

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CIVIL WRIT PETITION NO. 978 OF 2007.

IN THE MATTER OF :

M/s Ansal Properties and Infrastructure Ltd.
Registered Office at 115, Ansal Bhawan,
16, Kasturba Gandhi Marg,
New Delhi
Through its President Shri N.K.Sehgal

... Petitioner

Versus

State of Haryana,
Through the Financial Commissioner-cum-Secretary,
Town & Country Planning Department & Urban Estate Deptt.,
Haryana Civil Secretariat,
Chandigarh.

The Haryana Urban Development Authority
Sector-6, Panchkula
Through its Chief Administrator

The Land Acquisition Collector,
Urban Estates,
Government of Haryana,
Panchkula.

The Director,
Urban Estate,
Government of Haryana,
SCO-61, Sector 8,
Panchkula.

The Director,
Town & Country Planning,
Haryana,
Sector 18, Chandigarh.

6. The Estate Officer
HUDA, Gurgaon

... Respondents

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REGISTRAR

MADHAWA
... Court,
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CIVIL WRIT PETITION UNDER ARTICLE 226 OF
THE CONSTITUTION OF INDIA PRAYING, INTER

It is most respectfully prayed that this Honble Court may very kindly be pleased to summon the records from the respondents and upon perusal thereof grant the following relief :-

(c) Issue a writ in the nature of mandamus directing the respondents to exchange the 3.875 acres of petitioner's land in sector 13, Gurgaon with the land of HUDA in sector 53, Gurgaon as per the proposal of the respondents.

(d) Issue a consequent writ in the nature of mandamus directing the respondents to consider/grant the licence application under section 3 of the 1975 Act for the development of the petitioner's land measuring 3.875 acres for residential colony for which licence fee and scrutiny fee have been accepted vide licence applications dated 17.12.1990 read with 14.02.2001.

or
Alternatively

Issue a writ of mandamus directing the respondents to release/ exempt the 3.875 acres land of the petitioners from being acquired as per the government policy dated 30.09.2007 and consider the application for grant of licence.

or
Alternatively

Issue a writ in the nature of certiorari and/or any other writ quashing the notifications dated 08.09.1997 (P/3) and 07.09.1997 (P/5) issued under sections 4 and section 6 of the Land Acquisition Act qua the land of the petitioners and consider the application for grant of licence.

(b) Issue a writ in the nature of mandamus commanding the respondents not to dispossess the petitioner from its land measuring 3.875 acres in any manner except in the event of exchange of land as per the proposal of the respondents;

(c) Pass appropriate interim orders and/or directions to stay the further proceedings as well as stay dispossession qua the land of the petitioners during the pendency of the writ petition;

(f) Filing of certified copies of the Annexures may kindly be dispensed with;

(g) Issuance of five days advance notice to the respondents may be dispensed with;

(h) Cost of the petition may be awarded to the petitioner

ANY OTHER WRIT ORDER AND/OR DIRECTION WHICH THIS HONBLE COURT MAY DEEM FIT IN THE FACTS AND CIRCUMSTANCES OF THE PRESENT CASE.

It is further prayed that during the pendency of the instant writ petition the physical possession of the petitioner over the land in question may be protected in the interest of justice.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.W.P. No. 978 of 2008

Date of Decision: January 22, 2008

M/s Ansal Properties and Infrastructure Ltd.

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE T.P.S. MANN

Present: Mr. A.K. Chopra, Senior Advocate, with
Mr. Arun Monga, Advocate and
Ms. Rupa Pathania, Advocate,
for the petitioner.

M.M. KUMAR, J.

This petition filed under Article 226 of the Constitution prays for issuance of directions to the respondents to exchange land measuring 3.875 acres in Sector 43, Gurgaon, which at one time belonged to the petitioner and acquired by the respondent State in 1997-1998, with the land owned by the Haryana Urban Development Authority-respondent No. 2 (for brevity, 'the HUDA') in Sector 53, Gurgaon. A further direction to the respondents has been sought for grant of licence applied vide licence applications dated 17.12.1990 and 14.2.2001, under Section 3 of the Haryana Development and Regulation of Urban Area Act, 1975 (for brevity, 'the 1975 Act') for the development of that land measuring 3.875 acres for a residential

colony for which licence fee and scrutiny fee have been deposited. The petitioner has also sought an alternative prayer for issuance of direction to the respondents to release 3.875 acres of land of the petitioner from acquisition in pursuance to declaration under Sections 4 and 6 of the Land Acquisition Act, 1894 (for brevity, 'the Act'), issued on 8.9.1997 (P-3) and 7.9.1998 (P-5) respectively. Another alternative prayer made is for quashing of the aforementioned notifications as also subsequent proceedings with regard to the land of the petitioner. The petitioner has also prayed that it may not be dispossessed from the land measuring 3.875 acres except in the event of exchange of land as per the proposal.

