

(2011) 02 P&H CK 0061
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 4542 of 2009 (O and M)

Harkishan

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 03-02-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1, 151
Land Acquisition Act, 1894 — Section 4, 48, 5A, 6

Citation : (2011) 2 RCR(Civil) 140

Hon'ble Judges : Rakesh Kumar Garg, J; Jasbir Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Rakesh Kumar Garg, J.—By way of present writ petition, which has been filed in the public interest, a challenge has been made to the action of the State of Haryana, firstly in proceeding to acquire a big chunk of land for the alleged purpose of development of the land for residential and commercial area for Sector 30, Gurgaon and then proceeding to release the same in favour of respondent No. 3 i.e. East India Hotels Limited vide communications dated 19.9.1995 (Annexure P-3) and 4.1.1996 (Annexure P-4) and thereafter permitting the sale of the aforesaid land by respondent No. 3 in favour of respondents No. 4 and 5 in violation of the conditions imposed vide release orders Annexures P-3 and P-4 and then issuing notifications dated 6.12.2006 (Annexure P-7) and notification dated 19.3.2007 (Annexure P-8) under the provisions of the Special Economic Zone Act, 2005 by creating a nexus between the State Government and respondents No. 3 to 5 to defraud the residents of the area with a further prayer to quash the release orders Annexures P-3 and P-4 sales made in favour of respondents No. 4 and 5 vide Annexures P-5 and P-6 and also the notifications Annexures P-7 and P-8 or any other appropriate writ, order or direction which this Court may deem fit and proper in the facts and circumstances of the case.

2. As per the averments made in this petition, the State of Haryana issued notification dated 30.1.1989 (Annexure P-1) u/s 4 of the Land Acquisition Act, 1894 (in short the "Act") to acquire an area measuring 210.38 acres in village Silokhera and an area measuring 5.20. acres in village Sukhrali for a public purpose namely utilization thereof for residential and commercial area for Sector 30, Gurgaon. However, notification u/s 6 of the Act was issued only for an area measuring 169 acres in village Silokhera and area measuring 2.13 acres in village Sukhrali. It is also a matter of record that an award was passed on 22.1.1992 only for a land measuring 8.64 acres (i.e. 7.01 acres in village Silokhera and 1.63 acres in village Sukhrali). It is further averred that the State of Haryana vide communication dated 19.9.1995 released 30 acres of land in favour of respondent No. 3 i.e. a Company, namely, East India Hotels Limited. The operative part of the aforesaid communication reads as follows:

This has reference to your representation dated 14.2.1995 to the Hon'ble Chief Minister, Haryana, on the above mentioned subject and it is to inform you that your proposal has been examined and Government of Haryana is considering to release 30 acres of land from acquisition forming part of the under mentioned facilities out of 37 acres 2 marlas land belong to you in Sector 30, Gurgaon:-

a)

Land required for Hospital project:

15.00 acres

b)

Land required for Hotel Management

7.5 acres

Institute and its appurtenant and ancillary buildings

c)

Land needed for executive apartments and staff housing

5.00 acres

d)

Land under green belt

2.5 acres

30.00 acres

The above mentioned 30 acres of land is being considered for release subject to the following conditions :-

1. Released land shall not be sold without the approval of concerned Department of Govt. of Haryana.

2. Released land shall be used only for the facilities proposed to be set up by you as indicated above covering 30 acres of land proposed to be released.
3. Executive Apartments and Staff houses constructed on the released land including those on the 5 acres of land should not be sold and should be exclusively used for housing officers, other professionals and officials associated with the various facilities being developed.
4. You should obtain the permission for change of land use from the Director, Town and Country Planning, Department, Haryana, Chandigarh and an application for the same in the prescribed proforma with the relevant documents and fees should be submitted by you within 30 days of getting the 30 acres land released from acquisition. If obtaining change of land use permission from the concerned department is delayed for reasons which can be ascribed to deficiencies on your part by more than three months from the date of releasing of this land the terms of release as mentioned here and as would be incorporated in the agreement are liable to be changed at the instance of this Department and the Director, Department of Urban Estates, Haryana, would be at liberty to rescind the agreement for release of land unilaterally. Further such penalties in the nature of forfeiting the whole or part of the guaranteed sum (as per condition No. 6 and 7) are liable to be levied on you.
5. You should complete the construction of the said facilities viz. Hospital complex, Institute of Hotel Management and its appurtenant and Ancillary buildings and Executive Apartments and staff housing in a period of three years from the date of sanction of building plans which are to be submitted by you within a period of one month from the date of obtaining the change of land use permission.
6. The area under green belt as per the development plan of Gurgaon has to be maintained by you and no construction whatsoever would be allowed in the said green belt, statutory green belt as per the development plan has to be maintained no matter whether the area covered under that is more or less than the 2.5 acres of green belt projected by you in the representation. That is to say in the event of area under statutory green belt being less than 2.5 acres (which can only be ascertained once you submit the details of 30 acres on the khasra plan) then also 2.5 acres minimum green belt should be maintained by you.
7. A bank guarantee for a sum of two crore rupees shall be executed by you in the name of Director, Urban Estates, Haryana valid for a period of four years from the date of agreement for release of land is executed. This bank guarantee and any additional bank guarantee executed by you under the land release agreement are liable to be forfeited in the event of failure to complete the construction in a period of 3 years from the date of obtaining change of land use permission or upon breach of terms and conditions of agreement for release of land at any time.
8. You should undertake to provide additional bank guarantee of such like sum

valid till the date two crore rupees bank guarantee indicated above in condition 6 is in force, over and above any other guarantees offered by you for releasing the land as and when the same would be intimated to you in the event of any enhancement in the acquisition rate awarded by any court of law for the land acquired in Sector 30, Gurgaon u/s 4 notification of Land Acquisition Act. 1894 issued on 30.1.1989.

9. You should provide 10% of the beds in the hospital proposed by you for the poor and 20% of the OPD and investigative services shall also be provided free in the hospital.

