Before S.S. Nijjar & Hemant Gupta, JJ

GAGANDEEP KANG & OTHERS,—*Petitioners*

versus

THE UNION TERRITORY OF CHANDIGARH & ANOTHER.. *Respondents*

C.W.P. NO. 2074 OF 1990

28th April, 2003

Constitution of India, 1950—Art. 226—Land Acquisition Act, 1894—Ss. 4 & 6—Land sought to be acquired for public purpose—Publication of notifications u/ss 4 & 6—Challenge to acquisition proceedings on the ground that substance of notification u/s 4 in the locality not published—Wide publicity of the notification—Notification published in five daily newspapers including two in English published from Chandigarh—Publication by beat of drum made by a Cartsman—No rule, provision or instructions to show that the procedure of beat of drum has to be carried out only by a public servant—No illegality in the substance of the notification published in the locality in accordance with the provisions of Section 4—Plea that earlier withdrawal of acquisition proceedings sought to be acquired for multi-speciality hospital is devoid of merit—Denial of opportunity of personal hearing—Notice of hearing not delivered to the petitioners—No allegation of malafide *against the administration—Objections of the petitioners validly considered by the Land Acquisition Officer—Writ Petition filed by a sitting tenant held to be maintainable—Petitions dismissed while holding the acquisition proceedings legal.*

Held, that the notification has been published in five daily newspapers including two newspapers published in English from Chandigarh. The petitioners are not illiterate villagers who are tilling the land. They are reflected as sons and daughters of former senior Army Officer. Therefore, we find it difficult to accept the argument that the notifications published in the newspapers never came to their notice. Such wide publicity cannot be presumed to have escaped the attention of the land owners when large scale acquisition was being made at Manimajra for some time past. The petitioners must have been on guard and in the knowledge of the acquisition proceedings. Therefore, the reliance cannot be placed on the statement of the writ

petitioners. The fault being found in the publication of substance of the notification in the locality is an excuse to challenge the notification and lacks *bona fide*.

(Paras 18 & 19)

Further held, that the other argument that the acquisition is not *bona fide* as earlier it was sought to be acquired for multi-speciality hospital is again devoid of merit. The land for multi speciality hospital was sought to be acquired by invoking urgency provisions. However, the same was given up. Such fact alone is not sufficient to draw any inference that the acquisition is not *bona fide*. Similarly argument that the nursery is important from a eco-logical point of view is also without any merit. The open space is part of any planned development and is not a case of the petitioner that the State Government is acquiring the land without leaving any open space.

(Para 38)

Further held, that the acquisition proceedings at this stage cannot be quashed on the ground that the notice of hearing of objection is not conclusively delivered to the petitioners. Once two of the objectors who have been called for hearing of notice, we find no reason to give the finding that the petitioners have not been served. The petitioners have not alleged any *mala fide* against any officer of the Administration for not effecting the service. Therefore, it is held that the petitioners would be deemed to have been served and their objections have been validly considered in the report given by the Land Acquisition Officer dated 15th January, 1990. Therefore, we hold that the petitioners have failed to rebut the presumption of grant of personal hearing by the Land Acquisition Collector and, thus, we find no merit in the petition which is liable to be dismissed.

(Para 48)

M.L. Sarin, Senior Advocate with

Ms. Sweena Pannu, Advocate for the petitioners.

Ms. Lisa Gill, Advocate for Chandigarh Administration.

Rajiv Raina, Advocate with V.S. Rana, Advocate for Municipal Corporation.

JUDGEMENT

HEMANT GUPTA, J,

(1) This order shall dispose of twenty five writ petitions bearing CWP No. 2074 of 1990 pertaining to pocket No. 1, CWP Nos. 416 of 1990, 15877 of 1989, 16211 of 1990, 8670 of 1990 pertaining to pocket No. 2, CWP Nos. 3325 of 1990, 8881 of 1990, 14058 of 1990, 1034 of 1990, 3422 of 1990 pertaining to pocket No. 3, CWP No. 3125 of 1990, pertaining to pocket No. 5, CWP No. 597 of 1990 pertaining to pocket No. 6, CWP Nos. 5250 of 1991, 13116 of 1990 pertaining to pocket No. 9, 2821 of 1992 pertaining to pocket No. 10, CWP Nos. 12595 of 1990, 12596 of 1990, 15095 of 1991, 10145 of 1991, 5724 of 1992, 5103 of 1992, 15117 of 1991 pertaining to pocket No. 11, CWP Nos. 765 of 1992, 7774 of 1992, 11372 of 1990 pertaining to Kalagram as common questions of law and fact are involved. Pocket Nos. 1 to 6 are part of Scheme No. 2 whereas pocket Nos. 9 to 11 are part of Scheme No. 3.

(2) The facts are taken from writ petition Nos 2074 of 1990. The writ petitions where the additional points have been raised are also dealt with in this order. On 25th May, 1989, Chandigarh Administration published a notification that the land measuring 29.07 acres (Pocket No.1) is likely to be needed for public purpose, namely for development of residential-cum-commercial complex, Scheme No. 2 of the Notified Area Committee, Manimajra. It is the grievance of the petitioner that the notification was not published in terms of the provisions of Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 1894 Act) as amended by the Land Acquisition Act, 1984 and, thus, they have been deprived to file objections under Section 5-A of 1894 Act. Since the publication of the notification under Section 4 of the 1894 Act was not proper, the subsequent publication of the notification under Section 6 of the said Act, dated 11th September, 1989 declaring that the acquisition of land measuring 29.07 acres for the public purposes is wholly illegal and against the statutory provisions. The petitioners have stated that they are owners of land measuring 13 kanals 1 marla which is part of the acquisition. The *ex-parte* award was announced on 5th January, 1990. The petitioners came to know of the issuance of notification under Sections 4 and 6 of the Act and about making of the award in the end of January 1990 and filed the writ petitions without unnecessary and inordinate delay, on 16th February, 1990.