Brief facts of the case are that the petitioner is a developer and engaged in the business of setting up residential and commercial colonies in and around the State of Haryana and capital New Delhi. It has been claimed that on 31.5.1985 a licence under Section 3 of the 1975 Act was granted to the petitioner by the respondent State in respect of 101.55 acres of land, where the petitioner has developed a colony, namely, Sushant Lok. It has further been claimed that from 22.8.1985 to 12.2.2007, 23 additional sets of licences under the provisions of 1975 Act have been granted to the petitioner in respect of development of various pockets abutting

proximity of Sushant Lok. The petitioner use to own land measuring 3.875 acres, comprised in Khasra Nos. 8 to 15 and 33 in the revenue estate of Wazirabad, Gurgaon, which was purchased by it on

31.3.1989. On 17.12.1990, the petitioner made an application for grant of licence for development of a residential colony over 3.875 acres of land (P-1). In October 1991, revised layout plans were submitted by the petitioner in respect of land measuring 3.875 acres (P-2).

On 8.9.1997, a notification under Section 4 of the Act was issued by the respondent State for acquisition of land including 3.875 acres of land belonging to the petitioner, for a public purpose, namely, for the development and utilisation of land for residential, commercial and institutional purposes, beside providing open space in Sector 26-A, 27, 28, 42 and 43 at Gurgaon, under the Haryana Urban Development Authority Act, 1977, by the HUDA, in the area of village Kanhai, H.B. No. 73, Village Wazirabad, H.B. No. 75, Village Chakerpur, H.B. No. 74, Village Sikanderpur Ghosi, H.B. No. 68, Tehsil and District Gurgaon (P-3). The petitioner filed objections under Section 5A of the Act on 3.10.1997, requesting for the release of the land for the purposes of its development (P-4). However, the State Government issued declaration under Section 6 of the Act on 29.10.1998 (P-5). The petitioner again filed objections on 10.10.1998 (P-6). It is claimed that on 6.3.2000, the Government formulated a policy that in the case of a licence being sought qua a piece of land which is under acquisition, the same would be released if the licence is sought in respect of land purchased by the owner before the date of issuance of land acquisition notice. However, no such policy has been placed on record. On 24.8.2000, the Land Acquisition Collector

issued notice under Section 9 of the Act and award has been announced on 6.9.2000 (P-8/A). The Land Acquisition Collector also took symbolic possession by Rapat Roznamcha dated 6.9.2000 (P-8-T). On 15.12.2000, the petitioner made applications to the Secretary and Commissioner, Town and Country Planning as well as the HUDA, seeking release of land measuring 3.875 acres from acquisition on the ground that the same was purchased before issuance of notification under Section 4 of the Act (P-8/B). On 14.2.2001, the petitioner re-applied for grant of licence to the DTCP, Haryana and also submitted requisite documents and fees amounting to Rs. 1,56,800/- and Rs. 3,87,500/- towards scrutiny/licence fee (P-9 Colly). On 5.11.2001, the HUDA floated residential Sector 43, Gurgaon, which includes the land measuring 3.875 acres belonging to the petitioner. On 10.11.2001, the petitioner represented to the HUDA requesting that no further action in respect of allotment of plots on the petitioner's land be taken (P-10). On 29.6.2002, again a representation was made by the petitioner to the Director, Town & Country Planning, Haryana, whereupon personal hearing was granted on 23.12.2002 (P-11). On 10.12.2002, the petitioner also submitted a representation to the Chief Minister, Haryana, in relation to grant of licence (P-12).

On 25.12.2002, a letter was addressed by the District Town Planner, Gurgaon, to the Senior Town Planner, Gurgaon, in respect of proposal submitted by the petitioner. Thereafter, a letter dated 23.3.2003 by the Senior Town Planner, Gurgaon, was sent to

the Administrator, HUDA (P-14 Colly). Reference has also been made to letter dated 7.7.2004 addressed by the District Town Planner to the Chief Town Planner, Gurgaon (P/18-T) and further letter from the office of the District Town Planner, Gurgaon, to the Administrator, HUDA, Gurgaon, dated 20.9.2007 (P-22). A perusal of all these letters would show that land measuring 3.875 acres, belonging to the petitioner fell within Sector 43, Gurgaon, for which layout plan has already been approved by the Government, vide Memo. No. CTP-HUDA-DTP(M) 8517, dated 5.10.2001. The said land was planned for 4 marla plots and the sector has already been created. The plots have already been allotted by the HUDA. It has further been noticed that two alternative proposals were made by the petitioner, which were examined. Alternative proposal No. 1 was rejected as it has already been planned by the HUDA for plots to be allotted to Harijans in accordance with the judgment of this Court. Therefore, said proposal did not find any favour with the District Town Planner. The second proposal found favour with the District Town Planner, HUDA, which was also agreed to by the Senior Town Planner, as is evident from the letter dated 25.12.2002. A similar conclusion has been drawn in Memo. dated 7.7.2004 and 8.7.2004 (P-15 & P-19). The petitioner is stated to have surrendered two school plots in Surkhal Lok to the HUDA. From 2005-2007, a series of communications exchanged inter se between the official respondents as well as the petitioner. However, a perusal of these communications shows that in none of them either it has been conveyed to the

petitioner by any competent officer of the State that land measuring 3.875 acres is being released or licence under the provisions of the 1975 Act has been granted.

