

(2010) 06 SHI CK 0138
In the High Court Of Himachal Pradesh
Case No : CWP No. 1204 of 2010

Vardhman Roofing Pvt. Ltd.

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 04-06-2010

Acts Referred:

Constitution of India, 1950 — Article 248
Environment (Protection) Act, 1986 — Section 3
Environment (Protection) Rules, 1986 — Rule 5(3)
Himachal Pradesh Tenancy and Land Reforms Act, 1972 — Section 118, 5

Citation : (2010) 06 SHI CK 0138

Hon'ble Judges : Sanjay Karol, J;Deepak Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—By means of this writ petition the Petitioner has prayed for the grant of following amongst other reliefs:

- a) Quash the impugned order dated 11.11.2009 (Annexure P-20), order dated 19.11.2009 (Annexure P-22), order dated 28.1.2010 (Annexure P-25) and order dated 23.3.2010 (Annexure P-34) passed by the Respondents with all consequences flowing there from especially in the matter of restoration of the Essentiality Certificate Annexure P-7 in favour of the Petitioner Company and to its benefit.
- b) Issue a writ of Mandamus or other appropriate writ, order or direction as this Hon"ble Court deems fit directing the Respondents to continue to process the case of the Petitioner for the grant of permission to it for purchase of land u/s 118 of the H.P. Tenancy and Land Reforms Act, 1972 and consequently to grant such permission in its favour.
- c) Issue appropriate directions to the Respondents to permit the Petitioner to install a Non-Asbestos Cement Sheet (Plaint and corrugated) Manufacturing Plant at the proposed site till such time that the requisite permissions/sanctions from

the concerned authorities are not granted in favour of the Petitioner for setting up an Asbestos Cement Sheet Plant, with further directions to be issued to the Respondents to permit to the Petitioner to set up the aforesaid Asbestos Cement Sheet Manufacturing Unit after such permissions/approvals are granted in its favour.

2. The Petitioner Company is a registered Company under the Indian Companies Act. Sh. N.C. Jain, is the Director of the Company and has filed the present writ petition.

3. Brief facts of the case are that in the month of February, 2009, the Petitioner approached the State of Himachal Pradesh seeking permission to set up an Industrial Unit for manufacturing of Asbestos Cement Sheets. The Entrepreneur Memorandum (E.M.) of the Petitioner Company was considered by the Single Window Clearance Agency, Kala Amb, District Sirmour and on 9.6.2009 an acknowledgment was issued by the Member Secretary of the Single Window Clearance Agency informing the Petitioner that its E.M. has been received. It was clarified that the acknowledgment does not bestow any legal right on the Petitioner and it is required to seek requisite clearances and fulfil other statutory obligations stipulated under law. On the basis of this acknowledgment the Petitioner entered into two agreements to sell whereby it agreed to purchase 41-03 bighas of land in Mauza Kheri, Tehsil Nahan, District Sirmour, H.P. from M/s. Anupama Home Appliances and Sh. Vishal for setting up the unit in question.

4. The Petitioner thereafter approached the Member Secretary of the Single Window Clearance Agency praying that recommendations be issued to the Director of Industries for purchase of the aforesaid land. On 17.8.2009 the Member Secretary of the Single Window Clearance Agency issued the requisite certificate relevant portion of which reads as follows:

It is certified that M/s. Vardhman Roofing Pvt. Ltd. which is proposed to be set up at Village Kheri, Trilokpur Road, Kala Amb, Distt. Sirmour, H.P. for the manufacturing of Asbestos Cement Sheets vide EM Part-I No. 02/010/12/00616 dated 9.6.2009. The proposed land measuring 41-03 Bighas comprised in Khasra Nos. 198/110, 190/104,305/103. 197/110, 532/285/168 and 304/103 Village and Mauja Kheri was inspected by the office of the undersigned and found the proposed site quite suitable for Industrial Purpose. The proposed site is surrounded by N/s. Anupam Home Appliances, Pasupati Spinning and Weaving Mills Ltd. and Swiss Devices.

