
(2007) 05 P&H CK 0182
In the Punjab And Haryana At Chandigarh

Balwant Singh Sher Singh Rice Mills	Vs	APPELLANT
State of Haryana and Another		RESPONDENT

Date of Decision : 15-05-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Land Acquisition Act, 1894 — Section 17, 23, 4, 48, 5A

Citation : (2007) 4 PLR 359 : (2007) 3 RCR(Civil) 839

Hon'ble Judges : K.S. Garewal, J;Ajai Lamba, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ajai Lamba, J.—This judgment shall dispose of 11 writ petitions viz. C.W.P. No. 2722 of 2004 titled Balwant Singh Sher Singh Rice Mills Karnal v. State of Haryana and Anr. C.W.P. No. 1956 of 2004 titled Sharma Agro Industries, Karnal v. State of Haryana and Anr. C.W.P. No. 660 of 2005 titled Inder Chaudhary v. State of Haryana and Anr. C.W.P. No. 7144 of 2005 titled Ranjit Singh v. State of Haryana and Anr. C.W.P. No. 8884 of 2005 titled Harijinder Pal Singh v. State of Haryana and Anr. C.W.P. No. 1812 of 2005 titled Mandeep Singh v. State of Haryana and Ors. C.W.P. No. 6299 of 2004 titled Indian Discs Corporation, Karnal v. State of Haryana and Ors. C.W.P. No. 13062 of 2004 titled Harbhajan Singh v. State of Haryana and Ors. C.W.P. No. 8924 of 2005 titled Harminder Singh v. State of Haryana and Ors. C.W.P. No. 1706 of 2005 titled Kanwarjit Singh v. State of Haryana and Ors. and C.W.P. No. 2723 of 2005 titled Vijay Kumar Singla and Anr. v. State of Haryana and Anr. as they involve common facts and questions of law as the same acquisition proceedings have been challenged.

2. The petitions have been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing Notification dated 27.11.2002 issued u/s 4 of the Land Acquisition Act, 1894 (for short "the Act") and the declaration u/s 6 of the Act issued on 14.11.2003. Vide the said Notifications, the respondents have notified the land for acquisition for a public

purpose; namely, for the construction and development of Industrial Estate, Karnal, and laying of Sewerage and Storm Water Drainage in Sector 3, Karnal. The land falls in Kasba Karnal, Tehsil and District Karnal.

3. In challenge to the acquisition proceedings, the first argument raised by the learned Counsel for the petitioners is that the Land Acquisition Collector had recommended release of land while dealing with objections u/s 5A of the Act, which have not been accepted, therefore, the acquisition of land i.e. declaration issued u/s 6 of the Act is liable to be quashed.

4. The second argument raised is that the public purpose itself does not exist and has already been achieved as a sewerage treatment plant already exists. In support of this argument, lay out plan has been referred to, to say that no sewerage treatment plant is shown in the plan. It has also been argued that the action of the respondents is totally whimsical, without any application of mind and without any executive exercise, therefore, the same is rendered arbitrary and is liable to be quashed. The petitioners have been running various kinds of industry, commercial establishments, Auto repairs shops, etc. The purpose of acquisition viz., setting up of an Industrial Estate, already stands achieved. The existing industry would be displaced by the impugned action, as such, the same is arbitrary.

5. It is further pleaded that the adjoining land has not been acquired and, therefore, the power vested in the respondents has been misused, with mala fide intention so as to displace the existing industry.

6. With regard to the first argument, it has been pointed out by the learned Counsel for the respondent-State that the objections filed u/s 5A of the Act are required to be heard by the Land Acquisition Collector whereupon recommendation is made. It, however, remains the prerogative of the Government to either accept the recommendations or not.

7. With regard to the other argument that the public purpose does not exist, it has been pleaded on behalf of the respondent State that the acquisition of land is not only for Sewerage and Storm Water Drainage but also for construction and development of Industrial Estate, Karnal. In this regard, reference has been made not only to the plan appended by the petitioners but also to the site plan, appended as Annexure R-1/1 with the written statement filed in C.W.P. 2722 of 2004 titled Balwant Singh Sher Singh Rice Mills, Karnal v. The State of Haryana and Anr. and site plan, Annexure R-1 appended with written statement filed in C.W.P. 1812 of 2005 titled Mandeep Singh v. The State of Haryana and Ors.

