**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-13350-2021 (O&M)
Reserved on: 09.04.2025.
Pronounced on: 14.05.2025

M/s Bajwa Developers Limited

...Petitioner

Versus

State of Punjab and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI**

Present:- Mr. Sunil Chadha, Sr. Advocate, with
Mr. Akshay Chadha, Advocate and
Ms. Tanvi Dhull, Advocate, for the petitioner.

Mr. Mohit Kapoor, Sr. DAG, Punjab.

Mr. Prateek Gupta, Advocate, for respondent No.2.

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SURESHWAR THAKUR, J.

1. Petitioner-Bajwa Developers Limited has knocked the door of this Court for the accordings of the hereinafter extracted reliefs:-

> "Civil Writ Petition under Articles 226/227 of the Constitution of India for issuance of an appropriate Writ, Order or Direction, especially in the nature of a Writ of Certiorari for quashing the Notices (Annexures P-12 & P-14), whereby the respondents are demanding the External Development Charges etc. from the petitioner Company, so long the amount of compensation due to the petitioner Company on account of its land which has been acquired by the respondents to carve out/construct 200' wide Master Plan Road PR7) that passes through the same very projects (for which EDC etc. is being claimed)

> is not paid/adjusted and further the claims of the petitioner Company qua providing less saleable area and illegal taking over 16.19 Acres land of the petitioner Company free of cost for EWS are redressed, total of which would exceed much more than the alleged EDC amount being claimed."

2.1 Brief facts of the case are that the petitioner is a developer and has developed a residential colony (Sunny Enclave) in Sectors 123, 124 and 125, which falls within the jurisdiction of Greater Mohali Area Development Authority (hereinafter referred to as 'GMADA'). As per master plan approved by respondent No.1, a road measuring 200' wide, passes through the aforesaid Sectors 123, 124 and 125. The petitioner Company earlier developed two residential colonies in the area of Villages Desu Majra, Fatehullpur and Jhungian, out of which one residential colony was of an area measuring 31.13 acres, in respect of which Letter of Intent was issued on 04.07.2006 and License was issued on 29.12.2006. The second colony was of an area measuring 150 acres, in respect of which Letter of Intent was issued on 03.05.2006 and subsequently an agreement came to be executed on 22.06.2006 (Annexure P-2) between the petitioner and the competent authority. In terms of Annexure P-2, the Government of Punjab, was to facilitate provisionings of power supply, road accessibility, water and infrastructure required for the project, after the same is applied to the concerned Department/Agency/Authority/Local Body, but on fulfilment on various terms and conditions required in the said regard, at such rates/fees etc., which shall not be less favourable to them compared to similarly placed projects/customers.

2.2 Thereafter, a dispute arose between the petitioner and PUDA qua the payment of External Development Charges in respect of the aforesaid colonies and the petitioner filed a civil suit in this regard, which was decreed on 06.10.2012 by holding that PUDA cannot charge EDC from the petitioner, rather more than Rs.1.50 Lakh per Acre, as per Letter of Intent dated 04.07.2006. The said judgment and decree was challenged by PUDA but the same was dismissed vide judgment and decree dated 09.02.2016 (Annexure P-3. Challenging both the judgments and decrees, PUDA has filed a Regular Second Appeal No. 4594 of 2017 before this Court, which is pending consideration.

2.3 The petitioner applied for a Mega Housing Project for 205.54 acres of land, which was approved by the Empowered Committee on 22.06.2011. Letter of Intent for the said project was issued on 21.07.2011 and on 16.09.2011, an agreement (Annexure P-4) came to be executed between the petitioner and the respondents. The permission qua change of land user was issued on 26.04.2013 in respect of land measuring 159.28125 Acres out of the aforesaid land measuring 205.54 Acres and consequently, on 18.06.2013, a notification was issued by respondent no. 1 in respect of the said area of 159.28125 acres. The said notification was issued in terms of the provisions of the Punjab Apartment and Property Regulation Act, 1995 (hereinafter referred to as PAPRA).

2.4 The petitioner applied for the licence on 05.07.2013 for setting up a residential colony over land measuring 139.376 Acres, pursuant whereto, a Letter of Intent was issued to the petitioner on 19.05.2014 and thereafter, on 23.12.2014, the petitioner was issued Licence No. 22 of 2014, on 27.05.2015, whereafter an agreement (Annexure P-5) came to be executed between the competent authority and the petitioner.

2.5 There was a provision of PR7, which is 200' wide road, in the Master Plan, which was to be constructed by the GMADA. The land owned by the petitioner measuring 30.22 acres falls under the said 200' wide road. On 04.10.2013, the respondents issued a notification under Section 4 of the Land Acquisition Act, for acquisition of land measuring 5460.65 acres, to construct the said 200' wide road passing through Sectors 123, 124 and 125. In view of coming into force of the Right to Fair and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the Act of 2013), the aforesaid notification dated 04.10.2013, issued under Section 4 of the Land Acquisition Act, rather was withdrawn.