10. Preference shall be given to domicile of Haryana in the recruitment of Medical, Para-medical and other Class IV staff while filling the various posts in the facilities being developed by you depending upon the availability of requisite skills.

11. In the institute of Hotel Management 20% of the trainees/students should be domiciles of Haryana.

12. for the released proportionate development charges are payable by you as and when the same are intimated.

13. You should withdraw all the court cases for enabling the department to release the land.

14. You should enter into an agreement with the Director, Urban Estates Department, Haryana, for fulfilling all the other general conditions applicable for release of land including the above mentioned conditions. The proforma agreement and other relevant information would be provided to you by the Administrator, HUDA, Gurgaon, upon taking a formal decision for release of 30 acres of land. 15(a) Director General, Health Services or his nominee would monitor the adherence or otherwise of the conditions mentioned at condition No. 9 and 10. (b) Director, Tourism, Haryana, or his nominee would be the competent authority to monitor whether or not condition No. 11 is being adhered to.

3. The aforesaid communication was followed by a memo dated 4.1.1996 (Annexure P-4) directing the Administrative HUDA to get the agreement executed after getting all the formalities completed from respondent No. 3 for release of the land.

4. According to the petitioner, instead of constructing a hospital etc. as stipulated in the release orders (Annexures P-3 and P-4), respondent No. 3 sold the aforesaid land in violation of the specific conditions of the release order to respondents No. 4 and 5 for a sum of Rs. 14,37,50,000/- and for a consideration of Rs. 110 crores = Rs. 1,24,37,50,000/- on 22.8.2006 and 29.8.2006 (Annexures P-5 and P-6). It is the further case of the petitioner that in order to facilitate the utilization of the land so purchased by respondent No. 4 and 5 i.e. DLF Limited, the State Government further proceeded to issue notification on

6.12.2006 for setting up Special Economic Zone (in short the "SEZ") with respect to an area measuring 29.7882 acres and notification dated 9.3.2007 with respect to an area measuring 7.1877 acres (Annexures P-7 and P-8). Thus, according to the petitioner, initially, the State Government proceeded to acquire the big chunk of land which included the area in question by invoking provisions of Land Acquisition Act, 1894 by labeling it as public purpose for development and utilization of the land for residential and commercial area Sector 30, Gurgaon by HUDA and then proceeded to release the same in favour of respondent No. 3-Company, namely, East India Hotels Limited for construction of a 300 bedded hospital and still further respondent No. 3 proceeded to sell the land in question in favour of respondents No. 4 and 5 and the State Government to facilitate the utilization of the aforesaid land by respondent No. 4 and 5 issued notifications setting up Special Economic Zone which clearly shows the nexus between the respondent-Companies and the State Government to defraud the public at large and the State Exchequer. On the basis of the aforesaid facts, the petitioner raised the following questions for consideration of this Court :-

(a) Whether in the facts and circumstances of the instant case the action of the State Government in first proceeding to acquire a big chunk of land, then releasing the same in favour of the private company, though conditional, then permitting the sale of such land by respondent No. 3 company in favour of respondents No. 4 and 5 companies in violation of the condition of release, is not illegal, arbitrary, mala fide and ultra vires the provisions of the Act?

(b) Whether the nexus between the State Government and the respondent companies in first getting area acquired and then seeking release of the same is not mala fide and ultra vires of the provisions of the Act?

5. In response to the averments made in the writ petition, Union of India filed written statement submitting that policy and action of the State of Haryana-respondent No. 2 was under challenge and in the present case, the SEZ proposed to be set up by respondent No. 5 was approved by the Board of Approval only after the necessary recommendations of the State of Haryana.

6. In its reply, respondent No. 2 has not disputed the facts regarding acquisition of land, then, release of land in favour of respondent No. 3, sale of the disputed land in favour of respondents No. 4 and 5 and issuance of notifications Annexure P-7 and P-8 for setting up a SEZ for respondent No. 5. However, respondent No. 2 sought to justify its action submitting that the sale deeds were executed in favour of respondent Nos. 4 and 5 by respondent No. 3 with the prior permission of the Government and the land so released which falls in the residential Sector 30 was to be utilized in accordance with the approved master plan as per the Development Plan of Gurgaon Manesar Urban Complex, 2021 where IT/ITES are permissible activities and respondent No. 5 had sought permission for the same which was accorded by the Project Approval Committee as per the provisions of Haryana SEZ Act, 2005 and Development Commission NOIDA/Ministry of Commerce and Industry, Government of India. It was denied that respondent No.

3 had proceeded to sell the land in question in favour of respondents No. 4 and 5 in violation of the conditional release order.

7. In the reply filed on behalf of respondent No. 3, it was submitted that the petitioner had no locus to file the present writ petition which was filed after a lapse of more than 13 years after the transfer of land. It was further submitted that the said respondent is engaged in the business of Hotels in India and abroad and at the relevant time, it contemplated to set up hospitals/nursing homes/ Management Training Institutes etc. and for the said purpose, purchased land measuring about 37 acres in the revenue limit of village Silokhera, Tehsil and District Gurgaon and respondent No. 3 was granted permission vide letter dated 17.7.1984 to change the land use from agriculture to set up a Hospital/ Management Training Institute etc. with regard to land measuring 18 acres 2 marlas. The necessary agreement was also executed on 11.7.1984 with the State of Haryana. Thereafter, respondent No. 3 also made an application for change of land use for the remaining land. However, no action was taken on the said application. Since no reply was received, respondent No. 3 submitted another application dated 22.9.1989 for permission for change of land use in respect of additional land. However, no permission was granted by the State Authorities.

