

Before Ashok Bhan & N. K. Agrawal, JJ.

BUSCHING SCHMITZ PVT. LTD. & ANOTHER,—Petitioners.

versus

THE STATE OF HARYANA & OTHERS,—Respondents.

C.W.P. No. 2170 of 1983.

11th October, 1996.

*Constitution of India, 1950—Arts. 226/227—Land Acquisition Act, 1894—Ss. 4 & 6—Land of petitioners sought to be acquired initially in 1966 for planned development of Sector 12 Faridabad released from acquisition on an application to Director Town and Country Planning Haryana—Successive notification issued in 1971 seeking to acquire same land of petitioners—Challenged in Writ Jurisdiction—Notification quashed by the High Court—Order upheld—Now,—vide fresh notification dated 16th October, 1980 land again notified for acquisition for same public purpose by HUDA—Earlier judgment to act as res judicata—Respondents cannot go on issuing successive notification for the same purpose which had been earlier set aside.*

*Held, that public purpose for acquisition of land as mentioned in the Notification issued under Section 4 of the Land Acquisition Act, 1894 is “Development and Utilisation of Land as Commercial Area in Stctor 12”. Similar notification for the same purpose was set aside in the earlier writ petition filed by the petitioners, which order was upheld upto the Supreme Court of India. Since, the purpose for acquisition of successive notifications is the same as in the earlier notifications, which had been set aside, the impugned notifications could not have been issued for that very purpose. Judgment rendered in CWP 793 of 1972, which has attained finality having been upheld by the highest Court of the land, would certainly act as res judicata. Respondents cannot go on issuing successive notification for the same very purpose which in the earlier notifications had been set aside.*

(Para 23)

*Constitution of India, 1950—Arts. 226/227—Land Acquisition Act, 1894—S. 4—Acquisition is for planned development of Sector 12 which in Master Plan is shown as Commercial Sector—State Government has power to grant permission for change in use of land—Such permission granted to the petitioners to set up industry in area earmarked for commercial purpose—Exemption granted has not been withdrawn—State estopped from acquiring land of petitioners for commercial development of Sector 12.*

*Held*, that acquisition in the instant case is for the planned development of Sector 12, which in the Master Plan has been shown as a commercial sector. Within the controlled area, the land cannot be used for purposes other than specified in the Master Plan. Government has the power to grant permission for change in the use of land, which was granted to the petitioners. State Government had accommodated the petitioners within the Scheme for the development of Sector 12 and permitted industrial use of the land although Sector 12 was to be developed for commercial purposes. Exemption granted to the petitioners for the change in land use has not been withdrawn and in the absence of the same, Government cannot turn around and acquire the land with the petitioners for commercial development of Sector 12.

(Para 22)

*Further held*, that the petitioners were allowed to continue at the place where they had built their factory and with the permission of the respondents, petitioners invested huge money on buildings and machinery. State Government cannot repudiate those acts to the detriment of the petitioners. Land of the petitioners had been released from the acquisition earlier and they were allowed change of the user of the land. Petitioners were allowed to raise further construction on an express permission granted by the authorities. Petitioners' sunk lacs of rupees in the factory and altered their position to their *pre judice*. State Government having permitted the petitioners to use the land for a purpose other than the one which was shown in the Master Plan cannot be permitted to resile in order to nullify the effect of the permission granted validly and legally earlier.

(Para 26)

*Constitution of India, 1950—Art. 226—Haryana Urban Development Authority Act, 1977—S. 58—Purpose of HUDA Act is to effectuate urban development—Authority set up under Act is bound by all decision and actions of Director and Local Authority—Authorities under HUDA Act are bound by all the assurances given by its predecessors—State Government not armed with fresh power to acquire.*

*Held*, that with the coming into force of the HUDA Act, the State Government is not armed with a fresh power to acquire the land for the same very purpose which could not stand the scrutiny of the Court in the earlier petition.

(Para 29)

*Further held*, that purpose of the HUDA Act is merely to effectuate the urban development in the State of Haryana which has already been planned under the previous Act. The Act contemplates continuity which is further clear from Section 58 dealing with repeal and savings. The authority set up under the HUDA Act is bound by all the decisions and actions of the Director and the Local Authority, including the Faridabad Complex Administration. Authority under

the HUDA Act cannot be permitted to go back on the promises made with the petitioners and the assurances given to them by its predecessors. Authority under the HUDA Act is bound by all the assurances given to the petitioners earlier by the authorities under the Faridabad Complex (Regulation and Development) Act, 1971.

