
(2012) 02 P&H CK 0241

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 17979 of 2011

Jagtar Singh etc.

APPELLANT

Vs

State of Punjab etc.

RESPONDENT

Date of Decision : 09-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226
General Clauses Act, 1897 — Section 21
Land Acquisition Act, 1894 — Section 10, 16, 17(1), 3, 4
Punjab Regional and Town Planning and Development Act, 1995 — Section 17
Transfer of Property Act, 1882 — Section 10, 3

Citation : AIR 2012 P&H 145 : (2012) 2 RCR(Civil) 292

Hon'ble Judges : Hemant Gupta, J;A.N. Jindal, J

Bench : Division Bench

Judgement

Hemant Gupta, J.—The petitioners i.e. the vendors of the sale deeds executed in respect of land measuring 59 Acres 1 Kanal 19 Marlas in the year 2000, have sought to annul such sale deeds in the present writ petition.

2. The brief facts out of which the present writ petition arises are that the State Government has initially published a notification dated 07.07.1998 (Annexure R-1) u/s 4 of the Land Acquisition Act, 1894 (for short "the Act") intending to acquire land measuring 122 Acres 2 Kanals 7 Marlas for a public purpose namely for setting up the "Baba Farid University of Health Sciences, Faridkot" (for short the University). After such notification was published, the landowners entered into agreements with the State Government for sale of such land. One of the such agreements is annexed as Annexure P-4 (dated 29.07.1999), wherein the landowners agreed to sell their shares of property to the State Government at the rate of Rs.4,50,000/-per acre for the purpose of establishing the University. On behalf of the State Government, the agreement was signed by the Secretary, Medical Education & Research Department, Punjab; Deputy Commissioner, Faridkot; Director, Research & Medical Education, Punjab and also by Vice Chancellor, Baba Farid University of Health Sciences, Faridkot. After the such

agreements were executed, separate sale deeds were executed by the landowners in the month of July, 2000. Such sale deeds are appended as Annexure P-5/1 to P-5/51. Such sale deeds are also signed on behalf of the State Government i.e. the Secretary, Medical Education & Research Department, Punjab; Deputy Commissioner, Faridkot; Director, Research & Medical Education, Punjab and also by Vice Chancellor, Baba Farid University of Health Sciences, Faridkot.

3. The grievance of the petitioners is that they have agreed to sell their land to the State Government in view of the threat of the State Government to acquire the land under the provisions of the Act, but for a public purpose i.e. for establishment of "Baba Farid University of Health Sciences, Faridkot". But now the State Government has issued a notification on 17.06.2011 (Annexure P-1) transferring 86 Acres 6 Marlas of land belonging to the University to Punjab Urban Development Authority (for short "PUDA"); 25 Acres 5 Kanals 19 Marlas of land belonging to Department of Home Affairs & Justice (Jail Branch) to the University and; 11 Acres 4 Kanals 11 Marlas of land which is in possession of Principal's Office of Guru Gobind Singh Medical College, Faridkot to the University. It is averred that such transfer of land is fraud with the vendors, as the land was intended to be acquired for the establishment of University and the sale deed were executed for the said purpose only. Therefore, the State Government cannot transfer the said land for a different purpose.

4. In the written statement, it was averred that no doubt the notification u/s 4 of the Act was issued expressing intention of the State Government to acquire the land, but no compulsory acquisition took place and the notification u/s 4 of the Act was not given effect to. The land was sold with mutual consent at the rate of Rs.4,50,000/-per acre. The land was purchased by the State Government and mutated in its favour, but the State Government in due course transferred 158 Acres of land in the name of Baba Farid University in parcels over the period of time. It is further averred that the University is a statutory creation under "The Baba Farid University of Health Sciences Act, 1998" (Punjab Act No.18 of 1998). It has been explained that the part of land reserved for the University was transferred to the Jail Department for construction of Modern Jail Complex at Faridkot and to PUDA under OUVGL Scheme. It is also pointed out that such land is situated across the Rajasthan canal and even across the railway crossing, which is hurdle for the development of the University. The University was developed on Sadiq Road in view of the benefit to the public. The land of the Jail Department was transferred to the University near Sadiq road for expansion of the University. The said land is near to the existing land belonging to the University and is more suitable for expansion of the University. It is also pointed out that the land acquired, since transferred was banjar quadim and uncultivable. Modern Jail Complex has been constructed at the cost of Rs.250 crores on the land transferred by the State Government with the consent of the University to Jail Department. It is also pointed out that the Collector rate was Rs.1,50,000/-per acre when the land was sought to be acquired, which is evident from the

communication dated 03.10.1997 (Annexure R-2). But the State Government offered three times" of the Collector's rate as sale price and that all the landowners voluntary executed the sale deeds in favour of the State Government at such price. It is averred that though the land was intended to be used for the purpose of establishment of the University, but it is open to the State Government to use the land for any other public purpose. The petitioners having executed sale deeds of their land voluntary and on acceptance of the agreed sale consideration are estopped to challenge the transfer of land.