8. The entire case of the respondents is based on the site plan to indicate that the land is located at a very important site, along the National High Way and the plan also indicates the location of the land of the petitioners in various writ petitions. It has been pleaded that a bare perusal of the plan would establish that haphazard and scattered construction for various purposes is sought to be changed to a specific state of growth for development of the area as an

Industrial Estate. Thus, it has been pleaded that the action of the respondents cannot be addressed as whimsical and without any application of mind. It has been pointed out that the land that was sought to be acquired under the notification u/s 4 of the Act is the land that has been declared as required for acquisition u/s 6 of the Act. There is, therefore, no scope for discrimination. It is for the State to choose the land to be developed for a specified public purpose.

9. We have heard the learned Counsel for the parties and have gone through the pleadings as also the record of the case.

10. The site plans appended with the petitions are not clear and categorical as such, we have to advert to the site plans appended with the written statements. If we take an overall view of the case after taking a clue from the plan appended as Annexure R-1 with the written statement in response to C.W.P. 1812 of 2005 titled Mandeep Singh v. State of Haryana and Ors. it becomes clear that a part of the land shown in the plan was acquired vide separate acquisition proceedings in which land measuring 54 acres 1 bigha 13 biswas was acquired. The present cases relate to the acquisition of land measuring 25 acres 1 bigha 9 biswas. The notification u/s 4 of the Act was issued with regard to land measuring 25 acres 1 bigha 9 biswas. Objections u/s 5A of the Act were filed and after considering the recommendations made by the Land Acquisition Collector, it was deemed appropriate by the Government that the entire land be acquired as it formed a block. The result is that the declaration u/s 6 of the Act has been issued with regard to the entire land that was included in the Notification u/s 4 of the Act. Other than the above referred blocks of land, the plan also shows the existing Sector 3. It is the case of the respondent State that the entire area is sought to be developed into an industrial estate by merging the land in dispute in these petitions and 54 acres through another acquisition in the existing Sector 3.

11. Now, to deal with the first argument with regard to the recommendations of the Land Acquisition Collector after hearing the objections u/s 5A of the Act and yet the appropriate Government not accepting the same, a reference to the provisions of Section 5A of the Act is necessary. Section 5A of the Act provides as under:

5-A. Hearing of objections. - (1) Any person interested in any land which has been notified u/s 4, Sub-section (1), as being needed or likely to be needed for a public purpose or for a Company may, within thirty days from the date of the publication of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under Sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard in person or by any person authorised by him in this behalf or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified u/s 4, Sub-section (1), or make different reports in respect of different

parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government. The decision of the appropriate Government on the objections shall be final.

(3) For the purpose of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act,

A perusal of Sub-section (2) of Section 5A of the Act itself makes it explicit that "the decision of the appropriate Government on the objections shall be final". Therefore, there is no gainsaying that although the recommendations were made in favour of the petitioners, yet the recommendations have not been accepted thereby rendering the acquisition proceedings illegal. It is the Government that seeks to acquire the land through its agencies.

12. The fact situation of each case is required to be considered by the Land Acquisition Collector while hearing the objections u/s 5A of the Act. Considering the fact situation of each case, recommendation is made by the Land Acquisition Collector. It is, however, for the concerned Government to determine as to whether the land of a particular person/objector is required for acquisition to fulfill the purpose of acquisition. The purpose in the present case, as observed earlier, is for construction and development of Industrial Estate, Karnal, and laying of Sewerage and Storm Water Drainage in Sector 3. The recommendations, therefore, were required to be considered in the light of the notified public purpose.

13. In the case in hand, we cannot lose sight of the fact that the respondents want to develop Sector 3 after merging into it the surrounding left out pockets of land to develop an integrated industrial estate to provide better infrastructure and planned development. With such public purpose in view the recommendations to release land could not have been accepted. In fact, the plan (Annexure R-1) shows that the plots of various dimensions viz. 1 acre, 1/2 acre, 1/4 acre, 1 kanal and even smaller, are indicated as per the planning proposal. Other than the above, areas have been segregated for parking place, roads, green belt and avenue of trees along with National Highway.

14. In view of the facts and circumstances of the case indicated above, we do not find any illegality in the action of the respondents who have not accepted the recommendations of the Land Acquisition Collector to release the land. There is no jurisdictional error in not accepting the recommendations of the Land Acquisition Collector.