(Para 30)

R. S. Bindra, Senior Advocate with Rajive Bhalla, Advocate,  
*for the Petitioner.*

Parmodh Goel, DAG, Haryana, *for Respondents 1 & 3.*

Sanjeev Sharma, Advocate, *for Respondent No. 2.*

#### JUDGMENT

*Ashok Bhan, J.*

(1) This judgment shall dispose of Civil Writ Petitions 2170, 1206 and 1360 to 1363 of 1983, as basic facts and legal issues raised in these petitions are the same which invite common determination and judgment.

(2) Keeping in view the important questions of law raised in these petitions, a learned Single Judge of this Court on 30th May, 1986 requested Hon'ble the Chief Justice for placing them for decision before a larger Bench. After obtaining orders from Hon'ble the Chief Justice, these cases have been placed before a Division Bench. Facts, as stated below, are taken from Civil Writ Petition 2170 of 1983.

(3) Prayer made in this petition is for quashing of the notifications issued under sections 4 and 6 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') dated 8th June, 1982 and 30th December, 1982, respectively, for the land of the petitioners comprised in Hadbast No. 118 in the Tehsil and District Faridabad.

(4) Gurdip Singh Arora, petitioner No. 2, a highly qualified Chemical Engineer with practical experience, set up a modern plant for the manufacture of defence equipment, chemical fertilizers, pharmaceutical and other industrial machinery in collaboration with two leading West German Engineering Organisations known as Messers Busching and Company and Messers Munk and Schmitz at Milestone No. 18.6 on Delhi Mathura Road, in the area of village Ajronda, in July 1963. He later on promoted and got incorporated a

private limited company titled as 'Busching Schmitz Private Limited with an authorised capital of Rs. 25 lacs. This company is petitioner No. 1 in this petition. Factory set up by the petitioner was an instant success and secured substantial orders from various private firms and Government departments. Estate Officer, Faridabad. issued notices dated 27th April, 1964 and 15th May, 1964, under sections 3 and 6 of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (hereinafter referred to as 'the Scheduled Roads Act') calling upon the petitioners to demolish the buildings of the factory for an alleged contravention of the provisions of the scheduled Roads Act. Petitioners' efforts to get these notices withdrawn by the concerned authorities failed and, ultimately, Civil Writ Petition 1868 of 1964 was filed in this Court, which was allowed by a Division Bench on 13th January, 1965. Notices issued by the respondents under the Scheduled Roads Act were struck down. It was held that neither the plan for the controlled area had been approved by the Government nor the notification under sub-section (4) of section 5 of the Scheduled Roads Act for inviting objections was finally approved and published as required by sub-section (7) of section 5 of the Scheduled Roads Act. Thereafter, the State Government proceeded to make a declaration of the controlled area in accordance with the provisions of sections 4 and 5 of the Scheduled Roads Act. After observing the formalities prescribed by law, a Master Plan titled "Development Plan for Faridabad/Ballabgarh Controlled Area" was finalised and duly published in the Punjab Government Gazette (Extraordinary) dated 22nd January, 1966. Sector wise development of the township of Faridabad was prescribed. Separate areas were carved out as commercial, residential and industrial sectors. Site of the petitioners' factory was included in Sector 12, which was assigned to be developed as a commercial sector. Both under the Scheduled Roads Act as also the development plan, provision was made for making relaxations in the implementation of the scheme by allowing existing land use, particularly in the case of industries which had already been set up in the area before the enactment of the Scheduled Roads Act and framing and publication of the Development Plan.

(5) Petitioners approached the authorities for necessary permission to retain their factory at the existing site despite the fact that the site had some under a Sector, which was to be developed as a commercial sector. Applications in this regard were made to the Estate Officer, Faridabad, as well as the Director, Town and Country Planning, Punjab, Chandigarh, on 9th June, 1966 and 22nd

August, 1966, respectively. Keeping in view their growing needs, petitioners had also submitted plans for the extension of their existing factory building to the Director, Town and Country Planning, Punjab, Chandigarh, on 19th May, 1964. This matter remained pending owing to the pendency of CWP 1868 of 1964 in this Court.

