

Before M. M. Kumar & Jitendra Chauhan, JJ.

NEERA RANI AND ANOTHER,—Petitioners

versus

STATE OF HARYANA AND OTHERS,—Respondents

CWP No. 65 of 2009

18th March, 2011

Constitution of India,—Arts. 226/227 & 300-A—Land Acquisition Act, 1894 (as amended in 1984)—S. 4, 5-A, 6 & 6(A)—Right to Information Act, 2005—Haryana Urban Development Authority Act, 1977—Punjab New Capital Periphery Control Act, 1952—S. 3, 4 & 5—Haryana Development and Regulation of Urban Areas Act, 1975—S. 3.3-A & 3-B—Acquisition proceedings challenged by Petitioners—Alleging no uniform procedure were followed in acquiring or releasing land—Objections u/s 5—A were not decided nor were they heard—Petitioners allege discrimination—Award announced and possession taken on 26th November, 2009—Petition allowed holding that no specific area stipulated for acquisition shown before issuance of notification u/s 6—No effective hearing—Hearing of objections u/s 5-A cannot be reduced—No layout plan prepared for acquired area—Discrimination in acquiring and releasing land u/s 48.

Held. that firstly, no specific area stipulated for acquisition has been pointed out to the petitioners before issuance of notification under Section 6. The petitioners have been running from pillar to post for obtaining a copy of the area planned for acquisition. They applied for a copy to the District Town Planner, Panchkula, to know which part of Khasra Nos. 4 and 5 has been released from acquisition and which part thereof has been acquired. The District Town Planner merely forwarded their application to the Land Acquisition Collector-respondent No. 3 with the request to mark the relevant land/area acquired in different colour. However, the site plan of the area could be provided on 18th July, 2008 whereas declaration had already been made under Section 6 of the Act on 28th November, 2007 (P-2). In such a situation there cannot be any effective

representation in the form of objections under Section 5-A of the Act nor there could be any hearing or application of mind by the respondents.

(Para 22)

Further held, that the petitioners filed an application seeking certified copy of the plan depicting planning of residential, commercial and industrial area along with their sizes for Sector 28, Urban Estate, Pinjore. On 22nd August, 2008, the respondents replied that there was no such lay out plan prepared (P-10 & 11). Accordingly, it follows that the respondents were not even aware the exact measurement of land which has been acquired or which has been released after issuance of the notification under Section 6 of the Act. Therefore, there is colorable exercise of power of eminent domain which cannot stand judicial scrutiny.

(Para 23)

Further held, that it has also not been denied that construction at the back of the petitioners property and other surrounding areas have also been released from acquisition. If all the nearby surrounding land/constructed area have been released, it is not understandable as to how acquisition of the land belonging to the petitioners could be put to any use for the public purpose. On the ground of discrimination also the acquisition of the plot/land belonging to the petitioners is liable to be set aside.

(Para 24)

Further held, that the procedure adopted for hearing of objections under Section 5-A of the Act suffers from glaring illegality. Firstly, the petitioners were not given any personal notice of the date and place of hearing of objections. Secondly, the objections filed by the petitioners have not been heard. On 26th April, 2007 i.e. the date of hearing of objections, 300 objectors were present including the petitioners. Even if it is believed that the Land Acquisition Collector was present by ignoring the allegation made by the petitioners that only a Clerk was present, it is not possible for the Land Acquisition Collector to grant hearing to 300 people in one day. The hearing of objections under Section 5-A of the Act cannot be reduced to mere formality.

(Para 25)

Further held, that the assertion of the respondents that possession of the land belonging to the petitioners has already been taken on the date of announcement of award on 26th November, 2009 has failed to impress us because the petitioners have filed the writ petitions on 6th January, 2009. It is well settled that all actions taken by the respondents would be subject to the decision of the instant petitions including the factum of taking possession. Therefore, we find no substance in the argument raised on behalf of the respondents.

(Para 25)

Aman Arora, Advocate, *for the petitioner (s)*.

Aman Chaudhary, Addl. AG, Haryana *for the respondent (s)*.