15. Now, we deal with the second argument that the public purpose itself does not exist. Arguments have been addressed on two counts viz. that there already exists a sewerage treatment plant and, therefore, the purpose reflected in the notifications already stands satisfied. The other argument is that the petitioners are already running various kinds of industry/commercial shops/repair shops,

etc. and therefore, the decision to acquire land is arbitrary.

16. A perusal of the notifications itself shows that the purpose of acquisition is two fold. It can, therefore, safely be deduced that the plots to be allotted in the Industrial Estate would be used for various kind of industries. Surely, there would be discharge of sewerage effluents and there would also be requirement for storm water drainage. The acquisition proceedings cannot be struck down merely on the ground that the plan does not reflect clearly where the sewerage and storm water drainage area has been provided. With more area coming under industry, the requirement for sewerage disposal and water drainage also increases manifold. The planning itself is required to be done for years to come. Considering the Layout-cum-Survey Plan of the area, which reflects the constructed portion in Annexure R-1 and the observations made hereinabove, we find no infirmity in the acquisition proceedings on this count.

17. On the other ground that the petitioners have been running various kinds of industrial/commercial establishments, we have to consider the purpose of acquisition.

18. The stand of the respondents in the written statements is to the effect that in the recent past the Hon"ble Supreme Court of India has ordered closure and shifting of industries working in the non-conforming area of Delhi. The land in Karnal has been purchased by some of the private parties to set up industries in a haphazard manner;. In order to check the mushroom growth of industry and to create congenial atmosphere for systematic growth of industry, the Haryana State Industrial Development Corporation (for short "the HSIDC") has proposed to the Government to acquire the land for development of Industrial Estate where all the basic amenities and facilities necessary for the growth of industry are provided. This systematic development would provide for optimum use of the land and the industry would develop in a cluster to provide marketing as well.

19. It is further the case of the respondents that in the year 1990, the HSIDC developed industrial estate on National Highway, Sector 3 in Karnal on land measuring 72.43 acres and developed 228 industrial plots of different sizes. There were unacquired land pockets within the estate obstructing the integration of infrastructure for this purpose. The HSIDC, the main developing agency of the State Government, proposed to acquire these land pockets with the existing industrial estate. It is in accordance with these designs that the State Government acquired land measuring 25 acres 1 bigha 9 bishwas i.e. the subject-matter of these writ petitions. The land acquisition process has been completed and development works in the area initiated except in the cases which are pending before this Court. A perusal of Annexure R-I shows the other land pockets that have been acquired, which measure 54 acres.

20. A reference may be made to the observations of the Hon"ble Supreme Court in para 10 in Ramniklal N. Bhutta and another Vs. State of Maharashtra and others, , to which exact reference is required to be made. Para 10 is reproduced

as hereunder:

10. Before parting with this case, we think it necessary to make a few observations relevant to land acquisition proceedings. Our country is now launched upon an ambitious programme of all-round economic advancement to make our economy competitive in the world market. We are anxious to attract foreign direct investment to the maximum extent. We propose to compete with China economically. We wish to attain the pace of progress achieved by some of the Asian countries, referred to as "Asian tigers", e.g. South Korea, Taiwan and Singapore. It is, however, recognized on all hands that the infrastructure necessary for sustaining such a pace of progress is woefully lacking in our country. The means of transportation, power and communications are in dire need of substantial improvement, expansion and modernisation. These things very often call for acquisition of land and that too without any delay. It is, however, natural that in most of these cases, the persons affected challenge the acquisition proceedings in courts. These challenges are generally in shape of writ petitions filed in High Courts. Invariably, stay of acquisition is asked for and in some cases, orders by way of stay or injunction are also made. Whatever may have been the practices in the past, a time has come where the courts should keep the larger public interest in mind while exercising their power or grant in stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226 - indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lump sum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the courts while dealing with challenges to acquisition proceedings.

In the light of the observations reproduced above, the location of the land and the purpose of acquisition is required to be seen. The location of the land in dispute is itself unique in so much as it is along the National Highway and in close proximity to Karnal City, Karnal itself is in close proximity to Delhi, the national capital.