(3) The respondents filed the written statement wherein it has been stated that the land measuring 193.52 acres for Scheme No. 2 has been acquired in six pockets for the development of residental-cum-commercial complex and for the purpose of multi-speciality hospital by the Notified Area Committee, Manimajra. The area which was intended to be acquired under Section 4 of 1894 Act for different pockets is as under :—

Pocket No. 1	29.07 acres	25-05-1989
Pocket No. 2	37.55 acres	15-06-1989
Pocket No. 3	21.51 acres	12-10-1989
Pocket No. 4	39.27 acres	
Pocket No. 5	36.37 acres	12-10-1989
Pocket No. 6	29.75 acres	12-06-1989

(4) It was further pointed out that the award for the land relating to pocket Nos. 1 & 4 had been announced on 5th January, 1990 and that in respect of pocket No. 2 the award had been announced on 5th February, 1990 and in respect of Pocket No. 6 on 15th January, 1990. The land of the petitioner is situated in pocket No. 1 only. The total amount awarded is Rs. 63,30,699 out of which Rs. 41,97,723 has been received by other land-owners. The awards for pocket Nos. 1, 2, 4 & 6 have been announced compensation in respect thereof paid and received by most of the land-owners.

(5) On merits, it was submitted that the notification under Section 4 of 1894 Act was published in the Govt. Gazette as well as in two English newspapers i.e. "The Tribune" dated 3rd June, 1989 and the "Indian Express" and also in vernacular newspapers "Punjabi Tribune", "Hindi Tribune" and "Daily Ajit". A copy of the notification was pasted on the Public Notice Board of the office of the Notified Area Committee and the notification was also given publicity by beat of drum in the locality on 3rd June, 1989 and 4th June, 1989. Still further the notification dated 11th September, 1989 under Section 6 of 1894 Act was published on 18th October, 1989 in the "The Tribune", "Indian Express" along with vernacular newspapers "Dainik Tribune",

"Hindi Tribune" and "Daily Ajit". A copy of the notification was pasted on Public Notice Board in the Office of the Notified Area Committee and also publicly announced by beat of drum in the locality. Further it was stated that respondent No. 2 announced award on 5th January, 1990 in the presence of respective land owners only after giving them notices under Section 9 of 1894 Act and decision of the objections raised by them.

(6) On 30th March, 1990 the petitioners filed an application bearing C.M. No. 4235 of 1990 with a prayer that the respondents be directed to produce the entire record, specially documents evidencing the alleged publicity by beat of drum in the locality. The said application was ordered to be heard with the main case.

(7) The Chandigarh Administration has sought to acquire a large tract of land situated in revenue estate of Village Manimajra, Chandigarh, for setting up a residential-cum-commercial complex. In respect of village Manimajra, Gram Panchayat was constituted on 19th August, 1973. On 12th April, 1976 the whole of the area of Gram Sabha, Manimajra, was declared Notified Area under section 247 of the Punjab Municipal Act, 1911 (hereinafter referred to as '1911 Act'). By virtue of another notification dated 11th June, 1976, certain provisions of the Act of 1911 including Sections 3,53,58 and 192 were extended to Notified Area which is deemed to be a Municipal Committee in terms of Section 242 of 1911 Act. It is now admitted case of the parties that area falling within Notified Area Committee, Manimajra is now vested with Municipal Corporation, Chandigarh.

(8) During the course of hearing Sh. M.L. Sarin, the learned Senior Counsel for the petitioners has produced on record a photostat copy of the noting sheet dated 1st June, 1989 and the endorsement dated 6th June, 1989 in respect of publication of the notification in the locality by one Sh. Banarsi Dass, Cartsman. It is stated that the said photocopy was given to the petitioner at the time of motion hearing by the respondents. The said noting sheet is marked as 'Annexure C" for the facility of reference.

(9) An affidavit dated 22nd March, 2003 of Sh. S.K. Setia, Land Acquisition Officer has been filed on behalf of the respondents wherein it has been stated that the original record pertaining to acquisition of land in various pockets of revenue estates of Manimajra

is not traceable. It has been stated that the factum of missing record came to be known when the bunch of writ petitions came up for final hearing in view of an order passed in application for early hearing moved by the respondents. It was stated that inspite of concerted and coordinated efforts made, the following original records were not traceable :—

(i) Original record regarding publication in the official gazette and newspapers in respect to Pocket No. 2, 9, 10 & 11. The record regarding publication in the locality with regard to Pocket No. 1—6 and 9—11 is also not available.

(ii) The Original Rapat Roznamchas pertaining to the above are not traceable.

(iii) The original objections and notices under Section 5-A are not available except Pocket No. 11.

(iv) Original record pertaining to the presence of the objectors at the time of hearing of objections under Section 5-A is also missing."

(10) It has been stated that one file pertaining to acquisition has been traced in the Office of Finance Secretary continuing pages 1 to 518 and noting pages 1 to 83. This file contains record regarding publication of the notification in the Official Gazette and in the newspaper except in respect of pocket Nos. 2, 9, 10 & 11. The said file also contains two reports one dated 22nd August, 1989 given by the Land Acquisition Officer, Notified Aera Committee, Manimajra, pertaining to pocket Nos. 1 to 6 wherein objections filed by 18 objectors were considered and second is the report dated 11th September, 1989 wherein objections filed by 90 objectors were considered. Still further in other report dated 15th January, 1990 pertaining to pocket Nos. 3 and 5, objections filed by petitioner in CWP No. 3125 of 1990, and that of Amit Sing, Raj Mohan Sethi and Gurdip Kaur had been sent to the State Government.

