an irreparable loss then ordinarily stay in favour of the plaintiff should be granted. Therefore, to that extent, the order of the Appellate Tribunal cannot be sustained.

(7) The argument of Mr. Bansal that original order requiring the petitioner to pay Rs. 10.00 lacs passed on 22nd July, 1999 still operates, has not impressed us because the Appellate Tribunal,—*vide* its order dated 15th February, 2001 granted permission to the petitioner to move an appropriate application seeking waiver of the pre-condition of deposit under Section 21 of the 1993 Act. Therefore, there is no substance in the aforementioned submissions.

(8) For the reasons aforementioned, this petition succeeds. The order dated 22nd November, 2005 (Annexure P8) requiring the petitioner to deposit a sum of Rs. 5.00 lacs as a pre-condition under Section 21 of the 1993 Act to that extent is quashed. The Appellate Tribunal, New Delhi, is directed to proceed with the hearing of the appeal without insisting upon the payment of Rs. 5.00 lacs as a pre-condition as stipulated under Section 21 of the 1993 Act. In the facts and circumstances of the case we deem it just and appropriate to direct the Appellate Tribunal to conclude the hearing of the appeal preferably within a period of four months from the receipt of certified copy of this order.

R.N.R.

Before K.S. Garewal & Ajai Lamba, JJ

SAVITRI DEVI,—*Petitioner*

versus

STATE OF HARYANA AND ANOTHER,—*Respondents*

C.W.P. No. 17469 of 2006

25th May, 2007

Constitution of India, 1950—Art. 226—Land Acquisition Act, 1894—Ss. 4 & 6—Petitioners' land sought to be acquired for development of area as residential and commercial area—Petitioners setting up an industrial unit with permission from competent authority—Earlier also land of petitioner released from

acquisition—Respondents seeking acquisition after 26 years of granting permission to change land use and develop area as an industry—Action of respondents in first authorizing setting up of a factory and then acquiring the same is arbitrary, inequitable and unreasonable—Petition allowed, notifications under sections 4 and 6 quashed.

Held, that the respondents cannot be allowed to first authorize the setting up of a factory, allow it to function for more than two decades and then acquire it in total disregard to the rights of the owners. If such a position is allowed to exist, no person would feel secure in setting up of a factory and developing his business. The setting up of a factory does not involve only constructing a building but it also involves so many other factors e.g. creating a market for the product, arrangement for raw material, labour etc. It is only after considerable time that the project starts giving returns. Uncertainty is antithetic to development and progress of not only the person concerned but also the country.The action of respondents in first authorizing the setting up of a factory and then acquiring the same, is inequitable and unreasonable.

(Para 22)

J.K. Verma, Advocate, *for* Puneet Jindal, Advocate, *for the petitioner(s).*

R. S. Kundu, Senior Additional Advocate General, Haryana assisted by Ashish Kapoor, Additional Advocate General, Haryana.

Arun Walia, Advocate, with Anand S. Rohilla, Advocate, *for* HUDA.

AJAI LAMBA, J

(1) This shall dispose of CWP No. 17469 of 2006 titled 'Savitri Devi *versus* State of Haryana and others' and CWP No. 17458 of 2006 titled M/s Vinod Oil and General Mills versus State of Haryana and others'. The same acquisition proceedings have been challenged. The petitions involve common questions of facts and law.

(2) The acquisition proceedings were initiated by issuance of notification under Section 4 of the Land Acquisition Act, 1894 (for

short, 'the Act') dated 15th March, 2004. The declaration under Section 6 of the Act was issued on 14th March, 2005. The respondents seek to acquire land for a public purpose namely for development of the area as residential and commercial area under the Haryana Urban Development Authority Act, 1977 by the Haryana Urban Development Authority in the area of village Hisar Hadbast No. 146 and village Satrod Khas and Khurd Hadbast No. 154, 155, tehsil and district Hisar.

(3) The only issue raised is that the petitioners in the two petitions had set up an industrial unit in the year 1981, which is running under the name and style of M/s Vinod Oil and General Mills', the same being a partnership concern. Before setting up of the unit, permission from the competent authority namely, Director, Town and Country Planning, Haryana at Chandigarh was sought to change land use from agricultural to industrial which was given. The construction of the factory and its operation was duly authorized by the respondents.

