and unmask the private object behind an acquisition carried out in disregard to the mandate of Articles 14 and 300-A of the Constitution.

xxx xxx [82]. Power of land acquisition vested under the 1894 Act could be invoked only in public interest and not for creating land-bank in favour of respondent No. 11 through distress sales. The State can not force the landowners to surrender their title in favour of and at a price to be dictated by a private beneficiary. The notified public purpose was only a ruse to enable respondent No. 11 to purchase the land at the lowest possible price for maximizing the profiteering. It is so well settled that an action to be taken in a particular manner as provided by a Statute, must be taken, done or performed in the manner prescribed or not at all. The rule laid down by the Privy Council in Nazir Ahmad Vs. King Emperor, AIR 1936 PC, 253 that “where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all”, has been approved and further expanded by the Apex Court in a catena of decisions. When an action is taken in furtherance of explicit power given by a Statute, the legitimacy of invoking such power shall depend entirely upon the extent of achieving the net-end object for which the Statute enables the exercise of such power. These principles have been violated in whole-some in the case in hand as the pretended public purpose was neither intended nor was finally achieved.

[83]. There is too much hype created by the official respondents with reference to the legislative Scheme of the 1975 State Act. At the cost of repetition, it may be mentioned that applications for the grant of Licences were moved mostly in March/ April, 2005 though respondent No. 11 continued dropping in such applications in the year 2006 also. All the Licences were issued after passing of the Award in April, 2005 and before the execution of Sale Deeds in January, 2007. The Builder did not

own an inch of land, yet every licence was addressed to it and sent with a specific enclosure that respondent No. 11 was the sole owner of the licensed and released land. The issuance of licence, in our considered view, was a fraud played on the policy behind the 1975 Act. We say so for the reasons that Section 2[d] of the Act defines 'colonizer' to mean “an individual, company or association, body of individuals, whether incorporated or not, owning land for converting it into a colony.....”. Section 2[k] defines the expression 'owner' to include a person in whose favour a lease of land in an urban area for not less than 99 years has been granted. Section 3[1] mandatorily requires that “any owner desiring to convert his land into a colony” can make an application for the grant of Licence. Sub-Section [2] obligates the Director to inquire into “title to the land”. Similarly, Rule 3 of the Haryana Development and Regulation of Urban Areas Rules, 1976 requires an owner of the land desirous of setting up a colony to apply along with requisite documents including “copy or copies of all title deeds...”. A mis- directed reliance has been placed on Rule 17 of these Rules which says that “the Colonizer shall not transfer the licence granted to him under Rule 12 to any other person without the prior approval of the Director”. It has already been dealt with in extenso that the true owners were left with no choice but to enter into the Collaboration Agreements with the Builder, who was so sure of obtaining the licences and getting the land released that he ousted the owners from the consequential benefits of the licences in 2005 itself by paying them “entire sale consideration” for the land which had already vested in the State free from all encumbrances.

xxx xxx [87]. Repeated reference to Section 48[1] of the 1894 Act is also equally misconceived and misplaced. The Full Bench in Ram Murti Sarin's case [supra] says that if possession has not been taken by the Land Acquisition Collector as per the Award announced by it, the State Government can allow the acquisition proceedings to lapse without any notification under Section 48 of the Act, if it is no longer interested in acquisition of land. Had the official respondents followed the law in letter and spirit after arriving at the conclusion that the State was not interested in acquisition of land, the one and only consequence ought to have been to allow the acquisition to lapse and resultant return of land to the original owners. Here is a case where artificial reasons were created, the records were fudged with the aid of the Deputy Commissioner, Rohtak, to mislead the fact that the possession of acquired land was not taken while announcing the Award. The responsible officers of the State Government, in their anxiety to help out respondent No. 11, have completely overlooked the interest of landowners or of the General Public to whom thousands of plots could have been allotted at a fairly low price through the aegis of HUDA.