5. In the replication filed, it is averred that the State of Punjab was neither the vendee nor a signatory to the sale deeds. It is averred that the sale deeds have to be read in consonance with the intent and object of the agreements and the same cannot be construed in any convenient and isolated fashion by the respondents. The State has no business acting as a realtor or a property dealer and certainly not at the expense of gullible citizens or pliant officials managing the affairs of the institutes of higher medical education in the State. It is also pointed out that the land is transferred under the questionable "Optimum Utilization of Vacant Government Lands Scheme", but such Scheme as per the information provided under the Right to Information Act, 2005 deals with "...numerous pockets of Provincial Government / Nazul lands and lands belonging to various departments located within municipal limits of various towns and cities in the State which are either lying vacant or grossly under utilized."

6. The petitioners have also attached a brochure published by the PUDA for sale of residential plots in the land so transferred. The site plan printed therein shows that the site transferred is located at a distance of 3.20 kms. from the existing site of the University at Sadiq Road and is located across railway line and the Rajasthan and Sirhind Canals. The said site is on Kotkapura-Talwandi Bhai-Faridkot bye-pass, whereas the existing site of University is located at Ferozepur-Kotkapura main road.

7. Learned counsel for the petitioners has vehemently argued that the agreement to sell (Annexure P-4) was to transfer the land to the University, therefore, the land cannot be used for any other purpose. The relevant parts of such agreement, translated by the petitioners and attached with the writ petition, reads as under:

I, Rajbans Kaur wife of Veer Davinder Singh son of Sh. Rajinder Singh, am resident of Faridkot.

That Punjab Government Medical Education and Research Department has issued Notification No. 22/154/91-5 H.B.-3/21946 dated 07.07.1998 regarding acquisition of land for the establishment of Baba Farid University of Health Sciences, Faridkot, in this regard my land which is situated at Talwandi Road, Faridkot, measuring 40 Kanal 12 Marla bearing khasra numbers..... I promised that my above land and property coming under the above notification, I promised to sell the same on the following conditions to Punjab Government for

the establishment of Baba Farid University of Health Sciences, Faridkot:

1. That I promise that the land given to the Government regarding above to Government/Baba Farid University of Health Sciences, Faridkot, and against this, on this price I will not raised objection in any court. If I violate the conditions of this agreement then I will pay Rs.27,78,170/-as fine to the Government

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7. That area entered in the agreement have no dispute till date. If at any time there is any dispute regarding this area then with that Government/Baba Farid University of Health Sciences have no concern and neither Government/Baba Farid University of Health Sciences (vendee) will have any responsibility. Any if there is any loss then I will be personally responsible any my ancestral property and other property wherever it is situated in any shape will be responsible. Both the parties will be bound on the above agreement.

Therefore, this agreement has been written, so that it can be used at a relevant time

Witness:

Sd/-

Baj Singh

Advocate

Faridkot 29.07.99

Witness:

Sd/-

Malkiat Singh

s/o Baldev Singh

Talwandi, Faridkot

On behalf of Punjab Government

Sd/- 29.07.99

V.K.Bhardwaj

I.A.S.

Secretary

Medical Education

& Research Department

Punjab, Chandigarh

Sd/- 29.07.99

D.L.S.Chawla

Vice Chancellor

Baba Faridkot

University of

Health Sciences

Faridkot

Sd/- 29.07.99

J.S.Grewal

I.A.S.

Deputy Commissioner,

Faridkot

Sd/- 29.07.99

Dr. SudeshKhanna

Director,

Research & Medical

Education, Punjab,

Chandigarh.?

After the said agreement, the sale deeds were also executed. The relevant extract from one of the sale deed Annexure P-5/1 reads as under:

This deed has been executed today, on 11.7.2000, between Sh. Jagtar Singh son of Sh. Jarnail Singh son of Sh. Harnam Singh, resident of Faridkot (which expression shall, unless include his respective legal heirs, executors, who will be hereinafter referred as "VENDOR-cum-1st party" AND Governor, Punjab, through Department of Medical Education & Research, which will be hereinafter referred as "VENDEE-cum-2nd party"/

Whereas the property of vendor, as detailed herein below and the land, is required by the Government for public purpose i.e. Establishment of Baba Farid University of Health Sciences, regarding which, Notification No. 22/154/91-5 H.B.-3/21946 dated 07.07.1998 u/s 4 of Land Acquisition Act, 1894 was issued by Government of Punjab, Department of Medical Education & Research. It has been decided that the said land may be purchased by way of mutual discussion.....