M. M. Kumar, J.

(1) This order shall dispose of CWP Nos. 65 and 1502 of 2009 because the petitioners have challenged the proceedings for acquisition of their land, which were initiated by issuance of notification dated 30th November, 2006 (P-1), under Section 4 of the Land Acquisition Act, 1894 (for brevity, 'the Act') and declaration made on 28th November, 2007 (P-2), under Section 6 of the Act.

(2) Brief facts of the case are that on 30th November, 2006, the State of Haryana issued a notification under Section 4 of the Act to acquire land for a public purpose, namely, for the development and utilisation of land as residential area for Sector 27, 28 and 30 Pinjore under the Haryana Urban Development Authority Act, 1977, by the Haryana Urban Development Authority (P-1). Since the land belonging to the petitioner(s) was also included in the said notification, they filed objections dated 27th December, 2006 under Section 5-A of the Act (P-3). On 28th November, 2007, a declaration under Section 6 of the Act was issued acquiring the land for the aforementioned public purpose (P-2). In the declaration dated 28th November, 2007, it was stated that "*public notice has been issued under Section 6(2) of the Land Acquisition Act, 1894 as amended by the Land Acquisition (Amended) Act, 1984. The plan of the land may be inspected in the office of Land Acquisition Collector, Urban Estate, SCF No. 61, Sector-8, Panchkula*".

(3) The grievance of the petitioners is that they visited the office of the Land Acquisition Collector-respondent No. 3 several times for inspection of the plan and also for seeking clarification whether their land has been exempted from acquisition or not, however, neither the plan was shown to them nor any satisfactory clarification was provided. Therefore, they filed an application dated 12th April, 2008/21st April, 2008 (P-4) under the Right to Information Act, 2005, seeking the following information :—

- “(a) Whether the land of the applicants has been acquired or exempted from acquisition.
- (b) A certified copy of the plan showing clearly which part of the Khasra Nos. 4 and 5 as mentioned above has been exempted and which part has been acquired under acquisition.”

(4) On 8th May, 2008, the Collector-respondent No. 3 informed the petitioners that their land stood acquired and they were also provided with a copy of the report under Section 5-A of the Act. They were asked to obtain copy of the plan personally from the office of the District Town Planner, Panchkula (P-5). Thereafter, on 12th June, 2008 the petitioners submitted an application to the District Town Planner, Panchkula, for supply of certified copy of the plan showing which part of Khasra No. 4 and 5, where the land of the petitioners is situated, has been exempted, released or acquired (P-6). It is claimed that even the District Town Planner, Panchkula, was not aware which part of the land was acquired because he forwarded the application of the petitioners to the Land Acquisition Collector-respondent No. 3 with the request to mark the relevant acquired land/areas in different colours on the map (P-7). Eventually, the map of the land shown in the notification under Section 4, and the Land acquired or released under Section 6 of the Act, was provided to the petitioners by the District Town Planner, Panchkula,—*vide* letter dated 18th July, 2008 (P-8 & P-9).

(5) On 31st July, 2008, the petitioners again filed an application with the District Town Planner, Panchkula, under the RTI seeking certified copy of plan showing planning of the residential, commercial and industrial area along with their sizes, if any, planned for Sector 28 of Urban Estate, Pinjore. In response thereto it was replied,—*vide* letter dated 22nd August, 2008 that no such lay out plan was prepared (P-10 & P-11). It has been

alleged that the respondents never disclosed the exact area/measurement of land which has been acquired under the impugned notifications due to *mala fide* intention and colourable exercise of power. In that regard the petitioners have placed on record their application dated 1st August, 2008 and reply dated 19th August, 2008 sent by respondent No. 3 stating that they do not have any measurement of the area of acquired khasras (P-12 and P-13). On 28th November, 2008, the petitioners again demanded the following information under the RTI from respondent Nos. 1 and 2 :

- (i) That whose land has been released in Khasra Nos. 4 and 5.
- (ii) The land which has been released i.e. whether before or after the notification under Section 6 of the Land Acquisition Act.
- (iii) Whether the persons whose land has been released filed any objection, if yes kindly supply the copies of their objections.
- (iv) What were the recommendations/order of the Collector on the objections of those persons whose land has been acquired and released (kindly supply the copy of the order/recommendation).
- (v) What was the order, if any, was passed on the objections *vide* Sr. No. 8679, dated 27th December, 2006 of the applicant (kindly supply the copy of order) filed on your good office.”

