R.N.R.

Before Permod Kohli, J.

RAM BHAGAT AND OTHERS,—*Petitioners*

versus

STATE OF HARYANA AND OTHERS,—*Respondents*

CWP No. 14452 of 2010 and
connected writ petitions

6th December, 2010

Constitution of India, 1950—Art. 226—Land Acquisition Act, 1894—S. 48—Haryana Development and Regulation of Urban Areas Act, 1975—S. 3—Haryana Development and Regulation of Urban Areas Rules, 1976—Land of petitioners sought to be acquired for public purpose—Land owners entering into collaboration agreement with a Company for development of area for group housing and commercial purposes—Petitioners' eligibility, their capacity and validity of Scheme offered by them not disputed or objected to by respondents—Respondents after having accepted licence fee and scrutiny fee for whole land cannot turn around to deny claim on totally non-existent grounds and are estopped from doing so—Petitions allowed.

Held, that respondents have accepted licence fee and scrutiny fee for entire land. Petitioners have been found eligible for grant of licence on scrutiny as the development scheme/plan submitted by the petitioners confirm to the technical and developmental norms fixed by the respondents, as is evident from the record produced. It is also pertinent to note that the Scheme submitted by the petitioners pertain to entire land. Respondents after having accepted the licence fee and scrutiny fee for the whole land now cannot turn around to deny the claim on totally non-existent grounds and are estopped from doing so. Taking into consideration the facts that the petitioners continue to be in possession of the entire land notwithstanding the acquisition, petitioners' right under Government policies and the provisions of Section 3 of the 1975 Act and Section 48 of the Land Acquisition Act have been denied in a most arbitrary and discriminatory manner, these petitions are allowed.

(Paras 19 & 20)

Suman Jain, Advocate *for the petitioners.*

R. D. Sharma, DAG, Haryana

PERMOD KOHLI, J.

(1) Based upon factual background and questions of law, these petitions were heard and are being disposed of by this common judgment. Facts leading to the filing of these petitions are being usefully noticed here-in-after.

(2) Petitioners No. 1 to 48 in CWP No. 14452 of 2010 (hereinafter referred to as "the owners) were the owners of land measuring 85.83 acres situated in revenue estate of village Pehrawar, Garhi Bohar and Khedi Sadh in Sector 27, District Rohtak. Jamabandis for the year 1998-99 and 2000-2001 pertaining to the aforesaid villages do reflect their ownership at the relevant time. Petitioners No. 2 to 73 in CWP No. 14451 of 2010 (hereinafter referred to as "the owners) were the owners of land measuring 84.04 acres situated in revenue Estate of village Garhi Bohar and Khedi Sadh in Sector 27, District Rohtak. Similarly, Petitioners No. 1 to 205 in CWP No. 14453 of 2010 (hereinafter referred to as "the owners) were the owners of land measuring 11304 acres situated in revenue Estate of village Garhi Bohar

and Khedi Sadh in Sector 27, District Rohtak, State of Haryana issued Notification No. LAC(F)-2002/NTLA./92 dated 11th April, 2002 under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the "1894 Act") proposing to acquire the lands described here-in-above alongwith other tracts of land in the aforementioned villages for alleged public purpose, namely, development of residential/commercial Sectors 27-28, District Rohtak. This acquisition was notified, in view of provisions of Section 14 of the Haryana Urban Development Authority Act, 1977 (hereinafter referred to as "the 1977 Act"). It is alleged that due to inadequate publicity to the acquisition, the notification having been published in newspaper having no wide circulation, all the owners of the land could not know about the proposed acquisition. Some of the land owners, including some of the petitioners, however, objected to the acquisition by filing their objections under Section 5-A of the 1894 Act, when they came to know about the proposed acquisition. It is, however, common case of the petitioners that their objections under Section 5-A, were not disposed of nor they were granted any further opportunity of being heard. It is alleged that without complying with the mandatory provisions of Section 5-A, the Collector proceeded with the acquisition. Declaration under Section 6 of the Act was issued on 8th April, 2003. The land owners/petitioners, in the meanwhile, entered into collaboration agreement with M/s Uddar Ciagan Properties Private Limited arrayed as petitioner No. 49 in CWP No. 14452/2010, petitioner No. 1 in CWP No. 14451 of 2010 and petitioner No. 206 in CWP No. 14453 of 2010 (hereinafter referred to as the "Company") incorporated under the Companies Act, 1956 for development of the area for group housing and commercial purposes on 2nd March, 2005. Under the collaboration agreement, the owners were to contribute their land and the Company to provide financial and technical help for the development of the land. The Company was also authorised to obtain necessary licence for establishment of the Housing Colony and commercial area from the competent authority. Some of the land owners were issued notices under Section 9 of the 1894 Act asking them to submit their claims. It is alleged that these notices were not served upon all the owners. Such of the owners who were served with notice under Section 9 filed their objections against the acquisition of the land and also communicated that they have already entered into collaboration agreement with the Company for development of Group Housing/Residential Colony.