2.6 On 03.01.2017, the respondents issued a fresh notification under Section 11 of the aforesaid Act of 2013, thus, for acquiring the land for constructing 200' wide PR-7 road and part of PR-6. Thereafter, vide notification No. 6/22/2016-6HG/1145237/1 dated 12.01.2018, declaration under Sections 19 and 24, as carried in the Act of 2013, was also issued with regard to the land in dispute. The Land Acquisition Collector of the Department of Housing & Urban Development, Punjab, passed an Award bearing No. 569 on 18.05.2018, wherebys market rate for the land acquired in villages Jandpur, Desu Majra, Rani Majra, Panheri, Bahalpur, Dau, Hussainpur, Sinhpur, has been determined, respectively as Rs. 31,910,589/-, as Rs. 54,654,904/-, as Rs. 32,559,047/-, as Rs. 26,733,925/- as Rs. 8,547,308/-, as Rs. 29,403,043/-, as Rs. 20,487,329/-, and as Rs. 36,463,639/- per acre, respectively. The said rates have been determined by taking the nature of land as Chahi, whereas, the petitioner has alleged the acquired land as 'Gair Mumkin'.

2.7 The petitioner has not been paid any compensation amount towards acquisition of its land measuring 30.22 Acres, despite the passing of the aforesaid Award bearing No. 569 dated 18.05.2018, whereupons, the thereunderrs determined compensation amount comprising of more than Rs.295.73 Crores (approximately) along with other benefits i.e. solatium etc. and interest, thus, is receivable by the petitioner Company. The petitioner has filed four separate applications/references, before the learned Reference Court, under Section 64 of the Act of 2013 in respect of each of the aforesaid villages i.e. Jandpur, Desu Majra, Husainpur, and Jandpur, claiming thereby enhancement in the compensation amount to the tune of Rs. 25 Crores per Acre. The said petitions are still subjudice, as extantly there exists no material on record, thus, suggestive that the said reference petitions are decided and thereafters, thus, the apposite RFAs become raised thereagainst by the aggrieved therefroms, rather before this Court.

2.8 The petitioner filed a civil suit in the court of the learned Civil Judge (Senior Division), Kharar, seeking a declaration that the petitioner is entitled to the claim, the apposite settings off, qua the amounts towards the EDC charges, thus, as raised by the GMADA. The said settings off become rested upon the supra determined compensation amount viz-a-viz the petitioner company, through the passing of Award bearing No. 569 dated 18.05.2018. Moreover, in the supra suit, the rendition of a decree of injunction became espoused, thus, for restraining the respondents from raising the EDC demands, till the espoused claim qua the determination of compensation to the petitioner for its aforesaid acquired land, rather, becomes finally settled, and also thereins a claim became raised viz-a-viz rendition of a decree of mandatory injunction, thus, directing the respondents to release the property of the petitioner, from hypothecation against the demand of EDC and to direct the respondents to allow approval of the lay out plans, zoning plans, and other plans in Sectors 123, 124 and 125. However, the said suit was dismissed as withdrawn by the petitioner with liberty to file a fresh one.

2.9 Thereafter, a notice dated 11.07.2016 (Annexure P-7) was served upon the petitioner informing that as per the record, an amount of Rs. 1578.71 Lakhs, is overdue towards the EDC and Rs. 480.85 Lakhs, is overdue towards the licence fee as on 30.06.2016, against the aforesaid residential project for which license no. 22/2014 was issued to the petitioner. To the said notice, the petitioner submitted its reply dated 27.02.2017 (Annexure P-8). The petitioner received another notice dated 17.02.2017 (Annexure P-9) from respondent no.3, whereins, the total defaulted amount of EDC as on 31.12.2016, was shown to be Rs. 2581.41 Lakhs, and in addition thereto, an amount of Rs. 558.89 Lakh, was shown as defaulted amounts towards licence fee. On 13.06.2017, petitioner was called upon to pay the defaulted amount of Rs. 2287.12 Lakhs towards EDC. Then the petitioner sent its reply dated 27.06.2017 (Annexure P-11), whereins, the stand was taken that the claim of the petitioner towards the receivable compensation amounting to Rs. 308 crores excluding solatium, be adjusted towards the outstanding EDC and licence fee; and it was also requested to waive off the interest as well as penal interest on the outstanding EDC and licence fee, after the period of purchase of the land for sectoral roads, as there had been no default on the part of the petitioner. Thereafter, a notice dated 20.10.2020 (Annexure P-12) became issued, wherein, the tentative amounts of Rs. 8468.66 Lakh (including penal interest) has been shown to be due from the petitioner as on 30.09.2020.

2.10 Thereafter, the petitioner served a demand notice dated 08/10.03.2021 (Annexure P-13) upon respondent no.3 for releasing compensation towards acquisition of its land but no response thereto has been received.

SUBMISSIONS ON BEHALF OF PETITIONER

3. (A) Learned senior counsel for the petitioner submits, that the entirety of the compensation amounts as becomes determined under Award bearing No.569 dated 18.05.2018, but becomes amenable to be released to the present petitioner.

(B) It is argued that as per the guidelines (Annexure P-6) issued by GMADA in respect of Mega Projects, the State Government becomes enjoined, to ensure the purveyings of basic amenities appertaining to powers, road accessibility, communication, civic and other infrastructure to the licensed projects, subject to issuance of completion certificate(s).