(11) With the above background, Shri M.L. Sarin, the learned Senior Advocate for the petitioners challenged the legality of the notification and the acquisition proceedings, *inter-alia*, on the gound that there is no publication of the substance of notification under

Section 4 of 1894 Act in the locality. They have sought a copy of the report of the rapat roznamcha from the Patwari Halqa, Manimajra who has endorsed that the rapt roznamcha has not been made regarding the notification dated 25th May, 1989. It has been argued that the publication allegedly made by Banarsi Dass, Cartsman has not been authorised by the Collector but by the Secretary, Notified Area Committee. Still further, the substance of the notification is alleged to be published by a Cartsman and not by any official of the Department. It was also submitted that the substance of the notification was required to be published in the locality i.e. in the vicinity of the land acquired. However, noting-sheet produced by the respondents does not show that the publication of the substance was in any specified area or near the land acquired.

(12) Shri M.L. Sarin, contended that the publication of the substance of the notification is mandatory as it serves dual purpose. One, the State or its agencies get a right to entry in the land and the other to enable the land-owners to file objections, objecting to the acquisition of the land, as non-publication of the notification will deprive them of the right of representation provided under Section 5-A of 1894 Act which is a valuable right. Reliance was placed upon the judgments of the Supreme Court in **Khub Chand and others** *versus* **State of Rajasthan and others (1), Narinderjit Singh and others** *versus* **The State of U.P. and others (2), State of Mysore** *versus* **Abdul Razak Sahib (3).** He has also placed reliance on **Collector (District Magistrate) Allahabad and another** *versus* **Raja Ram Jaiswal (4),** to contend that even if objections have been filed after publication of the notification under Section 4 of 1894 Act but still the publication of the notification under Section 4 of 1894 Act is required to be mandatorily carried out by the State. The land-owner need not show any prejudice on account of non-publication of any notification. Learned counsel for the petitioners also placed reliance on the judgments of the Supreme Court in **The Madhya Pradesh Housing Board** *versus* **Mohd. Shafi and others (5),** to contend that the public notice is required to be published by the Collector. Reliance

(1) AIR 1967 S.C. 1074
(2) AIR 1973 S.C. 552
(3) AIR 1973 S.C. 2361
(4) (1985)3 S.C.C. 1
(5) 1992(2) Rev Law Reporter 1

was also placed upon the judgment in **State of Haryana and another** *versus* **Raghubir Dayal (6)** to contend that the provisions of Section 4 of the Act are mandatory although the provisions of Section 6 of 1894 Act are directory. Learned counsel for the petitioners also relied upon **Ghanshyam Dass Goyal and others** *versus* **The State of Haryana and others (7)** to contend that the notification was required to be published in the vicinity of the land acquired whereas no such publication in the vicinity of the land acquired can be said to have been carried out on the basis of noting sheet.

(13) To controvert the allegations of the counsel for the petitioners, the learned counsel for the respondents at the outset, pointed out that the petitioners have moved this Court after the award was announced on 5th January, 1990 and, thus, the writ petitions challenging the acquisition proceedings on account of non-publication of substance of notification under Section 4 of 1894 Act in the locality are not maintainable. He also placed reliance on a FullBench judgment of this Court in **Narinjan Singh and another** *versus* **State of Punjab and another (8), and M/s Convertaid Engineers Pvt. Ltd. and others** *versus* **State of Haryana and others (9).** It is further pointed out that idential questions were raised in respect of acquisition of pocket Nos. 9, 10 and 11 which was sought to be made by publication of notification under Section 4 of 1894 Act on 24th June, 1990. The said acquisition was the subject matter in C.W.P. No. 12936 of 1991 whereas acquisition of land in pursuance of notification dated 9th/10th August, 1990 was the subject matter of challenge in C.W.P. No. 14898 of 1991. The writ petition challenging these acquisition proceedings was dismissed by the learned Single Judge of this Court on 20th January, 1992 in **Prem Singh and others** *versus* **Union Territory, Chandigarh (10)** and Letters patent Appeal against the said judgment was also dismissed by the Divisoin Bench on 11th March, 1998. Another bunch of 30 writ petitions wherein notifications dated 28th June, 1990, 31st January, 1992 etc. under Section 4 was dismissed by the Division Bench on 22nd September, 1995. The detailed

(6) (1995)1 S.C.C. 133
(7) 1982 Rev Law Reporter 267
(8) AIR 1986 Pb & Hy. 202 = 1996 (1) S.C.C. 501
(9) 2003 (1) PLR 634
(10) 1992 (2) PLR 370

order was passed in C.W.P. 2126 of 1998, **Partap Chand and others** *versus* **Union territory, Chandigarh & others.** It was thus contended that since identical questions of law and fact have already been adjudicated upon by a Division Bench of this Court in respect of the similar acquisition proceedings, therefore, the present writ petitions are liable to be dismissed.

(14) After going through the record of the case and hearing the arguments of the counsel for the parties at length, we are of the opinion that no case for interference is made out. In **Narinderjit Singh's** case (*supra*) the Hon'ble Supreme Court has held that on account of the failure of the Collector to cause public notice of the substance of the notification to be given at convenient places in the locality where the land sought to be acquired is situated, the whole acquisition proceedings are vitiated even if powers under Section 17(4) of the Act have been invoked to dispense with the provisions of Section 5-A of the Act. In **Abdul Razak Sahib's** case (supra) it has been held that if no publicity of the substance of the concerned locality is given, the provisions of Section 4 cannot be said to have been complied with and the notification would be invalid. There is no dispute about the proposition of law laid down in the said judgment.