xxx xxx [89]. The objection of delay or latches raised against the petitioners merits rejection at-least on two counts. Firstly, it is decipherable from the Government record that the process of granting licences or releasing the land commenced in the year 2006 and continued till the year 2011. In fact, till the last date of hearing, the official respondents, for the reasons best known to them, did not deem it necessary to bring it on record as to how much land [out of 422.44 acres] has since been released in favour of respondent No. 11. It, however, appears from the submissions made at the bar that a major chunk of land has now gone into the hands of respondent No. 11 in due course of time except a few patches where the State/ HUDA intends to develop 'public utilities' to facilitate the said respondent. Secondly, no development whatsoever has been carried out till date and it was informed that the land is still lying in its original form without any construction having been made. (emphasis added) ”

6. It is clear from the findings recorded by the High Court that the transfer of title of land, covered by the notification for acquisition, in favour of a builder, who sought release of land for setting up of a colony, was clearly to defeat the law and the notified purpose of acquisition. It was observed that on this undisputed factual position, the plea of alternative remedy of seeking annulment of sale deed by a suit could not be entertained. Relief of setting aside of sale transaction was incidental and consequential to the finding of illegal exercise of power to release the land covered by acquisition proceedings to the builder who was not the original owner. It became necessary to undo the illegality and systematic fraud. It was undisputed that the builder did not own an inch of land prior to acquisition and it was only the land acquisition proceedings coupled with the capacity of the builder to seek licences for colonization of land covered by acquisition which enabled it to acquire title. Contrary to the legal mandate of requirement of a colonizer owning of its own land, ownership of land could not be allowed to be acquired by the sword of acquisition on the head of the original owners.

7. The High Court has observed that circumstances of the situation which created helplessness for the farmers to surrender their rights and unholy nexus of the builder with the officers of the Government resulted in constitutional guarantee of equality and fair play being defeated and acquisition power being abused to transfer the land to the builder in the name of acquisition by the State for public purpose.

8. On the aspect of moulding the relief, following operative order was passed :-

> [94]. In the light of the discussion and for the reasons stated above, we allow these writ petitions in the following terms:-
>
> [i] Since the subject acquisition neither intended nor has achieved its 'public purpose', the notifications dated 11th April, 2002 and 8th April, 2003 issued under Sections 4 and 6 of the Land Acquisition Act, 1894 are hereby quashed in entirety. As a result thereto, the subsequent awards passed on 06th April, 2005 can not sustain and are consequently quashed;
>
> [ii] As a necessary corollary, the licences granted to respondent No. 11-Builder-cum-Developer dated 12th June, 2006, 1st August, 2006, 1st September, 2006 or issued thereafter, even if not not brought on record but pertaining to the acquired land, are hereby declared null and void and quashed;
>
> [iii] Consequently, the release orders like dated 12th June, 2006 [P-28 and P-29] or any such like release orders pertaining to the land acquired vide the notifications dated 11th April, 2002 and 08th April, 2003, passed in purported exercise of powers under Section 48[1] of the 1894 Act are hereby quashed;
>
> [iv] As a result of the declaration and directions issued at [ii] and [iii] above, the Sale Deeds executed in favour of respondent No. 11 on different dates in January, 2007 in respect of the acquired land are declared to be null and void and non-existent in the

eyes of law;

[v] Those landowners who have neither received compensation nor entered into any Collaboration or Agreements to Sell with respondent No. 11, shall be restored with the possession of their respective land forthwith.

[vi] Those landowners who have received compensation but have not entered into any Collaboration or Agreements to Sell with respondent No. 11, shall also be returned their respective land subject to their deposit of the entire amount of compensation along with simple interest at the rate of 9% as prescribed under Section 28 of the Land Acquisition Act, 1894. The possession shall be restored in their favour within one week of refund of the compensation amount;

[vii] Those landowners who have entered into Collaboration or Agreements to Sell with respondent No. 11, shall be given option to return the Sale Consideration received by them from respondent No. 11 along with simple interest @ 7% per annum within a period of three months from the date of receipt of certified copy of this order. If any one of them has received compensation from the State, he/she shall be required to refund the same in the manner as laid down for the landowners falling in direction No. [vi] above. On doing so, the possession of their acquired land shall be restored to them within one week;