Mr. A.K. Chopra, learned counsel for the petitioner has made three fold submissions. He has argued that all those letters written by the District Town Planner to the Senior Town Planner and other correspondence show that a binding promise has been made by the HUDA to exchange land measuring 3.875 acres. In that regard our attention has been drawn to correspondence dated 25.12.2002, which is a letter addressed by the District Town Planner, Gurgaon, to the Senior Town Planner, Gurgaon, and then letter dated 25.12.2002 by the Senior Town Planner, Gurgaon, to the Administrator, HUDA (P-14 Colly). Reference has also been made to letter dated 7.7.2004 addressed by the District Town Planner to the Chief Town Planner, Gurgaon (P-18) and further letter from the office of the District Town Planner, Gurgaon, to the Administrator, HUDA, Gurgaon, dated 20.9.2007 (P-22). A perusal of all these letters would show that land measuring 3.875 acres, belonging to the petitioner fell within Sector 13, Gurgaon, for which lay out plan has already been approved by the Government, vide Memo. No. CTP-HUDA-DTP(M_ 8517, dated 5.10.2001. The said land was planned for 4 marla plots and the sector has already been floated. The plots stands allotted by the HUDA. It has further been noticed that two alternative proposals were made by the petitioner, which were examined. Alternative proposal No. 1 has already been planned by the HUDA for plots to be allotted to Harijans

in accordance with the judgment of this Court. Therefore, first proposal did not find any favour with the District Town Planner. The second proposal found favour with the District Town Planner, which was also agreed to by the Senior Town Planner, as is evident from the letter dated 23.12.2002. A similar conclusion has been drawn in Memo. dated 7.7.2004 and 8.7.2004 (P-18 & P-19). The petitioner is stated to have surrendered two school sites in Sushant Lok to the HUDA.

Before dealing with the submission made by learned counsel for the petitioner, it is appropriate to mention that the land measuring 3.875 acres belonging to the petitioner was subject matter of acquisition. A notification under Section 4 of the Act was issued on 8.9.1997 (P-3). The petitioner filed objections under Section 5A of the Act on 3.10.1997, requesting for the release of the land for the purposes of its development (P-4). However, the State Government issued declaration under Section 6 of the Act on 7.9.1998 (P-5). The petitioner again filed objections on 10.10.1998 (P-6).

We repeatedly asked the learned counsel for the petitioner as to how letters written by Senior Town Planner to Administrator, HUDA, would constitute a promise for release of the land acquired in the year 1997-98 and for which award was passed on 6.8.1998 (P-3A) and even possession has been taken. However, there was no satisfactory answer given by him. Merely because there is correspondence between various officers of a department for acceptance of one proposal and that too in their inter se

correspondence, which is not addressed to the petitioner, no promise of a binding nature could be inferred so as to assume the legal shape of a promissory estoppel. The principles of promissory estoppel have been laid down in various judgments including M.P. Sugar Mill v. State of U.P., (1979) 2 SCC 409. In those judgments it has been categorically laid down that if a person on the representation made by another person changes his position to his detriment then he will be strictly held to that promise. Firstly, no promise from this correspondence made to the petitioner is inferable. Secondly, the promise is required to be made by the State or by such an agency of the State which is competent. Thirdly, there is no letter or order which might have been addressed to the petitioner so as to constitute a promise. In order to assume the character of binding promise communication of any such order to the petitioner is a condition precedent. In that regard reliance can be placed on 5 Judge Constitution Bench of Hon'ble the Supreme Court in Bachittar Singh v. State of Punjab, AIR 1965 SC 365, which has been followed in Bahadur Singh v. Jagdish Bhai, (2004) 2 SCC 65 and J.P. Bansal v. State of Rajasthan, (2003) 5 SCC 134. The acquisition of land is always made by the State as is authoritatively settled by 7 Judge bench of the Supreme Court in Nagpur Improvement Trust v. Mithal Rao, (1973) 1 SCC 500. Therefore, only the respondent State could exempt or order exchange of land. In the present case that stage has already gone because possession of the land was taken long back and now exemption cannot be granted, as has been held by Hon'ble

the Supreme Court in the cases of Mandir Shree Sita Ramji v. Land Acquisition Collector, (2005) 6 SCC 745 and P.K. Kalburqui v. State of Karnataka, (2005) 12 SCC 489. The argument raised is wholly frivolous and the same is accordingly rejected.