(15) However, dispute in the present case is, whether the substance of the notification under Section 4 of the Act was published in the locality and, whether such publication satisfies the requirement of Section 4 of 1894 Act ? The counsel for the petitioners have relied upon noting sheet dated 1st June, 1989 whereby Secretary, Notified Area Committee, Manimajra had directed Sanitary Inspector to cause wide publicity of the notification in the locality through beat of drum on 1st June, 1989. The Sanitary Inspector has endorsed that wide publicity in respect of notification had been given through beat of drum by Banarsi Dass, Cartsman on 3rd June, 1989 and 4th June, 1998. The said noting sheet has been seen by the Secretary Notified Area Committe and placed on the file. The grievance to such manner of publication is that there is no valid authorisation by the Collector to cuase the substance of the notification published through Secretary, Notified Area Committee, Manimajra or by Sanitary Inspector. Still further, the publication is allegedly made by a Cartsman who is neither a public servant nor shown to be competent to carry out the requirement of the publication by beat of drum.

(16) The reliance of the counsel for the petitioners on the provisions of Section 4 of 1894 Act that "the Collector shall cause public notice of the substance or said notification to be given at the convenient places of the locality" is not tenable. The Collector contemplated under Section 9 of 1894 Act is one defined under Section 3 (c) of 1894 Act which means that the Collector of the district and includes the Deputy Commissioner and any officer specially appointed by the Appropriate Government to perform the functions of the Collector under the said Act. The Collector is the agent of the State Government competent to acquire land for the State Government. One or other official can cause the publication of the substance of the notification in the locality. It is not necessary that the Collector has to personally authorise the publication by beat of drum. It is the publication of the substance in the locality which is a material factor so as to invite the attention of the interested persons towards the intention of the Government to acquire the land. No rule, provision or instructions were brought to our notice that the procedure of beat of drum has to be carried out only by a public servant. As a matter of fact, such ministerial functions can be performed by any one authorised by the competent authority. The beat of drum is not a process requiring special skill and, thus, the arguments raised by the counsel for the petitioners are misconceived. In any case, the defects pointed out by the petitioners can at best be called an irregularity which does not vitiate the publication of the notification.

(17) Thus, we are of the opinion that the substance of the notification was published in the locality in accordance with the provisions of Section 4 of 1894 Act. In CWP No. 2126 of 1993, Partap Chand's case (supra) an argument was raised on the basis of the affidavit filed by Dayal Singh who, as per the State, carried out the process of beat of drum. Dayal Singh having denied any such process by way of filing affidavit, the Court negatived the contentions of the writ petitioners on the ground that it was the positive stand of the petitioners that notifications under Sections 4 & 6 of 1894 Act had not been published in the newspaper.

(18) In the present case, the grievance of the petitioners as per the averments made in the writ petition was against the non-publication of substance of the notification in the locality. It was also pleaded that the petitioners have not been able to locate the notification

in two daily newspapers in which notification was required to be published. The petitioners have sought quashing of the acquisition proceedings, *inter-alia*, on the ground that the public notice of the substance of the notification was not given at the convenient places in the locality and that the mandatory requirement of Section 4 had not been complied, inasmuch as the notification had not been complied, in asmuchas the notification had not been published in two daily newspapers circulated in the locality. As mentioned above, the notification has been published in five daily newspapers including two Newspapers published in English from Chandigarh. The petitioners are not illiterate villagers who are tilling the land. As per the writ petition, they are residents of House No. 5, Sector 7, Panchkula whereas in communication Annexure P.3, they have described as resident of SCF No. 20, Sector 7-C Chandigarh. Even in the rejoinder filed to the affidavit of the Administration, they have been described as residents of H. No. 5, Sector 7, Chandigarh. The petitioners are reflected as sons and daughters of former senior Army Officer.

(19) Therefore, we find it difficult to accept the argument of the petitioners that the notifications published in the newspapers never came to their notice. Such wide publicity can not be presumed to have escaped the attention of the land owners when large scale acquisition was being made at Manimajra for some time past. The petitioners must have been on guard and in the knowledge of the acquisition proceedings. Therefore, the reliance cannot be placed on the statement of the writ petitioners. The fault being found in the publication of substance of the notification in the locality is an excuse to challenge the notification and lacks *bona fide*.

(20) A perusal of the report dated 22nd August, 1989, Annexure I to the affidavit dated 22nd March, 2003 shows that 18 set of objections were considered by the Land Acquisition Officer after granting personal hearing on 10th August, 1989. Thus, if 18 sets of objections could be filed and considered by the Land Acquisition Officer, there is no reason to accept the argument of the counsel for the petitioners that the publication was not made in the locality.

(21) The reliance of the counsel for the petitioners on **Ghanshyam Dass Gupta's case** (supra) again is not tenable. The publication in the said case was in respect of Hisar town which has the population of few lakhs. However, that is not the situation in

respect of village Manimajra. Manimajra had a population of few thousands only in the year 1989 when the land was sought to be acquired. It is also stated that the notification has been pasted on the Public Notice Board. The majority of the land compensation amount has already been disbursed to the land-owners. Therefore, the feigned ignorance of acquisition proceedings is not tenable. It may be noticed that the petitioners have placed reliance on award Annexure P.5. It has been recorded in the said award that the publicity for the acquisition of this land was made in the locality by beat of drum and a report was also made in the roznamcha wakiati of Patwari circle Manimajra. There is nothing on record to doubt the correctness of the said facts recorded in the award.