[viii] If any of the landowners falling in Category [vii] above fails to return the sale consideration to respondent No. 11 or the compensation amount to the State, title of his/her land to that extent, shall stand transferred in favour of respondent No.11;

[ix] If the landowners fail to return the consideration amount to the private Builder as directed above and Respondent No. 11 perfects its title qua their land, the State Government would be free to grant Licence to the said respondent to the extent of such land, if so permissible under the 1975 Act;

[x] Respondent No. 11 shall be entitled to seek refund of the Licence fee, CLU or other statutory charges from the State, within a period of six months but without any interest, to the extent and for the land which shall stand released in favour of the original owners;

[xi] There shall be cost of `50,000/- [Fifty Thousand] in each case on respondent No. 11 which it shall deposit within one month with [i] Mediation and Conciliation Centre and [ii] Lawyers' Welfare Fund of High Court Bar in equal share."

9. When the matter first came up for hearing before this Court, reliance was placed on an order of this Court dated 5th August, 2011 in SLP (Civil)……/2011 (CC 12415 of 2011), titled State of Haryana versus Sindhu Education Foundation granting stay of the High Court judgment. The order of this Court in the said case has been referred to in the impugned order also. The said petition has been

subsequently dismissed by this Court on 7th September, 2015 (being SLP (Civil) No.22354 of 2011). This Court, while issuing notice, granted stay of operation of the impugned judgment. However, vide order dated 13th March, 2015, it was clarified that stay could not mean that any further development could be effected on the property. However, certain interlocutory applications have been filed wherein applicants claim to have purchased the plots on and after 6th February, 2012, during pendency of the litigation to support the appellant- builder. Applications have also been filed by some land owners who were not party before the High Court to support the impugned judgment. Even though persons who claimed to have purchased the plots during pendency of litigation may have no right whatsoever to oppose the writ petitions, we have heard counsel representing them only with a view to consider the diverse view points presented before the Court.

10. We have heard Shri Shyam Divan, learned senior counsel for the builder, S/Shri Harish N. Salve and Dr. Rajeev Dhawan, learned senior counsel, apart from other counsel, also appearing for the builder or the purchasers and Shri K.K. Venugopal, learned senior counsel for the land owners and other counsel for the land owners. We have also heard learned counsel for the State. The record has also been produced by the State.

11. The contentions on behalf of the appellants are that there is nothing wrong with the policy of the State to permit colonization by a private builder and the said policy is not under challenge. The policy is permitted by the 1975 Act and the High Court had issued a direction to consider the case of the appellant as per the said policy. In spite of the award, the possession continued with the land owners and the power under Section 48 of the 1894 Act was validly exercised for releasing the land. Irrespective of the merits, the petition was liable to be dismissed on the grounds of delay and latches and also on the principle of approbate and reprobate since the land owners had executed sale-deeds in favour of the builder and taken benefit of collaboration from the builder. It was also submitted that the operative direction in the impugned judgment giving options to the land owners "to retain the land or to receive the compensation paid to them by the builder with interest or to refund the compensation collected to the State", will result in a truncated colony being set up which will be contrary to the concept of integrated development. It was also submitted that the High Court has wrongly assumed that there was no policy applicable to the present situation permitting colonization. Reliance was also placed on policy dated 26th March, 2000. Shri Divan pointed out that as per report of the Chartered Accountants, the builder had spent a sum of Rs.64.58 crores on payments made to the original land owners and to the Government towards stamp duty and registration charges. The builder has also spent on development and construction, EDC/IDC, financial cost, licence/scrutiny fee/conversion charges, office/admin and other expense amounting to a sum of Rs.174.62 crores. The builder had collected a sum of Rs.114.91 crores from third parties towards sale consideration of carved out plots/units in residential plotted colony at Sector 27 (part in Section 26 & 28) Rohtak, Haryana. Thus, the builder had already spent approximately Rs.100 crores in excess of the amount it had received and will not be able to recover the same from the land owners if the land is to be returned against consideration collected from them. Dr. Dhawan added that the issues of undue influence could be decided only in a suit. The finding of mala fide was recorded unmindful of the standard of the proof required and requirement of impleading party against whom allegation was made. In any case, the relief could be moulded having regard to the transactions which had already taken place laying down law prospectively. It was also submitted