(C) It is further argued that despite there being a provision in the Master Plan, qua theirs becoming constructed a 200’ wide PR-7 road, yet the GMADA failed to provide land sufficient to carve out the said road. Therefore, left with no other choice, the petitioner company had to purchase the requisite land which falls under the 200’ wide PR-7 road, from its erstwhile owner so as to provide accessibility. The total land which the petitioner company purchased for the aforesaid purpose comes to 30.22

acres. Even after buying the aforesaid land, the respondent-GMADA, did not construct the required road and rather, it is only on 04.10.2013, that the respondent No.1 issued notification under Section 4 of the Land Acquisition Act, which was withdrawn subsequently, thus, in view qua then the provisions of the Right to Fair and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, rather had come into force. Resultantly, on 03.01.2017, the respondent No.1 issued a fresh notification under the aforesaid Act, thus, for the aforesaid public purpose.

(D) Ultimately, it is submitted that the benefit of the Award bearing No.569 dated 18.05.2018 as became pronounced in respect of land measuring 30.22 acres, owned and possessed by the petitioner company, thus, is required to be endowed to the petitioner, to the extent, that the compensation amount embodied thereins, and comprised in a sum of Rs.295.73/- crores (approximately) along with all the statutory benefits, rather becoming conditionally released to the present petitioner.

(E) With regard to less saleable area having been made available to the petitioner company, it is submitted that the petitioner company is further entitled for the loss suffered by it. The GMADA has carved out too many sector roads, streets/passages in all the aforesaid three colonies set up by the petitioner-company, owing to which it has suffered a huge monetary loss, which as per Annexure P-16, thus, comes to Rs.1035/- crores (approximately).

(F) It is further submitted that as per notifications dated 07.11.2008 and 18.06.2009 (Annexure P-17 colly), the petitioner company was required to reserve 5% qua the purpose of creating the dwelling units for housing thereins the financially weaker sections of society. However, vide a later notification dated 31.12.2013 (Annexure P-18), the respondents imposed an absolutely illegal condition upon the petitioner-company for mandatory transfer of 5% area for EWS free of costs for the authority i.e. GMADA.

(G) The abovesaid letter could not have been implemented against petitioner-company at least with regard to two of the aforesaid three projects/colonies, thus, for the reason, that the licence as well as the agreement as became already executed in respect of two projects, rather, both did respectively, come to be executed prior to 31.12.2013, Therefore, the respondents are liable to return an area of 16.19 acres or to monetarily compensate the petitioner company qua the said land, which was, rather free of cost, thus transferred for the aforesaid purpose by the petitioner.

REPLY

4. Pursuant to notice of motion becoming issued to the respondents, reply by way of an affidavit sworn by the Land Acquisition Collector, Urban Development Department, SAS Nagar, on behalf of respondent Nos.1 and 3, has been filed. The relevant contents, as borne in the said affidavit, are embodied in para 6 thereof, para whereof become extracted hereinafter:-

> "6. That in this regard, it is humbly submitted that the Promoter had got approved Lay Out Plan of its Mega Housing Project of 205.54 Acres falling in Villages Jandpur, Sihanpur and Hasanpur (forming part of Sectors 120,123-125, Sahibjada Ajit Singh Nagar), by including the area falling under sector roads in the calculation of saleable area. As per the Policy dated 06.02.2015 (Annexure P-19) issued by the Government of Punjab,

Department of Housing and Urban Development, the Promoters, who have included in overall calculation, the area falling GO under sector roads for calculation of saleable area, such Promoters will not be entitled to any compensation for the land falling under sector roads acquired by the Government. Hence, the Petitioner is not entitled to any compensation for his land acquired vide Award No. 569 dated 18.05.2018 for construction of Master Plan Road (PR7) and hence the Petitioner Company cannot seek adjustment of any amount in the outstanding dues of External Development Charges (EDC) claimed through demand notice dated 11.03.2019 (Annexure P-14)."

5. A keen perusal of the above extracted para unfolds, that the respondents have taken the shelter of the policy of the Government of Punjab, dated 06.02.2015 (Annexure P-19), for not releasing qua the petitioner, rather the compensation amount as became determined through the making of an Award bearing No.569 dated 18.05.2018. The relevant contents, as borne in the policy dated 06.02.2025 (Annexure P-19), are embodied in para (ii) thereof, para whereof become extracted hereinafter:-

ii. Regarding immediate adjust(ment)/payment of the compensation amount as per the Collector rate in respect of the said land of the project of the promoters which comes under the Sector Dividing Road against the due E.D.C. and licence fee:

A. Those promoters who do not include the land falling under the Sector Dividing Road in the overall calculation while calculating the saleable area:-The promoter/developer shall be allowed without charges (CLU, EDC, LF/PF, SIF) an additional saleable area of 2.5% i.e., upto 57.5% in his/her project in the same ratio in residential (plotted & group housing) and commercial component as provided in the project in lieu of his/her 2.5 acres of land for every 100 acres of the project area or on pro-rata basis as per the size of the project, if acquired for construction of Master Plan Roads, as compensation. He will be entitled to have extra density for utilization of additional saleable area and can compensate this additional saleable area from the public and semi public area. However, the area required for parks and open spaces shall not be compromised.