5. On the basis of this certificate the Commissioner of Industries issued an Essentiality Certificate in favour of the Petitioner recommending that the Petitioner be granted permission to purchase the said land in terms of Section 118 of the H.P. Tenancy and Land Reforms Act. Condition No. 4 of the Certificate reads as follows:

4.The party shall have to obtain other necessary NOC/permission from other concerned authorities as required for this Industrial Project including exemption

under the rule, if any.

6. Thereafter, the Petitioner applied for permission to purchase the land.

7. The Petitioner also submitted draft terms of reference with the Ministry of Environment and Forest, Government of India, New Delhi for permission to set up the Unit as is apparent from Annexure P-9 dated 26th August, 2009 whereby the Petitioner was asked to give further details.

8. It appears that M/s. Anupam Home Appliances in the meantime had a change of heart and did not want to sell the land to the Petitioner. It sent a representation to various authorities praying that the Essentiality Certificate be withdrawn since Asbestos is a polluting and hazardous industry and the Petitioner should not be permitted to set up the said unit in the area. Taking cognizance of this representation the Member Secretary, Single Window Clearance Agency, Kala Amb sent a letter dated 11.9.2009 to the Petitioner asking it to respond to this allegation. The Petitioner submitted its reply. Realizing that M/s. Anupam Home Appliances and Mr. Vishal may try to back out from the agreements, the Petitioner also filed two Civil Suits No. 85 of 2009 and 84 of 2009 in this Court praying for a decree for specific performance against M/s. Anupam Home Appliances and Mr. Vishal. Stay orders were passed in favour of the Petitioner on 18.9.2009 restraining M/s. Anupam Home appliances and Mr. Vishal from transferring, alienating and encumbering the suit land in any manner till further orders.

9. On 19.9.2009 an office order was issued by the Commissioner of Industries, Himachal Pradesh wherein it was mentioned that the manufacturing, handling and processing of asbestos and its products falls in the list of industries involving hazardous process requiring prior site clearances from the State Level Site Appraisal Committee and environment clearance from the Ministry of Environment and Forest, Government of India and the Essentiality Certificate issued in favour of the Petitioner was withdrawn. This order was challenged by the Petitioner by filing CWP No. 3542 of 2009 in this Court which came up before the Court on 9th October, 2009. The State did not oppose the prayer that the order dated 19.9.2009 may be quashed since it had been passed without issuing notice to the Petitioner. The petition was disposed of with liberty reserved to the State to take fresh action in accordance with law. In the meantime, both the suits filed by the Petitioner were compromised and the Defendants in the said suits agreed to transfer the land in favour of the Petitioner as per the agreements to sell.

10. Thereafter, a hearing in the matter was held on 4.11.2009 and after hearing, the Commissioner of Industries passed an order dated 11.11.2009, Annexure P-20, which is impugned before us, canceling the Essentiality Certificate granted in favour of the Petitioner. While endorsing a copy of the order to the Petitioner, a copy was also sent to all the General Managers of the District Industry Centers and Member Secretaries of the Single Window Clearance Agencies in Himachal

Pradesh with a direction that no Asbestos Unit should be registered without prior permission. The Petitioner immediately sent a representation challenging the validity of the said order mainly on the ground that no notice had been issued to it and that one of the Directors who happened to be at Shimla was telephonically informed that a meeting would be held on 4.11.2009 itself. Pursuant to this order the Member Secretary, Single Window Clearance Agency, Kala Amb withdrew the acknowledgement of EM-I on 19.11.2009.