21. The construction in the area is haphazard and without any planning or organisation. Vis-a-vis this existing situation, the purpose that is sought to be

achieved by the respondents is for creating an industrial estate by way of planned development. The planning itself can be seen from the site plan of the area which shows big plots and small plots in separate pockets. A large number of small and big industrialists would be benefited by the development of the industrial estate. Proper infrastructure can be developed to complement the industries only if the entire area is integrated as one estate/ complex. Haphazard and scattered structures/industrial establishments/commercial building/workshops etc. would obviously not be conducive for surrounding planned industrial estate.

22. The acquisition thus would enable systematic development of the area and put the land to optimum use and the industry would be developed to provide market support. The mushroom growth of industry would be stopped and infrastructure, basic amenities and facilities that are required for growth of industry would be provided.

23. In view of the facts and circumstances discussed above, we find no merit in the argument of the petitioners. The purpose to be achieved through acquisition is far greater and far more important than what is in existence today. We hold that the acquisition, is for an important public purpose and action of respondents cannot be termed as arbitrary.

24. In view of the arguments addressed that the action of the respondents is malafide, it would be in place to refer to a judgment of the Supreme Court in State of Punjab and Another Vs. Gurdial Singh and Others, , wherein the issue of malafide exercise of power has been discussed. For reference, para 9 is reproduced hereunder:

9. The question, then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power-sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions is the attainment of ends beyond the sanctioned purpose of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfillment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but relevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in Law when stated : "I repeat...accountable for its exercise - that, from the people, and for the people, all springs, and all must exist". Fraud on power voids the order if it is not exercised bonafide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this

be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action, malafides or fraud on power, vitiates the acquisition or other official act.

25. Considering the facts and circumstances of the cases in hand and the arguments addressed, no material has been placed on record to even indicate that fraud with power vested in the respondents has been played. It has not been established on the record that the power has been used for a purpose other than for the fulfillment of a legitimate object. Rather, the respondents have been able to establish on the record that their true object is in accordance with the purpose for which the power is entrusted. We are satisfied that the respondents have not been influenced in their exercise of power by considerations outside those for promotion of which the power is vested. The action clearly, we find, is not malice laden. The acquisition is for a justifiable reason. No fault can be found in the action of the respondents in acquiring the land of the petitioners. It is for the respondent State to choose the land that is to be acquired for development. The Court in writ jurisdiction ordinarily is not expected to review the decision of the State in this regard.

26. Learned Counsel for the petitioners has relied on a decision in an earlier Civil Writ Petition viz. C.W.P. 7678 of 1989 titled Trilok Singh Mohan Singh Vs. State of Haryana and Others, , decided on 7.2.1994 whereunder the acquisition proceedings were quashed. It has been submitted that the land was earlier acquired for utilization as industrial and commercial area Sector 3, Karnal, which was challenged. Challenge was to notifications issued under Sections 4 & 6 of the Act dated 13.3.1981 and 21.11.1983 respectively. Purpose of acquisition was the same as in the present case. The petition was allowed. The acquisition proceedings that are the subject-matter of this case, are also liable to be quashed.

27. We have gone through the judgment of the said case. On a perusal of the judgment, we find that the respondents had not deposited the compensation awarded by the Collector in time. In this regard while placing reliance on a number of earlier decisions of this Court, the acquisition proceedings were quashed. In the facts and circumstances of the present case, the petitioners cannot get any benefit while relying on quashing of the earlier acquisition proceedings.

28. It has also been pleaded by the learned Counsel for the petitioners that the land was sought to be acquired vide Notification issued u/s 4 read with Section 17 of the Act dated 9.4.2002. The respondents later withdrew from acquisition by way of issuing notification u/s 48 of the Act. This repeated acquisition is not permissible in law.

29. We have considered the arguments addressed by the learned Counsel for the petitioners with regard to earlier acquisitions. The acquisition proceedings

initiated in the year 1981 are too remote to be connected to the present acquisition proceedings. Some of the land was released on hearing objections u/s 5A of the Act and some civil writ petitions were allowed as was in the case of C.W.P. No. 7678 of 1989 titled Trilok Singh Mohar Singh, Karnal v. State of Haryana, to which a reference has been made hereinabove. The acquisition vide notification issued u/s 4 read with Section 17 of the Act dated 9.4.2002 and later withdrawn u/s 48 of the Act cannot in any way impact adversely the rights of the petitioners. If at all, the petitioners can plead for more compensation on the ground of pegging down of market price.