(22) The argument of the petitioners that a contradictory stand has been taken in the additional affidavit as against the one taken in the written statement, is again without any merit. It is stated in the written statement that the notification was given publicity by beat of drum in the locality on 3rd June, 1989 and 4th June, 1989 whereas in the additional affidavit filed, it has been stated that the record pertaining to the publication, original notification and entries in the rapt roznamcha remains with the Revenue Patwaris. However, the said record has not been produced. It is further pointed out that the affidavit dated 22nd March, 2003 has been verified on the basis of the fact derived from the official record which is not available. In fact, the stand of the Administration in the written statement is supported by the petitioners themselves. They have relied upon a noting initiated by Sanitary Inspector on 1st June, 1989 wherein it has been reported that the publication has been made by one Cartsman in the locality by beat of drum. The averments made in the affidavit dated 22nd March, 2003 are to the effect that rapt roznamcha pertaining to acquisition is not traceable. Therefore, we do not find any contradiction in the affidavit or impropriety in the stand of Administration.

(23) However, we find no merit in the objection raised by the respondents that the writ petition is not maintainable having been filed after the announcement of the award. Mr. Sarin has contended that the land vests with the State Government only when possession is taken after announcing of the award in terms of Section 16 of the Land Acquisition Act. Since, even the symbolic possession has not been

taken, therefore, the land does not vest with the State Government. In this context, a reference may be made to the award dated 5th January, 1990, wherein it has been stated that "the land shall vest absolutely in the acquiring department free from all encumbrances with effect from the date on which the possession is handed over to the notified area committee". There is nothing on record to show that the possession was handed over to the Notified Area Committee, Manimajra before the filing of the writ petition. The dispossession of the petitioner was stayed when notice of motion was issued on february 20, 1990. Thus, the judgments relied upon by the respondents are clearly distinguishable and are not applicable to the facts of the present case.

(24) In view of the above, we hold that the substance of notification under Section 4 was published in the locality and the writ petition cannot be dismissed as not maintainable since the land is not vested free from all encumbrances with the State Government.

(25) In this writ petition, the land measuring 40 Kanals 15 marlas of the petitioner is sought to be acquired by virtue of notification dated 12th October, 1989 under Section 4 of 1894 Act. This was followed by notification under Section 6 of 1894 Act published on 13th February, 1990.

(26) The grievance of the petitioner is that earlier the land was sought to be acquired on 1st February, 1989 for setting up of multi speciality hospital by invoking urgency provisions. However, such acquisition proceeding was withdrawn on 4th April, 1989. The notification is challenged, *inter-alia*, on the ground that substance of notification under Section 4 of 1894 Act was not published in the locality by beat of drum. The reliance was on letter dated 9th March, 1990 by the Patwari to the effect that there is no entry in the rapt *roznamcha Wakiati* regarding notification dated 12th October, 1989.

(27) Learned counsel for the petitioner has sought to contend that the Notified Area Committee made proposal No. 5 in its meeting held on 24th January, 1989 requesting Chandigarh Administration to acquire the land measuring 160.87 acres relating to pocket Nos. 1, 2 and 3. Therefore, a request was made under Section 58 of 1911 Act for acquisition of the land. It is contended that under Punjab New

Capital (Periphery) Control Act, 1952, no construction can be made except with the permission of the Government. The petitioner's grievance is that the exemption from this Act under Section 11 in favour of the Notified Area Committee is illegal, void and without any jurisdiction. It was pointed out that the Manimajra was a declared agricultural zone in the masterplan prepared in the year 1952.

(28) It is contended that no building scheme as contemplated under Section 192 of 1911 Act has been framed and in the absence of any scheme the land could not be acquired with the funds of the Notified Area Committee. The petitioner filed objections under Section 5-A of 1894 Act but no hearing was granted onthe date fixed i.e. 9th January, 1990 even though the petitioner with his counsel remained present in the Office of the Land Acquisition Collector.

(29) In the written statement, it was stated that the award could not be announced because of the interim order passed by this Court although many land owners are keen to receive the compensation of the land and have no objection to the acquisition of the land.

(30) Intially the writ petition was dismissed on 15th May, 1990 in the absence of the petitioner and his counsel but it was restored to its original number on 22nd May, 1990. However, in the meantime, the Land Acquisition Collector announced the award.

(31) Counsel for the petitioner has contended that the right of filing objection is a valuable right granted to the land owners to make representation against the proposed compulsory acquisition. In fact the right to file objections and granting of an opportunity of hearing and to adduce evidence in support of their objection is a right of the land owner is a mandatory provision in the Act. The Land Acquisition Collector while hearing objections under Section 5-A of 1894 Act exercises *quasi* judicial functions and the enquiry is not to be conducted in a casual manner. It was contended that the petitioner was present along with his counsel on 9th January, 1990 for hearing of the objection but the Land Acquisition Collector had reached the Officer only on 3.45 p.m. and told the counsel that he is busy and he will fix next date of hearing of the objections. However, no date of hearing has been communicated by the Land Acquisition Collector.

Learned counsel for the petitioner relied upon the judgments of the Supreme Court in **Farid Ahmed Abdul Samad and another** *versus* **The Municipal Corporation of the City of Ahmedabad and another (11)** and **Shyam Nandan Prasad and others** *versus* **State of Bihar and others (12).**

(32) The counsel for the respondents controverted the arguments and also produced the record particularly the file from the Officer of the Finance Secretary containing 1 to 518 pages. The attention of the Court was drawn to the noting dated 17th May, 1989 wherein proposal for the acquisition of 68.34 acres of land in village Manimajra was being examined. In the said noting, approval of the advisor to the Administrator of Chandigarh Administration exercising the powers of the State Government was solicited in terms of Section 58 of 1911 Act. The Advisor to the Administrator has granted approval on or before 22nd May, 1989. It may be noticed that the land measuring 68.34 is in fact land falling in pocket Nos. 1 and 4. Similarly, while considering the proposal for acquisition of land in respect of Pocket Nos. 3 and 5 the same has been approved by Advisor to Administrator on 27th September, 1989. Still further, controverting the allegations regarding the denial of opportunity of personal hearing, it was submitted that an opportunity of hearing was granted which is sought to be supported from the report of the Land Acquisition Collector attached with the additional affidavit dated 22nd March, 2003 filed on behalf of Shri S.K. Setia, Land Acquisition Collector.