The above said benefit of additional saleable area shall be limited to maximum upto 2.5 acres of land falling in Master Plan Roads for every 100 acres of the project area or in proportion to the project area. The above benefit shall be on pro-rata basis of the area utilized for group housing, commercial, residential plotted in the project of the promoter.

No compensation shall be given for the area falling in Master Plan Road maximum upto 2.5 acres for every 100 acres of the project area or in proportion to the project area utilized for achieving additional saleable area, even if promoter does not utilize or achieve this benefit of additional saleable area/FAR. This land will be transferred free of cost by the promoter to the Deptt. of Housing & Urban Development, Punjab by executing a conveyance deed. However, if area under Master Plan Road exceeds the limit of 2.5 acres for 100 acre of project area or in proportion to the project area than compensation shall be given on the excess area at the rate of 1.25 times of the collector rate at the time of possession of land. This land will also be transferred by the promoter to the Deptt. of Housing & Urban Development Punjab by executing a conveyance deed.

B. Those promoters have include the land falling under the Sector Dividing Road in the overall calculation while calculating the saleable area:- Since these promoters have already included the land falling under the Sector Dividing Road at the time of calculating the saleable area in the overall calculation, meaning thereby that they have taken the benefit of the saleable area, therefore, such promoters shall not be covered under the aforesaid policy.

C. Those promoters who have already executed an agreement in respect of land-(sic) falling under the Sector Dividing Road under the present policy, they will also be treated under the aforesaid policy.

UNDERTAKING OF DEVELOPER

6. An affidavit has been filed duly sworn by Shri Jarnail Singh Bajwa, Managing Director of M/s Bajwa Developers Limited, thus, has been taken on record, through an unobjected order becoming passed on 03.05.2025 upon the apposite miscellaneous application, the relevant contents whereof are extracted hereinafter:-

> "16. That the deponent being the Managing Director of the petitioner company undertakes that he or the petitioner company has no objection if after adjusting the amount of compensation receivable by the petitioner company against the land in dispute (approximately 30.22 Acres) in terms of the aforesaid Award No.569 dated 18.05.2018 (Annexure A-1) and Award dated 22.12.2023 (Annexure A-2) against the EDC and Licence Fee due along with reasonable interest, is paid back to the petitioner company."

INFERENCES OF THIS COURT

7. For the reasons to be assigned hereinafter, the dependence as made by the respondents upon the apposite policy, thus, in denying to the present petitioner, the benefit of Award bearing No.569 dated 18.05.2018, along with all the accruing thereovers statutory benefits, rather is an ill made dependence thereons.

8. Importantly, the issuance of a notification on 03.01.2017 under the relevant provisions as carried in the Act of 2013, but is deemed to be made through a profound contemplation becoming made by the acquiring authority viz-a-viz the necessity of acquisition of the subject lands, thus, for subserving the relevant public purpose. The said application of mind, thus, is not required to succumb to the pressure of the policy issued on 06.02.2015. The reasons for so concluding generates from:-

> **A.** In none of the project licences, as became respectively endowed viz-a-viz the petitioner, respectively, in the years 2006, 2014, thus, occurs any condition, wherebys, there was denial to the present petitioner, the benefit of the compensation amount as becomes so determined pursuant to an award, thus, becoming rendered in terms of the relevant statutory provisions.
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> **B.** Since after the espoused licences becoming accorded to the licensee concerned, by the licensor, therebys, a concluded contract came into existence *inter se* both. Resultantly, the covenants embodied in the license, but assumed the colour of contractual obligations, as created thereunders viz-a-viz the contracting parties. Therefore, in case, any covenant, did become embodied in the apposite licences, whereunders, the

licensee abandoned or waived his claim for compensation as became determined qua the acquisition of his lands, therebys, *prima facie*, the said covenant, thus, was required to become enforced against the petitioner. Resultantly, therebys, the present petitioner may have to relent from either seeking determination of compensation or assumingly, in case an award became passed, he may be required to relent from espousing that the amounts of compensation, as determined thereunders, being released to him.

C. Reiteratedly**,** the absence of the said covenant in the licenses, as became issued to the present petitioner, thus, begets an inference, qua thereupons, a right becoming endowed in the petitioner, to claim that the compensation amount, as became determined through the passing of Award bearing No.569 dated 18.05.2018, thus, becoming released in favour of the Managing Director of the company, who has filed a sworn affidavit, which is taken on record through an unobjected order becoming passed on 03.05.2025 upon an apposite miscellaneous application.

D. The further effect qua the absence of the requisite covenant in the respectively issued licences viz-a-viz the petitioner, wherebys the petitioner purportedly forfeited his rights to claim compensation, but naturally is that, the respondent concerned, on anvil of the policy dated 06.02.2015 (Annexure P-19), thus, cannot ill-stall the present petitioner, rather from claiming the determined compensation amounts viz-a-viz the acquired lands, as became so determined, through the passing of an Award bearing No.569 dated 18.05.2018.

