

**(2011) 08 P&H CK 0259**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Writ Petition No. 5064 of 1990**

Virender Singh and others

APPELLANT

Vs

State of Haryana and others

RESPONDENT

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**Date of Decision :** 03-08-2011

**Acts Referred:**

Constitution of India, 1950 — Article 299  
Land Acquisition Act, 1894 — Section 18, 19, 4, 48, 5A

**Citation :** (2011) 164 PLR 235

**Hon'ble Judges :** Jasbir Singh, J; Augustine George Masih, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## Judgement

Augustine George Masih, J.—Through this writ petition the petitioners are praying for issuance of a writ of mandamus commanding the respondents for releasing the land of the petitioners in compliance of the order dated 27.1.1982 (Annexure P-7), vide which the decision of the Government was conveyed by the Director, Urban Estates, Haryana, Chandigarh to the Administrator, Haryana Urban Development Authority, Faridabad for releasing of 2 Bighas and 3 Biswas of land of the petitioners in village Karnal, Tehsil and District Karnal from acquisition, where Smadhis of the ancestors of the petitioners and their houses were situated, and to quash the order dated 27.11.1989 (Annexure P-17) passed by the Chief Administrator, Haryana Urban Development Authority, conveying the petitioners that the land of the petitioners, above mentioned, cannot be released.

2. Briefly, the facts of the case are that, notification u/s 4 of the Land Acquisition Act, 1894 (Hereinafter referred to as "the Act") dated 4.6.1980 was issued by the State of Haryana for acquisition of 247.74 acres of land for development and utilisation as residential and Commercial Area under the Haryana Urban Development Authority Act, 1977 (hereinafter referred to as the "HUDA Act") in the area of village Karnal, Tehsil and District Karnal. 85 Bighas of land of the petitioners was also included in this notification for acquisition. On 2 Bighas and

3 Biswas of land there are three Smadhis of the ancestors of the petitioners, which were built by the forefathers of the petitioners and there were superstructures in the shape of building. Petitioners filed objections u/s 5-A of the Act, but the same were not accepted and vide declaration issued u/s 6 of the Act dated 16.4.1981 their entire land was included in the notification including 2 Bighas and 3 Biswas of land, referred to above. Award dated 6.7.1981 was announced by the Land Acquisition Collector.

3. Before the passing of the award, the petitioners filed an application dated 1.7.1981 for releasing of their land before the Minister Incharge. This application was duly processed by the department and considered by the Minister Incharge, who after hearing the petitioners as well as the Land Acquisition Collector, accepted the application and ordered release of 2 Bighas and 3 Biswas of land of the petitioners. In pursuance to the order of the Minister Incharge, Director Urban Estates vide letter dated 27.1.1982 (Annexure P-7) conveyed the decision of the Government to the Administrator, HUDA about the release of the land of the petitioners from acquisition.

4. In March, 1982, the petitioners were asked to submit an affidavit and an agreement to the Estate Officer, Karnal, which was duly done and the same was forwarded to the Director, Urban Estates Haryana on 11.5.1982. The agreement and the affidavit were sent to the Administrator, HUDA, Faridabad with a copy to the Estate Officer with a direction that the order dated 27.1.1982 be complied with. There was interdepartmental communication between HUDA authorities, and finally, on 10.8.1982, the District Town Planner, Karnal sent a plan to the Estate Officer after getting the same approved from the State Town Planner in order to implement the decision of the State Government dated 17.1.1982. The site plan is attached with the writ petition as Annexure P-9. Thereafter the petitioners were called upon to submit fresh agreement, which was done accordingly on 20.9.1982. This agreement was forwarded by the Estate Officer to the Administrator, HUDA, Faridabad vide letter dated 20.9.1982. On the demand being made by the Estate Officer, the petitioners demolished the structures where their houses stood constructed, in accordance with the proposed plan (Annexure P-9) to enable the respondents to construct a road as per the site plan. No compensation was paid to the petitioners for this demolition or the structures and, as a matter of fact, the road was duly constructed, which is still in existence.

