SUPREME COURT OF INDIA

Haryana State Industrial Dev.Corp.

Vs.

Shakuntla

C.A.No.7020 of 2009

(Tarun Chatterjee and V.S.Sirpurkar JJ.)

22.10.2009

JUDGEMENT

Tarun Chatterjee, J.

1. Delay condoned.

2. Leave granted.

3. These appeals by special leave have arisen from a judgment dated 14th of December, 2006 of a Division Bench of the High Court of Punjab and Haryana at Chandigarh passed in CWP No. 2479/2006 whereby the High Court had set aside the Notifications dated 11th of November, 2002 and 12th of November, 2003 issued under Sections 4 and 6 of the *Land Acquisition Act, 1894*, (in short `the Act') respectively so far as the acquired lands of the claimant-respondents are concerned, subject to certain conditions to be fulfilled by them.

4. The facts in appeal arising out of S.L.P. No. 7099/2007 are sufficient to decide the questions of law that have arisen in these appeals. In that view of the matter, let us narrate the facts involved in SLP No.7099 of 2007 in a nutshell and the decision of which will also govern the other Special Leave Petitions [Appeals].

5. On 15th of November, 2002, a notification under Section 4 of the Act was issued by the State Government of Haryana for the purpose of acquisition of lands situated in Village Khandsa, Tehsil and District Gurgaon for the purpose of development of a corporate complex for industrial, institutional, commercial and recreational purposes. The respondent no.1, being one of the owners of the notified acquired lands, filed objections under Section 5 of the Act, for exclusion of their lands. The Haryana Government, later on, that is on 12 th of November, 2003 issued a Notification under Section 6 of the Act, in respect of the aforementioned lands declaring that the lands notified were needed by the Government for a public purpose.

6. On 16th of July, 2005, the High Court of Punjab and Haryana at Chandigarh disposed of the petitions filed by respondent no.1 and others, directing that the grievances of the land owners be considered by a High Powered Committee, constituted to look into whether the lands of the owners concerned could be released from acquisition.

> "The High Powered Committee submitted its consolidated report containing its observations and recommendations to the State Government on 10th of November, 2005. The Committee recommended the acquisition of the lands of respondent no.1 on the basis of the parameters of evaluation formulated for the same purpose. On the basis of the same parameters, some other lands were released, land belonging to M/s Orient Crafts being one such plot. The recommendations of the Committee were to be applicable to all such cases pending before the High Court and they would not be disturbed till further orders of the Government. Aggrieved by the recommendations of the High Powered Committee, respondent no.1 filed a writ petition before the High Court of Punjab and Haryana contending that the said report was liable to be quashed as the policy of pick and choose was adopted in the matter of releasing lands and that the acquisition of lands was discriminatory. The High Court concluded that the case of respondent no.1 was on a better footing than that of M/s Orient Crafts since a perusal of the site plan shows that the land of M/s Orient Crafts which is similarly placed with the land of the respondent no.1, does not contain any structure unlike that of the land of the respondent no.1 containing a pucca structure.
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> Moreover, no nullah flows through the land of M/s Orient Crafts as averred by the appellant Corporation. As such, the land of M/s Orient Crafts was held to be wrongly released from acquisition amounting to discrimination against respondent no.1. Accordingly, the High Court ordered the release of the land belonging to respondent no.1 on the following grounds:
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> i. That they will maintain the green belt as desired by the Department which is essentially required to lay the infrastructure.
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> ii. That they would pay the proportionate internal and external charges to the Haryana State Industrial Development Corporation (in short the `HSIDC') as and when it is required by the authorities."

7. Before us, the learned counsel for the appellants argued, at the first instance, that since a High Powered Committee having been appointed to examine the cases of land acquisition had recommended the acquisition of the lands of the respondents, the decision of the High Court to quash the particular acquisition was fallacious. The High Powered Committee had adopted certain guiding principles for ascertaining the status of the land notified for acquisition, the first three conditions being;- I. The land for which CLU (change of land use) has been obtained and the Industrial unit is under construction/ constructed or running, not to be acquired; but if the CLU obtained but no construction initiated and duration of sanction had expired before the issue of notification under Section-4, shall not be considered as a case of CLU obtained, keeping in view the provisions of the Punjab Scheduled Roads and