(6) While the aforesaid correspondence was going on between the parties the parties and the authorities, firstly, on the subject of permission for change of land use and, secondly, for permission for extension of existing factory building, the Government came out with a notification dated 8th September, 1966, under section 4 of the Act stating, *inter alia*, that the land in the Revenue Estate of Village Ajrona was likely to be acquired for public purposes, namely, for the planned development of the area of Sector 12 in Faridabad/Ballabhgarh controlled area. Objections were invited from the affected persons. Petitioners filed their objections, which were not accepted and the Government issued a notification under section 6 of the Act. On 22nd March, 1967, petitioners again requested the Director, Town and Country Planning, Punjab, Chandigarh, for the release of the factory land from the threatened acquisition and for allowing them to proceed with their extension plan of the existing factory building which had been held up to the great detriment of their business, since May, 1964.

(7) State of Punjab was re-organised on 1st November, 1966. State of Haryana and Union Territory Chandigarh were carved out from the territories of the State of Punjab. Town of Faridabad/Ballabhgarh became a part of the State of Haryana with effect from 1st November, 1966. On 14th April, 1967, Director, Town and Country Planning, Haryana, Chandigarh, i.e. the successor State, formally withdrew the notices dated 27th April, 1964 and 15th May, 1964, which had, in fact, already been quashed by the High Court, and certain other notices issued by the Estate Officer, Faridabad, and advised the petitioners to apply for approval of the extension plans afresh, in accordance with the Scheduled Roads Act and the rules made thereunder. Petitioners,—*vide* letter dated 14th April, 1967, Annexure P-1, were informed that the Director, Urban Estate, Haryana, had been asked to take up the case of the release of the petitioners' land immediately. Meanwhile, petitioner had also made representations against the aforesaid acquisition/notification under the Act to the Governor of Haryana and the Secretary, Local Self Government Department, Haryana.

(8) While this correspondence was still going on, notification under section 6 of the Act was published in the Haryana Government Gazette dated 19th December, 1967. Petitioners again called

upon the Governor of Haryana to intervene in the matter. Shri Ishwar Chandra, I.A.S., Secretary, Local Self Government and Public Works Department, visited the factory of the petitioners and saw the things for himself. Governor of Haryana also visited the factory of the petitioners and heard them on the subject. Both the Secretary as well as the Governor assured the petitioners that they were convinced about the utility of the petitioners' factory and its importance as caterer of goods needed for defence oriented industries and other national projects. It is averred that the petitioners were further given an assurance that their factory will be exempted from acquisition.

(9) A fresh application was submitted to the Director, Town and Country Planning, Haryana, to instruct the Land Acquisition Collector not to take any further action in respect of the petitioners factory land. Ultimately, the land of the petitioners' factory was released on 4th June, 1968. It was recorded in the order of release that the change of land use was granted subject to certain conditions which were accepted by the petitioners. Land Acquisition Collector gave effect to the release of the land of the petitioners in his final award dated 29th October, 1968 by excluding the petitioners land from the acquisition. After the release of the land, petitioners invested huge amount on the building, machinery and plant of the factory. In the meantime, petitioners applied for an approval and sanction of the building plans for extension of factory buildings, which was granted in January, 1970. Extension of the factory building was completed in June, 1971.

(10) State of Haryana again issued a notification dated 7th/13th July, 1971, under section 4 of the Act, seeking to acquire the land under the petitioners factory. Petitioners raised objections and explained the position. It was brought to the notice of the authorities that the Government was bound by its promises and assurances; that after the permission for change in land use and sanction of plans for extension of the factory, petitioners carried out extensions at a huge cost and the matter could not be reopened; that the Government was estopped from acquiring the land after the petitioners had carried out extensions after seeking permission from the Government for change in the use of land and sanction of the plans for extension. It was also stated that the action of the State was a colourable exercise of power. Objections filed by the petitioners were rejected and a notification under section 6 of the Act was issued. Area of the petitioners' factory was included in the land sought to be acquired. Petitioners filed CWP 793 of 1972, which was allowed by a

learned Single Judge of this Court on 8th December, 1972. Notifications issued under sections 4 and 6 of the Act and the proceedings for acquisition were quashed. A few of the findings recorded in the said decision are reproduced below :—