E. The relevant statutory provisions, as embodied in Section 5 of the Punjab Apartment and Property Registration Act, 1995 (hereinafter referred to as '**the PAPRA Act'**) become extracted hereinafter:-

> "**[5. Development of land into colony.** - (1) Any promoter, who desires to develop a land into a colony having the prescribed qualifications, shall make an application in the prescribed form alongwith his title of minimum twenty five per cent of project land and irrevocable consent for the rest of land, if it is owned by other persons, permission for conversion of land use from the competent authority and the prescribed information, with the prescribed fee and charges, to the competent authority for grant of permission for the same and separate permission shall be necessary for each colony.
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> (2) On receipt of the application under sub-section (1), the competent authority, after making enquiry into the title of the land, extent and situation of the land, capacity of the promoter to develop the colony, layout of the colony, conformity of the development of the colony with the neighboring areas, plan of development works to be executed in the colony, and in case of apartment buildings, design, specification of material to be used, common areas and facilities to be provided, structural safety and fire safety and such other matters as it may specify, and after affording the applicant an opportunity of being heard and also taking into consideration the opinion of the prescribed authority, shall pass an order, in

writing recording reasons either granting or refusing to grant such permission.

(3) Where an order is passed granting permission under sub-section (2), the competent authority shall grant a license in the prescribed form after the promoter has complied with the following conditions, namely: -

(i) the promoter shall acquire the title of land not owned by him, within the time period given in the terms and conditions of the licence, and shall not make any sale or transfer of land which is not under his title;

(ii) furnish a bank guarantee equal to thirty five percent of the estimated cost of the development works certified by the competent authority, or mortgage plots falling in the same project equal to thirty five percent value of estimated cost of development by equitable mortgage deed to the satisfaction of the competent authority in the manner prescribed, which shall be marked on the layout plan and entered in the revenue record;

(iii) has entered into an agreement with the competent authority in the prescribed form for carrying out the development works in accordance with the conditions of the licence;

(iv) has paid, subject to the provisions of sub-section (6), the Change of Land Use Charges, External Development Charges and such other charges, as may be notified by the Government from time to time.

(4) In case, a promoter intends to revise the layout plan or zoning plan of the approved colony or building plan, he shall be required to obtain a revised permission, subject to fulfilment of all liabilities created due to prior permission, on payment of such charges and such fee and

on such terms and conditions, as may be specified after giving due notice to the plot or apartment holders. However, the said revision shall not extend the period of validity of the license granted under sub-section (3).

(5) The license granted under sub-section (3), shall be valid for a period of five years and shall be renewable for a further period of two years on payment of such fee and charges, and on such terms and conditions, as may be specified by the competent authority.

(6) The promoter shall enter into agreement give undertaking to pay development charges for external development works carried out or to be carried out by the Government or a local authority.

(7) The State Government shall determine the development charges and the time within which such development charges as referred to in subsection (6), shall be paid to the State Government or to such authority, as may be notified by the State Government.

(8) The Government may allow payment of external development charges and other charges mentioned in such installments, as may be notified by it from time to time. In such case, the first installment shall be deposited before the grant of licence and the promoter shall furnish and give undertaking to pay the balance installments as per notified schedule supported by such additional bank guarantee or mortgage of such additional property, as may be necessary to secure payment of the balance installments.

(9) The promoter shall carry out and complete the development of the land in accordance with the provisions of the Punjab Regional and Town Planning and Development Act, 1995 (Punjab Act 11 of 1995).

(10) The promoter shall construct or get constructed at his own cost, schools, hospitals, parks, community

centers and other community buildings, on the land set apart for this purpose or promoter may sell or transfer land meant for schools and hospital etc. on such terms and conditions, as may be specified by the Government. Further, the area under roads, open spaces, parks and other public utilities shall be transferred to the local authority before issue of completion certificate.

(11) The promoter shall, reserve five percent area of the gross project area in the case of colony and ten percent of the apartments in the case of apartments in the manner, as may be specified by the Government for reservation and disposal of such plots/apartments for economically weaker section of the society.

(12) The promoter shall carry out all directions issued by the competent authority for ensuring due compliance of the execution of the layout and the development works therein and to permit the competent authority or any officer authorized by it to inspect such execution

(13) The promoter shall be responsible for the maintenance and upkeep of all roads, open spaces, public parks and public health services for a period of five years from the date of issue of completion certificate or till the date of transfer the same, free of cost to the State Government or the local authority:

Provided that after the completion of development works in the colony, in all respects, the competent authority, may allow the promoter to hand over the maintenance of the infrastructure and services mentioned in this sub-section to an association of residents formed under section 17-A, which shall be responsible for management, maintenance, upkeep of common areas, infrastructure and common services of the colony.

(14) In the event of the promoter contravening any provisions of this Act, or rules made thereunder or any

conditions of the licence granted under sub-section (3), the competent authority may, after giving an opportunity of being heard, suspend or cancel the licence and enforce the bank guarantee or mortgage property furnished by the promoter under subsection (3).

(15) When a licence is suspended or cancelled under sub-section (14), the competent authority may itself carry out or cause to be carried out the development works, and after adjusting the amount received as a result of enforcement of bank guarantee or by disposal of mortgaged property, recover such charges, as the competent authority may have to incur on the said development works from the promoter and the allottees in the manner prescribed as arrears of land revenue.

(16) The liability of the promoter for payment of development charges referred to in sub-section (15), shall not exceed the amount the promoter has actually recovered from the allottees less the amount actually spent on such development works, and that of the allottees shall not exceed the amount, which they would have to pay to the promoter towards the expenses of the said development works under the terms and conditions of the agreement of the sale or transfer entered into between them: Provided that the competent authority may, recover from the allottees with their consent, an amount in excess or what may be admissible under the aforesaid terms of agreement of sale or transfer.