(6) It has been submitted that the above information was never supplied to the petitioners. They have further quoted some of the instances *viz.* a liquor shop on the right in front side : construction at the back, on the left side ; and a plot, where all the vacant land and/or constructions surrounding the land of the petitioners, have been released from acquisition.

(7) The grievance of the petitioners is that the land belonging to them is situated in a well planned residential colony, namely, New Model Town Nalagarh Road, Pinjore, having 22 ft. wide roads with street lights etc., which is surrounded by A Class constructed houses. It has further been urged that the said land is situated in a loop where all the nearby surrounding lands have been released and the land of the petitioners does not disturb the public purpose in any way for which the land has been acquired. It has also been claimed that they were never called for hearing of their objections

by the Collector-respondent No. 3. Rather, when they came to know that objections were to be heard on 26th April, 2007 by the Collector, they visited his office for making submissions but neither the Land Acquisition Officer nor any other officer was present on the spot to hear objections. Rather, one Clerk who was present marked the presence of about 300 people including the petitioners and asked them to go back. Even otherwise, it is not possible to hear so many people in a single day. In nutshell it has been alleged that there is no uniformity adopted by the respondents in acquiring the land, inasmuch as, many small pieces of land have been released by adopting the method of pick and chose and the provisions of the Act have not been complied with religiously.

(8) Denying the allegations of the petitioners, a joint written statement on behalf of respondent Nos. 1 and 3 was filed on 10th February, 2009. In the preliminary objections it has been asserted that *vide* notification dated 30th November, 2006, under Section 4 of the Act, total land measuring 483.14 acres was sought to be acquired. The provisions of Section 4 of the Act were duly complied with, inasmuch as, the said notification was duly published in the official gazette on 30th November, 2006 and in two daily newspapers on 6th December, 2006, namely, 'The Indian Express' (English) and 'Dainik Tribune' (Hindi). Proclamation of the notification was also made in the locality on 6th December, 2006 and an entry to that effect has been made in *Rapat Roznamcha Vakayati vide Rapat No. 435 to 443*. Similarly, declaration under Section 6 of the Act was issued on 28th November, 2007 acquiring 467.03 acres of land, which was also published in the official gazette on 28th November, 2008 (28th November, 2007?) and in the aforementioned two daily newspapers on 5th December, 2007. On 30th November, 2007, proclamation of the declaration was made in the locality and entry to that effect has been made in the *Rapat Roznamcha Vakayati vide Rapat No. 472 to 480*.

(9) With regard to hearing of objections of the petitioners and others, it has been stated that objections were heard from 25th April, 2007 to 27th April, 2007 and ample opportunity was provided to the objectors. The Collector made a report on individual objections and sent the same to the Government for final decision. Only thereafter declaration under Section 6 of the Act was issued. It has further been asserted that those constructed areas which could be adjusted in the plan, have been released

after considering objections under Section 5-A of the Act. It has been pointed out that an area of 16.11 acres of constructed area along with proportionate area has been released by the Government, whereas the area which could not be adjusted in the plan has been acquired. The provisions of the Act have been rigorously complied with. It has further been averred that the State Government has absolute right to acquire any land/construction needed for public purpose and the land owners or the interested persons could not claim release of constructed areas as a matter of right. In that regard reliance has been made on a Division Bench judgment of this Court rendered in the case of **M/s Neeraj Textiles versus State of Haryana and others (CWP No. 6833 of 1995, decided on 20th December, 1996)**. It has been denied that the Collector-respondent No. 3 has made any discrimination while making recommendation in his report for release of some portions of the land from acquisition. Regarding non-supply of information to the petitioners in response to their applications under the RTI Act, it has been submitted that since by that time proceedings were not complete and award was not passed, therefore, it was not possible to give exact measurement of the acquired land to them. The allegations of colourable exercise of power have also been refuted. It has been specifically stated that the land of the petitioners was not surrounded by the released land. No recommendation has been made to release such land where construction was up to DPC level. Only such constructed areas have been released where construction was raised prior to issuance of notification under Section 4 of the Act and that too if adjustable, under the plan.