“The Petitioners were allowed to continue with the Non-Conforming use and they executed an agreement in accordance with the provisions of Regulation 9. The petitioners were even allowed to expand their factory and plans for further construction in the factory were sanctioned and they were permitted to use the land for the purpose of industry under the Act and the Regulations made by the Government. In the presence of these facts if the acquisition is allowed to stand, then that would evidently result in nullifying the effect of all the acts of the authorities exercised in favour of the petitioners under the provisions of the Act and the rules made thereunder. I do not agree with the contention of Mr. Lamba, that the power under Section 24 is absolutely independent and can be exercised at any time uncircumscribed by any other factor. Sector 12 which is the commercial sector is being developed as such and some part of that area on which factories were built, was allowed to remain intact for the non-conforming use. The State Government cannot now repudiate all those acts and change its position to the detriment of the petitioners and cause him irreparable loss and injury.

(11) It was also contended by Mr. Awasthy, learned counsel that the State Government was estopped from issuing the impugned notifications so far as the factory of the petitioners was concerned. According to the learned counsel having by their act guaranteed petitioners' continuance at the place and also permitted the petitioners to invest huge money on buildings and machinery, the State Government cannot repudiate those acts to the detriment of the petitioners. On the other hand, it was contended by Mr. Lamba, that the question of estoppel did not arise in the instant case as the power of acquisition under Section 24 was not circumscribed by any provision of the Act. In my view, in the circumstances of this case, the contention of the learned counsel for the petitioners, has considerable force. From the narration of the facts, there is no gainsaying that the petitioners' land was released from acquisition earlier and they were allowed the change of the user of the land. The petitioners were also allowed to raise further construction with the

result than on the express representation of the authorities the petitioners altered their position to their prejudice. It is now too late for the State Government to turn round and say that the power under section 24 is not circumscribed and can be used in any manner." Notifications were also struck down on the ground of being vague and indefinite.

(12) Letters Patent Appeal against this judgment filed by the State of Haryana was dismissed in limine. Further appeal to the Supreme Court of India also failed.

(13) Again, on 16th October, 1980, another notification under section 4 of the Act was issued for acquiring the land in Sector 12 including the land under the petitioners' factory for the public purposes, namely, "Development and Utilisation of Land as Commercial Area in Sector 12 under the Haryana Urban Development Authority". Provisions of section 14 of the Haryana Urban Development Authority Act, 1977 (hereinafter referred to as 'the HUDA Act') were also invoked.

(14) Petitioners filed objections against the proposed acquisition and invited attention of the authorities to the judgment of this Court delivered in CWP 793 of 1972, which was *inter parties*. It was pointed out that the land of the petitioners had already been exempted by the Government and accommodated within the Scheme framed by it. Notification was withdrawn and, thereafter, yet another notification under section 4 of the Act was issued in June, 1982, in which the purpose mentioned was the same. Petitioners again filed detailed objections, which were not accepted and, ultimately, notification under section 6 of the Act was issued on 30th December, 1982.

(15) Petitioners, thereafter, filed the present writ petition, challenging the acquisition proceedings *inter alia*, on the grounds that the earlier decision of this Court in CWP 793 of 1972, which was affirmed upto the Supreme Court of India, would be *res judicata* and operate as estoppel against the respondents. The point in issue stands concluded by the earlier decision and the respondents are restrained from initiating repeated proceedings for acquisition of the land as the same amount to the abuse of its powers. Challenge to the acquisition has also been made on the ground of discrimination. Facts regarding discrimination have been mentioned in the connected case i.e. CWP 1360 of 1983, which is being disposed of



along with this case. It was alleged that Sectors 12 and 13 were to be developed as commercial sectors. In Sector 13, there are two industries, namely, Escorts India Limited and the Ford Tractors Division (India), which have been exempted from acquisition, thereby permitting the change in land use, whereas the land of the petitioners under industry in Sector 12 is being acquired, thus, discriminating between the petitioners and the Escorts India Limited and Ford Tractors Division (India). Another point raised is that the land for the Haryana Urban Development Authority (hereinafter referred to as 'HUDA') was sought to be acquired without following the procedure given in Chapter VII of the Act although HUDA was not a Local Authority at the relevant point of time.

