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STATE OF HARYANA & ORS.

v.

M/S. VINOD OIL & GENERAL MILLS & ANR.

(Civil Appeal Nos. 9098-9099 of 2014)

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SEPTEMBER 23, 2014

[T. S. THAKUR AND R. BANUMATHI, JJ.]

C *Land Acquisition Act, 1894 – ss. 4 and 6 – Acquisition of industrial land – For the residential and commercial purpose – The acquired strip of land measuring 19 marlas is contiguous to the factory and can be adjusted in the Planning Scheme and hence acquisition thereof is quashed – Another strip measuring 1 Kanal 11 marlas is hindrance*
D *for the wholesome development of the scheme, hence acquisition thereof upheld – In view of s. 24(2) of Acquisition Act of 2013, matter remitted to High Court to examine certain factual aspects – Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation,*
E *Resettlement Act, 2013 – s. 24(2).*

Public Purpose – Meaning and determination of – Held: A public purpose includes a purpose involving general interest of community as opposed to individual interest –
F *State is the first judge to determine whether there exists public purpose.*

Disposing of the appeals, the Court

G **HELD: 1. The action of the State in first approving setting up of a factory and then acquiring the same cannot be held as unreasonable. Permission for change of land use and developing the area as an industry, has no relevance while considering the validity of acquisition. The fact that the factory and building was**
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put up in the lands with the approval of the authority cannot be a bar for acquisition of the land. Public interest overrides individual's interests. The only effect of permission for such change in land use and approval for construction and developing the area as an industry can be recognized as valid only to the extent as to confer right upon the land owners to recover the appropriate compensation. [Paras 7, 8][530-D; F-H; 531-A-B]

2. Public purpose includes a purpose involving general interest of community as opposed to the interest of an individual directly or indirectly involved. Individual interest must give way to public interest as far as public purpose in respect of acquisition of land is concerned. Prima facie, State is the first Judge to determine whether there exists public purpose or not. But the decision of the State is not beyond judicial scrutiny. The requirement of land for residential and commercial purposes and for development of the Sector involves in it an element of general interest of the community and hence, must be regarded as a 'public purpose' as opposed to the particular interest of individuals. [Paras 9, 11 and 12] [531-D-E; 533-E; 534-C-D]

Daulat Singh Surana & Ors. v. First Land Acquisition Collector & Ors. 2006 (8) Suppl. SCR 1076 : (2007) 1 SCC 641; *Sooraram Pratap Reddy & Ors. v. Distt. Collector, Ranga Reddy Dist. & Ors.* 2008 (13) SCR 126 : (2008) 9 SCC 552 – relied on.

3. There is no bar to the subsequent acquisition of the land nor is there a bar for issuance of successive notification for acquisition of the land. In the present case, earlier notification was issued for the same

A purpose for which subsequent acquisition was made. The subsequent acquisition was done, when the State felt that the land sought to be acquired cannot be adjusted in the development of the Plan. [Para 15] [535-C-E]

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Roshan Lal & Ors. vs. State of Haryana & Ors.
2003 (3) PLR 199 – referred to.

C 4. Khasra No. 148/2/2, which is contiguous to the factory of the respondents, can be adjusted in the Planning Scheme of the Sector and on this ground, the order of quashing the acquisition thereof is affirmed. Insofar as another strip of 1 Kanal 11 Marla of land is concerned this strip of land is hindrance for the wholesome development of the Sector and the same cannot be adjusted in the development of the Sector. Order of quashing acquisition of this strip of land is upheld. [Paras 16, 17][536-B-F]

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E 5. In view of the plea that by virtue of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, Resettlement Act, 2013 the subject of acquisition shall be deemed to have lapsed, certain factual aspects viz., (i) whether possession of the land measuring 1 Kanal 11 Marlas has been taken or not; (ii) whether the compensation in respect of this acquired land was paid or not have to be examined. Since the 2013 Act has come into force with effect from 1.1.2014, the High Court did not have occasion to examine whether proceedings already initiated under the Land Acquisition Act, 1894 have lapsed on account of the alleged non-payment of compensation and the failure of the authorities to take over possession of the land acquired from them. The

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matter is remitted to the High Court to examine the above limited questions in respect of the acquisition of the land 1 Kanal 11 Marla. [Para 21][538-A-E] A

Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & Ors .2014 (1) SCR 783 : (2014) 3 SCC 183 – referred to. B

Case Law Reference:

2006 (8) Suppl. SCR 1076	relied on	Para 10	
2008 (13) SCR 126	relied on	Para 11	C
2003 (3) PLR 199	referred to	Para 13	
2014 (1) SCR 783	referred to	Para 20	

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 9098-9099 of 2014. D

From the judgment and order dated 25.05.2007 in CWP Nos. 17458 and 17469 of 2006 passed by the High Court of Punjab and Haryana at Chandigarh. E

Narender Hooda, Sr. Adv., Vineet Malik, Nupur Choudhary, Kamal Mohan Gupta for the Appellants.