(17) Notwithstanding anything contained in this Act, after development works have been carried out under sub-section (15), the competent authority may, with a view to enabling the promoter, to transfer the possession of, and the title of, the land to the allottees within a specified time, authorize the promoter by an order to receive the balance amount, if any, due from the allottees

after adjustment of the amount which may have been recovered by the competent authority towards the cost of the development works and also transfer the possession of, and the title of, the land to the allottees within aforesaid time and if the promoter fails to do so, the competent authority shall on behalf of the promoter transfer the possession of, and title of, the land to the allottees on receipt of the amount which was due from them.

(18) After meeting the expenses on development works under subsection (15), the balance amount shall be payable to the promoter.]"

F. The above extracted provisions, do not, excepting the envisaged therein contemplations, rather create any fetter against the releasings of determined compensation amounts viz-a-viz the land owner. As such, the policy cannot derogate from the supra extracted statutory mandates, whereunders the licences became issued. Since the policy has derogated from the supra statutory provisions, therebys, the policy is *ex facie* void, on the ground that it transgresses the specific mandates, as become enclosed in the supra extracted statutory provisions.

G. Moreover, since no notification became issued by the acquiring authority, thus, denotifying the acquired lands from acquisition nor when any writ petition became filed by the acquiring authority, wherebys, thus, on the basis of the supra policy, rather the acquiring authority sought the annulling of the appositely passed award(s). Therefore, the omission supra leads this Court to firmly conclude, that the policy was made in usurpation of the supra statutory provision, besides is made without the same being well anvilled upon any statutory provision, as contemplated in the Act of 2013.

9. Be that as it may, the further underpinnings stemming, from the absence of the existence of the said covenants in the licenses, as became issued to the present petitioner, wherebys, this Court has made an inference, that as such, rather than the petitioner becoming estopped to claim the releases of the determined compensation amounts, thus, under Award bearing No.569 dated 18.05.2018, viz-a-viz its Managing Director, contrarily rather the respondents becoming estopped to deter the petitioner from claiming the releases of the compensation amount as became determined viz-a-viz the petitioner through passing of an Award bearing No.569 dated 18.05.2018, thus, *inter alia,* are:-

i. That the relevant policy being unnecessarily brought to the forefront so that therebys, the GMADA untenably endeavours to escheat the subject estates, which rather become owned by the lawful owner i.e. the Managing Director of M/s Bajwa Developer Ltd. and that too, through unnecessary obstacles or hurdles rather being created by the acquiring authority against the releases of sums of moneys, as become determined as compensation under Award bearing No.569 dated 18.05.2018, thus, qua the Managing Director of M/s Bajwa Developer Ltd.

ii That since a constitutional right of property as enunciated in Article 300-A of the Constitution of India, becomes endowed to any lawful owner. Moreover, since the said enunciated constitutional right to property as endowed viz-a-viz any lawful owner of any estate, thus, is the cornerstone for protecting the usurpations of validly vested right, title and interest upon any estate holder, rather at the instance of the sovereign, through the misemployment(s) of the doctrine of eminent domain. However, in the instant case, despite the Managing Director of M/s Bajwa Developer Ltd., being the lawful owner of the subject lands, wherebys, in terms of well employments in respect thereofs qua the doctrine of eminent domain by the acquiring authority, thus, Award bearing No.569 dated 18.05.2018, became passed.

(iii) Nonetheless, despite the well employments of the doctrine of eminent domain viz-a-viz the subject lands, yet on the basis of the policy supra, policy whereof for the reasons supra becomes grossly misapplied by the respondent concerned, thus, releases of the appositely determined compensation amounts, rather, has not been made in respect of land, owned by the Managing Director of M/s Bajwa Developer Ltd. Resultantly, therebys, the well employed doctrine of eminent domain viz-a-viz the present subject estates, has been attempted to become ill-subjugated to the policy dated 06.02.2015 (Annexure P-19) issued by the Government of Punjab. Furthermore, assuming qua the apposite policy did carry some relevance and also assuming that the stipulations supra as made in the supra policy, were also embodied in the licenses as became issued to the present petitioner, but yet, unless in the relevant acquiring statute, as instantly is the Act of 2013, there occurred such statutory provisions which, but endowed a right viz-a-viz the acquiring authority, to despite the makings of the apposite lawful acquisitions, besides such appositely made lawful acquisitions resulting in the passing of an award, rather, to yet obstruct the releasings of the determined compensation amounts viz-a-viz the lawful owner of the acquired estates. Therefore, since only on the supra anchor, rather the respondent could well negate the claim of the present petitioner from espousing qua the appositely determined compensation amounts becoming released viz-a-viz the lawful owner of the relevant acquired estate. However, since the said statutory provisions are absent or do not find existence in the Act of 2013, resultantly, the policy is meaningless, the same being outside the provisions of the Act of 2013, whereunders the acquisition of the relevant estate was made.