11. The Petitioner challenged the aforesaid orders before this Court by filing CWP No. 4333 of 2009. In this writ petition an order of status quo was passed in favour of the Petitioner on 24.11.2009. During the pendency of the petition, the Petitioner made a representation to the Chief Secretary to the Government of Himachal Pradesh on 22.12.2009 praying that the orders cancelling the Essentiality Certificate and Cancelling the EM-Part-I may be recalled. Since the Petitioner had itself made the representation, this Court passed an order on 8.1.2010 in CWP No. 4333 of 2009 which reads as follows:

Mr. Anup G, Chaudhary, learned Senior Counsel has apprised the Court that in sequel to order dated 22nd December, 2009, the Chief Secretary has not heard the representation.

Mr. Sood, learned Additional Advocate General submits that the representation shall be heard and decided by the Chief Secretary on 19th January, 2010 at 3.00 p.m. in her Chambers.

Consequently, the Chief Secretary is directed to hear and decide the representation on 19th January, 2010 by passing a speaking order. The order shall be passed by the Chief Secretary wholly uninfluenced by the withdrawal of the essentiality certificate. In order dated 22nd December, 2009, we have restrained the Chief Secretary to pass the final orders without the leave of the Court. However, in order to do complete justice, we permit the Chief Secretary to pass the final orders. Liberty is reserved to the parties to make a mention before the learned Vacation Judge if the occasion so arises. Dasti copy on usual terms.

12. The Chief Secretary to the Government of Himachal Pradesh after hearing the Petitioner rejected the representation of the Petitioner vide a detailed order dated 28th January, 2010. Thereafter, the Petitioner filed an application seeking permission to amend the CWP No. 4333 of 2009 so that it could also implead the Chief Secretary as a party Respondent and challenge the order dated 28.1.2010 passed by her. On 11.2.2010 a learned Vacation Judge of this Court issued notice on the application for amendment and directed that the reply affidavit be filed. On 26.2.2010 when the matter came up for hearing before the Court, learned Counsel for the Petitioner withdrew the writ petition without reserving any liberty to file a fresh petition on the same cause of action.

13. According to the Petitioner, on 26th February, 2010 it also filed another representation to the Chief Secretary since it was assured that the Respondents would reconsider the matter favourably. The comments of the Commissioner of

Industries and others were called for and finally this representation was also rejected and a communication in this regard was sent to the Petitioner on 23rd March, 2010 informing it that the Chief Secretary had not found any reason to review her earlier order dated 28.1.2010. Aggrieved by these orders, the present writ petition has been filed.

14. We have heard Sh. R.L. Sood, learned Senior Counsel for the Petitioner and Sh. Vivek Singh Thakur, learned Additional Advocate General for the State.

15. On behalf of the Petitioner it has been urged that the eligibility certificate has been cancelled without following the rules of natural justice and without giving reasonable opportunity to the Petitioner to put-forth its case. It has also been urged that the State Government has no role to play and it is only the Ministry of Environment and Forests, Government of India which has the right to decide whether a hazardous industry should be set up or not. It is also argued that the Essentiality Certificate could not be cancelled/withdrawn since there is no violation of the conditions laid down therein. It is submitted that in case the Petitioner gets permission to set up the Industry from the Central Government the State Government has no right to impose any further restrictions as to whether such an industry should be set up or not. It has also been urged that the Kala Amb is a severely polluted area and not a critically polluted area and therefore the industry can be set up there. Lastly, it has been urged that the Petitioner has spent a huge amount of money for purchase of the land and machinery for setting up of the plant and therefore the Essentiality Certificate should not have been withdrawn.

16. First of all, we take up the allegations of the Petitioner that the orders have been issued in violation of the Natural Justice. There can be no manner of doubt that the order dated 19.9.2009 had been passed without issuing notice to the Petitioner. This however would have no effect on the writ petition since the said order was quashed by this Court on perusal of the letter produced by the State Government and permission was granted to the State to take fresh action in accordance with law.