that after acquisition, the HUDA could dispose of the acquired land even without carrying out any development thereon. Acquisition could not be challenged after the award. Bona fide purchasers were entitled to restitution. Shri Salve submitted that as against the problem of farmers on account of the forcible acquisition, equally serious problem of urban middle-classes for living space needs to be considered. Once acquisition is quashed, the validity of sale by farmers to the builders should be left to be gone into in private law remedy where equity could be balanced. If the acquisition is valid and the order of release under Section 48 is quashed, the land has to revert to the State. In this fact situation, the impugned order could not be justified. In absence of cross-examination and weighing of equities, the land could not be returned to the land owners who have already received the compensation or the sale consideration. The alleged fraud and undue influence or coercion may render a contract voidable but not void and the civil court has to balance equities for setting aside such a sale. Learned counsel for the State submitted that the object of the policy to permit colonization by a private builder is to prevent haphazard constructions. The policy helped integrated fast development and enabled the State to impose restrictions for reserving houses for weaker sections. It was submitted that the roads have already been constructed and in case release of land in favour of the builder was to be quashed, the land should revert to the HUDA.

12. Opposing the above submissions, Shri K.K. Venugopal, learned senior counsel of the land owners submitted that the facts speak for themselves. The builder has emerged on the eve of making of the award to make huge profits by exploiting helplessness of land owners facing imminent threat of losing land under the notifications. The builder obtained power of attorney in favour of its nominee and the land owners signed documents finding no other way to save their land irrespective of illegality of the State action. The builder could have taken the risk of investing money in illegally dealing with the land covered by acquisition only if it had assurance from the authorities that the land will be released to it even though law did not permit it. Thus, creating a situation which compelled the land owners to surrender their rights in favour of a builder was abuse of the power of acquisition. In such a situation, the land owners had no means to know the name of the officers or their precise role in advancing the illegality. Undisputed facts unequivocally indicate clear fraud and abuse of power. Relief could be moulded by overlooking technicalities to advance justice. It was also submitted that the State Government itself had ordered CBI investigation in some identical cases as also noted in the order of this Court dated 6th October, 2015 in SLP (Civil) No.5725/2015 (Rameshwar & Anr. vs. State of Haryana & Ors.).

13. We have given serious thought to the rival contentions. We have found no reason whatsoever to disagree with the finding recorded by the High Court that present case is a gross abuse of law on account of unholy nexus of the concerned authorities and the builder to enable the builder to profiteer. The land could either be taken by State for a compelling public purpose or returned to the land owners and not to the builder.

14. There could be no objection to acquisition of land for a compelling public purpose nor to regulated development of colonies, but entertaining an application for releasing of land in favour of the builder who comes into picture after acquisition notification and release of land to such builder tantamounts to acquisition for a private purpose. It amounts to transfer of resources of poor for the benefit of the rich. It amounts to permitting profiteering at the cost of livelihood and existence of a

farmer. This is against the philosophy of the Constitution and in violation of guaranteed fundamental rights of equality and right to property and to life. What cannot be done directly cannot be done indirectly also.

15. This apart, if State is to be party to directly or indirectly select beneficiary of State largess – which in present fact situation the State certainly is – objectivity and transparency are essential elements of exercise of public power which are required to be followed. It is patent that the State has enabled the builder to enter the field after initiation of acquisition to seek colonization on the land covered by acquisition. In absence of State's action, it was not possible for the builder to enter into the transactions in question which was followed by withdrawal from acquisition. But for assurance from some quarters, the builder could not have made investment nor land owners could have executed the transactions in question. Such fraudulent and clandestine exercise of power by the State is not permitted by law. This is in violation of Public Trust Doctrine laid down inter alia in Reliance Natural Resources Ltd. versus Reliance Industries Ltd.[1], Centre for Public Interest Litigation versus UOI[2]; Special Reference 1 of 2012 U/A 143(1) of Constitution of India[3] and Manohar Lal Sharma versus Principal Secretary[4].