8. Respondent No. 3 also submitted site plan for setting up of the hospital. It is the further case of respondent No. 3 that the necessary approval to the drawings and plans for the proposed construction of the hospital was accorded in February 1986 and thereafter, the respondent-Company started construction. However, it could not make much progress. In the meantime, the Government of Haryana proposed to acquire the land for development of Sector 30 in Gurgaon and issued notification dated 30.1.1989 u/s 4 of the Act for acquiring the land in village Sukhrali and in village Sukhrali including the entire land measuring 37 acres belonging to respondent No. 3. Respondent No. 3 filed objections u/s 5-A of the Land Acquisition Act. Subsequently, a notification u/s 6 of the Act was issued on 25.1.1990 under which land measuring 169 acres relating to village Silokhera was finalized to be acquired and the remaining land was released from acquisition. Respondent No. 3 challenged the aforesaid acquisition proceedings by filing CWP No. 3808 of 1990 and vide order dated 23.3.1990 its dispossession was stayed. However, during the pendency of the said writ petition, an agreement dated 13.10.1997 was entered into between the State Government for release of 30 acres of land of respondent No. 3 from acquisition. Consequently, the writ petition was withdrawn.

9. It has been specifically stated by respondent No. 3 that the conditions of the said release of land issued by the State Government were duly complied with. It is the further case of respondent No. 3 that since the change of land use was not forthcoming for one reason or the other, respondent No. 3 could not commence the proposed project on the said land and the entire project had become unviable and uneconomic and at that time, respondents No. 4 and 5 approached respondent No. 3 for purchase of the said land. Since there was no restriction on

the respondent except that the said land would not be sold with the prior permission of the appropriate Authority which was applied to the Director Town and Country Planning vide letter dated 31.3.2005 and the same was granted vide order dated 28.4.2006. Some additional conditions were put and after procuring the permission, the land was sold vide Annexures P-5 and P-6 and thus, there was no violation of any of the conditions on the part of respondent No. 3. Respondents No. 4 and 5 filed joint written statement raising preliminary objections regarding the locus standi of the petitioner to file the present writ petition in public interest. On merits, it was submitted by respondents No. 4 and 5 that they had purchased land measuring 238 kanals 9 marlas situated in the revenue estate of village Silokhera, Tehsil and District Gurgaon vide conveyance deed dated 22.8.2006 and 29.8.2006 (Annexures P-5 and P-6 respectively) in pursuance to the Memorandum of Understanding as also the agreement to sell dated 21.2.2005 and 18.2.2005 entered into between respondent No. 3 and respondent No. 5 for a total consideration of Rs. 14.37,50,000/- crores and 110 crores = Rs. 1,24,37,50,000/- which was transferred to respondent No. 3 with the approval of the Government as communicated by the Administrator, HUDA. Gurgaon vide memo No. 4273 dated 28.4.2006. It was further submitted by respondents No. 4 and 5 that they were also granted necessary approval for setting up of SEZ for Information Technology and Information Technology Enabled Services (in short "IT/ITES") in Sector 30, Gurgaona as per the provisions of the Special Economic Zones Act, 2005 (hereafter referred to as the "SEZ Act"). It is the case of respondents No. 4 and 5 that the Government of India, Ministry of Commerce and Industry, Department of Commerce, vide its letter dated 17.1.2006, conveyed "in principal" approval granted by the Government of India for setting up of SEZ for IT/ITES Sector over an area of 30 acres in terms of the provisions of the SEZ Act. After having received the approval "in principal", from the Government of India and in consonance with the provisions of the Haryana SEZ Act, 2005, an application was submitted before the Project Evaluation Committee for forwarding the same to the Government of India for regular approval vide application dated 7.2.2006. Since the Government of Haryana had permitted the transfer of land in favour of DLF Limited, respondent No. 5 vide its letter dated 7.6.2006 requested the Board of Approval that the said "In principle" approval granted by the Government of India to DLF Commercial Developers Limited be transferred in the name of respondent No. 5 and the said request was considered favourably in the meeting dated 21.9.2006 of the Board of Approvals granting formal approval which was conveyed vide letter dated 25.10.2006 by the Government of India. It was also stated in the written statement that respondent No. 5 had deposited a sum of Rs. 23,05,05,153/- towards external development charges and thereafter, on demand, additional amounts of Rs. 19 lacs and Rs. 50,000/- were also deposited towards the difference in floor area ratio vide letter dated 31.7.2006 and 2.8.2006 respectively. Thereafter, the Ministry of Commerce and Industry, Department of Commerce issued notification dated 6.12.2006 and 19.3.2007 (Annexures P-7 and P-8 respectively) thereby notifying the total area of 12.06

hectares and additional area of 2.91 hectares at village Silokhera, Tehsil and District Gurgaon as SEZ. The building plans in respect of 29.81 acres for construction of the proposed SEZ were submitted for necessary action by respondent No. 5 vide its letter dated 26.12.2006 and necessary approval to respondent No. 5 for starting excavation works on self certification basis was conveyed. It was further mentioned in the written statement of respondents No. 4 and 5 that an area measuring 30 acres approximately was purchased by virtue of conveyance deed dated 22.8.2006, Annexure P-5 and vide letter dated 9.10.2007 further request was made to the Development Commissioner, NSEZ to grant necessary approval to the zoning plan of 37 acres in Sector 30, Gurgaon. Vide its letter dated 24.10.2007, granted tentative approval to respondent No. 5 to start work in the said 37 acres of the SEZ area while forwarding the said request to the Director Town and Country Planning for necessary comments and the zoning plans were ultimately approved vide memo No. 4725 dated 26.2.2008. On the basis of the aforesaid facts, it has been submitted that respondents No. 4 and 5 have purchased the land in dispute from respondent No. 3 and have set up SEZ after all the required approvals and clearances from the concerned authorities and therefore, the writ petition is liable to be dismissed.

10. It may also be pertinent to mention at this stage that the petitioner filed rejoinder to the written statement filed on behalf of respondent No. 2 controverting the averments made in the said written statement and reasserting that the land was released in favour of respondent No. 3 for a special purpose of providing a hospital but the same was sold in violation of the specific conditions with an oblique motive of grabbing the valuable land for their own benefit.