17. We therefore come to the order dated 11.11.2009. According to the Petitioner, on 4.11.2009 one of the Director of the Petitioner was telephonically informed that a meeting is to be held on the same date and no notice was given to him. Assuming this to be correct it would only mean that the order dated 11.11.2009 was passed in violation of the rules of natural justice. Therefore, the Petitioner itself during the pendency of the earlier writ petition decided to make a representation to the State Government praying that the order cancelling the Essentiality Certificate and EM-Part-1 may be recalled. This Court firstly passed an order permitting the Chief Secretary to proceed with the hearing but not to decide the matter without leave of the Court. The Chief Secretary accordingly did not decide the matter. Thereafter, on 8th January, 2010 this Court directed the Chief Secretary to hear and decide the representation and pass a speaking order thereon. The Chief Secretary after hearing the matter passed a detailed order

thereon. All the points raised by the Petitioner have been duly considered by the Chief Secretary and she vide a detailed order has rejected the same. Relevant portion of the order of the Chief Secretary reads as follows:

The undersigned has also gone through the report of the Public hearing conducted by the Pollution control Board under the chairmanship of ADC Sirmour. I find that people have expressed their concerns with regard to the unit especially due to the hazardous material used in the process. The company management no doubt has tried to assuage their fears by telling the local residents that they are going to install a very modern machine and are going to provide for air pollutant control mechanism. Some of the local residents have given a conditional acceptance to the unit subject to the company arranging their visit to such a plant and satisfying themselves with regard to the air and water pollution of such units. The Presiding Officer has, however, concluded that most local residents have supported the proposed unit. The report has been forwarded to the Ministry of Environment but the final clearance of Ministry of Environment is still awaited. In the meanwhile the report of Central Pollution control Board has come and placed Kala Amb in the severely polluted industrial clusters with the comprehensive Environmental Pollution Index of 68.77 which is now to be assessed by the Ministry by norms which are meant for projects located in the critically Polluted Areas as per the Government of India O.M. No. J-11013/5/2010-1 A.II(I).

In view of the above facts I am of the considered view that it is not in public interest to have a manufacturing unit of Asbestos Cement Sheet which is a hazardous and polluting industry located at Kala Amb, Tehsil Nahan, District Sirmour. More so because Kala Amb has already been identified as a severely polluted industrial cluster as per the Central Pollution Control Board Report with CEPT of 68.77. I, therefore, reject the representation of M/s. Vardhman Roofing Pvt. Ltd. A copy of the order be sent to the Petitioner Company by Registered A.D.

18. The Chief Secretary has rejected the prayer of the Petitioner on the ground that it would be against the public interest to allow an Asbestos based Unit to be set up in the Kala Amb area which is already a severely polluted industrial cluster. The Petitioner had full opportunity to put forth its case before the Chief Secretary and since it had itself invoked the jurisdiction of the Chief Secretary it now cannot be heard to say that the Chief Secretary had no right to hear the matter. The Petitioner cannot urge that the principles of natural justice have been violated since it was aware of all the grounds raised by the State and had argued all the points before the Chief Secretary who gave a proper hearing to the Petitioner.

19. It would be pertinent to mention that in fact after the Chief Secretary passed her order, the Petitioner filed a petition for amendment of the writ petition seeking leave to challenge the order of the Chief Secretary also. Notice was issued on this application but on the next date i.e. 26th February, 2010 the CWP

No. 4333 of 2009 was withdrawn unconditionally. The Petitioner did not reserve the right to challenge the order of the Chief Secretary in any other proceedings and in our considered view this second petition would not be maintainable in view of the fact that no liberty was reserved by the Petitioner.

20. Having said so, we have gone into the merits of the petition also. We had summoned the record from the office of the Chief Secretary and we find that on 26th February, 2010 the date when the Petitioner withdrew the writ petition, it had not filed any representation. The representation which was filed is no doubt dated 26th February, 2010 but it was filed only on 3rd March, 2010. The comments on this representation were called for and finally on 20th March, 2010 the Chief Secretary came to the conclusion that she had already passed an order in the case and saw no justification for reviewing her earlier order. The matter did not stop here. Again a representation appears to have been made to the Hon"ble Chief Minister of the State who again called for the comments from various officials. After consideration by the highest authority in the State the action of the Chief Secretary was approved.