..... I had entered into an agreement to sell, registered at Sr.No.1946 dated

3.8.99 in favour of Punjab Government (Department of Medical Education & Research) / Baba Farid University of Health Sciences, Faridkot for selling out the said land alongwith super structure and have received a sum..... Hence, I have sold out my above noted land alongwith construction raised therein, total price of which is Rs.9,25,186/-in favour of Punjab Government (Department of medical Education & Research) for establishment of Baba Farid University of Health Sciences, Faridkot and have received entire sale consideration..... The vendee will have rights and benefits to be availed from all trees, plants, right of passage, admission and deletion, right of construction, bore, well, turn of irrigation, water, house etc. or anything else connection with the said property such right of ownership, interest, claim and demand, which are available to the vendor and to use the entire rights over all the area of said land, without any condition whatsoever. The vendor do hereby assures the vendee that it has right of ownership and selling and he is disposing off the said land in favour of vendee, in the manner mentioned as above and the vendee can now onwards keep the said property in its peaceful possession and use the same and do hereby transfer all these rights without any interference, claim or demand/ require and/or any right of legal interference by vendor or any other person/persons, which is available to them and special rights available to them, are transferred and do hereby dispose off any other such belief or anything else, which is required by the vendee.....

8. Learned counsel for the petitioners has argued that the agreement to sell and the sale deeds were executed for a specific purpose i.e. for establishment of the University, therefore, the respondents cannot divert the said purpose and use it to develop a residential colony by PUDA and sale plots at exorbitant rates. It is contended that such transfer of land is a fraud by the State Government and, therefore, the sale deeds are required to be declared null & void. Reliance is placed upon M/s Royal Orchid Hotels Limited and Another Vs. G.Jayarama Reddy and Others (2011) 10 SCC 608. Reliance was also placed on Smt. Gunwant Kaur and Others Vs. Municipal Committee, Bhatinda and Others, ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, , Zonal Manager, Central Bank of India Vs. Devi Ispat Ltd. and Others, and Syed Maqbool Ali Vs. State of Uttar Pradesh and Another, to contend that the disputed questions can be raised and decided in exercise of the writ jurisdiction under Article 226 of the Constitution of India. Reliance is also placed upon Julien Educational Trust Vs. Sourendra Kumar Roy and Others, . It is contended that the consent of the petitioners was for use of the land for the purpose of establishment of the University only, as the same was intended to be acquired u/s 4 of the Act. The sale deeds were got executed by coercion, undue influence, misrepresentation and fraud, therefore, such sale deeds are required to be declared null and void.

9. On the other hand, Mr. Anupam Gupta, learned counsel representing respondent No.4-University, has referred to the jamabandies placed on record, to counter the assertion of the petitioners that the agricultural land was regularly

cultivated by the petitioners or that the said land was their sole and main source of income. Referring to the jamabandies produced by the petitioners themselves as Annexure P-3, it is pointed out that the entire land, the subject matter of sale deeds, was Banjar Quadim i.e. uncultivable. It is pointed out that, in fact, the sale deeds were executed in favour of the State of Punjab i.e. Vendee though it was meant for the establishment of the University at a mutual agreed price which was three times more than the collector rate.

10. The State Government, as a owner and with the consent of the University, has decided to transfer land located more than 3kms to optimize its utilization. The University in turn got 37 Acres 1 Kanal of land belonging to the Jail Department situated near the existing campus for its purposes. It is pointed out that 72 Acres 2 Kanals 10 Marlas of land has been transferred to the Jail Department out of which 61 Acres 6 Kanals 16 Marlas was purchased for the University and 86 Acres 6 Marlas of land transferred to PUDA out of which 60.50 Acres belonged to the University and the remaining land belonged to other Departments. The transfer of such land is again for a public purpose defined under the Act even if the provisions of the acquisition are read into the sale deeds. It is contended that the sale deeds were executed by the vendors with the their eyes wide open and with their consent way-back in the year 2000. Therefore now after more than 10 years, the petitioners cannot put any embargo on the use of the land by the transferee in terms of Section 10 of the Transfer of Property Act, 1882. Mr. Gupta has referred to two judgments of the Hon'ble Supreme Court reported as Northern Indian Glass Industries Vs. Jaswant Singh and Others, and Govt. of A.P. and Another Vs. Syed Akbar, to contend that on payment of compensation in terms of the provisions of the Act, the land vests with the State Government free from all encumbrances and that the State Government is competent to use the same for any other public purpose. The landowners cannot seek direction to the State Government to use the land purchased only for the purpose for which it was intended to be acquired. Reliance is also placed on Sooraram Pratap Reddy and Others Vs. District Collector, Ranga Reddy Distt. and Others, wherein the provisions of the Act have been examined in detail and it has been held to the following effect:

79. A "public purpose" is thus wider than a "public necessity". Purpose is more pervasive than urgency. That which one sets before him to accomplish, and end, intention, aim, object, plan or project, is purpose. A need or necessity, on the other hand, is urgent, unavoidable, compulsive. "Public purpose should be liberally construed, not whittled down by logomachy."