(4) The petitioners are contributing to the revenue of the State by paying lacs in taxes. The land was sought to be acquired earlier while issuing notification under Section 4 of the Act dated 19th May, 1992 for the development and utilization of land as industrial area at Hisar. The petitioners submitted objections under Section 5-A of the Act, resultantly the same were accepted and the land was released.

(5) Now after 11 years, again notification under Section 4 of the Act has been issued for acquisition of the land including that of the petitioners. Objections under Section 5-A of the Act were filed. However, ignoring the fact situation, the land of the petitioners has been included in the declaration under Section 6 of the Act, hence this petition. The action of the respondents is arbitrary.

(6) It is pleaded that the principle of estoppel, in view of the facts and circumstances of the case, can safely be invoked. Other than the above, it is the policy of the respondent State that any factory or other structure which has been raised after getting the required permission/permission to change land use would not be acquired and therefore, it is against the very policy of the respondents to acquire the land of the petitioners.

(7) Learned counsel for the respondents, on the other hand, has argued that the land has been acquired for development of the area as residential and commercial area. The earlier acquisition and release of land on which construction has been raised would not in any way bar fresh acquisition of the same land. Factory has been constructed on the land of the petitioners, which cannot be allowed to exist in view of the public purpose to be achieved through the impugned acquisition viz. development of the area as residential and commercial area. Learned counsel has placed on record the site plan of the area showing the planning scheme.

(8) No other argument has been raised.

(9) We have heard the learned counsel for the parties and have gone through the record of the cases.

(10) We have to first consider the nature of the construction as to whether it has been authorized by the respondents or not.

(11) Perusal of the pleadings in CWP No. 17469 of 2006 titled 'Savitri Devi *versus* State of Haryana and others' shows that the petitioner namely Savitri Devi alongwith her brothers ; Bhagwan Dass Aggarwal, Banarasi Dass Gupta, Inder Sain Aggarwal, Moti Lal Aggarwal and Mohinder Aggarwal constituted a registered partnership firm under the name and style of M/s Vinod Oil and General Mills in the year 1981. On an application having been filed, the Director, Town and Country Planning, Haryana, approved the building plans for constructions of the industrial building in respect of the land measuring 23 Kanals 6 marlas falling in Khasra No. 148/1, 2, 9, 10,— *vide* letter dated 21st April, 1981, Annexure P-2, subject to the provisions of the Punjab Scheduled Road and Controlled Areas Restriction of Unregulated Development Act, 1963.

(12) Annexure P-1, dated 11th July, 1981 shows that the Director, Town and Country Planning, Haryana, granted the permission for change of land use for the construction of Oil and General Mills with respect to the same land measuring 23 kanals 6 marlas. The site plan itself has been appended as Annexure P-4. These facts have not been disputed by the respondents.

(13) In para 7 of the petition, it has specifically been pleaded that in the financial year 2003-04, the firm made sales to the tune

of Rs. 10.71 crore, in 2004-05 Rs. 11.77 crore and in 2005-06 11.60 crore. For all the three years, Value Added Tax has been paid in excess of Rs. 42 lac each year.

(14) The facts emanating from the pleadings and supporting documents clearly show that the setting up and running of factory of the petitioners had been authorized by the respondents.

(15) The pleadings also show that earlier, notification under Section 4 of the Act was issued on 19th May, 1992 for development of the area as industrial area which included the land now sought to be acquired. The petitioner filed objections under Section 5-A of the Act which have been placed on record as Annexure P-6. It seems that the objections were considered and accepted and the land of the petitioners was released from acquisition.

(16) The argument raised by the learned counsel for the respondents that the land has been acquired for development of the area as a residential and commercial area and therefore the industry cannot be allowed to exist in a residential area, in the facts and circumstances of the case, cannot be accepted for two reasons.