16. Reliance on Policy dated 6th March, 2000 is misconceived. The subject of the said document is :

> "Release of and from acquisition owned/ purchased by the developers before the issue of notification under Section – 4 of the Land Acquisition Act, 1894 but submitted application for grant of permission for change of land use for starred hotels/ licence for setting up of residential colonies thereafter." (emphasis added)

17. Thus, the policy is applicable only to release of such land from acquisition as is owned/ purchased by the developers before the issue of notification under Section 4 of the Land Acquisition Act, 1894. This condition was required to be strictly complied with and no person other than original owners prior to acquisition could directly or indirectly avail of the said policy. Even a bona fide error could not justify a patent illegality. In the present case, it is undisputed case of the builder itself that it did not have even an inch of land before the notification in question. It is also patent that the application for grant of licence, though purportedly made by the land owners, has in fact been made by the builder. Reference to the order of the High Court dated 25th March, 2008 in Civil Writ Petition No. 4767 of 2008 filed by the builder is of no avail to the appellant as it is only a direction to consider the claim of the writ petitioners in accordance with law. The validity of claim of the builder has not been adjudicated upon in the said order. Even in order dated 6th December, 2010 in Civil Writ Petition No. 14452 of 2010 and other connected matters, there was no consideration or adjudication of the issue with regard to the validity of release of land in favour of a builder who came into picture after the acquisition notification, which took away the basis of the claim for any relief.

18. While it is true that a belated petition cannot be entertained under Article 226 of the Constitution, it is well settled that this is only a rule of practice based on sound and proper exercise of discretion and not a jurisdictional bar. Exercise of discretion to quash an illegal action based on fraud or abuse of law even belatedly may not be liable to be interfered with under Article 136 of the

Constitution. When the land sought to be acquired for a public purpose is allowed to be transferred to private persons, any administrative action or private transaction could be held to be vitiated by fraud[5]. There is no legal sanction for such action, as already explained.

19. It is well settled that use of power for a purpose different from the one for which power is conferred is colourable exercise of power. Statutory and public power is trust and the authority on whom such power is conferred is accountable for its exercise. Fraud on power voids the action of the authority[6]-[7]. Mala fides can be inferred from undisputed facts even without naming a particular officer and even without positive evidence[8]. In the present case, abuse of power in dealing with the matter by the functionaries of the State is more than clear as rightly found by the High Court. Challenge to acquisition may not be confined to those who have not accepted the amount of compensation or consideration. Once such order/transaction is vitiated there could be no estoppel on the ground that compensation/consideration has been received, as the land loser has little choice in the face of acquisition[9].

20. Acquisition of land is a serious matter. It may result in depriving a tenure holder not only of his property but also his profession, livelihood and social security[10]. Even plight of investors in plots/ flats in land covered by acquisition or litigation cannot be a ground to ignore illegal actions of depriving a farmer of his land[11]. As already observed, and is settled law, State's power of compulsory acquisition cannot be used to enable a private entity to acquire title even if private person offers more compensation than the State.[12] It is also well settled that no legitimacy can be conferred to an abuse of power to advance a private purpose by invoking doctrine of prospective overruling[13].

21. We are also conscious of the legal position that under the scheme of the 1894 Act, the land losers get compensation as on the date of Section 4 notification. Any transfer of title thereafter for release of land to a person who is not owner on the date of notification under Section 4 can be viewed as abuse of power under Section 48 of the Act. Moreover, no such transferee can claim any right other than compensation. While notification under Section 4 of the 1894 Act may not prevent creation of an encumbrance on the land, such encumbrance does not bind the Government[14].

22. In view of the above, we do not find any ground to interfere with the finding recorded by the High Court that there was an abuse of power in releasing the land in favour of the builder. Once it is found that action of the State and the builder resulting in transfer of land from land owners to the builder was without any authority of law and by colourable exercise of power, none of the contentions raised by the builder could accepted[15]. We may consider the issue of moulding relief separately but the builder cannot be allowed to retain the land acquired illegally. Undoing of such illegal actions would clearly be in the interests of justice. The wrong has to be remedied.