5. There were further inter-departmental deliberations between the respondents and a fresh plan, per the instructions of the State Town Planner, was prepared by the District Town Planner, to implement the decision of the State Government. Copy of the plan is appended as Annexure P-10 with the writ petition.

6. Thereafter, on 19.4.1983, the Director, Urban Estates, Haryana once again wrote to the Administrator, HUDA, Faridabad to implement the decision of the Government to release the land of the petitioners as conveyed vide letter dated 27.1.1982. On 16.1.1984, the District Town Planner, wrote a letter to the Estate

Officer, Karnal, informing him that the implementation of the second proposed plan (Annexure P-10) was not possible as the Water Pipe Line had already been laid along with 9 meters wide road upto Green Belt, and accordingly, a third plan was prepared by the District Town Planner, which has been appended with the writ petition as Annexure P-13. This plan was forwarded to the Estate Officer, HUDA vide letter dated 4.5.1984. Vide letter dated 19.2.1985, the Estate Officer, HUDA, wrote to the Administrator, HUDA and requested him to get approval from the Chief Administrator so that the decision of the Government could be implemented. In this letter it was also mentioned that the agreement had already been got executed from the party/Reference was also made to the earlier two plans Annexures P-9 and Annexure P-10. The file was forwarded to the Chief Administrator, HUDA, but no decision thereon was taken or conveyed to the petitioners. The petitioners submitted a letter dated 12.6.1985, requesting the Director, Urban Estates, Haryana for implementation of the order dated 27.1.1982 but still no response was received.

7. In the meantime as the land of the petitioners stood acquired, petitioners applied u/s 18 of the Act for forwarding their reference to the District Judge, Karnal. The Land Acquisition Collector, vide letter dated 20.11.1986 asked the petitioners to disclose as to which land of the petitioners had been released from acquisition, to which the petitioners responded vide letter dated 27.11.1986 giving the details of the released land. On consideration of the application of the petitioners, Land Acquisition Collector forwarded the statement u/s 19 of the Act to the District Judge, wherein it was specifically mentioned that the reference is regarding the entire land of the petitioners except 2 Bighas and 3 Biswas. It is, thus, apparent that no reference qua the released land of the petitioners was forwarded by the Land Acquisition Collector to the District Court. It needs to mention here that the petitioners did not receive compensation for this land measuring 2 Bighas and 3 Biswas and they are still in possession of the land.

8. Thereafter the petitioners moved applications dated 16.12.1987, 29.4.1988, 17.7.1989 and 30.9.1989 to the Director, Urban Development for the implementation of the order dated 27.1.1982 (Annexure P-7). The Chief Administrator, HUDA, passed an order dated 27.11.1989 to the effect that the land of the petitioners cannot be released. The said order was conveyed to the petitioners in March, 1990. It is this order dated 27.11.1989 (Annexure P-17), which has been challenged by the petitioners, on the ground, that the Chief Administrator, HUDA, has no powers, whatsoever, to sit over the decision of the Government and further at this belated stage after the petitioners have been forced to demolish their houses. The decision conveyed to the petitioners that their land cannot be released is bad in law as the respondents are bound by the earlier decision.

9. The factual assertions, as made by the petitioners in the writ petition, have not been denied by the respondents in their written statement, except that respondents No.3 & 4 in their written statement in para 7 have submitted that

the release of the land of the petitioners was conditional to the extent that the petitioners were required to execute an agreement with the Department for payment of development charges. This agreement for payment of development charges was not executed by the petitioners, which assertion is contradictory to the stand taken in the next para i.e. 8, where the assertion of the petitioners in the writ petition with regard to the execution of the agreement and submission of the affidavit by them to the Estate Officer, Karnal and thereafter forwarding the same to the Director, Urban Estates, Haryana and further transmission of the same to the Administrator, HUDA, Faridabad, stands admitted. The fact with regard to the non-receipt of compensation by the petitioners for the land which is in question in the present writ petition, has also not been denied. However, it has been stated that the amount of compensation stands deposited and the petitioners did not come forward to receive the same, as they were waiting for the release of their land from acquisition. The decision of the Minister Incharge releasing 2 Bighas and 3 Biswas of land of the petitioners has not been disputed by the respondents in their written statements, filed in Court.