(3) Government of Haryana framed a policy with regard to grant of licence under the provisions of Haryana Development and Regulation Urban Areas Act, 1975 and Haryana Development and Regualation of Urban Rules, 1976 (hereinafter referred to as "the 1975 Act" and "1976 Rules", respectively). The original policy decision was taken on 21st November, 1999 to allow Starred Hotel in the residential zones of development plans of controlled areas which was followed by another decision dated 6th January, 2000 notified *vide* policy decision dated 6th March, 2000. It was decided to approve the proposal to release the land purchased by the Coloniser before issue of notification under Section 4 of the 1894 Act for which application for commercial licence was made. Thereafter if the Director Town and Country Planning, Haryana finds that the case is fit for grant of commercial licence, he will obtain the concurrence of the government for grant of licence. This decision was formulated for the intergrated development of urban areas and generation of resources for the State in the shape of conversion charges, scrutiny fee and external development charges.

(4) Petitioners herein applied for licence on 21st March, 2005 under the 1975 Act in the prescribed form LC-I for grant of licence to develop group housing/residential/commercial colony over the tracts of land of the petitioners/owners for which collaboration agreements were executed with the Company. The petitioners in CWP No. 14452 of 2010 deposited an amount of Rs. 36,87,000, *vide* demand draft dated 21st March, 2005 as licence fee, Rs. 33,93,440 as scrutiny fee in respect of 83.83 acres of land. Similarly, petitioners in CWP No. 14451 of 2010 applied for licence on 21st March, 2005 in respect of 84.04 acres of land for which licence fee of Rs. 42,02,000, scrutiny fee amounting to Rs. 34,01,940 were paid *vide* demand draft dated 20th March, 2005. Similar application was made by petitioners in CWP No. 14453 of 2010 for grant of licence on 19th April, 2006 in respect of land measuring 113.04 acres. A licence fee of Rs. 5.00 lacs *vide* demand draft dated 17th April, 2006, an additional amount of Rs. 33,90,000 and Rs. 41.00 lacs *vide* demand drafts both dated 26th April, 2006 were deposited with the respondents. Petitioners' contention is that despite deposit of the licence fee and scrutiny fee, respondents did not decide the applications for grant of licence and proceeded to pass the award award dated 6th April, 2005. It is further case of the petitioners that