Puneet Jindal, Sr. Adv., Rajat Sharma, Subhashish Bhowmick, Dr. Kailash Chand for the Respondents. F

The Judgment of the Court was delivered by

R. BANUMATHI, J. 1. Delay condoned. Leave granted.

2. These appeals arise out of the judgment of High Court of Punjab and Haryana in and by which the High Court quashed the acquisition of the lands of the respondents, *inter alia*, on various grounds. Feeling aggrieved, State of Haryana is before us. G

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A 3. Facts in nutshell giving rise to these appeals are as
under:- The respondents being a partnership concern 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. On
19.5.1992, Haryana Government issued a notification under
B Section 4 of the Land Acquisition Act, 1894 (for short 'Act') in
which the land of the respondents was also included. The
respondents submitted their objections under Section 5-A of
the Act and after considering their objections, the State
C Government excluded the land of the respondents from the
acquisition proceedings before declaration under Section 6
of the Act. Later at the time of planning of the Sector, it was felt
that two strips of lands of the respondents are creating
hindrance in the wholesome Development Plan of the Sector.
D Haryana Government again initiated acquisition proceedings
by issuance of notification under Section 4 of the Act on
15.3.2004 to acquire the land in the area of village Hissar
Hadbast No.146 and village Satrod Khas and Satrod Khurd
Hadbast Nos.154 & 155, Tehsil and District Hissar including
E the lands of the respondents for public purpose, namely, for
development and utilization of land for residential and
commercial Sector 9 & 11, Hissar. The respondents filed
their objections under Section 5-A of the Act and after hearing
the respondents, the Government decided to acquire the land
F in dispute and the declaration under Section 6 of the Act was
issued on 14.3.2005 and thereafter notice under Section 9 of
the Act was also issued. Challenging the acquisition
proceedings, the partnership concern filed two writ petitions
one by Savitri Devi, one of the partners (CWP No.17469/
G 2006) and the another by M/s. Vinod Oil and General Mills, a
registered partnership firm through Shri Inder Sain Aggarwal
(CWP No.17458/2006) praying to quash the notifications
dated 15.3.2004 and 14.3.2005 under Sections 4 and 6 of
the Act and also prayed for direction to release their land from
H acquisition proceedings.

4. The High Court quashed the acquisition proceedings, *interalia*, on the grounds:- (i) having permitted the change of land use for developing the area as an industry and after 26 years cannot turn around and acquire the land for development of residential and commercial purposes; (ii) lands having been released from earlier acquisition in 1992 cannot be included in the notification for re-acquisition; (iii) the land of the respondents being located in one of the corners of the sector that is proposed to be developed, the same could be conveniently adjusted in the Plan/Scheme.

5. Mr. Narendra Hooda, learned Addl. Advocate General, appearing for the State of Haryana, submitted that the development and utilization of land for residential and commercial purpose in Sector 9 & 11, Hissar will benefit many people and the High Court erred in not appreciating that the interest of the individuals could not come in the way of development plan. Learned counsel further submitted that at the time of planning of sector, it was noticed that the land in dispute was creating hindrance in development of the sector and the High Court did not properly appreciate the hindrance that is being caused by the land, for the development of the sector as residential and commercial sector. It was submitted that the release of the land from acquisition in the earlier notification in 1992 would not in any way bar fresh acquisition of the same land.

6. Mr. Puneet Jindal, learned Senior Counsel appearing for the respondents/claimants submitted that when the respondents' lands were earlier sought to be acquired, upon consideration of objections by the respondents that they have set up industry and put up constructions in their lands and after verification of the same, the claim of the respondents was accepted by the Government and the land of the respondents was then released from acquisition and while so, the

A notification issued by the State of Haryana seeking to acquire the land again is illegal and arbitrary and the High Court has rightly quashed the acquisition.