23. We find that the operative part of the order passed by the High Court needs modification. The entirety of the acquisition need not be quashed. What needs to be quashed is the abuse of power and illegal consequential actions which took place after the acquisition notifications. The High Court has rightly observed that the notified public purpose was valid but the subsequent events resulted in illegality. The High Court also rightly held that it will be inappropriate to release the land in favour

of the builder by permitting the builder to take over the property and granting licence for colonization on the land covered by acquisition[16]. Further, view of the High Court that doctrine of severability cannot be invoked and the entire acquisition was liable to be quashed needs modification in the facts of this case.

24. In view of the above, it is not necessary to refer to all the decisions cited on behalf of the appellant on the question that the court may not entertain a belated petition or may apply the doctrine of promissory estoppel or approbate and reprobate or insist on strict proof of mala fidies or to confine the relief to an individual who approaches the court on facts which speak for themselves.

25. Once release of land under acquisition is found to be mala fide or arbitrary exercise of power, acquisition of released land stands revived[17]. The operative direction of the High Court to quash the acquisition to the extent it has neither been challenged nor concerns the land transferred to a private builder by abusing the power of acquisition or on account of any extraneous considerations does not appear to be justified. Similarly the direction of permitting the builder to retain the land of those land owners who are not able to refund the sale consideration received by them may permit the builder to illegally retain the land. Moreover, it may not be practicable in the present fact situation to restore the land to the land owners but they can be duly compensated while restoring the land to the State to use it for notified public purpose. Person whose land is taken for houses for others cannot be rendered homeless and unemployed. This will be sheer exploitation. In view of the conduct of the builder, agreeing with the view of the High Court, we do not propose to allow any interest to the builder while permitting refund/ reimbursement to it. From the impugned judgment there is nothing to show that the developments which are now relied upon had taken place on the date of filing of the writ petition. It has been specifically held in para 89 of the impugned judgment that no development had taken place till the judgment of the High Court. Any subsequent transactions or development are of no consequence for rights of parties.[18] Any subsequent transactions entered into by the builder cannot be taken into account and are hit by the principle of lis pendens. In any case it was for the builder to inform the third parties to whom the plots have been sold, that the land was under litigation. If the third parties have purchased the land knowing fully about the litigation, they have clearly taken risk and their remedy will be only against the builder. If pendency of litigation was suppressed, the third parties can take their remedies against the builder. Without prejudice to their said private remedies, the court may try to balance equities to the extent possible. We are also of the view that if the authorities have proceeded to entertain applications for licence to give undue benefit to the builder by way of helping him to take over land under the cloud of acquisition, it may call for action against those who have misused their power and to find out the considerations for such misuse.

26. Land is scarce natural resource. Owner of land has guarantee against being deprived of his rights except under a valid law for compelling needs of the society and not otherwise. The commercial use of land can certainly be rewarding to an individual. Initiation of acquisition for public purpose may deprive the owner of valuable land but it cannot permit another person who may be able to get permission to develop colony to take over the said land. If the law allows the State to take land for housing needs, the State itself has to keep the title or dispose of land consistent with Article 14 after completion of acquisition. If after initiation of acquisition, process is not to be completed, land must

revert back to owner on the date of Section 4 notification and not to any one else directly or indirectly. This is not what has happened.

27. As already observed, the power to release land from acquisition has to be exercised consistent with the doctrine of public trust and not arbitrarily. Functioning of a democratic government demands equality and non-arbitrariness. Rule of law is the foundation of a democratic society.

28. However, having regard to the irreversible situation which has been brought about, though in normal circumstances land may have reverted to land owners, the relief will have to be moulded .