even when the award was passed, none of the land owners (petitioners) received the compensation nor possession of the land was taken over by the Collector or any other authority pursuant to the acquisition. Petitioners have placed on record copies of Khasra girdawaris for Kharif 2007 to establish their possession over the land. The Company (petitioner No. 49 in CWP No. 14452 of 2010) received a communication dated 12th May, 2005 from the District Town Planner indicating certain deficiencies and asked for futher information in respect of the lands in question. The Company *vide* its letter dated 21st June, 2005 not only forwarded the requisite documents but also made clarifications to remove the deficiencies pointed out by the respondents. The applications of the petitioners having not been decided, the petitioners filed CWP No. 1894 of 2006 (**Swaraj Singh** *versus* **State of Haryana and others**) challenging the notification under Section 4 and 6 of the Act with the further prayer to grant licence for setting up of group housing residential/commercial colony in respect of the tracts of land indicated here-in-above. While issuing notice of motion and asking the respondents to ascertain the status of the case, *status quo* qua the possession was ordered to be maintained *vide* order dated 7th February, 2006. Respondent No. 2 issued memo dated 19th June, 2006 to the petitioners informing that the request of the petitioners for grant of licence has been examined/considered and it is proposed to grant licence. The petitioners were required to complete certain formalities and were also asked to furnish 25% bank guarantee on the estimated costs of internal and external development works etc. Charges for internal and external development works were also specified in the aforesaid communication. It was however, mentioned to grant licence in respect of land measuring 51.89 acres out of 83.88 acres in CWP No. 14452 of 2010. A similar letter was issued to petitioners in CWP No. 11451 of 2010 proposing to grant licence in respect of 60.43 acres out of 84.04 acres whereas no decision was taken in respect of land of the petitioners in CWP No. 14453 of 2010. Apart from above, one of the conditions was that the petitioners to whom it is proposed to grant licence will withdraw the writ petition. Petitioners accordingly withdraw CWP No. 1894 of 2006 on 18th July, 2006 reserving liberty to challenge the acquisition regarding portion of the land for which letter of intent has not been issued. Since the respondents did not grant licence in respect of the remaining land, petitioners filed another CWP No. 11408 of 2006, (**Ram Bhagat and others** *versus* **State of Haryana and**

others) seeking direction for grant of licence for the reamaining land. This writ petition was, however, withdrawn with liberty to approach the respondents pursuant to the letter of intent issued in the meantime. Petitioners in CWP No. 14452 of 2010 have been granted Licence Nos. 1081 to 1104 dated 1st September, 2006 in respect of land measuring 51.89 acres. Similarly, licence has been issued in respect of land measuring 60.43 acres in favour of writ petitioners in CWP No. 14451 of 2010. But no licence has been granted in favour of writ petitioners in CWP No. 14453 of 2010.

(5) Petitioners accordingly made a representation dated 2nd March, 2007 to respondent No. 2. This representation remained pending with the respondents. In the meanwhile, the State reviewed its earlier policy in respect of acquisition and grant of licence for group housing/residential and commercial development of urban areas and a new comprehensive policy was notified in the year 2007 *vide* memo dated 30th September, 2007. Relevant extract of this policy is reproduced here under :—

"4. That the following policy frame work for release of land from acquisition proceedings has been approved and this includes the parameters conveyed,—*vide* memo No. 5/30-2007/2TCP, dated 30th September, 2007.

(1) No request will be considered after one year of award. Only those request will be considered by the Government where objections under Section 5-A were filed.

(2) Any request or application where structures have been constucted will only be considered for the release under Section 48(1) provided the structure exist prior to Section 4 and is inhabited ;

(3) Any factory or commercial establishment which existed prior to Section 4 will be considered for release ;

(4) Any religious institution or any building owned by community will also be considered for release ;

(5) Any land in respect of which an application under Section 3 of the Haryana Development Regulation of Urban Areas Act, 1975, has been made by the owners prior to the

award for converting the land into a colony, may also be considered for release subject to the condition that the ownership of the land should be prior to the notification under Section 4 of the Act ;

(6) The Government may also consider release of land in the interest of integrated and planned development for the lands where the owners have approached the Hon'ble Courts and have obtained stay dispossession. Provided that the Government may release any land on the grounds other than above under Section 48(1) of the Act under exceptionally justifiable circumstances for the reasons to be recorded in writing."

(6) Receiving no response in respect of their representation dated 3rd February, 2007, the petitioners made another representation dated 12th April, 2007 to the Chief Minister of the State for grant of licence in respect of the remaining land. This representation too was not responded. Petitioners thus filed three writ petitions (CWP Nos. 4767 of 2008, 4808 of 2008 and 4809 of 2008) in respect of the lands detailed here-in-above. All the writ petitions were disposed of by this Court by a common order with a direction to respondents to consider the petitioners' applications for grant of licence for the remaining land and dispose it of in accordance with law and as per government policy within a period of three months from the date of receipt of certified copy of the order. It was further directed that till the above stated application is decided, *status quo* with regard to the possession be maintained by the parties which would mean that the petitioners shall also not raise any construction or change the nature of the land in any manner.