(10) A separate written statement has been filed by the District Town Planner-respondent No. 4. Referring to the provisions of the Punjab New Capital Periphery Control Act, 1952 (for brevity, 'the 1952 Act'), it has been pointed out that the area under acquisition falls within the purview of the 1952 Act because the State of Haryana is adjacent to and within a distance of ten miles on all sides from the outer boundary of Chandigarh. As per Section 3 of the 1952 Act, the State of Haryana is empowered to notify the controlled area. Accordingly, on 4th April, 1972 a notification was issued notifying the controlled area. Thereafter, a Periphery Controlled Area Plan under Section 4 of the 1952 Act was also prepared whereunder various land uses like Urbanisable Zone, Agricultural Zone, Reserve Forest Zone, Protected Forest Zone, Restricted Zone, Stone Crusher Zone, Special

Project Zone and Water Body (River and Choe) were defined. On 3rd August, 2000, a latest plan of Periphery Controlled Area was approved.— *vide* Drawing No : DTP(P) 597/2000. The basic purpose of reserving the area for urbanization was to reduce pressure on Chandigarh and to control haphazard and unregulated development activities in and around the periphery of Chandigarh so that a habitable living environment could be provided to the particular area. The Pinjore-Kalka Urban Complex was also envisaged for urbanization purpose and a development plan, known as 'Pinjore-Kalka Urban Complex-2005' has been prepared and circulated to various quarters at District level, Block level, Local level as well as to the concerned village Panchayats.— *vide* Memo No. 3297-3332. dated 16th October, 2006. The said plan clearly indicates the land use of the particular area along with permissible activities. Thus, the acquisition could not have been challenged on the ground of non-planning of the area.

(11) It has further been stated by respondent No. 4 in his written statement that Section 5 of the 1952 Act also restricts development activities without obtaining permission of the Director, Town and Country Planning under Section 6 of the 1952 Act. In para 3 of the preliminary objections it has been specifically, pointed out that the residential colony of the petitioners, namely, New Model Town, Nalagarh Road, Pinjore, has been established by the developer without obtaining permission from the Town and Country Planning Department, Haryana under the Haryana Development and Regulation of Urban Areas Act, 1975 (for brevity, 'the 1975 Act'). In that regard relevant provisions of Sections 3, 3-A and 3-B of the 1975 Act have been reproduced. On merits, in reply to para 9 it has been disclosed that as per the approved development plan of Pinjore-Kalka Urban Complex-2005, the site in question has been reserved for residential use and could be utilised for various purposes. In this manner, the allegations of the petitioners that there is no approved or published scheme with the respondents has been denied.

(12) On 15th May, 2009, again a written statement was filed by respondent No. 1 perusal of which shows that most of the contents are mere reiteration of what has been stated in the earlier written statement filed by respondent No. 3 on 10th February, 2009. However, it has been disclosed that the land of the petitioners was vacant at the time of issuance of notification under Section 4 of the Act and the same was recommended

for acquisition. It has been reiterated that the constructed areas which could be adjusted in the plan, have been released from acquisition.

(13) The petitioners of CWP No. 65 of 2009 also filed separate rejoinder to the above referred written statements making similar submissions. Reiterating the averments of the writ petition it has been pointed out that on 7th May, 2009 a notice under Section 9 of the Act was issued but the same was withdrawn on 8th May, 2009, which amounts to complete withdrawal of acquisition proceedings. They have also disclosed following instances where land has been released by the respondents :

1. Land of Shri Deepak Nanda, situated at the back of the petitioner's land.
2. One liquor shop at the front of the land of the petitioners.
3. Land of influential persons comprised in Khasra No. 16, which is adjoining Khasra No. 4 wherein land/plot belonging to the petitioners is situated.
4. Out of the total area of 3 Bigas 17 Biswas comprised in Khasra No. 2 of village Ferozepur, which is adjoining Khasra No. 4, land measuring 17 Biswas is stated to have been released, whereas in the map given by the respondent, complete Khasra No. 2 has been shown to be released from acquisition.