(33) It was pointed out by the counsel for the respondents that the objections filed by the petitioners were not filed through an Advocate. The petitioner has not given the name of the Advocate who was informed by the Land Acquisition Collector that he is busy and will communicate the date of hearing. The petitioner has not disclosed even the name of the counsel or filed any affidavit to that effect. In the affidavit dated 22nd March, 2003 filed by Shri S.K. Setia, Land Acquisition Officer, it has been stated that as per report dated 15th January, 1990 (Annexure V) that interested persons who have filed objections under Section 5-A of 1894 Act where given opportunities of personal hearing on 9th January, 1990. A list of the objections along with the name of the objectors, brief contents of the objections

(11) AIR 1976 S.C. 2095
(12) (1993)4 S.C.C. 255

and a report of the Land Acquisition Officer prepared in respect of every objection. The said report of the Land Acquisition Collector contains three set of objections. The first is by Shri Amit Singh and Mrs. Raj Mohani Sethi, petitioners in CWP No. 8881 of 1990. The second is by Mrs. Gurdeep Kaur, petitioner in CWP No. 3325 of 1990 and that of Shri Ram Krishan Mahajan, petitioner herein. It is admitted by Shri Mahajan that a notice was received by him and he was present in the Office of Land Acquisition Collector but no hearing was given. However, no such grievance has been made by the petitioner in CWP No. 3325 of 1990.

(34) The other argument by the counsel for the petitioner that without framing any building scheme under Section 192 of 1911 Act, the acquisition of the land for development of residential-cum-commercial complex Scheme No. 2 of Notified Area Committee is not for a public purpose and is contrary to law. The public purpose for which the land can be acquired is defined under Section 3(f) of 1894 Act which contemplates that any provision of land for executing any scheme of development sponsored by the Government or with the prior approval of the Government, by a local authority is a public purpose. However, the scheme contemplated under clause (vii) is a scheme framed by the Notified Area Committee under Section 192 of 1911 Act. Since such scheme has not been framed, therefore, it is not a public purpose. It was further contended that Section 52 of 1911 Act contemplates utilisation of municipal funds for the development of streets, roads, schools, libraries, park etc. No municipal funds can be utilized for a scheme not framed under the statute and thus, acquisition proceedings are vitiated. Learned counsel for the petitioner has also placed reliance upon the judgments of the Supreme Court in **State of Tamil Nadu and another** *versus* **A. Mohammed Yousef and others (13)** and **H.M.T. House Building Co-operative Society** *versus* **Syed Khader and others (14).**

(35) However, we are unable to accept such arguments raised by the counsel for the petitioner. The learned single Judge in Prem Singh's case *(supra)* has held that the judgment relied upon by the petitioner i.e. A. Mohammad Yusuf's case is not applicable to the facts of the case. The Supreme Court has considered the provisions of

(13) (1991)4 S.C.C. 224
(14) AIR 1995 S.C. 2244

Madras State Housing Board Act, 1961 which provide for preparation of a scheme first. The said judgment was affirmed in Letters Patent Appeal in LPA No. 482 of 1992 on 11th March, 1998 wherein counsel for the appellant stated that the pleas raised in these cases are concluded against the land owner by the decision of the Division Bench in CWP No. 2126 of 1993. In the said Division Bench judgment again the argument raised by the petitioner was negatived with the following observations :—

> "The final argument of Mr. Ram Swaroop is purely a legal submission. It has been argued that as no scheme had been framed as envisaged under Section 192 of the Punjab Municipal Act, 1976 (hereinafter called the Punjab Act) the land cound not be acquired for the purpose. It has also been contended that the land could be acquired only for the purpose of the NAC and that Union Territory, Administration could not notify the same. We have considered these arguments in the light of the averments in the reply. It is the conceded case that no building scheme has been framed as per the provisions of Section 192 of the Punjab Act, but the respondents have categorically stated that the scheme for which the land had been acquired, is not a scheme within the meaning of Section 192 of the Punjab Act and the land is being acquired under the Act for the purpose of a Development Scheme for providing facilities to the residents of the area. We are further of the opinion that Section 58 of the Punjab Act specifically provides that the State Government which in this case would be the Union Territory Administration, is fully competent to acquire land for the public purposes. In the light of these averments, the judgments cited by the learned counsel, in fact, have no bearing in the case in hand.
>
> It has finally been contended by Mr. Ram Swaroop that the funds of the N.A.C. could not be spent for scheme in the light of proviso to Section 240(3) of the Punjab Act as there was no Notification under Section 241 thereof. This argument too, is without force. As per notification

dated 12th April, 1976 Annexure R-I with the reply, the area which falls in the present acquisition had been declared to be a Notified Area by virtue of powers conferred by sub-section (1) of Section 241 of the Punjab Municipal Act, 1911, which was then in force."