(16) There is not much controversy on facts. In the written statement filed by the respondents, it has been pleaded that the exemption to the land of the petitioners and the withdrawal or quashing of the previous notifications do not stand in the way of the Government to acquire land by issuing fresh notification in accordance with law. It has been averred that the principles of equitable estoppel are not applicable in the exercise of statutory powers. Allegations regarding discrimination have also been denied. It has been stated that in Sector 13, there are only two factories and the entire sector is under these two factories, whereas in Sector 12, only a part of the area is under industrial concerns and the remaining area has been developed as a commercial area and, therefore, no comparison can be drawn between Sectors 12 and 13, under these circumstances. It is admitted that at the time of issuance of notification under section 4 of the Act, HUDA was not a Local Authority but the same was made a Local Authority by effecting an amendment in the Haryana Urban Development Authority Act, 1977, by Amending Act No. 26 of 1984. By this amendment, HUDA was made a Local Authority with effect from the date of the enforcement of the HUDA ACT, and therefore, for all intents and purposes, HUDA would be deemed to be a Local Authority right from its inception in the year 1977, in view of the provisions of the Amending Act No. 26 of 1984.

(17) In the order of reference, the learned Single Judge posed a question as to whether after the decision of C.W.P. 793 of 1972 decided on 8th December, 1972 which decision was affirmed by the highest court of the land, the State could still acquire the land for the same purpose by having recourse to the provisions of the HUDA Act.

(18) Counsel appearing for the petitioners did not canvass the point regarding the power of the Government to acquire the land for

all times to come and under any circumstances, rather it was conceded that the power to acquire is a plenary power, which vests in the State and the State can acquire the land in the changed circumstances for a valid reason and for a purpose other than the one which had been put forth by the Government in the previous notification ; that the land could not be acquired repeatedly for the same purpose, especially when in the earlier petition the action of the State was not upheld by the courts for acquiring the land for that purpose.

(19) It was mainly argued that after the release of the property in dispute from acquisition earlier and after permitting the petitioner to continue with the existing use of the factory, the State Government could not legally issue the impugned notifications and acquire the land of the petitioners for the planned development of Sector 12.

(20) On the other hand, the plea raised by the respondent-State is that under section 14 of the HUDA Act, the State Government had the power to acquire the land for public purposes and it was in exercise of that power that the State Government validly acquired the land and as such the impugned notifications could not be held to be invalid.

(21) We find force in the argument put forth by the counsel for the petitioners. Admitted facts are that after the preparation of the Master Plan under the Act, petitioner approached the Estate Officer for release of the land. Director, Town and Country Planning Department, Haryana, sent an agreement form in order to enable him to grant the necessary change of land use/release of land comprised in Khasra Nos, 64/4 and 5, measuring 8500 square yards, belonging to the petitioners. The agreement was duly executed by the petitioner-company and forwarded to the Director, Town and Country Planning Department, Haryana, on 27th May, 1968. Permission for the change of land use was allowed by the D.U.E's letter No. 3396-VIIDP-68/2637 dated 4th June, 1968. Thereafter, the Land Acquisition Collector excluded the land comprised in the petitioners' factory from acquisition by the Government. Plans for expansion of the factory building submitted by the petitioner-firm were sanctioned on 14th January, 1970. Petitioners, thereafter, made huge investments in the factory, which is in the full production.

(22) Acquisition in the instant case is for the planned development of Sector 12, which in the Master Plan has been shown as a commercial sector. Within the controlled area, the land cannot be

used for purposes other than those specified in the Master Plan. Government has the power to grant permission for change in the use of land, which was granted to the petitioners. State Government had accommodated the petitioners within the Scheme for the development of Sector 12 and permitted industrial use of the land although Sector 12 was to be developed for commercial purposes. Exemption granted to the petitioners for the change in land use has not been withdrawn and in the absence of the same, Government cannot turn around and acquire the land with the petitioners for commercial development of Sector 12.