11. At this stage, it is necessary to point out that during the course of hearing on the basis of the record, counsel for respondent No. 2 revealed certain facts before this Court which have not been mentioned in its written statement. It is not in dispute that vide Annexure P-1 notification dated 30.1.1989 land measuring 215.8 acres (including the land measuring 37 acres 2 marlas) was sought to be acquired for public purpose namely for development and utilization of land for residential/commercial area, Sector 30, Gurgaon. However, vide notification dated 25.1.1990 (Annexure P-2) issued u/s 6 of the Land Acquisition Act, land measuring 171.13 acres only was sought to be acquired and the remaining land was left from acquisition. Still further respondent No. 3 filed CWP No. 3808 of 1990 challenging the aforesaid acquisition and also prayed for release of its land. The said writ petitions was dismissed as compromised on the basis of agreement dated 13.10.1997 reached between respondents No. 2 and 3 wherein the Department agreed to release 30 acres of land of the petitioner for Hospital Project with a specific condition that the land so released shall not be sold. It is also a matter of record that respondent No. 2 has started resumption proceedings against respondent No. 3 which were also challenged vide CWP No. 16710 of 2002. These writ petitions i.e. CWP Nos. 13401 of 2001 and 16701 of 2002 were got dismissed as withdrawn by respondent No. 3 vide order dated 22.5.2006 submitting that the matter has been compromised between the

parties and therefore, the petitioner does not wish to pursue this petition. The aforesaid facts which are very material to decide the present controversy have not been mentioned by respondent No. 2 in its written statement which clearly envisage that there was an attempt on behalf of respondent No. 2 to conceal the true facts from the knowledge of this Court. At this stage, it may be noticed that by way of present writ petition, the petitioner has raised a grievance in public interest to show that initially the State of Haryana proceeded to acquire a big chunk of land which included the land in question by invoking provisions of Land Acquisition Act, 1894 by labeling it as a public purpose for development and utilization of land for residential and commercial area, Sector 30, Gurgaon by HUDA and then proceeded to release the same in favour of respondent No. 3 i.e. East India Hotels Limited under the garb of providing a hospital of 300 beds and other medical/educational facilities for the residents of the area and still further while releasing the land in question in favour of respondent No. 3 certain conditions were put and in spite of the conditional release, respondent No. 3 sold the land in question in favour of respondents No. 4 and 5 vide sale deeds (Annexures P-5 and P-6) which was also approved by the Government without bothering about the violation of the conditions. It was further submitted that after the sale of the land in dispute in favour of respondents No. 4 and 5, the Government of Haryana gave approvals of all kinds including the approval for setting up a SEZ by respondents No. 4 and 5 on the land in dispute which clearly shows the nexus between respondents No. 3 to 5 and the State Government and thus, it was clearly illegal, mala fide and a fraud upon the residents of the State of Haryana and thus, the same is liable to be set aside. On the other hand, respondent No. 2 has sought to justify its action that the released land has been utilized in accordance with the approved master plan as per the Development Plan of Gurgaon Manesar Urban Complex. 2021 and the necessary permissions have been accorded by the competent authority under the provisions of SEZ Act and there was nothing illegal on the part of the State of Haryana.

12. Counsel for respondent No. 3 has submitted before this Court that the land was released in its favour in accordance with law for setting up of a medical project and after the release of the land, however the Company could not start the aforesaid project for one or the other reason and thereafter, since the project had become unviable, the land in dispute was sold with the permission of the Government.

13. Sh. A.K. Ganguly, learned senior Advocate appearing on behalf of respondents No. 4 and 5 has defended respondents No. 4 and 5 by arguing that respondents No. 4 and 5 have purchased the land in question from respondent No. 3 who had the necessary permission to sell for a valuable consideration and thereafter have set up a SEZ in accordance with the provisions of the SEZ Act and thus, the writ petition deserves to be dismissed which is not in the public interest. Rather by setting up of SEZ by respondents No. 4 and 5 is in conformity with the master plan of Gurgaon, Manesar and Urban Complex. 2021 and the writ petition is liable to be dismissed. It was further argued by the learned

counsel that in fact acquisition of land as initiated by the State of Haryana by issuing notification u/s 4 of the Act has not become final as possession of the land was still with the owners/respondents and the development has already taken place and no loss has been caused to anybody.

14. We have heard the learned counsel for the parties and perused the pleadings of the parties and the records as submitted on behalf of learned counsel for respondent No. 2.

15. It is pertinent to mention that vide notifications dated 30.1.1989 and 25.1.1990 issued under Sections 4 and 6 of the Act land situated at village Silokhera Hadbast No. 72, Sukhrali Hadbast No. 71. Tehsil and District Gurgaon (including the land in question) was sought to be acquired for a public purpose namely for the development and utilization of land for residential/commercial area (Sector 30) at Gurgaon). Thereafter respondent No. 3 herein, filed CWP No. 3808 of 1990 projecting that the land purchased by the said Company was for setting up a medical project to provide free medical facilities to the needy people of the State of Haryana and had prayed for release of the said land. Even recommendations of the then Chief Minister, Haryana for release of land were highlighted in the aforesaid writ, petition by submitting as under :-

6.... It is envisaged that with the completion of this prestigious project, considerable benefit would accrue to the people of the area and the State of Haryana will be benefited in many ways as this project is of Public utility in nature...

11... If was also submitted that the object of the project is to provide excellent medical facilities to the people of the State of Haryana and free medical facilities to the needy people.

18(i)... with advance medical facilities and also for setting up of the Institute for Management Trainees, which is highly for public use...

20. That manifest injustice has been done to the petitioners who are being deprived of the valuable land and their project for setting up of hospital and Management Training Institute etc. which were to provide better services to the public at large is not being allowed to be raised.