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119. In our judgment, in deciding whether acquisition is for "public purpose" or not, prima facie, the Government is the best judge. Normally, in such matters, a writ court will not interfere by substituting its judgment for the judgment of the Government.

11. Reference is also made to Dev Sharan and Others Vs. State of U.P. and Others, , wherein it has been observed that the concept of "public purpose" cannot remain static for all time to come. The definition u/s 3(f) of the Act, is not capable of any precise definition. It has an inclusive character. In another judgment reported as Sri Radhy Shyam (Dead) through L.Rs. and Others Vs. State of U.P. and Others, the Hon'ble Supreme Court has struck down the notification of acquisition of land invoking urgency provisions while returning the following findings :

77. From the analysis of the relevant statutory provisions and interpretation thereof by this Court in different cases, the following principles can be culled out:

(i) Eminent domain is a right inherent in every sovereign to take and appropriate property belonging to citizens for public use. To put it differently, the sovereign is entitled to reassert its dominion over any portion of the soil of the State including private property without its owner's consent provided that such assertion is on account of public exigency and for public good - Dwarkadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others, Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, and Jilubhai Nanbhai Khachar, etc. etc. Vs. State of Gujarat and another, etc. etc.,

(ii) The legislation which provide for compulsory acquisition of private property by the State fall in the category of expropriatory legislation and such legislation must be construed strictly - D.L.F. Qutab Enclave Complex Educational Charitable Trust Vs. State of Haryana and Others, State of Maharashtra and Another Vs. B.E. Billimoria and Others, and Dev Sharan and Others Vs. State of U.P. and Others,

(iii) Though, in exercise of the power of eminent domain, the Government can acquire the private property for public purpose, it must be remembered that compulsory taking of one's property is a serious matter. If the property belongs to economically disadvantaged segment of the society or people suffering from other handicaps, then the court is not only entitled but is duty-bound to scrutinize the action/decision of the State with greater vigilance, care and circumspection keeping in view the fact that the landowner is likely to become landless and deprived of the only source of his livelihood and/or shelter.

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(viii) The acquisition of land for residential, commercial, industrial or institutional purposes can be treated as an acquisition for public purposes within the meaning of Section 4 but that, by itself, does not justify the exercise of power by the Government under Sections 17(1) and/or 17(4). The Court can take judicial notice of the fact that planning, execution and implementation of the schemes relating to development of residential, commercial, industrial or institutional areas usually take few years. Therefore, the private property cannot be acquired for such purpose by invoking the urgency provision contained in Section 17(1). In any case, exclusion of the rule of audi alteram partem embodied in Section 5-

A(1) and (2) is not at all warranted in such matters.

12. On the basis of arguments addressed by the learned counsel for the parties, we find that the following questions arise for consideration:

1. Whether the land was sold by the petitioners to the State Government or to the Baba Farid University of Health Sciences, Faridkot?
2. Whether the State Government as owner by virtue of the sale deeds, can transfer the land so purchased to another Department or to PUDA, a local authority in terms of Section 17 of the Punjab Regional and Town Planning and Development Act, 1995?
3. Whether the petitioners can be permitted to dispute the sale deeds in the writ jurisdiction alleging to be an act of fraud after more than ten years of its execution?

Question No.1

13. Though the petitioners have alleged that the sale deeds were not executed in favour of the State Government, but the documents produced on record by the petitioners themselves belies such claim. The agreement to sell was executed with the State Government. It is so evident from the fact that the Agreement to sell is executed by the Secretary, Medical Education & Research Department, Punjab; Deputy Commissioner, Faridkot; Director, Research & Medical Education, Punjab. It is also signed by the Vice Chancellor, Baba Farid University of Health Sciences, Faridkot. The State Government acts through its officers. It is not suggested nor it is possible to even allege that the Secretary of the Department cannot represent the State Government. The agreement and sale deeds shows that the Vendee was the State Government. The acceptance of sale by the Vice Chancellor of the University is an additional endorsement, but the recitals in the agreement to sell and the sale deeds clearly show that it was a sale in favour of the State Government alone. The mutation produced by the petitioners as Annexure P-3 shows that the land is recorded in the ownership of the State Government C/o Baba Farid University of Health Sciences. Neither the agreement nor the sale deeds are in favour of by or on behalf of the University. Still further, the stand of the petitioners that it was a cultivable land, stand rebutted by the jamabandies produced by the petitioners themselves, wherein the land is recorded as Banjar Quadim in the jamabandi for the year 1999-2000 i.e the revenue record at the time of execution of the sale deeds. More so, for such land, the Collector's rate was Rs.1,50,000/-, but the sale deeds were executed at three times of the said Collector's rate i.e. Rs.4,50,000/-per acre. Therefore, it is a voluntary sale executed by the petitioners for consideration with their free will and consent. It is not a case of any fraud or misrepresentation, as is sought to be propounded by the petitioners during the course of arguments.