(14) On 8th March, 2010, when the matter came up for consideration, it was disclosed by the learned State counsel that award was pronounced on 27th November, 2009 (which was in fact 26th November, 2009) but it was not clear from the record whether possession of the land belonging to the petitioner was taken or not although notice under Section 9 of the Act was issued of 29th October, 2009. Accordingly, the learned State counsel sought and was granted time to seek instructions regarding status of the possession of the land belonging to the petitioners and also file a specific reply to the averments made in paras 12(1) and (2) of the petition filed by the petitioners that the vacant plot adjacent to their plot has been released from acquisition. It was also ordered that status *qua* be maintained till further orders and if the possession has not already been taken then the same was to continue to remain with the petitioners.

(15) In compliance with the order dated 8th March, 2010, an affidavit dated 5th April, 2010 has been filed by Shri D. R. Kairon, Land Acquisition Collector, Urban Estates, Haryana, Panchkula. In para 3 of the said affidavit it has been disclosed that award was announced on 26th November, 2009 and possession of the land in question was taken and handed over to the beneficiary department i.e. HUDA because there was no orders of stay, *status-quo* and stay dispossession at the time of announcement of award. An entry has been made as per Rapat Roznamacha No. 376, dated 26th November, 2009, regarding handing over of possession. It has further been disclosed in para 4 of the affidavit that the plot of the petitioners is fully surrounded by the acquired land. The following location and situation of the plot has been given :

“In front of plot is khasra No. 8 which is acquired and in the back of the plot of the petitioners the vacant land of Krishan Lal Dang and Deepak Nanda whose land is lying vacant and has been acquired. The right and left side of the plot is also acquired land. The liquor shop is about 200 Sq. Yards away from the plot of the petitioners.”

(16) Lastly it has been submitted that no name or Khasra Nos. have been disclosed by the petitioners whose land was similarly situated up to the DPC level which has been released by the respondents and totally false statement has been made by the petitioners.

(17) Mr. Aman Arora, learned counsel for the petitioner(s) has raised various submissions before us. His first submission is that there is hostile discrimination, inasmuch as, the land belonging to some influential persons has been released. In that regard he has placed reliance on the averments made in para 8 of the replication asserting that the map attached by respondent No. 1 along with its reply is completely vague, inasmuch as, it has not been prepared to scale nor there is any proper description of the land which has either been acquired or released. According to the learned counsel the land of one Shri Deepak Nanda situated at the back of the petitioner's land, has been released along with one liquor shop on the front of the land of the petitioner(s). He has also submitted that Khasra No. 16, which is adjoining Khasra No. 4 wherein land/plot belonging to

the petitioners is situated, has also been released because it belongs to some influential person, for obvious reason to give undue favour to him/her. He has further elaborated by asserting that the total area of Khasra No. 2, which is adjoining to Khasra No. 4 is 3 Bigas and 17 Biswas out of which the respondents have acquired 3 Bigas only and 17 Biswas of land has been released, which shows that they are fully aware of the proper and exact measurement of the land but in so far as the petitioners are concerned, no exact information has been furnished of the proper measurement of the acquired land.

(18) Another submission made by the learned counsel is that provisions of Section 5-A of the Act have not been complied with, inasmuch as, no notice of hearing, fixing the date and place, was served upon the petitioners. Despite the aforementioned fact, the petitioners on their own reached the office of the Collector on 26th April, 2007, where according to the averments made in para 12(iii), a Clerk was sitting. Firstly, no hearing could have been granted by the Clerk and secondly, the number of persons being so large, they could not have been heard. Therefore, the submission made by the learned counsel is that the proceedings under Section 5-A of the Act are completely sham and the impugned notifications for the aforesaid reason are liable to be quashed. In support of his submissions, learned counsel has read out the reply filed by the Land Acquisition Collector as well as the State Government, which do not controvert the averments made by the petitioners. For the aforesaid proposition, Mr. Arora has also placed reliance on the judgments of Hon'ble the Supreme Court rendered in the cases of **Hindustan Petroleum Corporation Ltd. versus Darius Shapur Chenai, (1)**, **Shyam Nandan Prasad versus State of Bihar (2)**, and **Hari Ram versus State of Haryana (3)**.

