REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8378 OF 2015
[Arising out of SLP (Civil) No. 29250 of 2008]

STATE OF HARYANA & ORS. .. APPELLANTS

VERSUS

NORTHERN INDIAN GLASS INDUSTRIES LTD. .. RESPONDENT

J U D G M E N T

VIKRAMAJIT SEN, J.

1 Leave granted.

2 The Appellant, State of Haryana, is assailing the Judgment dated 11.12.2007 passed by the High Court of Haryana in Civil Writ Petition No. 3750 of 2005 whereby the Notice to resume the land of the Respondent has been set aside. The Appellant State has been directed to comply with the principles of natural justice as perceived by the High Court, and, in consonance with its tenets, rehear the Respondent as well as the subsequent purchasers, and thereafter to decide the issue of resumption of the subject land by the Appellant State.

3 It is unfortunate, and indeed remarkable, that the fate of the subject agricultural land, measuring 358 kanals and 7 marlas, located in village Sankhol of Tehsil Bahadurgarh of District Rohtak, has been in a state of uncertainty since the year of its acquisition in 1973. The Respondent had approached the Appellant State on 18.5.1971 with a proposal to set up an industrial undertaking having 20,000 tonnes capacity for manufacture of sheet glass, requiring an investment plan of 4 crore,. It was projected that this industry would provide employment for as many as one thousand workmen. Keeping in perspective the palpable public purpose of generating employment and spurring industrial growth, the Appellant State approved the said proposal and issued a Notification and a Declaration under Sections 4 and 6 respectively of the Land Acquisition Act, 1894 (referred to as "the Act" hereinafter) in 1973. The Award came to be passed in the following year 1974 which computed the compensation for the landowners at 3,93,688.12. Immediately after the passing of the Award on 16.10.1974, the Appellant State executed a Deed of Conveyance in favour of the Respondent, the relevant clauses of which shall hereafter be adverted to.

4 Being aggrieved with the quantum of compensation the landowners approached the Additional District Judge in Reference proceeding under Section 18 of the Act, who enhanced the compensation by 59,349/- vide Order dated 29.1.1979. The compensation was thereafter further enhanced to 8.10 lakh by

the High Court vide Judgment dated 2.6.1988, which was not interfered with by this Court by the dismissal of the SLP of the Respondent. In the interregnum, on 1.8.1986, some of the landowners filed Execution proceedings under Order XXI Rule 11 of the CPC against the Respondent and the Appellant State for recovery of the enhanced compensation awarded to them. It is these proceedings which have supplied the bedrock for the dispute portrayed before us. In that execution case, the Additional District Judge proceeded to attach the acquired land, vide Orders dated 29.8.1987; and then directed its sale by way of auction vide Order dated 4.3.1989. The Respondent thereupon presented the Executing Court with an ingenious offer of private sale on the predication that the barren and water-logged land would not fetch sufficient funds to satisfy the decreed compensation through court auction. Suffice to note that the application of the Respondent for private sale seems to have received the imprimatur of the District Judge on 7.5.1991, and thence several portions of the subject land had been sold by the Respondent. Knowledge of these execution proceedings has been unconvincingly denied by the Appellant State which asserts that it came to know about them only in 1991, when some of the original landowners successfully challenged the acquisition proceedings on the ground of non-utilization of the subject land in CWP No. 14735 of 1991. The High Court quashed the acquisition proceedings in its entirety vide Judgment dated 5.3.1992 and directed that the land be returned to the original landowners.

These Orders were overturned by this Court on 29.10.2002 in *Northern India Glass Industries v. Jaswant Singh* (2003) 1 SCC 335 *inter alia* with the observations that in the event **"**the land was not used for the purpose for which it was acquired, it was open to the Appellant State to take action but that did not confer any right on the respondents to ask for restitution of the land. As already noticed, the Appellant State in this regard has already initiated proceedings for resumption of the land. In our view, there arises no question of any unjust enrichment to the Appellant Company."