14. Therefore, we have no hesitation to held that the land was purchased by the State Government.

Question No.2

15. For deciding this question, certain provisions of the Act; the Transfer of Property Act, 1882 as well as the Punjab Regional & Town Planning & Development Act, 1995 are required to be extracted. The same are as under:

Land Acquisition Act, 1894

3. Definitions - In this Act, unless there is something repugnant in the subject or context-

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(aa) the expression "local authority" includes a town planning authority (by whatever name called) set up under any law for the time being in force;

(f) the expression "public purpose" includes"

(i) the provision of village-sites, or the extension, planned development or improvement of existing village-sites;

(ii) the provision of land for town or rural planning;

(iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned;

(iv) the provision of land for a corporation owned or controlled by the State;

(v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State;

(vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government, or by any authority established by Government for carrying out any such scheme, or, with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State or a cooperative society within the meaning of any law relating to cooperative societies for the time being in force in any State;

(vii) the provision of land for any other scheme of development sponsored by Government or, with the prior approval of the appropriate Government, by a local authority;

(viii) the provision of any premises or building for locating a public office, but does not include acquisition of land for companies.

The Transfer of Property Act, 1882

10. Condition restraining alienation - Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him;

Provided that property may be transferred to or for the benefit of a woman (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.

Punjab Regional & Town Planning & Development Act, 1995

17. Establishment and constitution of the Authority - (1) With effect from such date as the State Government may, by notification, specify in this behalf, the State Government shall establish for the purposes of this Act, an Authority to be known as the Punjab Urban Planning and Development Authority with headquarters at such place as the State Government may specify.

(2) The Authority established under sub-section (1) shall be a body corporate as well as a local authority, by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract; and shall, by the said name, sue and be sued.

16. In support of the arguments, the star anchor of the petitioners is the judgment of the Hon'ble Supreme Court in M/s Royal Orchid Hotels Limited case (supra). The said judgment does not support the arguments raised and has been wrongly relied upon. In the aforesaid case, 37 acres 4 guntas of land was acquired for a public purpose in pursuance of notification dated 29.12.1981 issued u/s 4 of the Act, in respect of which an Award was announced on 07.04.1986 by the Land Acquisition Collector. The land was acquired for the benefit of Karnataka State Tourism Development Corporation. An agreement was executed by the Corporation in favour of a Realtor conveying 12 acres 34 guntas of the acquired land. 6 acres 8 guntas of land was transferred to Bangalore International Centre and 5 acres including 2 acres 30 guntas land belonging to respondent No.1 and his brothers. The High Court set aside the acquisition holding that the real estate developer had an eye on these lands from the very beginning, as he entered into agreement with the landowners even before the publication of the notification u/s 4 of the Act. The High Court found that transfer of valuable portion of land is a vivid case of fraud on power. With the said factual background, the Hon'ble Supreme Court observed as under:

26. The pleadings and documents filed by the parties in these cases clearly show that the Corporation had made a false projection to the State Government that land was needed for execution of tourism related projects. In the meeting of

officers held on 13.01.1987 i.e. after almost four years of the issue of declaration u/s 6, the Managing Director of the Corporation candidly admitted that the Corporation did not have the requisite finances to pay for the acquisition of land and that Dayananda Pai, who had already entered into agreements with some of the landowners for purchase of land, was prepared to provide funds subject to certain conditions including transfer of 12 acres 34 guntas land to him for house building project. After 8 months, the Corporation passed resolution for transfer of over 12 acres land to Dayananda Pai. The Corporation also transferred two other parcels of land in favour of Bangalore International Centre and M/s Universal Resorts Limited. These transactions reveal the true design of the officers of the Corporation, who first succeeded in persuading the State Government to acquire huge chunk of land for a public purpose and then transferred major portion of the acquired land to private individual and corporate entities by citing poor financial health of the Corporation as the cause for doing so. The Courts have repeatedly held that in exercise of its power of eminent domain, the State can compulsorily acquire land of the private persons but this proposition cannot be over-stretched to legitimize a patently illegal and fraudulent exercise undertaken for depriving the landowners of their constitutional right to property with a view to favour private persons.....

17. A careful reading of the said judgment shows that change of public purpose was adversely commented upon for the reason that the land was transferred in favour of the real estate developer and other persons for the reason that the Corporation has no funds to make payment of the land acquired. It was found that, in fact, real estate developer has entered into agreements with the landowners prior to the publication of notification u/s 4 of the Act and the acquisition proceedings proceeded so as to confer benefit on him. The said judgment deals with an issue where the acquisition proceedings from the very inception were tainted with fraud. The purpose was not bona fide and it was a colourable exercise of powers.