Annexure - 9(B)

1.... I respectfully place before you that the land which we had purchased is solely for the purpose of Hospital and not for sale to make any profits, unlike other colonizers, who are in the market to sell the Houses and make profits...

2. The Hospital will not only be used for the upper class of people but also for the general public living in Haryana State.

In hospital, WE ARE PROVIDING SPECIAL WARDS FOR THE NEEDY PATIENTS FREE OF COST.

16. Subsequently, pending litigation, respondent No. 3 filed an application under Order 23 Rule 1 read with Section 151 CPC to withdraw the aforesaid civil writ petition and also placed on record an agreement dated 13.10.1997 before this Court. The relevant paras of the said agreement are reproduced hereinafter :-

(a) That the Promise shall not, except with the previous permission of the Promisor sell the land/building or portion thereof. The Promisee shall use the said land/building only for the purpose for which it has been released and in accordance with the plans approved by the Estate Officer and not for any other purpose whatsoever. No obnoxious trade or activity shall be carried out in any portion of the said land building.

(e) That the promisee shall have to pay all general and local taxes/rates or cesses imposed or assessed on the said land/building by the Competent Authority.

(f) That the Promisee shall start and complete the construction of the said land within a period of three years as per memo No. 4738 dated 19.9.1995 from Director, Urban Estate Department, Haryana.

(i) That the promisee shall not claim any amount of compensation for 30 acres out of 36 acres 7 kanal 19 marlas of land under acquisition by the Governor.

(k) That in the event of failure to pay the development charges and any other amount due from the Promisee, the Promiser shall have the right to recover the same in the same manner as in the case of arrears of land revenue.

(l) That the Promisee shall abide by all the provisions of Haryana Urban Development Authority Act, 1977 and Rules/Regulations framed there under from time to time.

(n) Released land shall not be sold without the approval of concerned Department of Government of Haryana.

(o) That thirty acres of land released is to be used by Promisee as under:

i.

Land for Hospital Project

15.00 acres

ii

Land required for Hotel Management Institute and its appurtenant and ancillary building

7.5 acres

iii.

Land needed for Executive : Apartment and Staff Housing

5 acres

iv.

Land under green belt

2.5 acres

(p) Executive Apartments and Staff Houses constructed on the released land including those on the 5 acres of land should not be sold and should be used for housing officers, other professionals including officials associated with the various facilities being developed.

(q) The Promisee shall obtain the permission for change of land use from the Director, Town & Country planning Department, Haryana, Chandigarh and an application for the same in the prescribed proforma with the relevant documents and fees shall be submitted by the Promisee within 30 days of getting the 30 acres of land released from acquisition. If obtaining change of land use permission from the concerned Department is delayed for reasons which can be ascribed to deficiencies on part of Promisee by more than three months from the date of releasing of this land, the terms of release as mentioned herein and as would be incorporated in the agreement are liable to be changed at the instance of this Department and the Director, Department of Urban Estates, Haryana would be at liberty to rescind this agreement for release of land unilaterally. Further such penalties in the nature of forfeiting the whole or part of the guaranteed sum (as per condition No. (r) and (s) are liable to be levied on promisee.

(r) The Promisee should complete the construction of the said facilities viz. Hospital Complex, Institute of Hotel Management and its Appurtenant and Ancillary buildings and Executive Apartments and staff housing etc. in a period of three years from the date of sanction of building plans which are to be submitted by promisee within a period of one month from the date of obtaining the change of land use permission.

(s) The area under green belt as per the developmental plan of Gurgaon has to be maintained by Promisee and no construction whatsoever would be allowed in the said green belt. Statutory green belt as per the development plan has to be maintained no matter whether the area covered under that is more or less than the 2.5 acres of green belt projected in the representation. That is to say in the event of area under statutory green belt being less than 2.5 acres (which can only be ascertained once the Promisee submit the details of 30 acres on the Khasra Plan) then also 2.5 acres minimum greenbelt should be maintained by the promisee.

(t) A Bank Guarantee for a sum of two Crore rupees shall be executed by the Promisee in the name of Director, Urban Estates, Haryana valid for a period of four years from the date of agreement for release of land is executed. This bank guarantee and any additional bank guarantee executed by the promisee under the land release agreement are liable to be forfeited in the event of failure to

complete the construction in a period of three years as per memo dated 19.9.1995 at Annexure "A" or upon breach of terms and conditions of agreement for release of land at any time.

(u) The Promisee undertakes to provide proportionate additional Bank Guarantee of such like sum valid till the date two Crore rupees bank guarantee indicated above in condition No. (t) is in force, over and above any other guarantee offered by promisee for releasing the land as and when the same would be intimated in the event of any enhancement in the acquisition rate awarded by any Court of Law for the land acquired in Sector 39, Gurgaon under Section-4 notification of Land Acquisition Act, 1894 issued on 30.1.1989.

(v) The Promisee should provide 10% of the beds in the Hospital General Ward proposed by promisee free for the poor and 20% of the OPD and doctors investigative services shall also be provided free in the Hospital.

(w) Preference shall be given to Domiciles of Haryana in the recruitment of Medical. Paramedical and other Class-IV staff while filling the various posts in the facilities being developed by Promisee depending upon the availability of requisite skills.

(x) In the Institute of Hotel Management, 20% of the trainees/students shall be Domicile of Haryana.

17. Thus, according to the aforesaid conditions, the land was released for a specific purpose of setting up a hospital project in 30 acres of land with a further condition that the released land shall not be sold without the approval of the Government of Haryana and shall be used only for the facilities proposed to be set up and that if the promisee commits any breach of the terms and conditions of the agreement, then, notwithstanding waiver of any previous clause or right, promisor may revoke the release of land/building allowed to him.

18. It may also be relevant to refer to the order dated 9.2.2000 passed by a Lok Adalat of this Court which reads as follows :-

CWP No. 3808 of 1990

Shri Jitender Sibal, Senior Advocate with Shri Kumar Sethi, Advocate for the petitioners Shri Rajneesh Dhanda, AAG, Haryana for the respondents.