29. Keeping the above in mind, we are of the view that ends of justice will be served by moulding the relief as follows:

> i) Notifications dated 11th April, 2002, 8th April, 2003 and awards dated 6th April, 2005 are upheld. The land covered thereby vests in HUDA free from all encumbrances. HUDA may forthwith take possession thereof.
>
> (ii) All release orders in favour of the builder in respect of land covered by the Award in exercise of powers under Section 48 are quashed.
>
> iii) Consequently, all licences granted in respect of the land covered by acquisition will stand transferred to HUDA.
>
> iv) Sale deeds/ other agreements in favour of the builder in respect of the said land are quashed. The builder will not be entitled to recover the consideration paid to the owners but will be entitled to reimbursement as indicated hereinafter. Creation of any third party rights by the builder also stand quashed.
>
> v) The sale consideration paid by the builder to the land owners will be treated as compensation under the award. The land owners will not be required to refund any amount. The land owners who have not received compensation will be at liberty to receive the same. The land owners will also be at liberty to prefer reference under Section 18 of the 1894 Act within a period of three months, if such reference has not been earlier preferred.
>
> vi) The builder will be entitled to refund/ reimbursement of any payments made to the State, to the land owners or the amount spent on development of the land, from HUDA on being satisfied about the extent of actual expenditure not exceeding HUDA norms on the subject. Claim of the builder will be taken up after settling claim of third parties from whom the builder has collected money. No interest will be payable on the said amount.
>
> vii) The third parties from whom money has been collected by the builder will be entitled to either the refund of the amount, out of and to the extent of the amount

payable to the builder under the above direction, available with the State, on their claims being verified or will be allotted the plots at the price paid or price prevalent whatever is higher.

No interest will be payable on the said amount.

viii) The State shall give benefit of "Rehabilitation and Resettlement of Land Acquisition Oustees" policy of the State/ HUDA to the land owners. Area so required shall be reserved out of the acquired land itself.

ix) The State Government may enquire into the legality and bona fides of the action of the persons responsible for illegally entertaining the applications of the builder and releasing the land to it, when it had no title to the land on the date of the notification under Section 4 of the 1894 Act and proceed against them in accordance with law.

x) This Judgment be complied with within one year.

xi) Quarterly progress report of the action taken in pursuance of this judgment be filed by the State in this Court and final report of compliance may be filed within one month after expiry of one year from today for such further direction as may become necessary.

30. The matters will be treated as disposed of except for consideration of the report of compliance to be submitted by the State Government.

……J. [ANIL R. DAVE] ……J. [ADARSH KUMAR GOEL] NEW DELHI;

MAY 13, 2016.

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[1] (2010) 7 SCC 1;
[2] (2012) 3 SCC 1
[3] (2012) 10 SCC 1
[4] (2014) 9 SCC 516
[5] Royal Orchid Hotels v. G. Jayarama Reddy (2011) 10 SCC 608, para 22
[6] State of Punjab v. Gurdial Singh (1980) 2 SCC 417
[7] Greater Noida Industrial Development Authority v. Devendra Kumar (2011) 12 SCC 375, para 39
[8] State of Punjab v. Ramjilal (1970) 3 SCC 602, pr 9-10; Express

Newspapers (P) Ltd. V. UOI xx(1986) 1 SCC 133, pr. 119-120 [9] (2011) 12 SCC 375, para 43.

[10] ibid, para 45 [11] ibid, para 47 [12] State of Bihar v. Kameshwar Singh, AIR (1952) SC 252, pr. 45, 52; Chairman Indore Vikas Pradhikaran v. Pure Industrial Coke (2007) 8 SCC 705, pr 53-56; Devinder Singh v. State of Punjab (2008) 1 SCC 728 [13] Bangalore City Cooperative v. The State of

Karnataka (2012) 3 SCC 727, para 41 [14] (1995) 2 SCC 528, [Gyan Chand v. Gopala & Ors.]; (1995) 5 SCC 335 [Mahavir & Anr. v. Rural Institute, Amravati & Anr.]; (1996) 3 SCC 124 [The U.P. Jal Nigam, Lucknow Thr. its Chairman & Anr. v. M/s. Kalra Properties Pvt. Ltd., Lucknow & Ors.]; (2008) 9 SCC 177 [Meera Sahni v. Lieutenant Governor of Delhi] and (2014) 15 SCC 394, pr. 14-15; (2012) 12 SCC 133 pr.18 [15] (2007) 9 SCC 304 [16] Para 69 of the impugned judgment which has already been quoted.

[17] (2014) 15 SCC 394, para 14
[18] ibid, pr 11
[19] NOIDA Entrepreneurs Assn. v. NOIDA (2011) 6 SCC 508, prs. 40-41