18. On the basis of such judgment, it cannot be said that the State Government having acquired land for one public purpose, is estopped to convert the use of the said land for any other public purpose. There is no finding that the land acquired for one public purpose cannot be used for another public purpose. The entire case was based upon transfer of land to a private builder. In the two judgments referred to by Mr. Anupam Gupta, it has been held that after announcing of the award and taking possession u/s 16 of the Act, the acquired land vests with the Government free from all encumbrances. The landowners do not get any right to ask for revesting the land in them and to ask for restitution of the possession even if the land is not used for the purpose for which it was acquired. In fact, one of the earliest judgment on the issue of "change of public purpose" is Gulam Mustafa and Others Vs. The State of Maharashtra and Others, , wherein it was held to the following effect:

5.once the original acquisition is valid and title has vested in the

municipality, how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. There is no principle of law by which a valid compulsory acquisition stands voided because long later the requiring authority diverts it to a public purpose other than the one stated in the...declaration.

19. Later, a three Judges' Bench in *Mangal Oram and Others Vs. State of Orissa and Another*, reiterated the same view. Still later, another three Judges' Bench in *State of Maharashtra Vs. Mahadeo Deoman Rai alias Kalal and Others*, has observed under:

6. Besides, the question as to whether a particular scheme framed in exercise of statutory provisions is in the public interest or not has to be determined according to the need of the time and a final decision for all times to come cannot be taken. A particular scheme may serve the public purpose at a given point of time but due to change of circumstances it may become essential to modify or substitute it by another scheme. The requirements of the community do not remain static; they indeed, go on varying with the evolving process of social life. Accordingly, there must be creative response from the public authority, and the public scheme must be varied to meet the changing needs of the public. At the best for the respondent, it can be assumed that in 1967 when the resolution in his favour was passed, the acquisition of the land was not so urgently essential so as to call for his dispossession. But for that reason it cannot be held that the plots became immune from being utilized for any other public purpose for ever....

20. In *Collectors of 24 Parganas and Others Vs. Lalit Mohan Mullick and Others*, :

16. Our considered view in this matter is that establishment of a hospital for crippled children falls within the idea of settlement and rehabilitation of displaced persons and the notification cannot be faulted on the ground that the purpose disclosed in the letters is one different from the public purpose disclosed in the notification. The Division Bench of the High Court was in error in quashing the notification.

21. In *Union of India and Others Vs. Jaswant Rai Kochhar and Others*, the Hon'ble Supreme Court held to the following effect:

4.....Therefore, when the notification has mentioned that the land is sought to be acquired for housing scheme but it is sought to be used for District Centre, the public purpose does not cease to be public purpose and the nomenclature mentioned in the notification u/s 4(1) as housing scheme cannot be construed to be a colourable one. The notification u/s 4(1) could not have been quashed on the ground that the land is sought to be used for District Centre, namely, for commercial purpose. It is obvious that the lands acquired for a public purpose should serve only the public purpose of providing facilities of commercial purpose, namely, District Centre as conceded by the learned counsel in fairness to be a public purpose. The notification u/s 4(1) cannot be quashed on the

ground of change of user. The High Court was wholly wrong in quashing the notification on the ground of change of user.

22. In *Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others*, the Hon'ble Supreme Court considered the entire case law and returned the following findings:

22. It is thus well-settled legal position that the land acquired for a public purpose may be used for another public purpose on account of change or surplus thereof. The acquisition validly made does not become invalid by change of the user or change of the user in the Scheme as per the approved plan. It is seen that the land in Block "H" which was intended to be acquired for original public purpose, namely, the construction of Sewage Purification Plant, though was shifted to Block "A", the land was earmarked for residential, commercial-cum-residential purposes or partly for residential purpose etc. It is the case of the appellant that the Corporation intends to use the land acquired for construction of the staff quarters for its employees. It is true that there was no specific plan as such placed on the record, but so long as the land is used by the Corporation for any designated public purpose, namely, residential-cum-commercial purpose for its employees, the later public purpose remains to be valid public purpose in the light of the change of the user of the land as per the revised approved plan..... It would not, therefore, be necessary that the original public purpose should continue to exist till the award was made and possession taken. Nor is it the duty of the Land Acquisition Officer to see whether the public purpose continues to subsist. The award and possession taken do not become invalid or ultra vires the power of the Land Acquisition Officer. On taking possession, it became vested in BMC free from all encumbrances including tenancy rights alleged to be held by the respondents. Possession and title validly vesting in the State, becomes absolute u/s 10 of the Act and thereafter the proceedings under the Act do not become illegal and the land cannot be revested in the owner.