The second submission made by the petitioner is that the petitioner has applied for grant of licence alongwith licence fee in respect of land measuring 3.875 acres on 17.12.1990 (P-1). The petitioner has claimed that the State Government formulated a policy that in cases where licence in respect of a piece of land sought to be acquired under the Act has been applied, the same is to be released from acquisition, if the purpose of licence is development of the land and it conforms to the purpose of acquisition. Learned counsel for the petitioner has argued that even lay out plan (P-2) was submitted and despite that the land has been acquired and the HUDA-respondent No. 2 has floated Sector 43. According to learned counsel, a direction deserves to be issued to respondent No. 1 for grant of licence to the petitioner under Section 3 of the 1975 Act. The petitioner is stated to have re-applied for the licence on 14.2.2001 (P-9 Colly). Again the submission is devoid of any merit. Firstly, no policy of the State in respect of the acquired land as existed before issuance of notification under Section 4 of the Act, dated 8.9.1997 (P-3) has been pointed out nor any such provision has been shown that the respondent State is under an obligation to release the land from acquisition. A reference has, however, been made to the policy dated 30.9.2007 for release of land from acquisition proceedings. In the present case, the land stands

acquired in the year 1997-98. The notification under Section 4 of the Act was issued on 8.9.1997 (P-3) and declaration under Section 6 of the Act was issued on 7.9.1998 (P-5), after hearing of objections raised by the petitioner. The Land Acquisition Collector issued notice under Section 9 of the Act on 24.8.2000 and award has been announced on 6.9.2000. In these circumstances, it is not possible for us to firstly set aside the acquisition and thereafter issue direction to respondent No. 1 to issue a licence to the petitioner for developing a residential colony on that land. It is well settled proposition of law that such schemes or policies do not confer any right on the land owner to seek exemption with a corresponding duty on the State. We draw support for the aforesaid view from the judgment of Hon'ble the Supreme Court in the case of State of Tamil Nadu v. L. Krishnan, (1996) 7 SCC 450. The writ petition has been filed after inordinate delay of more than seven years. It is well settled that principle of limitation governing filing of suit can safely be applied for the purposes of limitation to the filing of writ petition as well. In that regard reliance may be placed on the judgment of Hon'ble the Supreme Court in the case of State of M.P. v. Bhailal Bhai, AIR 1964 SC 1006. On that count, the writ petition deserves to be dismissed.

Learned counsel for the petitioner has further submitted that there were legitimate expectations for the petitioner that its land would not be acquired and it would be granted licence under Section 3 of the 1975 Act to develop the acquired land as a colony. In that

regard reliance has been placed on a judgment of Hon'ble the Supreme Court in the case of National Buildings Construction Corporation v. S.P. Singh, (1998) 7 SCC 66. The submission made by learned counsel suffers from misconceptions. Merely because an application for obtaining licence was made, would not give rise to legitimate expectation loading the respondents with an extra obligation. Moreover, the principles of legitimate expectations are closely interlaced with the principles of promissory estoppel, which are based on equitable consideration. There is no such fact present in the instant case. The petitioner has never been granted any licence nor any promise with regard to exchange of land has been made. It has been a one side affair and the correspondence made by the petitioner with the officers of the HUDA-respondent No. 2 or others is merely a wish, which has never matured into any legal right. Therefore, we find no merit in the aforementioned contention.

It has further been argued that the petitioner is in possession of land measuring 3.875 acres. It is not understood as to how the possession of the petitioner could be lawful in respect of the land which has been acquired in the year 1997-98. The award was announced on 6.9.2000 and possession has been taken under Sections 16 and 17(1) of the Act. Even the land was planned for 4 marla plots. Sector 43 has already been floated and plots stand allotted. The argument is wholly absurd. Such an argument was raised in the case of Balmokand Khatri Educational and Industrial Trust v. State of

Panjab, (1996) 4 S.C. 212. Rejecting the argument that their Lordships' observations in para 4 are under:-

4. It is seen that the entire gamut of the acquisition proceedings stood completed by 17.4.1976 by which date possession of the land had been taken. No doubt, Shri Panicki has contended that the appellant still retained their possession. It is now well-settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the panchanama in the presence of panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession."

As a sequel to the above discussion, we find that this writ petition is wholly without merit. Accordingly, the same is dismissed.

Sd/- (M. M. KUMAR)

Judge

Sd/- T. P. S. Mann
Judge

True Copy
Examiner

January 22, 2008
Pimpri

For Fair / N.P.S. / INC