5 The Appellant State thereupon initiated resumption proceedings, pursuant to which a Committee was constituted by it on 27.5.2004, which visited the subject land and submitted its Report dated 16.6.2004. This Report has provided the primary plank for the Notice of Resumption dated 6.1.2005 issued by the Appellant State to the Respondent, which was challenged by the Respondent before the High Court in the CWP No. 3750 of 2005. This Notice has been annulled by the High Court vide the impugned Judgment on the ground of non adherence to the *audi alteram partem* principle, since the Respondent and the subsequent purchasers had not been given an opportunity of hearing. This is the solitary issue which arises before us. In the Writ Petition of the Respondent, the Appellant State essayed to justify the impugned Notice of Resumption on the basis of the terms and conditions set out in the Deed of Conveyance. The

relevant clauses of the Deed, whence the rights and the duties of the parties flow, *inter alia* state:

> "2. The Company hereby covenants with the Government that it shall:
>
> (i) Use the said land exclusively for all or any of the purposes of a factory for the manufacture of sheet glass and such other products as the Government may approve and for no other purpose.
>
> XXXXXX
>
> (iv) Not to transfer by way of sale, gift, exchange, mortgage or otherwise the said land or the buildings constructed thereon or any right, title or interest therein without prior written permission of the Government. However, the Government hereby agrees that the company shall have the liberty to mortgage the said land together with building erected/to be erected thereon in favour of the Industrial Finance Corporation of India (IFCI); Industrial Development Bank of India (IDBI); and the Industrial Credit and Investment Corporation of India (ICICI).
>
> XXXXXX
>
> 4(i) In the event of the company being up whether compulsorily or voluntarily (save for the purposes of amalgamation or reconstruction) and the company, through its liquidator, failing to obtain the Government's permission to transfer the said land with the buildings constructed thereon in terms of the clause 2(iv) hereof or if the company shall fail to observe and perform any of the covenants on its part contained in this deed, then and in either such case the Government may resume the said land by serving a notice on the company by sending it to the registered office of the company by registered post (acknowledgment due). The notice shall indicate the reasons for resumption of the said

> land and shall require the company to remove and dispose of for its own benefit all buildings and other structures constructed on the said land and all machinery and other fittings fixed therein or lying thereon within a period of not more than 15 months from the date of service of the notice on the company.
>
> (ii) That from the date of service of the notice referred to in sub-clause (i) the said land shall subject to the provisions of sub-clause (iv) hereinafter appearing stand resumed and vest in the Government.

6 Even a cursory glance at clause 2(iv) of the Deed would manifest that the Respondent was specifically precluded from selling, gifting or transferring the subject land without prior "written permission" of the Appellant State. When clause 2(iv) and clause 4(i) of the Deed are read in conjunction, it is at once apparent that the Appellant State was empowered to resume the land in the event of their violation by the Respondent. Such resumption, the Appellant State vehemently argues, could be done merely by serving on the Respondent a notice containing the reasons therefor. The Appellant State further contends that the Deed bestows no right on the Respondent to be heard before resumption and hence no corresponding duty is cast on the Appellant State to comply with the principles of natural justice; that the rights and the duties of the parties are strictly circumscribed by the contractual rights contained in the Deed, which alone should be the determining factor to resolve disputes arising between the parties. The argument of the Appellant State did find favour with the High Court which held that the power of the Appellant State to convey the land to the

Respondent is subject to extant Rules. It opined that the Appellant State has exercised its power to convey the land by virtue of Chapter VII of the Act, but Clause 2(iv) is also borrowed from Section 44A of the Act. Section 41, as provided in the Chapter VII of the Act read with the preceding provisions, lays down several general conditions, such as, cost of acquisition, terms on which the land transferred should be held by a company, time period for fulfilment of conditions etc. Section 44A thereafter forbids the concerned company from disposing of the land transferred to it by any mode of conveyance, except with the previous written sanction of the concerned Government. The clause for resumption mentioned in the Deed has not been prescribed in the Act, but nevertheless empowers the State to resume the land in certain situations. Sub-Rule 2 of Rule 5 of the Land Acquisition (Companies) Rules, 1963 provides that in case a company breaches any of the terms of the Agreement, the appropriate Government shall not make an order declaring the transfer of the acquired land as null and void, unless the company has been given an opportunity of being heard in the matter.

7 We agree with the High Court that the Deed of Conveyance is founded on the Act and, therefore, contractual rights would not be the only determinative elements in the dispute. We also endorse the High Court's opinion that the principles of natural justice are an "inalienable part of the rule of law"; abidance

with these principles is necessary even *de hors* specific stipulation in this regard. We reiterate, however, that the Deed of Conveyance does not permit the Respondent to sell the land without prior written permission of the Appellant State. The Respondent, while admitting that it never sought permission of the Appellant State, endeavours to defend its conduct by asserting that since the Appellant State was a party to the execution proceedings, it impliedly consented to the sales.