10. A ground has been taken by the counsel for the State during the arguments that the decision for releasing of land of the petitioners stood over-ruled by the competent authority of the State i.e. Deputy Chief Minister, vide his decision dated 11.9.1989, which was conveyed to the petitioners vide letter dated 27.11.1989 (Annexure P-17). In support of this contention, photo copies of the notings of the file of HUDA and the Government have been produced by him in the Court.

11. We have heard counsel for the parties and with their able assistance have gone through the case file.

12. Doctrine of legitimate expectation has its genesis in the field of administrative law. The Government and its departments in administering the affairs of the country are expected to honour their statements of policy, or intention and treat the citizen with full personal consideration without any iota of abuse of unfairness in the form of unreasonableness which is akin to violation of natural justice. It imposes in a sense a public authority to act fairly by taking into consideration the relevant factors, thus, this doctrine has today become a source of substantive as well as procedural right. The principle of estoppel is closely inter linked with the principle of legitimate expectation, the expectation may arise either from a representation or a promise made by the authority or from consistent past practice. If there is a positive order passed by a public authority and such an order is source of legitimate expectation then repository is bound to have regard to such an order in exercising the power.

13. The Hon"ble Supreme Court in Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, held that public bodies are as much bound as private individuals to carry out representations of facts and promises made by them, relying on which other persons have altered their position to their prejudice. A public body is not

exempted from liability to carry out its obligation arising out of representations made by it relying upon which a citizen has altered his position to his prejudice.

14. The Hon''ble Supreme Court in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, dealt with the doctrine of promissory estoppel in detail and has summarised the same in para 24 thereof as follows:-

The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. It is elementary that in a republic governed by the rule of law, no one, howsoever high or low, is above the law. Everyone is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and individual so far as the obligation of the law is concerned : the former is equally bound as the latter. It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel. Can the Government say that it is under no obligation to act in a manner that is fair and just or that it is not bound by considerations of honesty and good faith? Why should the Government not be held to a high standard of rectangular rectitude while dealing with its citizens? There was a time when the doctrine of executive necessity was regarded as sufficient justification for the Government to repudiate even its contractual obligations; but, let it be said to the eternal glory of this Court, this doctrine was emphatically negated in the *Indo-Afghan Agencies case* (A.I.R. 1968 S.C. 718) and the supremacy of the rule of law was established. It was laid down by this Court that the Government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action. If the Government does not want its freedom of executive action to be hampered or restricted the Government need not make a promise knowing or intending that it would be acted on by the promisee and the promisee would alter his position relying upon it. But if the Government makes such a promise and the promisee acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promise like any other private individual.

15. Doctrine of promissory estoppel was further considered by the Hon''ble Supreme Court in the case of *Union of India (UOI) and Others Vs. Godfrey Philips India Ltd.*, where the Hon''ble Supreme Court has held that doctrine of promissory estoppel, is applicable against the Government in exercise of its Governmental, Public or executive functioning and the doctrine of executive necessity or freedom of future executive action cannot be invoked to defeat the

applicability of the doctrine of the promissory estoppel. However, in para 13 of the said judgment, it has been held as follow:-

Of Course we must take it clear, and that is also laid down in Motilal Sugar Mills case, that there can be no promissory estoppel against the Legislature in the exercise of its legislative functions nor can the Government or public authority be debarred by promissory estoppel from enforcing a statutory prohibition. It is equally true that promissory estoppel cannot be used to compel the Government or a public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make. We may also point out that the doctrine of promissory estoppel being an equitable doctrine, it must yield when the equity so requires; if it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be inequitable to hold the Government or public authority to the promise or representation made by it, the Court would not raise an equity in favour of the person to whom the promise or representation is made and enforce the promise or representation against the Government or public authority. The doctrine of promissory estoppel would be displaced in such a case because of the facts, equity would not require that the Government or public authority should be held bound by the promise or representation made by it. This aspect has been dealt with fully in Motilal Sugar Mills case and we find ourselves wholly in agreement with what has been said in that decision on this point.