7. Acquisition of respondents' lands was held to be vitiated on the ground that State having granted permission to the respondents for change of land use and develop the area as an industry cannot turn around after twenty six years to acquire the land saying that the same is required to be developed for residential purposes and the action of the respondent/State was held to be arbitrary. Of course, Director of Town and Country Planning, Haryana earlier granted permission to the respondents herein for change of land use for construction of Oil and General Mills in their lands in 23 Kanal 6 Marla in Khasra No.148/1,148/2 and 149/10. The fact that the factory and building was put up in the lands with the approval of the authority cannot be a bar for acquisition of the land. Public interest overrides individual's interests. In our view, the High Court was not justified in saying that the acquisition is bad since permission was earlier granted for change of land use and developing the area as an industry and that Government is estopped from initiating acquisition proceedings.

8. Permission for change of land use and developing the area as an industry, in our view, has no relevance while considering the validity of acquisition. If we are to hold that once permission is granted for change of land use for developing the area as an industry and thereafter State cannot acquire it, then a situation may arise that for all time to come, the particular area cannot be acquired which may not be in the larger public interest. We are also unable to agree with the view taken by the High Court that the action of the respondents/ State in approving setting up of a factory and then acquiring the same is unreasonable. It is not as if the lands where

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factories are set up are immune from any acquisition. The only effect of permission for such change in land use and approval for construction and developing the area as an industry can be recognized as valid only to the extent as to confer right upon the land owners to recover the appropriate compensation.

9. The land was acquired for development and utilization of the same for residential and commercial purposes in Sector 9 & 11, Hissar. So far as the purpose of acquisition of land is concerned, the High Court observed that "*the acquisition is not for essential public services such as development of infrastructure, railways, metro or the purpose related thereto, irrigation, water supply, drainage, road, communication etc.....*". High Court was not correct in observing that only development of infrastructure, railways or irrigation, water supply, drainage, road etc. are primary public purposes. Public purpose includes a purpose involving general interest of community as opposed to the interest of an individual directly or indirectly involved. Individual interest must give way to public interest as far as public purpose in respect of acquisition of land is concerned.

10. The concept of 'public purpose' was dealt with in detail in *Daulat Singh Surana & Ors. vs. First Land Acquisition Collector & Ors.* (2007) 1 SCC 641, in which this Court has held as under:-

"49. In *United Community Services v. Omaha Nat. Bank* (77 NW 2d 576, 585, 162 Neb 786) the Court observed that a public purpose has for its objective the promotion of the public health, safety, morals, security, prosperity, contentment and the general welfare of all the inhabitants.

50. In *People ex rel Adamowski vs. Chicago R.R. Terminal Authority* (151 NE 2d 311, 314, 14 Ill 2d 230)

A the Court observed that public purpose is not static concept, but is flexible and is capable of expansion to meet conditions of complex society that were not within contemplation of framers of the Constitution.

B 51. In *Green v. Frazier* (176 NW 11, 17, 44 ND 395), the Court observed that a public purpose or public business has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity and contentment of all the inhabitants or residents within a given political division, as for example, a State, the sovereign powers of which are exercised to promote such public purpose or public business.

C 52. In the words of Lord Atkinson in *Central Control Board v. Cannon Brewery Co. Ltd.* {1919 AC 744: 88 LJCh 464: 121 LT 361 (HL)} the power to take compulsorily raises by implication a right to payment.

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E 59. In *Somavanti v. State of Punjab* (1963) 2 SCR 774: AIR 1963 SC 151 the Court observed that public purpose must include an object in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned.

F Public purpose is bound to change with the times and the prevailing conditions in a given area and, therefore, it would not be a practical proposition even to attempt an extensive definition of it. It is because of this that the legislature has left it to the Government to say what is a public purpose and also to declare the need of a given

G land for a public purpose.

H 60. The Constitution Bench of this Court in *Somavanti* observed that whether in a particular case the purpose

for which land was needed was a public purpose or not was for the Government to be satisfied about and the declaration of the Government would be final subject to one exception, namely, that where there was a colourable exercise of the power the declarations would be open to challenge at the instance of the aggrieved party.

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73. Public purpose cannot and should not be precisely defined and its scope and ambit be limited as far as acquisition of land for the public purpose is concerned. Public purpose is not static. It also changes with the passage of time, needs and requirements of the community. Broadly speaking, public purpose means the general interest of the community as opposed to the interest of an individual.”