(23) Public purpose for acquisition of land as mentioned in the Notification issued under Section 4 of the Act, Annexure P-7, is "Development and Utilisation of Land as Commercial Area in Sector 12". Similar notification for the same purpose was set aside in the earlier writ petition filed by the petitioners, which order was upheld upto the Supreme Court of India. Since, the purpose for acquisition of successive notifications is the same as in the earlier notifications, which had been set aside, the impugned notifications could not have been issued for that very purpose. Judgment rendered in C.W.P. 793 of 1972, which has attained finality having been upheld by the highest Court of the land, would certainly act as *res-judicata*. Respondents cannot go on issuing successive notifications for the same very purpose which in the earlier notifications had been set aside.

(24) Final development plan was published in the Punjab Government Gazette (Extra-ordinary) dated 19th January, 1966. Zoning Regulations, which prescribe the governing use and development of the land in the Controlled Areas around Faridabad old Town and around as shown in drawing No. STP/1202/64, have been mentioned in Annexure 'B'. Clause IX of the Regulations reads as under :—

"IX. Industrial Non-conforming uses—with regard to the existing industries shown in zones other than industrial zones in the development plan, such industrial non-conforming uses shall be allowed to continue provided that the owner of the industry concerned :—

(a) Undertakes to pay to the Director, as determined by him the proportionate charges towards the external development of this site as and when called upon by the Director to do so in this behalf, and

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(b) during the interim period, make satisfactory arrangement for the discharge of affluent to the satisfaction of the Director.”

‘Non-Conforming Use’ has been defined in Regulation II(j) as follows :—

“(j) ‘Non-Conforming Use’ in respect of any land or building in a controlled area means the existing use of such land or building which is contrary to the major land use specified for that part of the area in the Development Plan.”

(25) Petitioners were allowed to continue with the Non-conforming Use and they executed an agreement in accordance with the provisions of Regulation IX. Petitioners were permitted the change in land use and their plans were sanctioned for extension of the factory. Sector 12, which is a commercial sector, is being developed as such and some part of it on which factories were built were allowed to remain intact for the Non-conforming Use. In these facts, if the acquisition is allowed to stand, then, the same would result in nullifying all the acts of the authorities exercised in favour of the petitioners earlier.

(26) Petitioners were allowed to continue at the place where they had built their factory and with the permission of the respondents, petitioners invested huge money on buildings and machinery. State Government cannot repudiate those acts to the detriment of the petitioners. Land of the petitioners had been released from the acquisition earlier and they were allowed change of the user of the land. Petitioners were allowed to raise further construction on an express permission granted by the authorities. Petitioners’ sunk lacs of rupees in the factory and altered their position to their *pre judice*. State Government having permitted the petitioners to use the land for a purpose other than the one which was shown in the Master Plan cannot be permitted to resile in order to nullify the effect of the permission granted validly and legally earlier.

(27) The underlying purpose of the Scheduled Roads Act and the HUDA Act, is for the planned development of the land in certain areas. Section 2(h) of the HUDA Act defines Development Plan as meaning :—

“A plan prepared under the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development

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Act, 1963, or the Faridabad Complex (Regulation and Development) Act, 1971.”

(28) Under section 2(y)(ii) of the HUDA Act, “Urban Area” includes :—

“any area declared as controlled area under the provisions of the Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963, or the Faridabad Complex (Regulation and Development) Act, 1971.”

(29) With the coming into force of the HUDA Act, the State Government is not armed with a fresh power to acquire the land for the same very purpose which could not stand the scrutiny of the Court in earlier petition.

(30) Purpose of the HUDA Act is merely to effectuate the urban development in the State of Haryana which has already been planned under the previous Act. The Act contemplates continuity which is further clear from section 58 dealing with repeal and savings. The authority set up under the HUDA Act is bound by all the decisions and actions of the Director and the Local Authority, including the Faridabad Complex Administration. Authority under the HUDA Act cannot be permitted to go back on the promises made with the petitioners and the assurances given to them by its predecessors. Authority under the HUDA Act is bound by all the assurances given to the petitioners earlier by the authorities under the Faridabad Complex (Regulation and Development) Act, 1971.