30. The ground reality that faces us is the haphazard and scattered structures in the area which through the impugned acquisition proceedings are sought to be converted into a planned and integrated industrial estate with the required infrastructure in public interest. This fact cannot be disputed. The law does not prohibit acquisition of same land at a later stage if the public purpose so requires. We have already highlighted the importance of the public purpose in the case in hand. In the facts and circumstances of the cases, therefore, we find that the acquisition of 1980s and release of land at that point of time would not render the present acquisition proceedings in 2002 illegal. Public purpose has to be given precedence over private and personal purpose and interest.

31. Having considered the facts and circumstances of each case, we find that in none of the cases the construction has been raised after taking permission from the authorities, after approval of the site plans and after seeking permission to change land use as required by law. The construction therefore in each case is unauthorized. The petitioners have not placed any material on the record to establish facts to the contrary. The respondents, on the other hand, have clearly pleaded these facts.

32. Reference to the judgment of the Hon"ble Supreme Court of India Bharat Singh and Others Vs. State of Haryana and Others, may be made re-pleadings in a writ petition wherein in Para 13, the following has been held:

In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexured to the writ petition or to the counter affidavit. As the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the CPC and a writ petition or a counter-affidavit. While in a pleading that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it.

A reference to the facts of each case is relevant.

In C.W.P. No. 2722 of 2004 titled Balwant Singh Sher Singh Rice Mills, Karnal v. State of Haryana and Anr. the categoric stand of the respondents in Para 6 of the written statement (preliminary objections) is that the petitioner has not taken the necessary permission for the change of land use from the competent authority for running the unit. As per the lay out plan prepared by the HSIDC, a 12 meter wide road is passing through the land of the petitioner while some of the land is falling in green belt. The land of the petitioner is required for development of the commercial zone.

33. In C.W.P. 1956 of 2004 titled Sharma Agro Industries, Karnal v. The State of Haryana and Anr. the factual position that emerges from the written statement is that the petitioner has raised unauthorized construction i.e. without getting the site plan approved from any competent authority and the permission to change land use has not been taken.

34. In C.W.P. 660 of 2005 titled Inder Chaudhary v. The State of Haryana and Anr. the petitioner has not placed on record any material to show that the construction or operation of his venture was legal or sanctioned by the Government. Permission to change land use, sanction of site plan and other relevant permissions have not been brought on the record. The petitioner has pleaded that in the premises, a printing press along with office and workshop is located. It has however, not been shown as to whether required permission for raising construction or change of land use has been taken.

35. In C.W.P. 7144 of 2005 titled Ranjit Singh v. The State of Haryana and Anr. C.W.P. 8884 of 2005 titled Harjinder Pal Singh v. The State of Haryana and Anr. and C.W.P. 1812 of 2005 titled Mandeep Singh v. The State of Haryana and Ors. the facts as disclosed from the written statements indicate that the location of land abuts National Highway and is within the green belt where construction is prohibited. In the green belt, the land is essentially required to be left open for further extension of roads in controlled areas as per the provisions of Punjab Scheduled Roads Controlled Area and Restrictions of Unregulated Development Act, 1963. No construction can be raised within 30 meters of a scheduled road and a National Highway, being a/scheduled road, the acquisition of the property of the petitioners stands justified.

36. Even otherwise, the petitioners in any of these three writ petitions have not placed on record permission for change of land use issued by the competent authority, sanction of site plan and permissions of the authorities concerned. The construction essentially, therefore, is to be constructed as unauthorised.

37. In C.W.P. 6299 of 2004 titled Indian Discs Corporation, Karnal v. The State of Haryana and Ors. it is evident from the written statement that the petitioner had raised unauthorised construction i.e. without getting site plan approved from any competent authority. The petitioner is running industry wherein agricultural implements are being manufactured without permission to change land use.

38. In C.W.P. No. 13062 of 2004 titled Harbhajan Singh v. The State of Haryana

and Ors. C.W.P. No. 8924 of 2005 titled Harminder Singh v. The State of Haryana and Ors. the petitioners have not placed on record any document to indicate that before construction, the site plans were got sanctioned or that permission to change land use was obtained. The construction is unauthorised.