21. We now take up the argument of the Petitioner that in view of the provisions of the Environmental Protection Act and the notification issued thereunder it is only the Central Government which has the power to decide as to where such a hazardous unit should be located and the State Government has no role to play in the matter. It is not disputed that the industry being set up by the Petitioner is hazardous industry and as per EIA notification dated 14th September, 2006, Annexure P-37, all Asbestos Industries and Asbestos Units fall in category "A". Power to permit the setting up of these Units and to grant prior environmental clearance thereof lies with the Central government. Section 3 of the Environment Protection Act, 1986 lays down the powers of the Central Government. Sub Clause (v) of Clause (2) reads as follows:

3. Power of Central Government to take measures to protect and improve environment:

(1) xxx xxx xxx (2) In particular, and without prejudice to the generality of the provisions of Sub-section (1), such measures may include measures with respect to all or any of the following matters, namely:

(i) to (iv) xxx xxx xxx (v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards.

22. Section 5 of the Act empowers the Central Government to give directions and Rule 5(3)(a) and (d) of the Environment (Protection) Rules, 1986 read as follows:

5. Prohibition and restriction on the location of industries and the carrying on processes and operations in different areas:

(1) and (2) xxx xxx xxx (3)(a) Whenever it appears to the Central government that it is expedient to impose prohibition or restrictions on the location of an

industry or the carrying on of processes and operations in an area, it may, by notification in the official gazette and in such other manner as the Central Government may deem necessary from time to time, given notice of its intention to do so.

(b) and (c) xxx xxx xxx (d) The Central Government shall, within a period of one hundred and twenty days from the date of publication of the notification in the Official Gazette, consider all the objections received against such notification and may within three hundred and sixty-five days from such date of publication, impose prohibition or restrictions on location of such industries and the carrying on of any process or operation in an area.

23. On the basis of the aforesaid statutory provisions and rules it is urged that it is only the Central Government who has the power to decide whether an industry should be set up in a particular area or not. Further more on the basis of Clauses (3) and (4) of Annexure P-36 it is urged that since the State of Himachal Pradesh does not have an environment policy of its own it is bound to follow the general directions issued by the Central Government.

24. At first blush, this argument seems attractive but on a closer analysis of the constitutional provisions it is apparent that the State Government has the right to decide whether a polluting industry should be set up in the State or in a particular area in the State.

25. Article 248 of the Constitution of India provides that the Parliament has exclusive power to make any law with respect to any matter not enumerated in the concurrent list or State list. List-I of the 7th schedule deals with the matters to be exclusively dealt with by the Parliament. The two relevant entries are entries Nos. 7 and 52 which read as follows:

7. Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war.

xxx xxx xxx 52. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.

26. A bare perusal of these entries shows that the Union is empowered to make laws in respect of those industries which Parliament by law has declared to be necessary for purposes of defence or prosecution of war or those industries over which the Union has control in accordance with an Act of Parliament passed in the public interest.

27. List-II of Schedule-7, is the State List. Entry-6 empowers the State to make laws in respect of Public health and sanitation; hospitals and dispensaries. Entry 24 empowers the State Government to frame legislation in respect of industries not covered by entry 7 and 52 of List-I.

28. Entry 33 of list-III of 7th Schedule of the concurrent list reads as follows:

33. Trade and commerce in, and the production, supply and distribution of-

(a) the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products;

(b) foodstuffs, including edible oilseeds and oilseeds and oils; (c) cattle fodder, including oilcakes and other concentrates;

(d) raw cotton, whether ginned or unginned, and cotton seed; and

(e) raw jute.