16. The true principle of promissory estoppel is that where one party has by his word or conduct made to the other a clear and unequivocal promise or representation which is intended to create legal relations or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise or representation is made and it is in fact so acted upon by the other party. In such case the promise or representation would be binding on the party making it and it would not be entitled to go back upon the same, as it would be unequitable to allow him to do so having regard to the dealings which had taken place between the parties.

17. To invoke this principle it is enough to show that the promisee has, acting in reliance of the promise, altered his position. It is not necessary to further show that he has acted to his detriment but in case he has altered his position to his prejudice, it has far more binding effect and it is essential that the promisor does not back from its representation or promise made to the promisee. The Public Bodies, Authorities and Government are as much bound by the principle of promissory estoppel as private individuals to carry out representation of facts and promises as made by them. No distinction can be made between the exercise of sovereign or governmental function and a trading or business activity of the government so far as the promissory estoppel is concerned. The principle would be applicable against the Government or the Public Body/Authority in exercise of its governmental, public or executive functioning. Whatever the

nature of the function, which the Government is discharging, the Government is subject to the rule of the promissory estoppel, and if the essential ingredients of this rule are satisfied, the Government can be compelled to carry out the promise made by it. This principle, however, cannot be used to compel the Government or the public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the Officer of the Government or the public authority to make.

18. The principles having been settled, let us now proceed with the case in hand. The facts as narrated in the earlier part of the order, paints a grim picture about the functioning of the various departments of the Government. After the decision was taken by the Government for releasing the land of the petitioners, which was conveyed vide letter dated 27.1.1982 (Annexure P-7), the petitioners were called upon to act upon the same with certain conditions attached thereto for such release of land measuring 2 Bighas and 3 Biwas. As required and demanded by the respondents, affidavit and agreement were duly submitted by the petitioners to the Estate Officer, Karnal, receipt whereof has been duly acknowledged and the same was forwarded to the Director, Urban Estates, Haryana, respondent No.2, who in its turn forwarded the same to the Administrator, HUDA, Faridabad. Acting thereon the District, Town Planner, Karnal was required to send a plan to the Estate Officer, Karnal to give effect to the decision taken by the Government for releasing the land of the petitioners so that the land of the petitioners could be identified and earmarked for release to them at the site in a manner that the planning was not affected adversely. In compliance thereto three plans Annexures P-9, P-10 & P-13 were forwarded by the District Town Planner time and again to fulfill the requirements of the Director, Urban Estates and Administrator, HUDA. These plans were prepared in such a manner that on the release of the petitioners land it did not affect overall planning of the Sector. In pursuance to the first plan (Annexure P-9) the petitioners were called upon by the Estate Officer, Karnal to demolish their houses, which were falling in the road alignment, so that their case could be forwarded for issuance of notification u/s 48 of the Act for releasing the land from acquisition. The petitioners in pursuance thereto proceeded to demolish their houses themselves to facilitate the construction of the road as shown in the plan. No compensation was paid to the petitioners for the superstructures, which were demolished by them and, as a matter of fact, after this demolition the road was duly constructed by the respondents, as per the plan, which still exists. After the decision had been conveyed and acted upon by the respondents and the petitioners, it does not lie in their mouth to say that the same has been recalled by the State subsequently and that too after a period of almost seven years. The State, although, in a dominant position, cannot be allowed to withdraw from the undertaking and decision taken by it which after having been conveyed stood acted upon by the citizen to the detriment of his interest. State is estopped by its own act and conduct now to withdraw its offer at the stage when the same had been acted upon by the petitioners

19. The earlier decision for release of the land was passed by the Minister Incharge on hearing the petitioners as well as the Land Acquisition Collector and the Kanungo, and on consideration of the submissions of the parties a speaking order was passed, extract whereof has been placed on record as Annexure P-6 (which fact has not been denied by the respondents). It has also not been denied that in pursuance to the said decision taken by the Government, the same was conveyed to the Director, Urban Estates, Haryana to the Administrator, HUDA, Faridabad vide letter dated 27.1.1982 (Annexure P-7) for implementation. The stand, which has been taken in the written statement that the petitioners had not executed an agreement with the department for payment of development charges is belied from the official communication, which has been placed on record, which in the subsequent paragraphs the respondents have admitted. All efforts have been made by the respondents to deprive the petitioners of the accepted claim of the petitioners for release of land, as per the decision of the Government.

