State Of Haryana vs Eros City Developers Pvt.Ltd.& Ors on 19 January, 2016

Equivalent citations: AIR 2016 SUPREME COURT 451, 2016 (12) SCC 265, 2016 (1) AJR 825, (2016) 2 ORISSA LR 718, (2016) 2 PAT LJR 194, (2016) 3 PUN LR 613, (2017) 1 CLR 885 (ORI), (2016) 1 LANDLR 322, (2016) 1 RECCIVR 904, (2016) 3 RAJ LW 1806, (2016) 3 ANDHLD 1, (2016) 159 ALLINDCAS 250 (SC), (2016) 122 CUT LT 805, (2016) 4 CURCC 443, (2016) 131 REVDEC 559, (2016) 1 SCALE 356, (2016) 2 JLJR 85, (2016) 1 MAD LJ 795, (2016) 115 ALL LR 437, (2016) 2 ALL WC 1605

Author: Prafulla C. Pant

Bench: Prafulla C. Pant, Ranjan Gogoi

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.354 OF 2016
(Arising out of S.L.P. (C) No. 7553 of 2008)

State of Haryana … Appellant

Versus

Eros City Developers Pvt. Ltd. and others …Respondents

WITH

CIVIL APPEAL NO.355 OF 2016
(Arising out of SLP (C) No. 27588 of 2008)

J U D G M E N T

Prafulla C. Pant, J.

Leave granted in both the special leave petitions.

These appeals are directed against judgment and order dated 21.01.2008, passed by the High Court of Punjab and Haryana in Civil Writ Petition No. 10611 of 2004 whereby said Court has quashed the notifications dated 08.10.2003 and 07.05.2004 issued under Sections 4 and 6 of Land Acquisition Act, 1894, respectively, by the State of Haryana regarding acquisition of land measuring 129 kanals 14 marlas in village Lakarpur, District Faridabad. The High Court has further quashed the Award dated 05.05.2006, passed by respondent No. 4 in respect of land owned by respondent No. 1 Eros City Developers Pvt. Ltd., which was acquired through the above mentioned notifications.

Succinctly stated total area of 172 kanals 19 marlas situated in village Lakharpur Tehsil Ballabgarh in District Faridabad was proposed to be acquired by the State of Haryana through notification dated 08.10.2003 issued under Section 4 of Land Acquisition Act, 1894 out of which 129 kanals 14 marlas (for short subject land) belonged to respondent no.1 M/s. Eros City Developers Pvt. Ltd. The details of the persons whose land is acquired is as under:

S. No.	Name of owner	Total Area	Status
1.	Shri Sekher S/o Shri Roshan Lal	6 kanal 2 ½ marla	Compensation paid. Possession taken over.
2.	Shri Sissar S/o Shri Roshan Lal	6 kanal 2 ½ marla	Compensation paid. Possession taken over.
3.	M/s. Eros City Developers Pvt. Ltd.(Respondent No.1 herein)	129 kanal 14 marla	Compensation deposited before the Land Acquisition Collector. Acquisition quashed vide impugned judgment.
4.	Shri Vikram Bakshi S/o Shri DN Bakshi	25 kanal 2 marla	C.W.P. No. 1510 of 2005 pending before the High Court. Status quo with regard to the possession of the land ordered during the pendency of the writ petition vide order dated 22.5.2006. Compensation deposited before the Land Acquisition Collector.
5.	M/s. Faridabad Compex	2 kanal 18 marla	Compensation paid. Possession taken over.

The subject land was stated to have been acquired for the purpose of expansion and systematic development of Surajkund Tourist Complex which included development of parking area adjacent to the Surajkund Tourist Complex near annual Surajkund Fair.

Admittedly, earlier in 1992 an attempt was made to acquire the same land but the acquisition proceedings were dropped after this court passed order dated 10.05.1996 in WP (C) No. 4677 of 1985 i.e., M.C. Mehta's case restraining the constructions in the area. Meanwhile in 1993 contesting respondent appears to have purchased the land indicated above. It is in 1998, the order dated 10.05.1996 said to have been modified, and Municipal Corporation Faridabad and the State

Government were directed to consider the plan of hotel project submitted by the respondent No.1.