(7) As a consequence of the aforesaid directions, respondents No. 2 *vide* memo dated 30th June, 2008 asked the petitioners to appear in person for personal hearing. Representative of petitioners accordingly appeared before respondent No. 2 on 4th July, 2008 and placed their case before him. Despite personal appearance, no order has been issued by the respondents for grant of licence for the remaining land within the stipulated period. These petitions have accordingly been filed seeking directions for grant of licence in respect of lands specified in each of the petitions i.e. 31.94 acres situated in village Pehrawar, Garhi Bohar and Khedi Sadh in

Sector 27, District Rohtak 23.61 acres situated in village Garhi Bohar and Khedi Sadh in Sector 27, District Rohtak and 113.04 acres measured by respondents as 93.631 acres situated in village Garhi Bohar in Sector 27, District Rohtak.

(8) Two sets of replies have been filed by respondents No. 1 and 2. While admitting the entire factual averments made in the writ petitions regarding the ownership of the acquired land by the petitioners, their applications for grant of licence and release of the part of the land and grant of licence to the petitioners in CWP No. 14452 of 2010 and 14451 of 2010, it is stated that possession of the land where the Rabi crop was standing could not be taken over by the Estate Officer, HUDA, Rohtak/ Land Acquisition Collector, Hissar as the land owners were granted time upto 30th April, 2005 at their request. Subsequently, the matter was referred to the Deputy Commissioner, Rohtak who vide his report dated 17th March, 2006 confirmed the possession of the land owners upto October, 2005. Thereafter on account of status quo issued by the High Court in CWP Nos. 1893 and 1894 of 2006, possession of tracts of land for which licence was granted could not be taken over from the petitioners. It is further stated that in respect of remaining land, it was presumed that the same was not considered fit having been vested in the government on 6th April, 2005 of which possession was taken and handed over to the Estate Officer, HUDA, Rohtak. In respect of the directions of the High Court issued in CWP No. 4767 of 2008 to decide the application for grant of licence for remaining land within three months, it is stated that after affording hearing to the petitioners, and their counsel, the file was forwarded to the government for obtaining its concurrence.

(9) Section 3 of the 1975 Act deals with the making of an application for licence by the owners of land, payment of licence fee, conversion charges to develop a colony. Director i.e. respondent No. 2 has been empowered to consider application by taking into consideration the parameters prescribed under sub-section (2) of Section 3 which, *inter-alia*, relates to the title of the land, extent and situation of the land, capacity to develop colony, the lay out of the colony etc. Rule 3 of 1976 Rules prescribes the manner of making application and documents to be annexed thereto. Rules 4 and 5 require certain conditions to be fulfilled for development of the colony whereas Rule 8 deals with the powers of the Director to hold an enquiry and Rule 9 deals with the rejection of the application.

(10) In consonance with Section 3 of the 1975 Act, the State Government formulated its first policy for grant of licence vide memo dated 28th August, 1991. It was decided to acquire land not only by HUDA and Private Sector for development, but even individuals were permitted to acquire land, for development and to apply/get a licence. It was further decided in cases where applicants have applied for licence or have acquired land, but could not apply for licence before the issue of acquisition notification, release of land could be considered on individual merits of each case. This policy was reiterated *vide* subsequent policy dated 6th March, 2000 where under it was further decided that where the land is purchased by the Colonizer before issuance of notification under Section 4 of the Land Acquisition Act and the Director Town and Country Planning, Haryana decides to issue licence, release of such land from acquisition may be allowed for development. This policy was further modified on 30th September, 2007 where under the release was even allowed after acquisition and passing of the award under the Land Acquisition Act where the owners continue to be in possession or have obtained stay orders with regard to their possession. Respondents in their reply have not exhaustively dealt with the question relating to the possession of the petitioners over the tract of lands, subject matter of these writ petitions, though petitioners have specifically pleaded that they continue to be in possession of the land even after the passing of the award till the date of filing of these petitions. Such averments have been made in paragraphs 9 and 10 of the writ petition. In addition to the averments, in the pleadings, they have also placed on record Khasra girdawari for the period 2007 i.e. even two years after the passing of the award to substantiate the factum of their possession. These averments have not been denied in reply to these paragraphs. With a view to avoid the answer to the specific averments, it is pleaded that HUDA and Land Acquisition Officer, Rohtak have not been impleaded as party respondents as they alone can comment on the claim of the petitioners regarding the physical possession. In preliminary objections, respondents have referred to Rapat Roznamcha which also establishes that possession was allowed to remain with the owners, in view of Rabi crops standing in the year 2005. The possession of the petitioners over the land cannot be disputed as there is no material on record to establish that at any time before or after the passing of award, the possession was taken over from them by the Land Acquisition Collector or any other competent authority. To the contrary,