(17) Firstly, as discussed above, the respondents authorized the setting up and running of the factory in the year 1981. It seems that thereafter the business of the respondents progressed considerably as they have been paying taxes, the last figure being Rs. 46.4 lac against a total sale of its product to the tune of Rs. 11.60 crore. It thus transpires that it was on the permission having been given by the respondents, the petitioners constructed the factory and continued to develop the land as an industrial unit.

(18) The respondents once having allowed the petitioners by giving specific and explicit permission to change land use and develop the area as an industry cannot now turn around after 26 years to say that the same is required to be developed for residential purposes. We find the action of the respondents to be clearly arbitrary and without application of mind. Before land is to be acquired for a particular purpose, not only revenue record but also the fact situation of the area is required to be seen after conducting survey of the area. Executive exercise is required to be undertaken to identify the existing structures on land, their nature whether they are authorized or

unauthorized and other similar and relevant parameters. It stands established that such executive exercise has not been carried out by the respondents rendering their action illegal.

(19) Secondly, the respondents had earlier proposed to acquire the land of the petitioners while issuing Notification under Section 4 of the Act on 19th May, 1992. The petitioners objected to the acquisition. The objections were accepted and the land of the petitioners was released. The fact situation remains the same.

(20) A similar situation arose in **Roshan Lal and others** *versus* **State of Haryana and others (1)** wherein the government had released the land from acquisition on imposing certain conditions on the land owners. The land was acquired again at a later stage after the landowners had invested in the development of the area. The acquisition proceedings were quashed invoking the principle of estoppel as well. In our considered opinion, the present case is also covered by the said decision.

(21) Another factor that needs to be considered is that when a person wants to set up a factory and he follows relevant rules by taking the required permissions and sets up a unit which is authorized by the respondents, can his existence be left in suspension for always ?

(22) In our considered opinion, the respondents cannot be allowed to first authorize the setting up of a factory, allow it to function for more than two decades and then acquire it in total disregard to the rights of the owners. If such a position is allowed to exist, no person would feel secure in setting up of a factory and developing his business. The setting up of a factory does not involve only constructing a building but it also involves so many other factors e.g. creating a market for the product, arrangement for raw material, labour etc. It is only after considerable time that the project starts giving returns. Uncertainty is antithetic to development and progress of not only the person concerned but also the Country. The action of respondents in first authorizing the setting up of a factory and then acquiring the same, is inequitable and unreasonable.

(23) This has to be viewed in the context of the purpose of acquisition of land, which in this case is not for the development of

(1) 2003(3) P.L.R. 199

infrastructure, railways/metro or a purpose related thereto, irrigation, water supply, drainage, road communication or for the purpose of maintaining any structure or system pertaining to electricity etc.

(24) Referring to the site plan of the area, we find that the land of the petitioners is located in one corner of the area that is proposed to be developed. To the north of the land in question, as per the learned counsel for the respondent, land has not been acquired. On specific query, learned counsel for the respondents has informed us that the utilization of land of the petitioners has not yet been determined and therefore it has not been shown in commercial area, residential area, community center etc. In these circumstances, the land of the petitioners could conveniently be adjusted in the planning scheme. The action of the respondents in acquiring the land of the petitioners is therefore clearly unreasonable and arbitrary.

(25) In view of the discussion above, we find the action of the respondents in acquiring the land of the petitioners to be arbitrary, unreasonable and inequitable. Resultantly, the petitions are allowed. The impugned notifications issued under Sections 4 and 6 of the Act with regard to the land of the petitioners are hereby quashed.

R.N.R.

Before H. S. Bhalla, J

TARLOCHAN SINGH AND OTHERS,—*Petitioners*

versus

U.T. CHANDIGARH AND ANOTHER,—*Respondents*

C.W.P. No. 4225 of 2006

31st May, 2007

Constitution of India, 1950—Art. 226—Purchase of a Shop-cum-Office—Transfer in name of petitioners showing it to be SCO—Plea that a bona fide error took place with regard to character of property at the time of issuance of allotment letter and transfer order—No notice with regard to correction in allotment letter or transfer order—Original allotment letter and transfer order clearly showing the property Shop-cum-Office—Petitioners not liable to pay conversion