The matter came up before us on 23.12.1999 when the application made by the petitioners based on a compromise dated 13.10.1997 between the petitioners and the State of Haryana for consideration as the petitioners sought withdrawal of the petitions on that basis. A copy of the same was supplied to the Ld. Assistant Advocate General, Haryana to have the instructions from the authorities concerned. Notice was also sent to the Director, Urban Estates-cum-Chief Administrator, Haryana, Urban Estate Authority, Panchkula for today the service is complete.

The compromise dated 13.10.1997 has not been disputed. The writ petition is

accordingly disposed off as withdrawn on its basis.

Sd/-

Reader

Lok Adalat Sd/-

Punjab and Haryana High Court

Sd/- (D.V. Sehgal)

Chandigarh

President

11.2.2000

Sd/-

(S.S. Goindi)

February 9, 2000

Member

19. Thus, even the civil writ petition No. 3808 of 1990 was allowed to be withdrawn on the basis of the aforesaid agreement. There was also a condition that the construction of the hospital and other facilities shall be completed within a period of three years from the date of sanction of building plans to be submitted by respondent No. 3 within one month from the date of obtaining the change of land use permission and in case of failure to complete the construction as aforesaid, a Bank guarantee for a sum of Rs. 2 crores shall be forfeited.

20. It may also be relevant to note that in view of the release of the land in favour of respondent No. 3 in fact the whole of the land measuring 171 acres (except 8.64 acres for which an award was pronounced) was released from acquisition but respondent No. 2 has failed to make any averment in the written statement regarding as to under what circumstances, the land under acquisition was released. On the other hand, it has been established on record that in fad 33 writ petitions were filed before this Court challenging the aforesaid acquisition and because of the agreement dated 13.10.1997, the Government had to release the other land also.

21. The relevant part of judgment dated 11.1.2010 passed in CWF No. 3494 of 1990 and other connected matters read as following:-

This order shall dispose of a bunch of 33 petitions* as common questions of law and facts are involved. However, the facts are being taken from Civil Writ Petition No. 3494 of 1990.

The challenge in these petitions is to the notification dated 30.1.1989 (Annexure P-2), issued u/s 4 of the Land Acquisition Act, 1894 (for brevity the Act). The

declaration u/s 6 of the Act (Annexure P-3) acquiring the land was made on 25.1.1990. The public purpose of acquiring the land declared in the aforesaid notifications was for development and utilisation of land for commercial area in Sector 30 of village Silokhera and Sukhrali, District Gurgaon.

The averments made in the petitions are that the land belonging to the influential persons had either not been acquired or it had later been released. In para 6 of this petition such like allegations have been made. It has also been averred that huge area has been released from acquisition which would be evident from the perusal of para 8.

The writ petitions were admitted on 13.11.1990. The interim directions were issued staying the dispossession and further proceedings against the petition.

The matter had been contested and respondents have filed their separate replies.

Mr. R.M. Singh and Mr. Puneet Bali, learned counsel for the petitioners have, at the outset, brought to the notice of this Court that the aforesaid notification issued under Sections 4 and 6 of the Act were also the subject matter of challenge in Civil Writ Petition No. 3059 of 1990 on similar grounds. The said writ petition was also decided by a learned Single Judge vide order dated 23.12.2006, and the notification u/s 6 of the Act was quashed. In the appeal i.e. LPA No. 179 of 2008 filed by the respondent- State, the view taken by the learned Single Judge was affirmed and the appeal was dismissed on 24.9.2008. The Letters"

Patent Bench has noticed the subsequent events which had taken place after the filing of the petition, which are to the effect that the land belonging to many builders covered by the aforesaid acquisition proceedings, had been released which include M/s East India Hotels Ltd., Gurgaon. M/s DLF Universal Limited and S/Sh. Gopal Ram @ Gopi, Jai Bhagwan, Ram Singh, Sri Niwas, Kamal Kumar, Shyam Lata, Hari Chand and Smt. Nirmal Kanta wife of Sh. Daya Nand. Reference has also been made to the instances of releasing acquired land measuring 30 acres vide letter dated 19.9.1995. "The Letter" Patent Bench has also taken notice of the fact that a collaboration agreement was entered into by various builders with the owners of the land who were later on granted licence by the Town and Country Planning Department for establishing and developing the land for various purposes, like Cyber Park Colony Commercial Colony, Group Housing Society etc On the basis of the aforesaid instances, the Division Bench has concluded that the land had been released in favour of several persons but the same was to be developed privately by the builders and that "A" class residential construction existed which deserved to be exempted from acquisition. An inference of discrimination was found to be patent in ignoring to consider the case of the petitioners while selectively releasing the land of other similarly situated persons. It is well settled that power of acquisition of land cannot be used for profiteering and in that regard reliance is placed on *Bharat Singh and Others Vs. State of Haryana and Others*, and *B.E.M.L. Employees House Building Co-operative Society Ltd. Vs. State of Karnataka and Others*, .

After hearing the learned counsel, we are of the view that the bunch of these petitions is squarely covered by the opinion expressed by this Court in its judgment dated 24.9.2008 rendered in LPA No. 179 of 2008. Accordingly, the notification dated 25.1.1990 issued u/s 6 of the Act stands quashed with liberty in the same terms as has been granted by the learned Single Judge in Civil Writ Petition No. 3059 of 1990.

The writ petitions are disposed of accordingly. The parties are left to bear their own costs.

23. In B.E.M.L. Employees House Building Co-operative Society Ltd. Vs. State of Karnataka and Others, , the Hon''ble Supreme Court observed that the discretion may be wide but was not wild. Exercise of statutory discretion has to be on reasonable grounds. Arbitrariness was an anathema to the rule of law.