while disposing of CWP Nos. 4767 of 2008 and 4808 of 2008 and 4809 of 2008 *vide* order dated 20th March, 2008, *status quo* with regard to the possession of the petitioners was maintained, though the petitioners were also restrained from raising construction and changing the nature of the land. This further strengthens the petitioners' claim of possession, same having been protected by this Court. When the matter was heard and reserved, State was asked to produce the record relating to the payment of licence fee, scrutiny fee as also consideration of the applications of the petitioners for grant of licence and regarding the possession.

(11) The respondents have produced the record.

(12) I have carefully examined the record. In all the awards passed in respect of land in question, there is stipulation of existence of crops over the land and on oral request of the land owners, they were allowed to reap the crops by 30th April, 2005. On the day of passing of the awards i.e. 6th April, 2005, a document was prepared saying that the "possession handed over". This document is neither signed by the land owners nor the persons to whom the possession is said to be delivered. It is also relevant to note that the total land acquired by these three awards is 280.14 acres and the above stipulation relates to the entire land without any exception. The total acquired land of the petitioners is 280.95375 acres. I have also perused the notings in Files produced by the State. It has been categorically recorded that the physical possession of the land has not been taken and continues to be with the land owners, though paper possession was taken over on the date of passing of the awards. It has further been recorded that the land owners have not received any compensation for the acquired land. On this basis, the recommendation was made to the Government by the DTP(BP) on 24th April, 2006 for consideration of grant of licence on the conditions stipulated therein. It has also come on record that the applications for grant of licence are in order and the entire land for which the licence has been applied for is lying vacant at site.

(13) As regards the land measuring 84.50 acres relating to CWP No. 14452 of 2010 is concerned, it has been recorded that this land falls in Sectors 26, 27 and 28. No acquisition proceedings were initiated in respect of land falling under Sector 26 and the proposal for acquisition of land under Sector 28 was not published. It is futher noted that only 73.01

acres of land falls in Sector 27. Thus there is absolutely no reason to refuse licence in respect to land falling in Sectors 26 and 28.

(14) The petitioners have made specific reference to the policies of the State Government framed from time to time regarding release of land right from the year 1991 to 30th September 2007. These polices are in operation as on date. All these policies, *inter alia*, provide for release of the land not only after issuance of notification under Sections 4 and 6 of the Land Acquisition Act, but even after the passing of the final award provided the application under Section 3 of the 1975 Act has been made prior to the passing of award for converting the land into colony and the applicant was the owner of the land prior to the notification under Section 4 of the Act. Another category is where the possession continues to be with the owners and there is stay against dispossession by Courts. Claims of the petitioners are squarely covered by the government policies referred to here-in-above.

(15) Section 48 of the Land Acquisition Act provides for release of the land from acquisition of which possession has not been taken. This Section reads as under :—

> "48. Completion of acquisition not compulsory, but compensation to be awarded when not completed. (1) Except in the case provided for in Section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.
>
> (2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.
>
> (3) The provisions of Part III of this Act shall apply, so far as may be to the determination of the compensation payable under this Section."