23. In *Bhagat Singh Vs. State of U.P. and Others*, , it was observed as under:

22. As pointed out in the above judgments, there is no need that the land proposed to be acquired by the Government for a particular public purpose should be for the same purpose or use mentioned in the Master Plan or Zonal Plan for the said area. Nor will the acquisition be invalid merely because the land proposed to be acquired is for a purpose other than the one permitted by the Master Plan or Zonal Plan applicable to that locality. Acquisition will be valid if it is for a public purpose even if it is not for the type of user permitted by the Master Plan or Zonal Plan in force at the time the acquisition is made....

24. In *Northern Indian Glass Industries case (supra)*, it was held to the following effect:

9....It is a well settled position in law that after passing the award and taking possession u/s 16 of the Act, the acquired land vests with the Government free from all encumbrances. Even if the land is not used for the purpose for which it is

acquired, the landowner does not get any right to ask for revesting the land in him and to ask for restitution of the possession.

25. In Dev Sharan's case (supra), it was held as under:

10. It is neither debated nor disputed as regards the valid acquisition of the land in question under the provisions of the Land Acquisition Act and the possession of the land had been taken. By virtue of Section 16 of the Land Acquisition Act, the acquired land has vested absolutely in the Government free from all encumbrances. u/s 48 of the Land Acquisition Act, Government could withdraw from the acquisition of any land of which possession has not been taken. In the instant case, even u/s 48, the Government could not withdraw from acquisition or to reconvey the said land to the respondent as the possession of the land had already been taken. The position of law is well settled.

26. In Ravi Khullar and Another Vs. Union of India (UOI) and Others, , the Hon"ble Supreme Court held as under:

23.....The purpose for which the lands are being utilized by a governmental agency is also a public purpose and as we have noticed earlier, would come within the ambit of the public purpose declared in Section 4 notification. Therefore, the acquisition cannot be challenged on the ground that the acquired lands are not being utilized for the declared public purpose. Having regard to the facts of the case it cannot be contended, nor has it been contended, that the notification u/s 4 of the Act was issued mala fide.

27. In Smt. Sulochana Chandrakant Galande Vs. Pune Municipal Transport and Others, the Hon"ble Court observed as under:

12. The provisions of Section 10(3) of the 1976 Act are analogous to Section 16 of the Land Acquisition Act, 1894 (hereinafter called "the 1894 Act"). Acquisition proceedings cannot be withdrawn/abandoned in exercise of the powers u/s 48 of the 1894 Act or Section 21 of the General Clauses Act, 1897 once the possession of the land has been taken. [Vide State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others, , Lt. Governor of Himachal Pradesh and Another Vs. Avinash Sharma, Pratap and Others Vs. State of Rajasthan and Others, , Mandir Shree Sitaramji alias Shree Sitaram Bhandar Vs. Land Acquisition Collector and Others, Bangalore Development Authority and Others Vs. R. Hanumaiah and Others, and Hari Ram and Another Vs. State of Haryana and Others,

13. The meaning of the word "vesting" has been considered by this Court time and again. In Fruit and Vegetable Merchants Union Vs. Delhi Improvement Trust, this Court held that the meaning of the word "vesting" varies as per the context of the statute in which the property vests. While considering the case under Sections 16 and 17 of the 1894 Act, the Court held as under: (AIR p. 353, para 19)

19. ... the property acquired becomes the property of Government without any

conditions or limitations either as to title or possession. The legislature has made it clear that the vesting of the property is not for any limited purpose or limited duration.

(Emphasis added)

14. "Encumbrance" actually means the burden caused by an act or omission of man and not that created by nature. It means a burden or charge upon property or a claim or lien on the land. It means a legal liability on property. Thus, it constitutes a burden on the title which diminishes the value of the land. It may be a mortgage or a deed of trust or a lien of an easement. An encumbrance, thus, must be a charge on the property. It must run with the property. (Vide *The Collector of Bombay Vs. Nusserwanji Rattanji Mistri and Others*, , *H.P. State Electricity Board and Others Vs. Shiv K. Sharma and Others*, and *AI Champdany Industries Limited Vs. The Official Liquidator and Another*,

15. In *State of Himachal Pradesh Vs. Tarsem Singh and Others*, this Court held that the terminology "free from all encumbrances" used in Section 16 of the 1894 Act, is wholly unqualified and would encompass the extinguishing of "all rights, title and interests including easementary rights" when the title vests in the State.

16. Thus, "free from encumbrances" means vesting of land in the State without any charge or burden in it. Thus, the State has absolute title/ownership over it.