(19) Mr. Arora then submitted that the plot of the petitioner(s), where construction to the roof level has been raised, is situated in a well-planned colony and prior approval of the site plans has been taken from the Municipal Council. Once the plot has been constructed up to roof level then the respondents should have exercised the power to release the land.

(1) (2005) 7 S.C.C. 627

(2) (1993) 4 S.C.C. 255

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

especially when approval has been taken from the Municipal Council. He has further stated that not only the constructed area, even the vacant plots have been released, which is wholly unwarranted especially when there was no policy prevalent during the period when the land was acquired.

(20) Mr. Arora has also submitted that non-application of mind by the respondents is illustrated by virtue of issuance of notices under Section 9 of the Act on 29th October, 2009 and withdrawal of the same on the same date. According to the learned counsel the property belonging to the petitioners in the same locality was, in fact, released from acquisition but still notice under Section 9 of the Act was issued, which highlight total non-application of mind by the respondents. According to him it amounts to withdrawal of the acquisition proceedings.

(21) The learned State counsel has made submissions by mainly reiterating the averments made in the written statement.

(22) Having heard learned counsel for the parties we are of the considered view that these petitions merit acceptance. Firstly, no specific area stipulated for acquisition has been pointed out to the petitioners before issuance of notification under Section 6. The petitioners have been running from pillar to post for obtaining a copy of the area planned for acquisition. They applied for a copy to the District Town Planner, Panchkula, to know which part of Khasra Nos. 4 and 5 has been released from acquisition and which part thereof has been acquired. The District Town Planner merely forwarded their application to the Land Acquisition Collector-respondent No. 3 with the request to mark the relevant land/area acquired in different colour. However, the site plan of the area could be provided on 18th July, 2008 whereas declaration had already been made under Section 6 of the Act on 28th November, 2007 (P-2). In such a situation there cannot be any effective representation in the form of objections under Section 5-A of the Act nor there could be any hearing or application of mind by the respondents.

(23) The situation is further grim because on 31st July, 2008 the petitioners filed an application seeking certified copy of the plan depicting planning of residential, commercial and industrial area along with their sizes for Sector 28, Urban Estate, Pinjore. On 22nd August, 2008, the respondents

replied that there was no such lay out plan prepared (P-10 & P-11). Accordingly, it follows that the respondents were not even aware the exact measurement of land which has been acquired or which has been released after issuance of the notification under Section 6 of the Act. Therefore, there is colourable exercise of power of eminent domain which cannot stand judicial scrutiny. This is amply high lighted by the reply sent by the respondents on 19th August, 2008 (P-13).

(24) Moreover, on a close scrutiny we find that the petitioners have made categorical assertion with regard to release of land of Shri Deepak Nanda, situated at the back of their land; one liquor shop situated at the front side of their land; land comprised in Khasra No. 16, which is adjoining Khasra No. 4 wherein land/plot belonging to them is situated; and land measuring 17 Biswas comprised in Khasra No. 2 of village Ferozepur, which is adjoining Khasra No. 4. The aforesaid position has not been denied by the respondent. It has also not been denied that construction at the back of the petitioners' property and other surrounding areas have also been released from acquisition. If all the nearby surrounding land/constructed area have been released, it is not understandable as to how acquisition of the land belonging to the petitioners could be put to any use for the public purpose. On the ground of discrimination also the acquisition of the plot/land belonging to the petitioners is liable to be set aside. In that regard we may place reliance on the observations made by Hon'ble the Supreme Court in para Nos. 40 to 43 in the case of **Hari Ram** (supra), which reads thus :