11. Prima facie, State is the first Judge to determine whether there exists public purpose or not. But the decision of the State is not beyond judicial scrutiny. The Courts have the jurisdiction and it is their duty to determine the matter whenever a question is raised whether a requisition order is or is not for a public purpose. In *Sooraram Pratap Reddy & Ors., vs. Distt. Collector, Ranga Reddy Dist. & Ors., (2008) 9 SCC 552*, it was held as under:

“133.....It is primarily for the State to decide whether there exists public purpose or not. Undoubtedly, the decision of the State is not beyond judicial scrutiny. In appropriate cases, where such power is exercised *mala fide* or for collateral purposes or the purported action is *dehors* the Act, irrational or otherwise unreasonable or the so-called purpose is “no public purpose” at all and fraud on statute is apparent, a writ-court can undoubtedly

A interfere. But except in such cases, the declaration of
the Government is not subject to judicial review. In other
words, a writ court, while exercising powers under Articles
32, 226 or 136 of the Constitution, cannot substitute its
own judgment for the judgment of the Government as to
B what constitutes “public purpose”.

12. While determining the question whether a requisition
order is or is not for a public purpose, the facts and
circumstances in each case are to be closely examined in order
C to determine whether a public purpose has been established.
The requirement of land for residential and commercial
purposes and for development of the Sector involves in it an
element of general interest of the community and whatever
furthers the general interest must be regarded as a ‘public
D purpose’ as opposed to the particular interest of individuals.

13. High Court quashed the acquisition on yet another
ground that the land was sought to be acquired earlier by
issuing notification dated 19.5.1992 under Section 4 of the
E Act and accepting the respondents’ objections, their land was
earlier released and ignoring the said fact situation, the State
arbitrarily included the land of the respondents in the
notification under Section 4 of the Act for reacquisition. Relying
upon its own judgment in *Roshan Lal & Ors. vs. State of*
F *Haryana & Ors.* 2003 (3) PLR 199, the High Court quashed
the acquisition proceedings invoking principle of estoppel.

14. Mr. Narender Hooda, learned Addl. Advocate
General, appearing for the appellants/State of Haryana,
G submitted that the judgment rendered in *Roshan Lal* (supra)
does not apply in the facts of the present case, since in the
said case, the land was earlier released on certain conditions
and then again acquired the land and the Government was
bound by the earlier conditions. But in the present case, there

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was no such condition imposed on either party at the time when the land was released earlier. It is further submitted that the respondents have a total area of 23 Kanal 6 Marla, out of which only small portion in two small strips are sought to be acquired which is very much required for the development of the Sector. A

15. As regards contention of the learned counsel for the respondents that the land once released cannot be subsequently reacquired, in our view, there is no bar to the subsequent acquisition of the land nor is there a bar for issuance of successive notification for acquisition of the land. It would not be right to contend that because the land was already released, it cannot be acquired by subsequent notification. If it is to be held that land already released cannot be reacquired, an anomalous situation may arise that the land cannot be acquired for all time to come even if it is genuinely required. It is not in dispute that the earlier notification is issued by the State for the development of the land for residential and commercial purposes which is same purpose for subsequent acquisition as well. When the State felt that the land sought to be acquired cannot be adjusted in the development of the Plan, there is no bar for issuance of notification for acquisition of the land. B C D E

16. Yet another ground on which the High Court quashed the acquisition is that the land of the respondents is located in one corner of the area that is proposed to be developed and the land of the respondents could conveniently be adjusted in the planning scheme. We have perused the Plan of Sector 9 & 11. Two chunks of lands of the respondents one strip measuring 19 Marla and another measuring 1Kanal 11 Marla are sought to be acquired. 19 Marla of land in Khasra No. 148/2/2 standing in the name of Savitri Devi measures 192'.6"x 27'.6" feet. In this small strip of land of 19 Marla, office block, laboratory and Mandir (place of worship) are said F G

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A to have been constructed. Main sheds of the factory and the land underneath have not been acquired. According to the respondents, this small strip of land of 19 Marla is not contiguous with the other land of Government/HUDA and in the absence of office building, laboratory, the respondents will not be able to run their factory. We find substance in the contention of the respondents that Khasra No. 148/2/2, the small strip of land which is contiguous to their factory appears to be in the corner of the Development Plan and the same can be adjusted in the Planning Scheme of the Sector and on this ground, we affirm the order of the High Court quashing the acquisition in respect of Khasra No.148/2/2 measuring 19 Marla.