It is common case of the parties that the notification under Section 4 was issued on 11th April, 2002 and declaration under Section was made on 8th April, 2003 whereas the applications for licence were made on March 21, 2005, except land in CWP No. 14453 of 2010 where the application was made on 27th April, 2006 under the provisions of 1975 Act. Final award came to be passed on 6th April, 2005. From the record, it appears that the actual physical possession of the land remained with the owners all along. This Court while disposing of CWP Nos. 4767 of 2008, 4808 of 2008 and 4809 of 2008 protected the possession of the petitioners. The claim of the respondents regarding taking over the possession has not been established. To the contrary, the possession of the petitioners has not been disputed. Neither from the reply nor from the record produced, it is established that possession was ever taken from the petitioners at any stage. Part of the land released from acquisition has been released by the Government in exercise of powers under Section 48(1) of the Land Acquisition Act primarily on the ground that the possession remained with the owners. It is not the case of the respondents that the petitioners are not eligible or entitled for grant of licence in terms of Section 3 of the 1975 Act and 1976 Rules. Grant of licence for part of the land is sufficient to indicate that the petitioners fulfil all qualifications specified under Section 3(2) of the 1975 Act and the Rules 4 and 5 read with government policy for grant of licence. There is no rejection of the applications of the petitioners for grant of licence within three months as directed by this Court *vide* order dated 25th March, 2008 passed in CWP Nos. 4767 of 2008, 4808 of 2008 and 4809 of 2008. In CWP No. 14453 of 2010 it is pleaded by the respondents that application has been filed after more than one year of the completion of the acquisition proceedings and handing over the possession. It is also mentioned that there was no stay of possession against the applied land in CWP No. 14453 of 2010 from the High Court. This averment is contrary to even official record of the government. It is acknowledged positition that the land is lying vacant at site. In so far as the plea of the respondents of filing application more than one year is concerned, Section 48 of that Land Acquisition Act does not prescribe any period for releasing the land when the possession could not be taken over. Hence the plea is a ploy to reject the claim. In a similar matter where licensee could not comply with the conditions and even failed to deposit the amount

within the specified time. Hon'ble Supreme Court in the case of **M/s B.P. Jain & Associates** *versus* **State of Haryana, (1),** considered the question and rejected the plea of the State primarily on the ground that no prejudice is caused to the respondents and direction was issued to grant the permission for development of the area. Petitioners in this petition numbering 206 had earlier also filed CWP No. 4808 of 2008. This petition also came to be disposed of alongwith CWP Nos. 4767 of 2008 and 4809 of 2008 vide order dated 25th March, 2008 passed by this Court. In all these petitions, possession of the petitioners qua the land in question has been protected.

(16) Apart from claiming the possession over the property and non-receipt of the compensation for enabling the Company to release and to de-notify the property and grant licence to the petitioners, the petitioners have also alleged discriminatory and hostile treatment to them. It is pleaded that a number of similarly situated persons have been granted licence by the respondents even after the acquisition whereas in the case of the petitioners, similar treatment has been denied. The details are given in paragraph 25 of the writ petition wherein reference is made to M/s East India Hotels Limited, Gurgaon in respect of 30 acres of land, Gopi Rai, Jai Bhagwan Ram Singh and others in respect of 15.337 acers at Village Salokhara, District Gurgaon. Nirmal Kanta wife of Daya Nand in respect of land measuring 2.75 acres on the basis of collaboration agreement with M/s DLF Universal. The petitioners have also reproduced the reply filed by the respondents in CWP No. 3059 of 1990 (Ashok Chopra vs. State of Haryana and others) wherein respondents have admitted the policy decision and release of land under the policy dated 6th January, 2000 framed by the Government. The petitioners have also given instances of various persons whose land was released. Such details are contained in paragraph 27. All these facts have not been disputed in the reply. State counsel has referred to a Division Bench judgment of this Court in the case of **Hari Chand and others** *versus* **State of Haryana and others. (2)** In this case, Hon'ble Division Bench of this Court made observations regarding the policy of

(1) 1992 (1) R.R.R. 126
(2) 2009 (4) R.C.R. (Civil) 467

the State for release of the land to be *ultra vires* of the provisions of Land Acquisition Act. These observations of the Hon'ble Division Bench have been stayed by Hon'ble Supreme Court in Special Leave to Appeal (Civil) No. 3644 of 2009, *vide* order dated 23rd February, 2009 and the State Government has been granted liberty to exercise power under the existing policy. The relevant directions of the Hon'ble Supreme Court are as under :—

> "..... There shall be inerim stay of the observations in the impugned judgment about the validity of the policy and the State Government is at liberty to exercise powers under the existing policy."