(31) As is clear from the factual narration in the preceding paragraphs, right from the beginning petitioners got clearance from various authorities for their factory building and its existence from time to time. Everything was done after prior notice to and getting the approval of these authorities, particularly, the Director, Town and Country Planning, Haryana. Factory of the petitioners was duly permitted and accommodated within the Scheme of Sector 12 of the Faridabad Complex ; firstly, by permission of the change of land use within the provisions of this Scheme and, secondly, by its exclusion from the acquisition proceedings which had been started by the Government.—*vide* notification dated 23rd September, 1966, issued under section 4 of the Act, for this very public purpose. Successive notifications issued thereafter were also for the same purpose. Petitioners spent lacs of rupees in setting up the factory and expansion

of the building, plant and machinery relying upon the exclusion of the land from acquisition and grant of permission for change in the land use. Once, sanction is given under the law, it could not be recalled after the petitioners had changed their position to their detriment by investing huge amounts on the basis of the assurances given by the Government and Government authorities. Principle of estoppel, under the circumstances, would come into play and the respondents have to be restrained from acquiring the land on the principle of estoppel as well.

(32) The threatened acquisition would tantamount to destruction of an existing factory, which had already been accepted by the Government as being engaged in an activity conducive to the public benefit. Nothing has been brought on the record to show that the petitioner-establishment is causing any nuisance to the residents of the area or that its activities are not conducive to the public benefit.

(33) The next challenge of the petitioners is that the notification issued under sections 4 and 6 of the Act are discriminatory in nature. It was argued that Sectors 12 and 13 were to be developed as commercial sectors. In Sector 13 there were two factories ; namely, Escorts India Limited and the Ford Tractors Division (India), which have been exempted from acquisition, thereby permitting the change in the land use, whereas the land of the petitioners under industry in Sector 12 is being acquired, thus, discriminating between the petitioners and the Escorts India Limited and the Ford Tractors Division (India).

(34) Whole of Sector 13 is under the factories of the Escorts India Limited and the Ford Tractors Division (India). There are no other buildings in that Sector. Since, there were no other buildings, the Government did not deem it advisable to acquire the land under these factories for the development of Sector 13 as a commercial sector. Sector 13 has not been developed as a commercial sector, whereas in Sector 12, there are only 7 factories belonging to the petitioners in different writ petitions and the remaining area has been developed for a commercial use. The two situations being different, notifications issued under sections 4 and 6 of the Act, in the present case, cannot be set aside on the ground of discriminatory use of power. Therefore, on the point of discrimination, we find no force in the contention raised by the counsel for the petitioners.

(35) Another point which was raised by the counsel for the petitioners is that the land for the HUDA was sought to be acquired

without following the procedure given in Chapter VII of the Act although HUDA was not a Local Authority at the relevant point of time.

(36) There is no substance in this submission as well. HUDA was not a Local Authority at the time when the HUDA Act came into force initially in the year 1977. HUDA was made a Local Authority for the purposes of the Act by making a retrospective amendment of Section 14 of the HUDA Act,—*vide* Amending Act No. 26 of 1984, which was published in the Haryana Government Gazette on 16th July, 1984, which reads as under :—

“14. Acquisition of land—(i) When any land other than the land owned by the Central Government is required for the purpose of this Act, the State Government, may at the request of the Authority, proceed to acquire it under the provisions of the Land Acquisition Act, 1894, and on payment by the Authority of the compensation awarded under that Act and of any other charges incurred in acquiring the land, the land shall vest in the Authority.

(ii) For the purpose of the Land Acquisition Act, 1894, and any other law for the time being in force, the Authority shall be deemed to be a ‘local authority’.”

Since, the amendment has been effected in the HUDA Act retrospectively, HUDA would be deemed to be a Local Authority for all intents and purposes right from its inception.

(37) No other point was raised.

(38) For the reasons recorded above, we hold that the respondent-State could not issue successive notifications for acquiring the land for the same very purpose when the earlier notifications issued for that very purpose have been set aside on the principle analogous to *res judicata* and on the principle of estoppel, as the petitioners had acted to their prejudice on the assurances and promises held by the respondents. As the petitioners have been unnecessarily dragged to the Court repeatedly, we accept these writ petitions with costs. Costs are assessed at Rs. 5,000 in each petition.

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J.S.T.