10 Reiteratedly, a closest scrutiny of the provisions embodied in the Act of 2013, whereunders the award became passed reveals, that thereins exists no statutory provisions, wherebys, after the passing of an award, viz-a-viz the lawfully owned estate of the concerned, thus, the acquiring authority rather could well deny to the concerned, thus, the releasings of the determined compensation amount under Award bearing No.569 dated 18.05.2018, unless, of course, there was no lawful vestings of right, title or interest over the subject lands, thus, in the present petitioner or its Managing Director.

11. Now the effective import of no apposite deterring provision becoming carried in the Act of 2013, thus, covering the instant situation, appertaining to the respondents purportedly declining to cause releases of the determined compensation amount viz-a-viz the present petitioner through, theirs making reliance upon the policy dated 06.02.2015, naturally is that, the said policy is but an ill-contemplated policy. Moreovers, when there is no evidence existing on record suggestive, that the present petitioner held no lawful right, title or interest viz-a-viz the subject lands, therebys, also on anvil of the policy, which otherwise is beyond the contractual covenants, besides is beyond the supra statutory provisions, as also is beyond the embodiments, as made in the letters of intent/licenses issued by the licensing authority, to the present licensee, thereupons, thus, the apposite denials could not be made to the owner concerned. If the said are made on

the basis of the policy, thereby, the said created hurdles are invented and spurious and have no effective force in the eyes of law.

12. Reiteratedly, and emphasizingly the constitutional right to property as endowed to the lawful owner, and which becomes enunciated in Article 300-A of the Constitution of India, but naturally required forthright application theretos, to the lawfully acquired estate of the owner concerned. After the makings of lawful acquisition of the estate of the present petitioner, thus, the acquired estate could not be escheated, rather through denying the determined compensation amounts to the lawful owner and that too, merely on account of an ill-dependence being made upon the policy supra. Article 300-A of the Constitution of India is extracted hereinafter:-

> "**300A. Persons not to be deprived of property save by authority of law:-**
>
> *No person shall be deprived of his property save by authority of law."*

13. Now assuming that even if some covenants became carried in the letter of intent, wherebys the licensee has forfeited his claim qua the determinations of the compensation amounts viz-a-viz his lawful estate, yet the said covenant but would also be void, unless pursuant thereto, there was lawful partings of title by the lawful estate holder viz-a-viz the acquiring authority. The covenant, as such, on its own strength, without evident lawful passings of title through the modes envisaged in the Transfer of Property Act, by the petitioner to the respondent concerned, but cannot naturally ill tinker with the right of a lawful estate holder to ensure, that its/his lawfully owned estate becomes not expropriated by the sovereign. As such, therebys, the covenant, if any, wherebys the licensee assumingly forfeited his right to

claim compensation, thus, to the considered mind of the Court, would be also void on the ground, that it militates viz-a-viz the constitutional right of property, as endowed viz-a-viz the lawful owner. Naturally, when the said right cannot be curtailed, but by any void covenant becoming carried in the licence concerned, more especially also, when the embodiment of the said covenant may rather, be on account of the superior bargaining power of the licensor/licensing authority concerned, wherebys also, it has no validity besides the same is unconscionable.

14. Though the statute, in terms whereof the licenses became respectively endowed viz-a-viz the petitioner, did require, that covenants becoming borne therein, thus, aligning with the provisions, as embodied in Section 3 of the PAPRA Act. The relevant provisions to Section 3 of the PAPRA Act become extracted hereinafter:-

> **"(i) in the case of residential apartments, ten percent of the total apartments be reserved for economically weaker section of society; and**
> **(ii) in the case of colony, five percent area of the gross area of the project, be reserved for plots to be allotted to the persons belonging to economically weaker sections of society, in such manner and on terms and conditions, as may be specified."**

15. The supra extracted provisions envisage qua in respect of the residential apartments, 10% of the total apartments is to be reserved and in respect of colony, 5% of the gross area of project area is required to be reserved, but such reserved plots being subsequently allotted to the persons belonging to the marginalized sections of the society. The said provisions are also to the considered mind of this Court, rather, expropriatory as unless and

of course, in the relevant statute, whereunders acquisitions were made i.e. the Act of 2013, there existed an apposite ousting clause, wherebys the acquiring authority, thus, in terms of purveyings of the espoused licence, thus, pursuant to Section 3 of the PAPRA Act, hence, viz-a-viz the licencee, rather, became barred to make lawful acquisitions of the estate concerned. Rather since, no such apposite ousting clause exists in the Act of 2013 nor also when in the supra Article carried in the Constitution of India, thus, any provisioning is made, wherebys the Legislature concerned becomes conferred with the latitude, to but to the obvious financial detriment of the land loser concerned, rather expropriate the apposite estate nor also when obviously the competent authority concerned can be said to become vested with the jurisdiction, thus, for stalling the lawful estate holder, rather from receiving compensation. As such, in the absence of such provisionings occurring in the supra Article carried in the Constitution of India. Resultantly, this Court is led to conclude that the said supra extracted provisions in Section 3 of the PAPRA Act, are naturally constitutionally void, as they infringe the constitutionally endowed right to property viz-a-viz the lawful owner. Since the cornerstone of the said endowed constitutional right viz-a-viz the lawful owner of any estate, though is that, without determination of compensation viz-a-viz the property owned by the estate holder concerned, thus, the respondent as sovereign cannot naturally expropriate the land loser's estate.