20. Although during the course of hearing counsel for the State has asserted that the decision earlier taken for release of land of the petitioners stood cancelled by the State and in this regard reference has been made to the photo copies of the notings of the files, but he could not dispute the assertion of the counsel for the petitioners that the Deputy Chief Minister had acted in his capacity as the Chief Administrator, HUDA and also the assertion of the counsel for the petitioners that he was not the Minister Incharge and thus not competent to pass such an order.

21. It would not be out of way to mention here that in the pleadings it is not the stand of the respondents that the decision for release of land of the petitioners have been recalled by the Government on reconsideration of the same. As per the order dated 27.11.1989 (Annexure P-17) the decision has been taken by the Chief Administrator, HUDA, which fortifies the assertion of the counsel for the petitioners that the Deputy Chief Minister, who was the Chief Administrator of HUDA had taken the decision and not in the capacity of the Minister Incharge of the Department.

22. That apart in the facts and circumstances of the case, as has already been held above, the State cannot retract from its decision at such a belated stage, when a citizen had, in pursuance to the decision taken by the Government, complied with the conditions, which have been imposed upon him, especially when the decision of the Government is not stated to be in violation of any statute or its requirements. The stand of the State could have been accepted in case the earlier decision taken by the Government was not in accordance with law and was violative of any of the statutory provisions or an earlier policy decision of the Government to the contrary. The stand of the petitioners that the decision of the Government was accepted and was being given effect to by the respondents is further fortified from the statement forwarded by the Land Acquisition Collector u/s 19 on an application moved u/s 18 of the Act for making a reference to the District Judge for enhancement of the compensation, wherein



it has been specifically mentioned that the reference be treated qua the entire acquired land of the petitioners except 2 Bighas and 3 Biswas meaning thereby that no reference u/s 18 of the Act was forwarded by the Land Acquisition Collector to the District Judge qua the released land.

23. Another reason, why the impugned order dated 27.11.1989 cannot be sustained, is that before recalling its earlier decision to release the land of the petitioners from acquisition and rejecting the claim of the petitioners, they were required to be heard for which an opportunity should have been given to them as this decision carries with it civil consequences. "Audi alteram partem", which is a settled principle of law and justice, stands violated as admittedly no such notice was ever sent what to say served on the petitioners prior to the passing of the impugned order, especially when the earlier decision taken for release of the land of the petitioners, both the department and the petitioners were duly heard and their submissions considered by the Minister Incharge. A detailed speaking and well reasoned order was passed by the Government and conveyed for compliance earlier. Further the order impugned dated 27.11.1989 (Annexure P-17) is totally a non-speaking order, where no reasons, whatsoever, have been assigned by the Chief Administrator, HUDA and is a one line order which reads as under:-

Your land including 3 Samadhies falling in Sector-6, Karnal already acquired cannot be released.

24. In view of the above, the writ petition stands allowed. The impugned order dated 27.11.1989 (Annexure P-17), passed by the Chief Administrator, HUDA cannot be sustained and is hereby set aside.

25. During the course of hearing counsel for the petitioners has very fairly stated that the petitioners are ready to accept any of the three proposals in the site plans (Annexures P-9, P-10 and P-13), as forwarded by the District Town Planner, Karnal. In view of this statement, direction is issued to the Secretary, Government of Haryana, Department of Urban Estates, Chandigarh to finalise and specify the land to be released to the petitioners by accepting any of the three site plans forwarded by the District Town Planner, Karnal, and thereafter issue notification u/s 48 of the Act for release of the same within a period of two months from the date of receipt of certified copy of this order.