39. In C.W.P. No. 1706 of 2005 titled Kanwarjit Singh v. The State of Haryana and Ors. it is the case of the petitioner himself that construction was raised and the premises are being used as a transport company under the name and style of "Khillan Transport Company". The premises are being utilized as workshop, godown and service station etc. It is further the admitted case that the land abuts the National Highway. There is no document placed on the record to indicate that the construction is after sanction of site plan, after taking permission from the authorities or after taking permission to change land use.

40. In C.W.P. 2723 of 2004 titled Vijay Kumar Singla and Anr. v. The State of Haryana and Anr. the pleadings indicate that the petitioners have raised unauthorised construction i.e. without getting the site plan approved from the competent authority and approval for raising such construction. Other than the above, land of the petitioner, as per the lay out plan, prepared by the HSIDC, falls in the 12 meter wide service road and green belt.

41. Having considered the fact situation of each case, we have no doubt that indeed in the entire area, various commercial and industrial activities are mushrooming without any planning. This, in itself, justifies the acquisition proceedings through which the area is to be developed as industrial estate.

42. Learned Counsel for the petitioners has placed reliance on a Single Bench judgment of this Court in Roshan Lal and Others Vs. State of Haryana and Others, , to contend that in case while dealing with the objections of the petitioners u/s 5A of the Act, the land was released from acquisition, the same cannot be subsequently acquired for the same very purpose, particularly when there is no change in the circumstances nor there is any change in the use of the land and the purpose for which it is proposed to be acquired. On the strength of this judgment, it has been pleaded that the land of the petitioners was earlier acquired but considering the construction thereon, the same was released. Some land was subject-matter of writ petitions in this Court, which were allowed.

43. We have gone through the judgment in Roshan Lal's case (supra) and find that at the time of initial acquisition, the land was vacant and residential houses were proposed to be constructed. The land subsequently was released from acquisition by the respondent-State after imposing certain conditions that the land owners would pay development charges, make arrangements for disposal of effluents and they would get the plans approved from the Director before commencing any construction on the said land. It seems that after the release of land, the petitioners on the promise advanced by the respondent-State, developed the land and invested money. The respondents, however, subsequently, again acquired the land. It was in this backdrop of facts, while

invoking the principle of estoppel and considering the law as laid down by the Hon'ble Supreme Court in Ghaziabad Sheromani Sahkari Avas Samiti Ltd. and another etc. Vs. State of U.P. and others etc., and 965822--> , the petition was allowed.

44. The facts of the present case are clearly distinguishable. In the case in hand, the petitioners have raised unauthorised construction on the acquired land which the respondents seek to develop as a planned industrial estate. The petitioners have not been able to show that the respondents had, at any point of time, made any promise on account of which the petitioners have developed their business.

45. The other judgment on which reliance has been placed by the learned Counsel for the petitioners is Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, . The contention is that the decision making process in the present case has resulted in illegality and irrationality. As industrial, commercial and other establishments are in existence, the land should not be acquired for developing an industrial estate.

46. Having gone through the judgment, we find that the petitioners cannot derive any benefit. As observed hereinabove, public interest must give precedence to personal purpose and interest. It is in this backdrop of facts that the land on which haphazard industrial and commercial establishments stand, has been acquired. We find no infirmity in the decision of the respondents in this regard.

47. It has also been argued that adjoining land that was lying vacant has not been acquired.

It has been repeatedly held in various pronouncements that it is the prerogative of the State to choose the land that is to be acquired. Therefore, we find no merit in this contention.

48. Having considered the facts and circumstances of the cases, we find that no illegality or irregularity has been committed in the process of acquisition. We find no jurisdictional error in the action of the respondents. The petitioners would be entitled to compensation not only for the land but also other matters reflected in Section 23 of the Act, which would include market value of the structure, the damage sustained at the time of Collector taking possession of the land by reason of the acquisition injuriously affecting his other property, movable, in any other manner, or his earnings; if in consequence of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.

49. It however cannot be disputed that the petitioners have been running their industrial or commercial establishments for a considerable period. The land acquired is to be developed for a similar purpose. Considering the peculiar facts and circumstances of the case, we consider it appropriate to direct that in case the petitioners make applications for the allotment of land, the respondents shall

consider such applications and give them priority in the matter of allotment, provided they fulfill the conditions for such allotment.

For the reasons aforesaid, subject to the directions given, the writ petitions are dismissed.