(36) We do not find any reasons to take a different view than the one taken by the earlier Division Bench. However, it may be said that the judgment relied upon by the petitioner has been distinguished in **State of T.N. and others** *versus* **L. Krishnan and others (15).** It was noticed that the judgment of the earlier Constitution Bench in **Aflatoon and others** *versus* **Lt. Governor of Delhi and others (16)** was not brought to the notice of the Court. The distinction sought to be drawn by the petitioner that the purpose of present acquisition is residential and commercial complex scheme of Notified Area Committee whereas the purpose of acquisition in L. Krishnan's case *(supra)* was a housing scheme and not by any authority. It was, thus, contended that the proposed housing scheme is a public purpose and after acquisition the State Government could transfer the land to the Housing Board in terms of the Housing Board Act but in the present case since the acquisition is for the benefit of Notified Area Committee, therefore, the provisions of the Scheme under Section 192 of the Punjab Municipal Act are mandatorily to be followed. The judgment in Mohd. Yousef's case *(supra)* was noticed as overruled by the later decision of three Bench judgment as observed in **Jaipur Development Authority** *versus* **Sita Ram and others (17).** In **Aflatoon's case** it has been held by the Constitutional Bench while interpreting the *pari materia* provisions of Delhi Development Act that the provisions of said Act did not preclude the Central Governemt for acquiring land for the land development under the land Acquisition Act in an area other than the developed area. Therefore, reliance on the judgment of the Supreme Court by the petitioners is not tenable.

(37) The judgment in **H.M.T. House Building Cooperative Society** *(supra)* is clearly distinguishable. The Supreme Court was examining the case for acquisition of land for the purpose of housing society which entered into an agreement with the State Government

(15) (1996)1 S.C.C. 250
(16) (1975)4 S.C.C. 205
(17) (1997)3 S.C.C. 522

for acquisition. The acquisition was found to be invalid as there was no approval of the State Government to the Housing Scheme in terms of Section 3(f)(vi) of 1894 Act. It was found that the hybrid procedure appears to be followed in respect of Housing Co-operative Society. Such is not the case in the present case.

(38) The other argument raised by the petitioner is that the acquisition is not *bona fide* as earlier it was sought to be acquired for multi speciality hospital is again devoid of merit. The land for multi speciality hospital was sought to be acquired by invoking urgency provisions. However, the same was given up. Such fact alone is not sufficient to draw any inference that the acquisition is not *bona fide*. Similarly argument that the nursery is important from a ecological point of view is also without any merit. The open space is part of any planned development and is not a case of the petitioner that the State Government is acquiring the land without leaving any open space.

(39) Learned counsel for the petitioners has relied upon the judgment of the Supreme Court in Smt. **Bimla Devi and others** *versus* **Union of India and others (18)** to contend that the dismissal of another writ petition challenging the same acquisition is not binding on the petitioners. However, the said judgements are not applicable in the facts of the present case. In Bimla Devi's case *(supra)*, the Hon'ble Supreme Court remitted the matter to the High Court since the question which was raised in the writ petition was not decided.

(40) Learned counsel for the petitioner has also relied upon the judgment of this Court in **Mangat Singh and others** *versus* **State of Punjab and another (19)** to contend that the dismissal of the writ petition is not binding on the petitioner. The said judgment is clearly distinguishable. The land was sought to be acquired by invoking urgency provisions which was found to be not tenable. In view of the delay in acquisition proceedings the owners were deprived of their rights under the Land Acquisition Act. It was found that the judgment of the Supreme Court was not brought to the notice of the earlier Bench who decided the case.

(18) 1992 LACC-519
(19) 1992 PLJ-129

(41) The petitioners are owners of the half share of the land measuring 14 kanals 5 marlas comprising in Khewat No. 75, Khatauni No. 77, Khasra No. 101/24 (8—0), 110/4(5—11), 5/1 (0—2).

(42) The challenge in the present writ petition is to the notification dated 15th June, 1989 under Section 4 of 1894 Act and to notification dated 19th October, 1989 under Section 6 of 1894 Act. The acquisition was challenged on the ground that the petitioners have not been granted an opportunity of hearing inspite of the fact that they have filed objections under Section 5-A of 1894 Act. Initially the respondents have not filed any written statement. However, an affidavit dated 22nd March, 2003 of Shri S.K. Setia, Land Acquisition Officer has been filed. After going through the contents of the writ petition and affidavit and the documents attached with the affidavit, it seems that the land of the petitioners was, in fact, intended to be acquired,—*vide* notification dated 12th October, 1989 under Section 4 of 1894 Act pertaining to pocket No. 3 whereas notification under Section 6 of 1894 Act was published on 13th February, 1990. The said notifications have not been challenged by the petitioners in the writ petition. Therefore, the grievance of the petitioners that the respondents have not filed the written statement by controverting the allegations contained in each para of the writ petition is not seriously required to be gone into as the petitioners as well as the respondents have failed to present proper pleadings. Be that as it may, we have heard counsel for the parties at length and proceed to decide the contentions of the parties on merits.

(43) The grievance of the petitioners is that they have filed objections under Section 5-A of 1894 Act but no hearing was given to the petitioners and the objections were not considered by the Collector who is duty bound to pass a speaking order. It has been pleaded by the petitioners that they objected to the acquisition being *mala fide,* being acquired merely for making profit by resorting to speculative method by the State Government. It was colourable exercise of power of the authorities. The petitioners further offered to develop the land as per the plan given by the authorities. The petitioners claimed exemption of the land from acquisition.

(44) Shri Mahinderjit Singh Sethi, Senior Advocate, vehemently argued that the Notified Area Committee cannot deal with the land in commercial manner to make profit. The hearing of the objection under Section 5-A 1894 Act is mandatory. An affidavit dated 13th March, 2003 has been filed by the petitioners wherein it was asserted that the address given by the petitioners was that of

House No. 155, Sector 9-B, Chandigarh and also that they claimed personal hearing but the petitioners had not received any notice or communication from the Land Acquisition Collector or any other authority affording an opportunity of personal hearing. No notice whatsoever was given either to the petitioners or to any members of their family. At no stage, they were called for personal hearing by the Land Acquisition Collector.