29. This also does not cover the present case since we are dealing with a hazardous industry.

30. In *The State of Rajasthan Vs. G. Chawla and Dr. Pohumal*, the Apex court while considering the plenary powers of legislation vested in the Union and the State held that the theory of pith and substance should be applied when deciding a question as to whether the concerned legislature has a power to legislate on a particular topic or not. It held as follows:

8. After the dictum of Lord Selborne in *Queen -Empress v. Burah* (1878) AC 889 oft-quoted and applied, it must be held as settled that the legislatures in our Country possess plenary powers of legislation. This is so even after the division of legislative powers, subject to this that the supremacy of the legislatures is confined to the topics mentioned as Entries in the List conferring respectively powers on them. These Entries, it has been ruled on many an occasion, though meant to be mutually exclusive are sometimes not really so. They occasionally overlap, and are to be regarded as enumeratio simplex of broad categories. Where in an organic instrument such enumerated powers of legislation exist and there is a conflict between rival Lists, it is necessary to examine the impugned legislation in its pith and substance, and only if that pith and substance falls substantially within an Entry or Entries conferring legislative power, is the legislation valid, a slight transgression upon a rival List, notwithstanding. This was laid down by Gwyer C.J. in AIR 1941 47 (Federal Court) in the following words:

It must inevitably happen from time to time that legislation, though purporting to deal with a subject in one list, touches also on a subject in another list, and the different provisions of the enactment may be so closely intertwined that blind adherence to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the legislature enacting them may appear to have legislated in a forbidden sphere. Hence the rule which has been evolved by the Judicial Committee whereby the impugned statute is examined to ascertain its "pith and substance", or its "true nature and character", for the purpose of determining whether it is legislation with respect to matters in this list or in that.

This dictum was expressly approved and applied by the Judicial Committee in *Prafulla Kumar v. Bank of Commerce, Ltd., Khulna* 74 Ind App 23 : AIR 1947 PC

60, and the same view as been expressed by this Court on more than one occasion. It is equally well settled that the power to legislate on a topic of legislation carries with it the power to legislate on an ancillary matter which can be said to be reasonably, included in the power given.

31. In the case before the Apex Court the question was whether the State had the jurisdiction to legislate in respect of noise pollution. The Apex Court in para 12 held as follows:

12. There can be little doubt that the growing nuisance of blaring loudspeakers powered by amplifiers of great output needed control, and the short question is whether this salutary measure can be said to fall within one or more of the Entries in the State List. It must be admitted that amplifiers are instruments of broadcasting and even if Communication, and in that view of the matter, they fall within Entry 31 of the Union List. The manufacture, or the licensing of amplifiers or the control of their ownership or possession, including the regulating of the trade in such apparatus is one matter, but the control of the "use" of such apparatus though legitimately owned and possessed, to the detriment of tranquility health and comfort of others is quite another. It cannot be said that public health does not demand control of the use of such apparatus by day or by night, or in the vicinity of hospitals or, schools, or offices or habited localities. The power to legislate in relation to public health includes the power to regulate the use of amplifiers as producers of loud noises when the right of such user, by the disregard of the comfort of and obligation to others, emerges as a manifest nuisance to them. Nor is it any valid argument to say that the pith and substance of the Act falls within Entry 31 of the Union List, because other loud noises, the result of some other instruments etc., are not equally controlled and prohibited.