24. Following the aforesaid judgment, this Court in LPA No. 179 of 2008 decided on 24.9.2008 found that the process of acquisition was used to enable the colonisers to take over the private land for their purpose instead of public purpose and the State became party to that by releasing such land in favour of colonizers who were not even owners at the time of acquisition and thus, the finding was recorded that the policy of exemption was arbitrarily applied only to give benefit to the private colonizers.

25. In view of the finding recorded above, we do not find any merit in the contention that there is absolute power of the State or that exercise of discretion by the State cannot be interfered with in exercise of its power of judicial review, Court can certainly see that the executive acts lawfully, bona fide and within the limits of its power. If there is an abuse or misuse of power, jurisdiction of this Court can certainly be invoked. Rule of law has to prevail as it the basic requirement of Article 14 that the State acts fairly, reasonably and in good faith.

26. It may also be seen that respondent-DLF has entered into a memorandum of understanding as early as on 21.2.2005 with respondent No. 3 to purchase the land in question, the date on which even the permission to sell the land by respondent No. 3 was not applied as respondent No. 3 made a request to the Government for permission to sell the land in question to M/s DLF Limited vide its letter dated 31.3.2005/4.4.2005. Further the DLF-respondent No. 5 applied for setting up a Special Economic Zone on the land in question on 14.10.2005 and "in principle" approval to set up the aforesaid SEZ was granted to the aforesaid respondents by the State of Haryana even prior to the permission to sell which was granted on 28.4.2006 and execution of the sale deeds in their favour on 22.8.2006 and 29.8.2006.

27. Thus, it may be noticed that on one hand, the Government was proceeding with the permission to set up a SEZ upon the land in favour of respondents No. 4 and 5 which was granted vide letter dated 28.10.2005 and on the other hand, permission to sell land in question was granted to respondent No. 3 vide its memo No. 4273 dated 28.4.2006 on the basis of a request of respondent No. 3

made on 4.4.2005. While granting permission, the respondent-State completely ignored the agreement dated 13.10.1997 executed by respondent No. 3.

28. The aforesaid facts alone are enough to establish the nexus of M/s DLF Limited with the Government to grab the property in question. In fact the subsequent facts of granting necessary approvals for setting up of a SEZ etc. was an attempt to cover the whole mala fide action of respondent No. 2 and the facts noticed above, indicates only to one conclusion i.e. there was a nexus between the Government and respondents No. 4 and 5 to grab the land in question and everything was facilitated to give the same a legal cover.

29. At this stage, we are constrained to observe that in the matter of acquisition, State of Haryana has already earned severe strictures from Hon"ble the Supreme Court in the case of Hari Ram and Another Vs. State of Haryana and Others, , Hon"ble the Supreme Court has severally indicted the respondent State. In paras 26, 40 and 43 of the judgment, following observations have been made :

26.....The policy articulated in the letter dated 26.6.1991, thus, hardly helps the respondents. Rather it is seen that neither the aforesaid policy nor any other policy has been followed by the State Government while releasing land of various landowners whose lands have been acquired in the same acquisition proceedings. As a matter of fact, the only policy that seems to have been followed is: "you show me the face and I'll show you the rule".

40. It is true that any action or order contrary to law does not confer any right upon any person for similar treatment. It is equally true that a landowner whose land has been acquired for public purpose by following the prescribed procedure cannot claim as a matter of right for release of his/her land from acquisition but where the State Government exercises its power u/s 48 of the Act for withdrawal from acquisition in respect of a particular land, the landowners who are similarly situated have right of similar treatment by the State Government. Equality of citizens' rights is one of the fundamental pillars on 28 CWP No. 1620 of 2010 which edifice of rule of law rests. All actions of the State have to be fair and for legitimate reasons.

43. It is unfair on the part of the State Government in not considering representations of the appellants by applying the same standards which were applied to other landowners while withdrawing from acquisition of their land under the same acquisition proceedings. If this Court does not correct the wrong action of the State Government, it may leave citizens with the belief that what counts for the citizens is right contacts with right persons in the State Government and that judicial proceedings are not efficacious. The action of State Government in treating the present appellants differently although they are situated similar to the landowners whose lands have been released can not be countenanced and has to be declared bad in law.

(Emphasis added)

30. While recognizing the power of judicial review of the High Court, a Nine-Judge Bench of Hon''ble the Supreme Court in I.R. Coelho (Dead) By LRs. Vs. State of Tamil Nadu and Others, observed in paras 129 and 130 of the judgment, which read thus :

129. Equality, rule of law, judicial review and separation of powers form parts of the basic structure of the Constitution. Each of these concepts are intimately connected. There can be no rule of law, if there is no equality before the law. These would be meaningless if the violation was not subject to the judicial review. All these would be redundant if the legislative, executive and judicial powers are vested in one organ. Therefore, the duty to decide whether the limits have been transgressed has been placed on the judiciary.

130. Realising that it is necessary to secure the enforcement of the Fundamental Rights, power for such enforcement has been vested by the Constitution in the Supreme Court and the High Courts. Judicial Review is an essential feature of the Constitution. It gives practical content to the objectives of the Constitution embodied in Part III and other parts of the Constitution. It may be noted that the mere fact that equality which is a part of the basic structure can be excluded for a limited purpose, to protect certain kinds of laws, does not prevent it from being part of the basic structure. Therefore, it follows that in considering whether any particular feature of the Constitution is part of the basic structure - rule of law, separation of power - the fact that limited exceptions are made for limited purposes, to protect certain kind of laws, does not mean that it is not part of the basic structure.

31. The Hon''ble Supreme Court in the case of S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, , held as under :

It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decree - by the first court or by the highest court - has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.