8 We have perused the Orders of the Executing Court adduced by the Respondent where the Appellant State through its Land Acquisition Officer has been shown as a party in the application filed on 1.8.1986 by the original landowners under Order XXI Rule 11 of the CPC. As a matter of fact, the Appellant State has also been mentioned as one of the Judgement Debtors along with the Respondent in the Orders passed by the Executing Court from time to time. It must be immediately underscored that neither has it been pleaded that the Appellant State was notified of the Execution proceedings nor has any effort been made to show that the Appellant State was represented and heard by the Executing Court. Mere inclusion of a party in a proceeding falls far too short of proving that its views or stance had been laid and duly considered. We have no hesitation in holding that there was no permission either in law or as per the Deed which authorised the Respondent to sell the land. We think that had the

Executing Court been properly apprised of the terms and conditions of the Conveyance Deed and the true factual circumstances of the case, its conclusions would have been diametrically different. The Respondent cannot take advantage of its own transgressions and legal duplicity and shenanigans.

9 The plea of the Respondent is that it was saddled with higher compensation awarded by the District Court and thereafter by the High Court, and that requisite resources were not available with it to satisfy the decreed amount and that consequently it filed in Court, instead with the Appellant State, the application for permission for private sale. It must immediately be highlighted that the said higher compensation was computed at a mere 8.8 lacs which stands in stark contrast to the quantum of 4 crore which was planned to be invested by the Respondent in the manufacture of sheet glass.

10 Significantly, the Respondent was neither asked nor did it proffer details of its other properties against which the decree in favour of the original landowners could have been satisfied and satiated. The Respondent also hid from the Executing Court the fact that the burden to pay any enhanced compensation lay, in the first place, on the Appellant State and not the Respondent. Class 2(v) is relevant on this point, and reads as:

> 2(v) pay to the Government any additional amount which may have to be paid by the Government in addition to the sum of Rupees three lacs ninety three thousand five hundred eighty eight and twelve paise

> only on account of assessment or enhancement of compensation payable in respect of the acquisition of the said land and all costs, charges and other expenses whatsoever relating thereto resulting from any reference, appeal or writ petition, etc to any court or authority. (emphasis is ours)

11 The Respondent has also argued that it had intimated the Appellant State about the enhanced compensation, but it failed to elicit any response. Even if the Appellant State failed to act upon its intimation, it would have been appropriate for the Respondent to bring the relevant clause to the notice of the Executing Court or invoke arbitration in terms of Clause 4(viii) of the Deed. It could not arrogate to itself the power to take unilateral action inconsonant with the contractual clauses.

12 Clause 2(iv) of the Deed of Conveyance, in pellucid terms, enables the Respondent to mortgage the subject land along with any structure thereon in favour of the Industrial Finance Corporation of India (IFCI), the Industrial Development Bank of India (IDBI), or the Industrial Credit and Investment Corporation of India (ICICI) in order to obtain loans. Whilst conveyance of the property was forbidden, its mortgage to the named entities was permitted. There was neither disposition of power nor any justification for the Respondent to have sold the acquired land or even a portion of it. As reflected in the Deed of Conveyance, the Respondent was required to construct the factory within two years from the date of delivery of possession of the acquired land or within one

year from the date of execution of the Deed, whichever period expired later. The Deed of Conveyance was executed on 16.10.1974 whereas the possession was given on 20.06.1974, and it is an admitted fact that no factory building has been constructed till date. The Appellant State cancelled the allotment of the acquired land to the Respondent. However the petition for quashing of the acquisition proceedings was allowed on 5.03.1992, which was ultimately set aside by this Court on 29.10.2002. During the period 5.03.1992 to 29.10.2002, the land was returned to the original landowners, so the Respondent could have done nothing. Thereafter, resumption took place on 6.1.2005.

13 The Respondent pleads all the said factors, but without basis halted its efforts to construct the factory building and establish the sheet glass industry. What is evident from the abovementioned facts is that, at least before 05.03.1992, the only excusable factor could be of flood, which also did not recur regularly since the date of possession, i.e. 20.10.1974 for nearly two decades. Enhanced compensation and economical constraint had already been discoursed above and even if the factor of flood is kept in sight, cannot discharge the Respondent of the duty to establish the industry. Significantly, the Respondent had not sought extension of time from the Appellant State as per the Rules of 1963. The only conclusion to be drawn from these facts is that the Respondent failed altogether to perform the terms and conditions of the

Conveyance, which throws serious doubts on its intention to establish a sheet glass factory and commence production on the acquired land.