Controlled Areas Restrictions of Unregulated Development Rules, 1965 (Rule 26 f) II. The Industrial units constructed without permission, if fit in the overall planning and do not interfere in the road network, will be adjusted as these are subject to the condition that the Town and Country Planning Department has not filed prosecution case in the Court of Law for the violations, and shall give an undertaking to the Committee that they will apply to the Director, Town and Country Planning for compounding the offences and shall pay all the charges/ fees to the Government as per policy of the Department of Town and Country Planning Haryana. III. To ensure continuity of the Industrial Estate, land under acquisition, which is essential for integrated planning, shall not be released. These guidelines and parameters for evaluation of the merits of each case were approved by the Government of Haryana and Punjab and were subsequently notified through the newspaper `The Tribune' and were also made available in the website of HSIDC.

8. The land belonging to the respondent had houses and shops built prior to the notification issued under Section 4 of the Act. However this does not amount to fulfilment of the conditions necessary for release of the land under the criteria laid down in the abovementioned parameters and as such, this particular land was rightly recommended for acquisition. On the other hand, the land belonging to M/s Orient Craft was recommended for release by the High Powered Committee on grounds which were beyond the scope of the criteria applied under the parameters approved by the Government.

> "Moreover, as rightly pointed out by the High Court, the observation of the Committee regarding a seasonal nullah passing through the lands of M/s Orient Craft are contrary to the actual facts. Consideration of this observation in releasing the land of M/s Orient Craft betrays an element of either partiality or insincerity on the part of the Committee.
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> Though, no construction was raised on the land of M/s Orient Craft, the State of Haryana sought an affidavit from the General Manager of M/s Orient Craft before releasing their land. In the affidavit filed by the Senior General Manager of M/s Orient Craft, it was averred that they would leave the land as desired by the HSIDC which is essentially required to lay the infrastructure. Moreover, it was averred that they would also pay the proportionate external and internal developmental charges to the HSIDC. Consequent to the submission of this affidavit, the Director of Industry & Commerce, Haryana, released the land belonging to M/s Orient Craft. This procedure of release of the land notified for acquisition clearly does not conform to the guidelines that were formulated and approved at the first place."

9. It appears that the release of the land of M/s Orient Craft would not frustrate the whole object of acquisition for expansion of the industrial estate since the undertaking of M/s Orient Craft to release land as desired by the HSIDC amounts to fulfilment of the lands needed by the HSIDC in that area. However, the manner in which it was released and the grounds that were relied on for its release are fraught with defects that raise doubts regarding the impartiality and sincerity of the authority. The appellant corporation has sought to justify the decision of the High Powered Committee to release that particular land by referring to a

judgment of this Court in the case of *Anand Buttons v. State of Haryana and others*[1] wherein this court observed:

> "...reasoning of the High Court cannot be faulted for the simple reason that the authority, who has to carry out the planned development of the industrial estate, is in the best position to judge as to which land can be exempted from the acquisition without jeopardizing the development scheme. It is not possible for the court to sit in appeal over the exercise of such satisfaction by the authority vested with the task of implementing the development plan."
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> Thus the validity of the decision of the concerned authority was upheld on the ground that it has to carry out the planned development of the industrial estate and so it is in the best position to judge as to which land can be exempted from acquisition without jeopardising the development scheme. As such, it was rightly held by this court in Anand Buttons's Case (supra) that it is not possible for the court to sit in appeal over the exercise of such satisfaction by the authority vested with the task of implementing the development plan.

10. The task of such authority is no doubt to ensure the smooth execution of the development plans and since they have a firsthand knowledge of the ground realities, they are surely at a better position than anyone else to decide as to which land is to be acquired and which is to be released. But when there has been a guideline laid down for the same task and it has been approved and notified, the issue becomes a matter of policy which the authority has to follow with a reasonable amount of uniformity. In the given facts of the case, the respondents have alleged discrimination thereby attracting Article 14 of the Constitution of India. As held in the case of *Union of India v. International Trading Co.*[2] Article 14 applies to matters of government policy and such policy or action would be unconstitutional if it fails to satisfy the test of reasonableness. This Court observed:

> "...It is law that Article 14 of the Constitution applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional. While the discretion to change the policy in exercise of the executive power, when not trammelled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give impression that it was so done arbitrarily on by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness in action by the state, and non-arbitrariness in essence and substance is the heart beat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for discernible reasons, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualized than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to

apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness. Where a particular mode is prescribed for doing an act and there is no impediment in adopting the procedure, the deviation to act in different manner which does not disclose any discernible principle which is reasonable itself shall be labelled as arbitrary. Every State action must be informed by reason and it follows that an act uninformed by reason is per se arbitrary."