32. As found in the foregoing paragraphs of this judgment that the power of compulsory acquisition has been used fraudulently, all objections concerning delay in challenging acquisition and locus standi are not sustainable as it is well settled that all actions taken fraudulently are vitiated in law. The defence taken by the State of Haryana that the land in question was released in favour of respondent No. 3 in accordance with law and further necessary permission was granted to respondent No. 3 for selling the land to respondents No. 4 and 5 after adopting due procedure is not sufficient to oust the present petitioner. In the written statement or in the arguments, the State has failed to justify its action of acquiring a vast track of land for development purposes and thereafter, virtually releasing the whole of the land. In fact from the judicial record, it has been established that due to the release of the land in question, the remaining

acquired land had also to be released as noticed in a judgment dated 23.12.2006 passed in CWP No. 3059 of 1990. Even Letters Patent Appeal No. 179 of 2008 filed against the judgment dated 23.12.2006 passed in CWP No. 3059 of 1990 was dismissed by a Division Bench of this Court vide its judgment dated 24.9.2008. Not only this, CWP No. 3494 of 1990 along with 32 other writ petitions was also allowed by this Court in terms of the judgment passed in LPA No. 179 of 2008 as aforesaid. Thus, the power of acquisition has been used for a collateral purpose of extending benefit to respondents No. 3 to 5 as against a public purpose.

33. The oblique motive of acquisition is completely exposed by the stand taken by the respondent-State. It is not understandable as to why the State of Haryana is showering favour of respondents No. 4 and 5. In any case, it has been proved that the power of acquisition has been used for a colourable purpose on the pretext of serving a public purpose. Even this Court in CWP No. 1620 of 2010 has found that the land in question in that case was acquired on the pretext of a public purpose with the real object of handing it over to DLF-respondent. In the aforesaid judgment, this Court also observed that the State and its officers are tilted in showering favour on the DLF i.e. Respondents No. 4 and 5.

34. In 2010(1) R.C.R. (Civil) 412 : CWP No. 5878 of 2003 decided on 8.12.2009 titled as Amita Banta and another v. State of Haryana and others, this Court has observed that power of acquisition cannot be enlarged to achieve a purpose other than notified public purpose by recourse to policy making u/s 48. It was further observed in this case that effect of withdrawal from acquisition is to confer immense advantage to person in whose favour such power is exercised which is not permissible except for unforeseen hardships to State or individual and not for profit to individual or even to the State.

35. In Amita Banta's case (supra), the Division Bench of this Court held that the power to release the acquired land u/s 148 is not unlimited, uncanalised and unguided. The said power having regard to the scheme of the Act, has to be confined to exceptional situations. Otherwise the same will defeat the object and purpose of the Act to acquire land strictly for public purpose and not otherwise.

36. In the aforesaid judgment, this Court also found that the action of the State in first initiating acquisition proceedings without public purpose and thereafter, in unauthorisedly withdrawing from acquisition selectively on an irrelevant ground of grant of licence under the 1975 Act, was not legally permissible. While summing up in the judgment, the Court also held that wherever there is a wrong, there is a remedy and the Court is possessed of different options for moulding relief. Thus, the Court cannot ignore the releases/wrongs which has become final and the persons have been benefited immensely on accounts of such wrongs by retaining those benefits illegally and this may have to be undone. To prevent illegal benefit being retained, the Court may quash release or withdrawal from acquisition if the same is held to be vitiated by fraud. The Court may require the State to recall such release and also to ascertain whether

release was for any extraneous consideration and how wrongful gain or wrongful loss can be readjusted. Released land may be restored to the State or sold in public auction. The State itself may recall its illegal actions. It may not be possible to lay down any rigid rule as to how relief can be moulded by Court in an individual fact situation. If order of release is to be cancelled, it may be necessary to hear the affected party by the Court or the authority passing the order.

37. In view of the findings recorded above, the impugned action of the State cannot be upheld. Accordingly the writ petition is allowed and notifications Annexures P-3 and P-4 releasing the land in favour of respondent No. 3 are set aside and it is further held that permission of sale which was granted on 28.4.2006 in favour of respondent No. 3 and execution of sale deeds in favour of respondents No. 4 and 5 vide sale deeds Annexures P-5 and P-6 were illegal.

38. At this stage, it may also be noticed that notification u/s 4 of the Act, for acquiring the land in question was issued on 30.1.1989 and the declaration u/s 6 of the Act was issued on 25.1.1990. However, respondent No. 3 challenged the aforesaid acquisition proceedings by filing CWP No. 3808 of 1990 and vide order dated 23.3.1990, his dispossession was stayed. The said writ petition was disposed of vide order dated 9.2.2000 passed by a Lok Adalat of this Court on the basis of a compromise dated 13.10.1997 reached between respondent No. 3 and the State of Haryana and the writ petition was allowed to be withdrawn and in the meantime, land was released in favour of respondent No. 3 in a fraudulent manner as noticed in the foregoing paragraphs of the judgment. Since the whole transaction has been found to be the result of fraudulent exercise of power, all the actions are deemed to be vitiated in law.

39. Accordingly, we "hold and direct that the proceedings of acquisition of land in question as per the notification u/s 4 and 6 of the Land Acquisition Act issued on 30.1.1989 and 25.1.1990 respectively shall be revived and the respondent-Authorities shall complete the acquisition proceedings from that stage. The result would be that the respondent-State shall pass an award acquiring the land in dispute. After completing the acquisition proceedings, the land be put to use by the respondent-State for the same public purpose for which it was released from acquisition in favour of respondent No. 3. The construction, if any, raised by the respondents on the land in dispute, shall be removed by the respondents within a reasonable time, say within six months. In case of their failure, the same shall be demolished by the State of Haryana at the expenses of respondents No. 3 to 5. Respondents No. 3 to 5 are at liberty to seek their remedy against each other for recovery of the sale price/damages on account of sale/purchase of land in question between themselves.

40. The respondent State is directed to take further action in the matter in accordance with law.

41. Thus, this writ petition is allowed with costs which is quantified at Rs.

2,00,000/- which shall be borne by the respondent-State and respondents No. 3 to 5 equally. Amount of costs be paid to the Legal Services Committee of the High Court within one month, failing which Secretary of the Committee shall start recovery proceedings against the aforesaid respondents.