(17) It is settled proposition of law that where the Government exercise its power under Section 48 of the Act for withdrawal from acquisition in respect of a particular land, the landowners who are similarly situated have a right of similar treatment. In the case of **Hari Ram and another** *versus* **State of Haryana and others (3),** Hon'ble Supreme Court has made following observations :—

> "40. It is true that any action or order contrary to law does not confer any right upon any persons for similar treatment. It is equally that a landowner whose land has been acquired for public purpose by following the prescribed procedure cannot claim as a matter of right for release of his/her land from acquisition but where the State Government exercises its power under Section 48 of the Act for withdrawal from acquisition in respect of a particular land, the landowners who are similarly situated have right of similar treatment by the State Government. Equality of citizens' rights is on of the fundamental pillars on which edifice of rule of law rests. All actions of the State have to be fair and for legitimate reasons.
>
> "41. The Government has obligation of acting with substantial fairness and consistency in considering the representations of the landowners for withdrawal from acquisition whose lands have

(3) (2010) 3 S.C.C. 621

been acquired under the same acquistion proceedings. The State government cannot pick and choose some landowners and release their land from acquisition and deny the same benefit to other landowners by creating artificial distinction. Passing different orders in exercise of its power under Section 48 of the Act in respect of persons similarly situated relating to same acquisition proceedings and for same public purpose is definitely violative of Ariticle 14 of the Constitution and must be held to be discriminatory."

(18) It is also relevant to note that the petitioners' eligibility, their capacity and the validity of the Scheme offered by them is not disputed or objected to. Rather from the notings on the file, it has been revealed that the capacity of the petitioners has been certified. It has also been noted that the petitioner-Company has already developed certain areas in Gurgaon and thus, it has the capacity to carry out the development activities.

(19) Respondents have accepted licence fee and scrutiny fee for entire land. Petitioners have been found eligible for grant of licence on scrutiny as the development scheme/plan submitted by the petitioners conform to the technical and developmental norms fixed by the respondents, as is evident from the record produced. It is also pertinent to note that the Scheme submitted by the petitioners pertain to entire land. Respondents after having accepting the licence fee and scrutiny fee for the whole land now cannot turn around to deny the claim on totally non-existent grounds and are estopped from doing so. Under similar circumstances, a Division Bench of this Court while considering the right and claim of similarly situated person passed following directions in the case of **M/s Pax Properties Pvt. Ltd., Gurgaon** *versus* **State of Haryana and others (4) :—**

"10. Consequently, in view of the above, we are of the opinion that the licence cannot be denied to the petitioner once it fulfilled all the parameters which it was required to fulfil on the date of

(4) 2008 (2) R.C.R. (Civil) 35

application and the denial is purely on account of inaction on the part of the respondents, who cannot turn around to say that it should conform to the revised parameters. In any eventuality, the petitioner has shown sufficient material to satisfy the Court that it has been discriminated against as in other cases where nine metres approach road was available, licences have been granted as per the candid admission of the respondents as reflected in order dated 23rd October, 2006 (Annexure P-10).

XXX XXX XXX XXX

12. In view of the above, the writ petition is accepted, impugned orders Annexure P8 and P11 are set aside and the respondents are directed to grant the licence to the petitioner forthwith, preferably within a period of four weeks from the date of communication of this order."

(20) In the light of the factual background noticed here-in-above, primarily taking into consideration the facts that the petitioners continue to be in the possession of the entire land notwithstanding the acquisition, petitioners' right under the government policies and the provisions of Section 3 of the 1975 Act and Section 48 of the Land Acquisition Act have been denied in a most arbitrary and discriminatory manner, these petitions are allowed. Respondents are directed to grant licences to the petitioners within a period of two months pursuant to the applications made by the petitioners for the remaining land, detailed here-in-above. It is, however, observed that the petitioners would be liable to pay the current licence fee, as may be applicable on the date of passing of this order. Records be handed over to the counsel for the State.

R.N.R.