Learned counsel for the appellant State submitted that annual Surajkund Mela, is held every year in February in Faridabad District, and has become a regular feature of international fame. As such, there was need to develop Surajkund Tourist Complex by acquiring land adjoining to Surajkund Mela ground in Faridabad. It is also pointed out that significance of Surajkund fair was noticed by this Court in W.P. (C) No. 4677 of 1985 (M.C. Mehta vs. Union of India and ors.) wherein effective directions were issued in the year 1996 to protect and maintain the sanctity of the area. The acquisition of subject-land is thus not only in public interest but also to maintain the integral development of the Surajkund Complex in a unified and planned manner. It is contended that while quashing the notifications mentioned above, the High Court has erred in not considering the public interest and public purpose over private interest of the respondent/writ petitioner, a private colonizer. The impugned order passed by the High Court has been assailed by the appellant, also on the ground that the equity doctrines of promissory estoppel and legitimate expectation were wrongly applied by the High Court in favour of respondent No. 1. It is stated that before issuance of notification under Section 6 of the Land Acquisition Act, 1894 (for short "the Act") objections filed on behalf of respondent No. 1 under Section 5A of the Act were duly considered by the authority concerned, and there was no illegality in the acquisition.

On the other hand, on behalf of respondent No. 1, Shri Shyam Divan Senior Counsel contended that Government of Haryana which earlier attempted to acquire the same land in the year 1992, itself dropped the acquisition proceedings as such it cannot be said that the land in question is genuinely required for any public purpose. The contesting respondent has pleaded that the land in question was purchased by it in the year 1993 with the object to construct a hotel complex of international standard. In the counter affidavit, it is stated that the answering respondent got the permission for change of land use and submitted the plan for sanction from the Municipal Corporation. It also obtained permission from Public Works Department for construction of approach road to the land. Even the Director, Tourism, Government of Haryana, had accorded approval for the hotel project of respondent No. 1. However, the answering respondent was prevented from raising construction due to the restraint order dated 10.5.1996, passed by this Court in M.C. Mehta's case (in W.P. (C) No. 4677 of 1985). Said order was modified on 13.05.1998. On application filed by the answering respondent, vide order dated 12.10.1998, this Court directed the Municipal Corporation, Faridabad, and State Government to accept option plan A with regard to hotel project (ground plus four floors), submitted by it. It is submitted that there was malice on the part of the State Government in acquiring the land in question through the notification dated 08.10.2003 issued under Section 4 of the Act. It is also pleaded that there were overwhelming circumstances in favour of the answering respondent to invoke doctrine of promissory estoppel, and that of legitimate expectation. In this connection, it is pointed out that permission of change of land use was also granted in favour of the answering respondent. Lastly, it is submitted that the High Court has rightly quashed the notifications issued by the State Government for acquisition of the land owned by the answering respondent.

In reply to this, on behalf of the State of Haryana, it is submitted that since the construction did not start within six months as required under the terms of order by which permission for change of land

use was granted as such merely for the reason that permission to change of land use granted, the acquisition cannot be questioned. It is further submitted that the acquisition proceedings have been upheld by the High Court in Civil Writ Petition No. 1510 of 2005 filed by Vikram Bakshi, who was owner of another piece of land acquired by same notification dated 08.10.2003 issued under Section 4 of the Act read with consequential notification issued under Section 6 of the Act.

We have also gone through the copy of order dated 07.07.2010 passed by the High Court of Punjab & Haryana in Civil Writ Petition No. 1510 of 2005 filed by Vikram Bakshi, said writ petition was filed challenging the notification dated 08.10.2003 issued under Section 4 of Land Acquisition Act, 1894, and the consequential notification issued under Section 6 of the Act. The land for which acquisition sought to be quashed by Vikram Bakshi relates to 32 kanal of land comprising of rectangle no. 40 khasra Nos. 14, 17/1, 17/2, 18/1, 23/1, and 24/1 of Village Lakharpur Tehsil Ballabhgarh District Faridabad. In said petition also, public purpose i.e. expansion and systematic development of Surajkund Tourist Complex was questioned, and issue relating to consideration of objections filed under Section 5-A was raised. The High Court after considering the rival submissions and going through the record opined that there was no illegality in the acquisition and dismissed the Writ Petition No. 1510 of 2005 on 07.07.2010.