The discretion to change a policy in exercise of the executive power, which appears to be the case in the present matter, must be exercised fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. It has been observed by this court, as noted herein above, that a question whether the impugned action is arbitrary or not, is to be ultimately answered on the facts and circumstances of the given case. It was rightly held that where a particular mode is prescribed for doing an act and there is no impediment in adopting the procedure, the deviation to act in a different manner which does not disclose any discernible principle which is reasonable itself shall be labelled as arbitrary.

11. Thus in the given facts of the case, the action of the Committee in releasing the lands of M/s Orient Craft would not be arbitrary in so far as it has deviated from the procedure laid down in the form of guidelines approved for the same purpose, provided a principle discerned from the deviation is within the bounds of the reasonableness test. From a perusal of the facts of the case, it is clear that the release of the land of M/s Orient Craft may be said to be based on the logic that as the undertaking of M/s Orient Craft to release their land as desired by the department had fulfilled the lands needed by the HSIDC, so the deviation in releasing the same has a justifiable reason. So, we may safely say that such deviation from the procedural guidelines is not unjustified in the present situation. This leads us to the question as to why such a reasonable principle was not applied in the case of the lands of the respondent, though the same were contiguous and adjoining the lands of M/s Orient Craft and thereby releasing the land of the respondent also.

12. As the deviation from the guidelines in releasing the land of M/s Orient Craft has been found to be not wrongful, there is no question of committing two wrongs by applying the same yardstick to release the lands of the respondents. As such, we do not find anything wrong in the decision of the High Court to release the lands of the respondents from acquisition.

13. Thus, let us now consider the question raised by the respondents regarding the validity of the conditions laid down by the High Court for release of their lands. As noted herein earlier, the High Court had laid down the following conditions for the release from acquisition of the lands of the respondents:-

“i. That they will maintain the green belt as desired by the Department which is essentially required to lay the infrastructure.

ii. That they would pay the proportionate internal and external charges to the HSIDC as and when it is required by the authorities.

It is obvious that these conditions laid down are very similar to the undertaking of M/s Orient Craft which was filed in the form of an affidavit as mentioned earlier. At the risk of repetition, we would like to mention the two conditions mentioned in the undertaking of M/s Orient Craft viz.:-

i. That they would leave the land as desired by the department which is essentially required to lay the infrastructure.

ii. That they would also pay the proportionate external and internal development charges to the HSIDC as and when assessed and demanded.

Thus, the intention of the High Court is clearly to bring parity in the status of the lands of the respondents vis-a-vis that of M/s Orient Craft.

This is justifiable since the same principle has been applied that is discernible from the act of release from acquisition of the land of M/s Orient Craft, as has already been observed."

14. However, the respondents have argued against the validity of the condition to maintain a green belt on their land up to 50 meters on two grounds. First, they relied on a judgment of this Court in the case of *Raju S. Jethmalani v. State of Maharastra*[3] wherein it was held that the burden to make available green area cannot be put on the citizens. Secondly, it was argued that the condition of maintaining 50 meters green belt is not supported by any law in force, and also that even under Section 3 of the *Punjab Scheduled Roads & Controlled Areas (Restriction of Unregulated Development) Act, 1963*, there is no condition of maintaining green belt.

15. Before taking up the first point, we would like to clarify one thing about the second point. It is true that Section 3 of the *Punjab Scheduled Roads & Controlled Areas (Restriction of Unregulated Development) Act, 1963* does not explicitly require the maintenance of 50 meters green belt. However, one must take into consideration the fact that the Corporation had been appointed as a nodal agency by the State Government for rapid industrialisation of the State and so it had to carry out the planned development of the industrial estates.