14 The Committee constituted by the Appellant State had submitted its Report dated 16.6.2004 which categorically stated that no plant, machinery, electric connection etc, which may have some semblance of industrial activity, was found on the site; instead, only an Office engaged in dealership of plots has been set up. Indeed, the Committee had reported that the acquired land had been divided into different plots, foretelling a forthcoming unauthorised colony. The Report of the Committee remains uncontroverted; rather, the endeavour of the Respondent is focused on explaining the predicament it was supposedly trapped in. Recapitulating the facts noted above, it is clearly evident that the Respondent failed to establish and commence production in the sheet-glass factory within the time frame provided in the Deed of Conveyance; that it used the subject acquired land for purposes other than those allowed by the Deed; that it sold the acquired land, without written permission or any permission worth mentioning, to third parties. Despite all these happenings, the Respondent failed to make even a single representation before the Appellant State.

15 The question to be answered is whether the Respondent should have been given an opportunity of being heard by the Appellant State before the Appellant

State could resume the subject land acquired on its behalf for a specified purpose. In *State of Gujarat v. M.P. Shah Charitable Trust*, (1994) 3 SCC 552 it was contended by the respondent Trust that taking away the power of the Trust to nominate certain number of students in the concerned Government Medical College by the Appellant State was bad in law inasmuch as the State Government had passed the impugned resolution without notice to the Trust. This Court while allowing the appeal of the State has observed thus:

> **"22.** We are unable to see any substance in the argument that the termination of arrangement without observing the principle of natural justice (*audi alteram partem*) is void. The termination is not a quasi-judicial act by any stretch of imagination; hence it was not necessary to observe the principles of natural justice. It is not also an executive or administrative act to attract the duty to act fairly. It was — as has been repeatedly urged by Shri Ramaswamy — a matter governed by a contract/agreement between the parties. If the matter is governed by a contract, the writ petition is not maintainable since it is a public law remedy and is not available in private law field, e.g., where the matter is governed by a non-statutory contract".

16 In *State of Chhattisgarh v. Dhiroj Kumar Sengar*, (2009) 13 SCC 600 a compassionate appointment was cancelled because the incumbent had procured it on the prediction of the services of his deceased uncle, but without proving that he had been validly adopted by him. The High Court allowed his writ petition challenging the cancellation of appointment on the ground that he had adduced an Adoption Deed as well as a Succession Certificate. This Court found

the said documents to be deficient of proving the claim of adoption since the Deed of Adoption was unregistered and the Succession Certificate included the name of the incumbent as well as his real father. This Court noted that the appointment had been obtained by suppression of the facts including the rejection of the first application and therefore, principles of natural justice were not required mandatorily to be complied with.

17 *Nirma Industries v. SEBI* (2013) 8 SCC 20, involved interpretation of Regulation 27 of the Takeover Code. The appellant company therein after making a public announcement for proposed open offer up to 20 per cent of the shares of the existing shareholders of Shree Ram Multi Tech Ltd (SRMTL) under Regulation 10 of the Takeover Code, sought to withdraw that offer in the light of certain Reports in the public domain post the open-offer, unearthing fraudulent transactions and siphoning off of funds by the promoters of SRMTL. SEBI declined the request for withdrawal *inter alia*, holding that the appellant company should have conducted due diligence before making an open public offer. The failure by SEBI to grant any opportunity of being orally heard was held by both the Securities Appellate Tribunal and this Court not to vitiate the order of SEBI *inter alia*, because SEBI had all the necessary information and materials before it to make a fair decision, all of which had been duly considered.

18 In the Chairman Board of Mining Examination and Chief Inspector of Mines v. Ramjee, (1977) 2 SCC 256, Krishna Iyer J, one of the foremost apostles of human rights and natural justice, advocated that the Court ".... cannot look at law in the abstract or natural justice as a mere artefact. Nor can we fit into a rigid mould the concept of reasonable opportunity..... If the authority which takes the final decision acts mechanically and without applying its own mind, the order may be bad, but if the decision-making body, after fair and independent consideration, reaches a conclusion which tallies with the recommendations of the subordinate authority which held the preliminary enquiry, there is no error in law. ..." It would also be useful to recollect the observations of this Court in Union of India v. Jesus Sales Corporation, (1996) 4 SCC 69 wherein it has been enunciated that the dictat of natural justice, viz. affording an opportunity to the person concerned to present his case would be met if the person concerned had the opportunity to present his case and that all points were taken into consideration. More recently, in Patel Engineering Ltd. v. Union of India (2012) 11 SCC 257, this Court has opined "that there is no inviolable rule that a personal hearing of the affected party must precede every decision of the State".