17. In *Satendra Prasad Jain and Others Vs. State of U.P. and Others*, this Court held that once land vests in the State free from all encumbrances, it cannot be divested. The same view has been reiterated in *Awadh Bihari Yadav and Others Vs. State of Bihar and Others*, *U.P. Jal Nigam, Lucknow through its Chairman and another Vs. M/s. Kalra Properties (P) Ltd. Lucknow and others*, *Pratap case (supra)*, *Chandragauda Ramgonda Patil and Another Vs. State of Maharashtra and Others*, , *Allahabad Development Authority Vs. Nasiruzzaman and Others*, , *State of Kerala and others Vs. M. Bhaskaran Pillai and another*, *M. Ramalinga Thevar Vs. State of Tamil Nadu and Others*, *The Printers (Mysore) Ltd. Vs. M.A. Rasheed and Others*, *Govt. of A.P. and Another Vs. Syed Akbar*,

18. So far as the change of user is concerned, it is a settled legal proposition that once land vests in the State free from all encumbrances, there cannot be any rider on the power of the State Government to change user of the land in the manner it chooses.

19. In a similar situation, in *Gulam Mustafa and Others Vs. The State of Maharashtra and Others*, this Court held as under: (SCC p. 802, para 5)

5. ... once the original acquisition is valid and title has vested in the municipality, how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. There is no principle of law by which a valid compulsory acquisition stands voided because long later the requiring authority diverts it to a public purpose other than the one stated in the ... declaration.

20. Reiterating a similar view in *C. Padma and Others Vs. Dy. Secretary to the Govt. of T.N. and Others*, , this Court held that if by virtue of a valid acquisition of land, the land stands vested in the State, thereafter, the claimants are not entitled to restoration of possession on the grounds that either the original public purpose has ceased to be in operation or the land could not be used for any other purposes.

21. In *Bhagat Singh Vs. State of U.P. and Others*, *Niladri Narayan Chandradhurja (d) by L.Rs. Vs. State of West Bengal*, and *Northern Indian Glass Industries Vs. Jaswant Singh and Others*, this Court held that, the land user can be changed by the statutory authority after the land vests in the State free from all encumbrances.

22. In view of the above, the law can be summarised that once the land is acquired, it vests in the State free from all encumbrances. It is not the concern of the landowner how his land is used and whether the land is being used for the purpose for which it was acquired or for any other purpose. He becomes *persona non grata* once the land vests in the State. He has a right to get compensation only for the same. The person interested cannot claim the right of restoration of land on any ground, whatsoever.

28. In view of the aforesaid judgments, though the land was not acquired under the provisions of the Act, but still applying the principles of acquisition under the Act, the public purpose for which the land is acquired can always be changed to another public purpose by the State Government for optimum utilization of the land. The requirements of the community keep on varying. The schemes can be varied to meet the changing needs of the public.

29. In the present case, 70 acres of land was transferred to the Department of Home Affairs & Justice (Jail Branch) for construction of Modern Jail Complex at Faridkot. On the said land, jail has been constructed at the cost of Rs.250 acres. Not a little finger was raised at that point of time. Since the land has been now transferred to PUDA for carving out the plots, the erstwhile landowners have woken up. Punjab Urban Development Authority constituted u/s 17 of the Punjab Regional & Town Planning & Development Act, 1995, is a local authority and an instrumentality/agency of the State Government. The land could be acquired for developing a residential complex for or on behalf of the PUDA in terms of the provisions of the Act, as defined u/s 3(f). Therefore, mere change of purpose does not entitle the land owners to dispute the sale deeds. It may be mentioned that the land has not been acquired but purchased. Therefore, in terms of Section 10 of the Transfer of Property Act, 1882, any condition in respect of use of land is void. We may mention that in the sale deeds, there is no condition in respect of use thereof, though, it is recited that land has been purchased for the purpose of University. The University has no objection for the transfer. Therefore, the petitioners, who have parted with their land and accepted compensation more than a decade earlier cannot be permitted to dispute the transfer of land.

Question No.3

30. Learned counsel for the petitioners has referred to certain judgments i.e. Smt. Gunwant Kaur, ABL International Ltd., M/s Devi Ispat Ltd. and Syed Maqbool Ali cases (supra) to contend that the disputed questions can be examined or decided in the writ jurisdiction.

31. There is no dispute about the proposition laid down in the aforesaid cases. In appropriate cases, the High Court has jurisdiction to examine disputed question of fact, but whether such jurisdiction could be exercised or not, is dependent upon the judicial discretion to be exercised by the High Court in the facts of each case. The existence of jurisdiction is one thing than to exercise the same in the facts of a particular case is altogether another thing. We do not find that the petitioners has made out a case for avoiding such sale deeds after more than ten years only for the reason, the land has been transferred to a local authority, constituted under the State Act.

32. Therefore, if the State Government has decided to consolidate the land of different Departments with a view to optimum utilization and functionality of the same, we find that there is no fraud much less any illegality or irregularity, which may warrant any interference by this Court in its writ jurisdiction.

33. In view of the above, the present writ petition is dismissed.