32. In *B. Viswanathiah and Company and Others Vs. State of Karnataka and Others*, a similar view was taken.

33. Whether we apply the doctrine of pith and substance or the doctrine of harmonious construction, it is more than apparent that normally the power to regulate industry except those mentioned in Entries 7 and 52 of the list, lies with the State Government. True it is, that the Environment Protection Act empowers the Central Government to grant or reject permission for setting up an Industry falling within category "A". However, this does not mean that the State has no right to decide what industries should be permitted to be set up in the State. The State, in the public interest, and also in order to protect the environment of the State may take a decision not to permit polluting and hazardous industries to be set up in any part of the State. The Central Government cannot in such a situation direct that the polluting industry must be set up in the State. It is the State which has the first right to decide what industries should be set up and where they should be set up. The State may declare certain areas to be industrial areas. How the zoning is to be done and industrial areas are to be earmarked is solely within the jurisdiction of the State. Even if the laws of the State permit an industry to be set up in a particular area the Central Government in terms of the

Environment Protection Act can still reject permission on the ground that the industry is a hazardous industry. The Environment Protection Act has been enacted primarily to protect the environment and it is therefore more than apparent that the power granted to the Central Government under the said Act is an additional power to safeguard the environment and these provisions cannot be interpreted in such a manner that they take away the primary right of the State to legislate on issues covered under the second List. Health is an issue falling within the purview of the List.

34. We find that the Chief Secretary in her order, relevant portion of which we have quoted hereinabove, has taken into consideration the larger public interest. Kala Amb is already a severely polluted area having CEPI index of over 68.77. It may be true that it is not a critically polluted area but the setting up of a hazardous industry like an Asbestos based industry could easily bring it into a critically polluted area. As they say, "prevention is better than cure". It is better to take steps to prevent the area from becoming more polluted than to set up a hazardous polluting industry. We also find that the decision has been taken keeping into view the health of the citizens of the area. We find nothing wrong in the decision so taken.

35. We are also of the view that the question whether an industry which is a hazardous polluting industry should be permitted to be set up or not is an administrative decision and this Court would not normally interfere in the same especially when the decision has been taken by the Government with a view to protect the environment and the health of its people.

36. It has been urged by the Petitioner that since it was granted Essentiality Certificate and has also filed an entrepreneur memorandum which has been acknowledged and it has spent crores of rupees for setting up the industry, the essentiality certificate should not have been withdrawn. We find that the Petitioner has made the investment at its own risk. Even before the Civil Suits were compromised in the Court the Petitioner was aware that the State had initiated steps to revoke its Essentiality Certificate. Merely because an Essentiality Certificate has been granted gave no right to the Petitioner to purchase land and machinery to set up a hazardous industry even before environment clearance had been granted. The Essentiality Certificate was only granted with an idea of permitting the Petitioner to go ahead with the identification and purchase of land. Without getting permission of the State Government u/s 118 of the H.P. Tenancy and Land Reforms Act the Petitioner paid entire sale consideration of Rs. 1.8 crores. Such payment has been made by the Petitioner at its own risk. The Petitioner could not have assumed that permission u/s 118 of the Tenancy and Land Reforms Act was bound to be granted to it.

37. In this case the Petitioner has purchased the machinery without first getting clearances under the H.P. Tenancy and Land Reforms Act, Environment Protection Act and other provisions of law. The Petitioner acted at its own risk and cannot

plead promissory estoppel or legitimate expectations. The principle of legitimate expectation as explained in Punjab Communications Ltd. Vs. Union of India and Others, has no applicability to the facts of the present case as at no stage was a promise held out to the Petitioner that the State would grant permission to it. In fact, at every stage the Petitioner was told that the Essentiality Certificate was being granted subject to the Petitioner obtaining other clearances.

38. The decision of the Apex Court in Villianur Iyarkkai Padukappu Maiyam Vs. Union of India (UOI) and Others, especially the law laid down in para 210 thereof relied upon by the Petitioner has no applicability to the facts of the present case.

39. Sh. R.L. Sood, has relied upon the observations of the Apex Court in paras 122 and 123 of Narmada Bachao Andolan Vs. Union of India and Others, We fail to understand how the observations of the apex court in the said case help the Petitioner. The facts of this case are totally different and this authority is not at all applicable.

40. In view of the above discussion, we find no merit in the writ petition which is dismissed with costs assessed at Rs. 50,000/ -.