(45) Counsel for the respondents vehemently contended that the arguments raised by the petitioners are not tenable. It was submitted that notice dated 2nd January, 1990 for hearing of the objections filed by the petitioners under Section 5-A of 1894 Act was issued for 9th January, 1990. The said notice is received on behalf of the petitioner which is evident from Annexure V. attached with affidavit, dated 22nd March, 2003. On 9th January, 1990 the objections filed by Ram Krishan Mahajan, petitioner in CWP No. 3125 of 1990 pertaining to pocket No. 5 and Gurdeep Kaur in CWP No. 3325 of 1990 was also fixed for hearing. Although Shri Mahajan has disputed that no hearing was given by the Land Acquisition Officer yet the grievance of the petitioners in Gurdeep Kaur's case was limited to the extent that to the best knowledge of the petitioners, objection filed by her has not been decided and no report as envisaged under Section 5-A(2) of 1894 Act has been submitted. The receipt of the notice dated 2nd January, 1990 has been denied by the petitioner by filing a counter affidavit wherein it has been stated that the signatures on the notice is not of the petitioners or any of their family members. It has been vehemently argued by the petitioners that no notice of hearing was ever received by the petitioners.

(46) We have gone through the record of the case. The original record produced by the respondents shows that the report of the Land Acquisition Officer dated 15th January, 1990. Annexure III is in respect of three sets of objections. The original objection of the three objectors as well as the office copies of the original notices are part of the record. In the affidavit filed on behalf of the respondents, it has been stated that the record of the Land Acquisition Officer recording the presence of the objectors is not available. It may be mentioned here that the petitioners have not appended the objections filed by them under Section 5-A of 1894 Act nor have given the date on which such objections were filed. The petitioners have withheld objections from the Court for the reasons best known to them. However, objections filed by the petitioners have been considered by the Land Acquisition Officer. Report dated 15th January, 1990 in respect of objections

raised by the petitioners have been submitted. For ready reference, the report of the Land Acquisition Officer in respect of objections filed by the petitioner reads as under :—

> "That the notification is valid and fulfils all the requirements of law. The development of Residential-cum-Commercial Complex Scheme No. 2 has clearly been defined as purpose in the notification which include residential/ commercial/hospital and institutional etc. which are all public purpose.
>
> As regards plots sold at high rates, the Government spent crores of rupees on the development work i.e. roads, electricity, water supply, sewerage, parks, school building and grounds, bus stands etc. etc. Thus, the objections made by the objector are base-less and deserves to be rejected. Therefore, the land of the objectors may be acquired."

(47) The petitioners have relied upon Section 45 of the Act which contemplates that the service of the notice shall be made by delivering or tendering a copy thereof to be served upon the persons named therein and if he cannot be found, to any other adult member of his family residing with him. It is also contemplated that on the directions of the Collector, notice may be sent by post in registered post. It is contended that such process has not been even stated to be followed and, therefore, notice dated 2nd January, 1990 calling upon the petitioners is not proved to be served.

(48) After considering the respective contentions of the parties, we are of the opinion that the acquisition proceedings at this stage cannot be quashed on the ground that the notice of hearing of objection is not conclusively delivered to the petitioners. Once two of the objectors who have been called for hearing of notice, we find no reason to give the finding that the petitioners have not been served. The petitioners have not alleged any *mala fide* against any Officer of the Administration for not effecting the service. Therefore, it is held that the petitioners would be deemed to have been served and their objections have been validly considered in the report given by the Land Acquisition Officer dated 15th January, 1990. Therefore, we hold that the petitioners have failed to rebute the presumption of grant of personal hearing by the Land Acquisition Collector and, thus, we find no merit in the petition which is liable to be dismissed.

Other cases.

(49) Mrs. Lisa Gill has raised an objection that the writ petition Nos. 3325 of 1990, 3422 of 1990, 12595 of 1990, 12596 of 1990 and 765 of 1992 are the writ petitions filed by the lessees of the land not by owners. Therefore, they have no right to impugn the acquisition, keeping in view the fact that the land owners under whom they are tenant have accepted the compensation. However, this objection has no merit in view of the fact that persons interested as defined under Section 3(b) of 1894 Act includes all persons claiming an interest in compensation to be made on account of acquisition of land and a person is deemed to be interested in land if interest in an easement in the land. It is well settled that the sitting tenant has an interest in amount of compensation of acquisition of land as he has a right in the land which has been acquired. Therefore, he is a person interested. Therefore, the writ petition filed by the tenants cannot be dismissed on this ground. However, if the compensation has been received by the land owners, the tenants can only lay claim on the apportionment of the compensation and cannot challenge the acquisition proceedings inasmuch as they derived their title under the owners only. Thus, the land owners of the land on which petitioners in CWP No. 3433 of 1990 is a tenant has already received compensation alone is not maintainable.

(50) Thus, we do not find any infirmity in the acquisition proceeding pertaining to acquisition of land. Land measuring 37.55 acres was sought to be acquired,—*vide* notification dated 15th June, 1989 from pocket No. 2. Consequent to the publication, 90 sets of objections were filed and report was made by the Land Acquisition Officer to the State Government on 11th September, 1989. The objectors were given an opportunity of personal hearing on 23rd August, 1989. Therefore, we find no illegality in the acquisition proceedings pertaining to pocket No. 2 as well.

(51) For the reasons recorded above, we do not find any merit in the writ petitions and any illegality in the acquisition proceedings. No separate argument was raised in respect of acquisition of pocket Nos. 6, 9, 10 and 11 and that of Kalagram.

(52) Consequently, we find no merit in this bunch of writ petitions and the same are hereby dismissed.

R.N.R.