19 In the instant case, the conduct of the Respondent has not only been utterly unfair but, in fact, it smacks of fraud, malpractice and malfeasance. It

cannot be justified as a simple error which may exonerate it of the allegations levelled against it by the Appellant State. According to its own affidavit filed before the High Court, the Respondent has executed 118 Sale Deeds in favour of various third parties, with several sales being in 2004-05. This is sought to be vindicated by the Respondent on the ground that since the land was returned to it in 2004 after the quashing of the acquisition was set aside by this Court, it could have executed final Sale Deeds in respect of Agreements to Sell of 1991 post repossession of the land. Whether it had entered into Agreements to Sell with third parties in 1991 or accepted Earnest Money thereagainst is not an enquiry to be made here. It is also the case of the Respondent that after the land remained in possession of the original landowners for twelve long years, it was beyond its control to establish the unit as was proposed and postulated at the time of acquisition and so in *bona fide* belief it sold the remaining land as well. The Respondent cannot predicate that after paying the cost of the land to the Appellant State and the enhanced compensation to the original landowners, it had become absolute owner of the land and consequently it could use the land in the manner it liked.

20 Some brief words with regard to persons who have purchased plots from the Respondent. If a diligent title-search had been conducted by them it would indubitably have disclosed that the sale transaction was contrary to the purpose

of the acquisition, was not consonant with the clauses of the contract executed by the Appellant State and the Respondent and was intrinsically inconsistent with the terms and the tenor of law. Equities cannot emerge in favour of such purchasers who cannot but be presumed to have purposefully transgressed the law. Suchlike persons are not justified or entitled to seek impleadment in these proceedings. The impleadment applications are meritless and are dismissed.

21 The prayer in the writ petition was for the issuance of a writ of Certiorari quashing the Resumption Notice dated 6.1.2005 issued by the Appellant State. In the impugned Judgment the Division Bench has opined that the principles of natural justice applied irrespective of the nature of the cause or the gravity thereof and are not mere platitudes. In our analysis of the exposition of law contained hereinabove, we think that this unjustly sets far too broad and wide a parameter to the perceptions of natural justice. Quite to the contrary, Courts should be "pragmatic rather than pedantic, realistic rather than doctrinaire, functional rather than formal and practical rather than precedential". We cannot lose perspective of the fact that protracted litigation had already taken place between the parties as a consequence of which the legal position of all affected parties had already become well-known. It seems to us that in the writ petition, the challenge was predicated on the perceived failure to adhere to the *audi alterem partem* rule and not to the correctness of the decision to resume

possession of the land. In any event, we harbour no manner of doubt that the circumstances of the case warrant the issuance of the Resumption Notice of the land by the Appellant State. We also note that the 'Resumption Notice' has been issued to the Respondent alone which, because of its actions, has forfeited whatsoever rights it may have enjoyed over the land in question. In fact the Respondent may be liable to make over to the Appellant State all the profit that it has illegally and unjustifiably reaped in its misutilization of the lands acquired for it for the purpose of setting up an industrial unit for manufacture of sheet glass with the accompanying projection of providing employment to almost a thousand workmen. How this Resumption Notice will be implemented against third parties is a matter on which we would think it prudent not to make any observations. The Appellant State may not treat the observations made by us above pertaining to third parties who have purchased land from the Respondent as conclusively circumscribing any relief to them and/or rendering it unnecessary to give any hearing to them. The Appellant State will avowedly have to proceed in accordance with law, especially since it has not maintained a watchful eye on the manner in which the land was dealt with by the Respondent.

22 The Appeal is accordingly allowed and the Impugned Judgment is set aside. We are mindful of the legally reprehensible manner in which the

Respondent has abused the acquisition of land in their favour. The Respondent is therefore liable to pay costs of legal proceedings which are quantified by us at 2 lakhs. Costs to be paid within two months.

…….J.
[VIKRAMAJIT SEN]

…….J.
[PRAFULLA C. PANT]

New Delhi,
October 07, 2015.