D 17. Insofar as another strip of 1 Kanal 11 Marla of land which stands in the name of M/s. Vinod Oil and General Mills, this strip of land in Khasra No.149 is situated in the midst of Sector 9 & 11. We find substance in the submission of the State that this strip of land is an hindrance for the wholesome development of the Sector and the same cannot be adjusted in the development of the Sector. Order of the High Court quashing acquisition of this strip of land measuring 1 Kanal 11 Marla in Khasra No.149 is set aside and the acquisition of 1 Kanal 11 Marla in Khasra No.149 is upheld.

F 18. Regarding acquisition of 1 Kanal 11 Marla in Khasra No.149, on behalf of the respondents it was then argued that by virtue of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, Resettlement Act, 2013 (hereinafter referred to as 'the Act 2013'), the subject of acquisition shall be deemed to have lapsed because the award is prior to the commencement of the Act 2013 and since no compensation has been paid to the respondents nor the amount was deposited and the possession was not taken.

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19. Learned counsel for the appellants Mr. Hooda submitted that there is no default on the part of the appellants and hence the acquisition proceedings have not lapsed under Section 24(2) of the Act 2013. He, however, submitted that the matter be remitted back to the High Court for consideration of that aspect as was ordered in Civil Appeal No. 8104/2014 and connected matters titled *Surjit Kaur vs. State of Haryana & Ors.* decided on 5.9.2014 by this Court where similar situation prevailed.

20. Considering the scope of Section 24(2) of the Act 2013 in *Pune Municipal Corporation & Anr. Vs. Harakchand Misirimal Solanki & Ors.*, (2014) 3 SCC 183, in para (11) this Court has held as under:-

“11. Section 24(2) also begins with *non obstante* clause. This provision has overriding effect over Section 24(1). Section 24(2) enacts that in relation to the land acquisition proceedings initiated under the 1894 Act, where an award has been made five years or more prior to the commencement of the 2013 Act and either of the two contingencies is satisfied viz. (i) physical possession of the land has not been taken, or (ii) the compensation has not been paid; such acquisition proceedings shall be deemed to have lapsed. On the lapse of such acquisition proceedings, if the appropriate Government still chooses to acquire the land which was the subject-matter of acquisition under the 1894 Act then it has to initiate the proceedings afresh under the 2013 Act. The proviso appended to Section 24(2) deals with a situation where in respect of the acquisition initiated under the 1894 Act an award has been made and compensation in respect of a majority of landholdings has not been deposited in the account of the beneficiaries then all the beneficiaries specified in the Section 4 notification

A become entitled to compensation under the 2013 Act.”

21. Since the new Land Acquisition Act has come into force with effect from 1.1.2014, the High Court did not have occasion to examine whether proceedings already initiated under the Land Acquisition Act, 1894 have lapsed on account of the alleged non-payment of compensation to the respondents and the failure of the authorities to take over possession of the land acquired from them. Having regard to the submission of the learned counsel for the respondents, certain factual aspects viz., (i) whether possession of the land in Khasra No. 149 has been taken or not; (ii) whether the compensation in respect of the acquired land in Khasra No. 149 was paid or not have to be examined. We are of the view that instead of this Court examining the above issues by itself, it would be better if the matter is remitted back to the High Court to examine the above limited questions in respect of the acquisition of the land 1 Kanal 11 Marla in Khasra No.149.

22. In the result, we uphold the order passed by the High Court quashing the acquisition of the land 19 Marla in Khasra No.148/2/2. So far as the acquisition of land measuring 1 Kanal 11 Marla in Khasra No.149(CWP No.17458/2006), the order of the High Court is set aside and it is held that the acquisition proceedings have been properly concluded in respect of the said extent of land acquired in Khasra No.149 and the matter is remitted to the High Court to examine the limited questions as aforesaid. We further direct that the status quo as it exists today in regard to disputed property shall be maintained by the parties pending disposal of the writ petition. We restore the CWP. No. 17458/2006 (M/s Vinod Oil and General Mills Vs. State of Haryana & Ors.) on the file of the High Court. Since the writ petition is of the year 2006, we request the High Court to dispose of the same as expeditiously

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as possible preferably within a period of four months from the date of receipt of copy of this judgment. The appeals stand disposed of accordingly. In the facts and circumstances of the case, no order as to costs. A

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Kalpana K. Tripathy

Appeals disposed of.