The needs of industrialisation and economic development are so dynamic that it is not possible to limit these needs by certain legislative provision. These needs will change according to the growing economic demands. In the present case in hand, the need for rapid industrialization of the State was recognised by the State Government and accordingly notifications were issued by it under Sections 4 and 6 of the Act, which was clearly done according to the applicable rules and procedures. Moreover, there is no law in force that categorically limits the area to which a green belt may be extended, and this means that it is a need based decision on the part of the authority

though it has to be within reasonable bounds. So the mere fact that Section 3 of the Punjab Scheduled Roads & Controlled Areas (Restriction of Unregulated Development) Act, 1963 does not explicitly require the maintenance of 50 meters green belt, cannot be allowed to frustrate the attempt to meet the ever increasing economic needs of rapid industrialisation. In this regard, we may once again look back to the judgment in Anand Button's case (supra) and conclude that since the nodal agency is in the best position to decide how much is needed for the maintenance of 50 meters green belt, there is nothing wrong in requiring the same in the given case.

16. As far as the judgment in the case of Raju S. Jethmalani (supra) is concerned, we need to see whether the facts in that case are similar to the facts in the present case. In Raju S. Jethmalani, this court held that no burden can be placed on private citizens to provide suitable area in the locality for using the same as garden or park. This Court observed:

> "...We fail to understand how can the burden be placed on the appellants that they should provide suitable area in the present locality for using the same as garden or park.
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> Rather, the burden should have been placed on the Municipal Corporation or the State Government instead of putting it on the appellants that they must provide some space for garden and park. This direction, in our opinion, appears to be wholly misconceived and we set aside the impugned order of the Division Bench..."

In view of the above, therefore, the burden should have been placed on the Municipal Corporation or the State Government and not on the individuals. This appears to render the judgment of the High Court in the present case fallacious as far as the conditions imposing maintenance of a green belt on the respondents is concerned. However in the present case, the purpose is very different from that in Raju S. Jethmalani's case and also the applicable Acts are different. So the need is to check whether the two situations are in pari materia or not.

We have to take into account the observations of this Court in Raju S. Jethmalani's case (supra) that a development plan can be prepared of a land comprising of a private person but that plan cannot be implemented till the land belonging to the private person is acquired by the Planning Authority. Accordingly in Raju S. Jethmalani's case (supra), the decision of the High Court to impose burden on private individuals to provide suitable area for park was found to be faulty because of the fact that the Municipal Corporation had failed to acquire the land for the said purpose even though it was planned so initially. It is beyond any doubt that in the present case, the HSIDC is ready to acquire the land of the private persons i.e. the respondents, and so we fail to relate the situation in Raju S. Jethmalani with that of the present case. Moreover, we cannot frustrate the overall purpose of the Act by relying on a judgment that relates to a matter under the *Maharashtra Regional and Town Planning Act, 1966*. Thus, we need not be bound by the decision in Raju S. Jethmalani's case (supra) as far as the burdening of a private person to provide land for public utility is concerned.

> However, so far as the question of maintaining a green belt imposed by the High Court in the impugned order is concerned, we are not in a position to agree with such directions of the High Court.

17. Leaving the land for the HSIDC to develop a green belt is different from that of requiring the private person to maintain the green belt since that will be an unnecessary burden on that person. Since we have sought to rely on the averment made by M/s Orient Craft in order to bring parity between the status of the lands of the respondents and M/s Orient Craft, we believe that the same criteria should be applied in releasing these lands from acquisition. The most important issue is that the process of development and industrialisation as planned and approved by the legislature should not meet a dead end because of a small stretch of land. As such, the land of the respondents shall be released from acquisition as was the case with M/s Orient Craft, but the same shall be done on same grounds as was applied for the land of M/s Orient Craft. Accordingly, affirming the judgment of the High Court, we only modify the conditions for fulfilment on the part of the respondents so that their land is released from acquisition. These are:-

> "i. They will release the land which is needed by the HSIDC for maintaining the green belt, undisturbed and such land shall be not more than the 50 meters prescribed for the Green Belt.
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> ii. They will pay the proportionate external and internal charges to the HSIDC as and when it is required by the authorities."

18. Apart from the modifications that we have made in the conditions imposed by the High Court in the impugned judgment as mentioned above, we do not find any merit in these appeals.

19. For the reasons aforesaid, the appeals are disposed of with the aforesaid modification of the impugned judgment of the High Court.

There will be no order as to the costs.

[1]*(2005) 9 SCC 164*
[2]*(2003) 5 SCC 437*
[3]*(2005) 11 SCC 222*