16. However, yet in the instant case, through the supra provisions, the estate of the lawful owner has been expropriated, as the lawful owner, through a statutory *ultra vires* diktat, but *force majeure* has been led to

reserve some portions of lands lawfully owned by him for, thereovers, plots being created for subsequently theirs being allotted to the marginalized sections of society.

17. The said has occurred without determination of compensation and as such, the said provisions are expropriatory, besides are outside the mandate enclosed in the supra Article as carried in the Constitution of India, as neither thereins nor in any other Article carried in the Constitution of India, rather is any empowerment vested in any Legislature, to engraft a mandate, wherebys, the effective workability of the said constitutional provision becomes limited or becomes curtailed, as has ill-happened in the instant case.

18. The only exception to the said endowed constitutional right to property qua a lawful estate holder, is when the sovereign intends to, through a competently passed Legislature, thus forward agrarian reforms, wherebys naturally it proceeds to achieve the apposite constitutional objective as underlined in Article 31-A of the Constitution of India. In the instant case, the supra extracted statutory provisions palpably do not forward agrarian reforms, as the underpinning of agrarian reforms, thus is to make the tillers of the subject lands concerned, thus, as owners thereofs. However, the marginalized sections of society to whom the reserved plots would become ultimately allotted, rather are not tillers over the subject lands, therebys, the provisions of Article 31-A of the Constitution of India, do not come to the forefront, wherebys, the said exception to Article 300-A of the Constitution of India, also cannot protect the supra extracted void provisions as carried in Section 3 of the PAPRA Act.

19. More emphasisingly, the State is under a Constitutional obligation to cater to the housing needs, of the economically weaker sections of society. In that regard, various provisions occur either in the Central or in the State statutes, whereunders pools of land are reserved, for, therebys the said reserved pools of lands becoming allotted to the marginalized sections of the society.

20. It appears that the State instead of satisfying the constitutional requirement appertaining to its catering to the housing needs of the marginalized sections of the society, through releasing to the concerned, thus, lands from the relevant legitimate pools, rather has through incorporating the supra proviso(s) of Section 3 of the PAPRA Act, but has naturally expropriated the lawfully owned estate of the lawful owners.

21. The apposite pools of lands, wherefrom allotments can be made to the persons belonging to the marginalised sections of the society, become so created through applying the provisions of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. The said apposite pools also become created after enforcing such statutes which prohibit the holdings of lands beyond the ceiling limits prescribed thereins. As such, the supra created apposite allotable pools, thus, over the lands owned by the Government or by the Panchayat concerned, when do subserve the housing needs of the marginalized sections of society, through allotments thereof being made to the concerned. Resultantly, the instantly created pools of land for theirs subserving the housing needs of the marginalized sections of society, and that too, without determination of any compensation being made to the lawful estate holder concerned, but naturally effectively eclipses

the endowment of the constitutional right supra viz-a-viz land owners concerned, therebys too, it is constitutionally void.

20. In the light of the supra inference made by this Court, the policy dated 06.02.2015 is found to be illegal and arbitrary and, thus, is quashed and set aside. Moreover, the supra provisions engrafted in Section 3 of the PAPRA Act, which are re-extracted hereinafter, but are also declared to be void and are quashed.

> "(i) in the case of residential apartments, ten percent of the total apartments be reserved for economically weaker section of society; and
> (ii) in the case of colony, five percent area of the gross area of the project, be reserved for plots to be allotted to the persons belonging to economically weaker sections of society, in such manner and on terms and conditions, as may be specified."

23. However, it is made clear that constructions and consequential allotments, if any, made over the 5% land reserved for economically weaker sections, shall remain unaffected by the supra made declaration by this Court. Nonetheless compensation in respect of the lands whereover constructions are made, be determined through lawful acquisitions thereofs become made. In case the subject lands are vacant, therebys, either compensation in respect thereof be determined or the said lands be forthwith returned to the lawful owner.

24. The writ petition is allowed and the Reference Court/Executing Court/Land Acquisition Collector concerned is directed to, in accordance with law, thus, conditionally release forthwith the compensation amount determined under Award bearing No.569 dated 18.05.2018 viz-a-viz the

Managing Director of the petitioner-company, M/s Bajwa Developers Ltd. Moreover, in terms of the affidavit sworn by Shri Jarnail Singh Bajwa, Managing Director of M/s Bajwa Developers Limited, he is to file an apposite application before the learned Reference Court concerned, stating thereins the account number of the GMADA, whereinto the compensation amount is to be remitted.

25. It is also directed that the fullest complement of the determined compensation amounts will be forthwith deposited by the respondent concerned, before the Court concerned and the same shall be, also in the supra manner, thus, released to the GMADA. It is clarified that the said deposit shall be, in the manner detailed in connected writ petition bearing No.CWP-20106-2021, thus, become utilized for the executions of the incomplete/left over developmental works at the sites of the colonies concerned.

26. Pending applications, if any, also stand disposed of.

(SURESHWAR THAKUR)
JUDGE

(VIKAS SURI)
JUDGE

May 14, 2025
harish

Whether speaking/reasoned Yes/No
Whether reportable Yes/No