“40. It is true that any action or order contrary to law does not confer any right upon any person for similar treatment. It is equally true 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 one 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 consering the representations of the landowners for withdrawal from acquisition whose lands have been acquired under the same acquisition 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 Article 14 of the Constitution and must be held to be discriminatory.
42. More so, it is not even the case of the respondents that release of land from acquisition in favour of various landowners , as noticed above, was in violation of any statutory provision or actuated with ulterior motive or done due to some mistake or contrary to any public interest. As a matter of fact, *vide* order dated August 19, 2009, this Court gave an opportunity to the State Government to consider the representations of the appellants for release of their land and pass appropriate order but the State Government considered their representations in light of the policy dated October 26, 2007 ignoring and overlooking the fact that for none of the landowners whose lands have been released from acquisition. the policy dated October 26, 2007 was applied. The State Government has sought to set up make believe grounds to justify its action that development planning has been kept into consideration and that the appellants have been offered developed plots of double the area of construction while the fact of the mater is that in some cases where the plots were vacant and had no construction, the entire plot has been released from acquisition and also the cases where one room or two rooms construction was existing, the whole of plot has been released. While releasing land of more than 40 landowners having plots of size from 150 sq. yards to 1500 sq. yards, if development plan did

not get materially disturbed in the opinion of the State Government, the same opinion must hold good for the appellants' lands as well.

43. It is unfair on the part of the State Government in not considering representations of the appellants by applying the same standards which were applied to other landowners while withdrawing from acquisition of their land under the same acquisition proceedings. If this Court does not correct the wrong action of the State Government, it may leave citizens with the belief that what counts for the citizens is right contracts with right persons in the State Government and that judicial proceedings are not efficacious. The action of State Government in treating the present appellants differently although they are situated similar to the landowners whose lands have been released can not be countenanced and has to be declared bad in law."

(25) We are further of the view that the procedure adopted for hearing of objections under Section 5-A of the Act suffers from glaring illegality. Firstly, the petitioners were not given any personal notice of the date and place of hearing of objections. Secondly, the objections filed by the petitioners have not been heard. On 26th April, 2007 i.e. the date of hearing of objections, 300 objectors were present including the petitioners. Even if it is believed that the Land Acquisition Collector was present by ignoring the allegation made by the petitioners that only a Clerk was present, it is not possible for the Land Acquisition Collector to grant hearing to 300 people in one day. The hearing of objections under Section 5-A of the Act cannot be reduced to mere formality. Under the Act it is probably one of the stages where land owner could persuade the Collector for release of his land from acquisition. The aforesaid view is supported by the judgment of Hon'ble the Supreme Court rendered in the case of **Darius Shapur Chenai** (supra). In paras 6 and 9 following observations have been made :—

- "6. It is not in dispute that Section 5-A of the Act confers a valuable right in favour of a person whose lands are sought to be acquired. Having regard to the provisions contained in Article 300A of

of the Constitution of India, the State in exercise of its power of 'eminent domain' may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefore must be paid.

9. It is true that hearing given to a person must be an effective one and not a mere formality. Formation of opinion as regard the public purpose as also suitability thereof must be preceded by application of mind as regard consideration of relevant factors and rejection of irrelevant ones. The State in its decision making process must not commit any misdirection in law. It is also not in dispute that Section 5-A of the Act confers a valuable important right and having regard to the provisions, contained in Article 300A of the Constitution of India has been held to be akin to a fundamental right."

(25) The assertion of the respondents that possession of the land belonging to the petitioners has already been taken on the date of announcement of award on 26th November, 2009 has failed to impress us because the petitioners have filed the writ petitions on 6th January, 2009 and 29th January, 2009. It is well settled that all actions taken by the respondents would be subject to the decision of the instant petitions, including the factum of taking possession. Therefore, we find no substance in the argument raised on behalf of the respondents.

(26) As a sequel to the above discussion, these petitions succeed. The acquisition in respect of the aforesaid petitioners is quashed. The petitioners shall be entitled to continue in possession of the land in dispute. If the respondents have made any entry in the repeat roznamcha concerning possession, the same shall be suitably altered. The needful shall be done within a period of three months. No costs.

(27) A photocopy of this order be placed on the file of connected case.