In Sooraram Pratap Reddy and Others vs. District Collector, Ranga Reddy District and others (2008) 9 SCC 552, this Court has held that the project for which land is acquired should be taken as a whole and must be judged whether it is in the larger public interest. It cannot be split into different components and to consider whether each and every component will serve public good. A holistic approach has to be adopted in such matters. This Court further observed in said case that development of infrastructure is legal and legitimate public purpose for exercising power of eminent domain. In deciding whether acquisition is for “public purpose” or not, prima facie, the Government is the best judge. Although the decision of the Government is not beyond judicial scrutiny, normally, in such matters a writ court should not interfere by substituting its judgment for the judgment of the Government. In Sooraram Pratap Reddy (supra), this Court has further explained that the meaning of expression “public purpose” is wider than that of “public necessity”.

Clause (f) of Rule 26-D of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Rules, 1965 (for short “1965 Rules”) requires the applicant seeking change of land use for construction to undertake to start construction on the land within a period of six months and complete the construction within a period of two years from the date of order permitting the change of land use. It appears that no construction was done in terms of Clause (f) of Rule 26-D of 1965 Rules on the land in question, for which acquisition is quashed by the impugned order.

In State of Haryana and Others vs. Vinod Oil and General Mills and Another (2014) 15 SCC 410, this Court has held that permission for change of land use has no relevance while considering the validity of acquisition. It is further observed in said case that there is no bar to the subsequent acquisition of a land, after the land was released from earlier acquisition.

In A.P. Pollution Control Board II vs. M.V. Nayudu (Retd.) and Others (2001) 2 SCC 62, this Court has observed in para 69 as under:

> "69. The learned Appellate Authority erred in thinking that because of the approval of plan by the Panchayat, or conversion of land use by the Collector or grant of letter of intent by the Central Government, a case for applying principle of "promissory estoppel" applied to the facts of this case. There could be no estoppel against the statute....." As far as the argument advanced on behalf of the respondent relating to the promissory estoppel and legitimate expectation is concerned, in Monnet Ispat and Energy Limited vs. Union of India and Others (2012) 11 SCC 1, this Court while enumerating the principles relating to doctrine of promissory estoppel and legitimate expectation has clearly held that the protection of legitimate expectation does not require the fulfillment of the expectation where an overriding public interest requires otherwise. In other words, personal benefit must give way to public interest and the doctrine of legitimate expectation cannot be invoked which would block public interest for private benefit.
>
> In Hira Tikkoo vs. Union Territory, Chandigarh and Others (2004) 6 SCC 765, this Court explaining the scope of principle of legitimate expectation has held that the doctrine cannot be pressed into service where the public interest is likely to suffer as against the personal interest of a party. In paragraph 22 this Court has observed as under:
>
> "22. In public law in certain situations, relief to the parties aggrieved by action or promises of public authorities can be granted on the doctrine of "legitimate expectation" but when grant of such relief is likely to harm larger public interest, the doctrine cannot be allowed to be pressed into service. We may usefully call in aid the legal maxim: "Salus Populi est suprema lex: regard for the public welfare is the higher law." This principle is based on the implied agreement of every member of society that his own individual welfare shall in cases of necessity yield to that of community. His property, liberty and life shall under certain circumstances be placed in jeopardy or even sacrificed for the public good." In view of the principle of law laid down by this Court as above, in our opinion the High Court has erred in quashing the acquisition of land in question, by applying doctrine of promissory estoppel and legitimate expectation, in the facts of the present case. We have no hesitation in holding that the purpose i.e. for expansion and systematic development of Surajkund Tourist Complex, is a public purpose. It included development of parking area adjacent to Surajkund Tourist Complex near annual Surajkund Fair. We are of the view that the High Court is incorrect in holding that the State has not acted bonafide, after 1992 acquisition proceedings were dropped. It is apparent from the record that earlier proceedings were dropped in the light of orders passed in M.C. Mehta's Case in the year 1996, restraining construction in the area, and after modification in the said order in the year 1998, the State took fresh decision to acquire the land for public purpose and there is no illegality in the same.

Accordingly, both the appeals are allowed and impugned judgment and order dated 21.01.2008 passed by the High Court in CWP No.10611 of 2004, is set aside. No order as to costs.

.....J (Ranjan Gogoi) .....J (Prafulla C. Pant) New Delhi Dated: January 19, 2016