

(2011) 03 P&H CK 0271

In the Punjab And Haryana At Chandigarh

Case No : CWP No"s. 15528 of 2005 and 11127 of 2006 (O and M)

Didar Singh and Others

APPELLANT

Vs

Union Territory and Others
 Hardyal Singh Johl and
Others Vs Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-03-2011

Acts Referred:

Capital of Punjab (Development and Regulation) Act, 1952 — Section 5
Constitution of India, 1950 — Article 14, 19, 21, 300A
Punjab New Capital (Periphery) Control Act, 1952 — Section 1, 10, 11, 12(2), 15
Punjab Reorganisation Act, 1966 — Section 2, 3, 3(1), 87, 88

Citation : (2011) 164 PLR 1 : (2011) 2 RCR(Civil) 623

Hon'ble Judges : Rakesh Kumar Garg, J; Jasbir Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Garg, J.—This judgment shall dispose of a bunch of 21 writ petitions i.e. CWP Nos. 15528 of 2005, 4135 of 2005, 11127, 18024 of 2006, 10464, 10465, 11117, 11407, 10137, 10645, 10177, 11249, 9750, 10892, 10073, 10296, 10309, 10353, 10461, 10462 and 10463 of 2007.

2. These writ petitions were initially being heard along with CWP No. 5065 of 2007 and other connected matters in which acquisition of land for development of Phase-II and Phase-III of Chandigarh Technology Park in the Periphery of Chandigarh is under challenge. However, during the course of hearing, it was found that in these writ petitions, there is no challenge to the acquisition of land by the Respondent-Administration but a challenge has been laid to the provisions of the "Punjab New Capital (Periphery) Control Act, 1952 (hereinafter called the "Periphery Act) and declaring the same as ultra vires. In civil writ petitions i.e. CWP Nos. 10464, 10465, 11117, 11407, 10137, 10645, 10177, 11249, 9750, 10892, 10073, 10296, 10309, 10353, 10461, 10462, 10463 of 2007, even no challenge has been laid to the vires of the aforesaid Act and only a prayer has been made for quashing of the notices issued by the Chandigarh Administration

u/s 12(2) of the Periphery Act, 1952 asking the Petitioners to demolish the illegal construction made by them.

3. As per the averments, the erstwhile State of Punjab, after losing its Capital at Lahore to Pakistan, proceeded to develop its new Capital at Chandigarh. A committee was appointed by the Punjab Government for the construction of its own capital city which after carefully examining all the factors selected the present site. Thereafter, a master plan of the city was prepared by an American firm. The Committee also appointed an eminent French planner and Architect, Le Corbusier. The city was to be built up in two phases. The first phase covered 9,000 acres of land in the shape of 29 distinct sectors which was increased upto 46 number of sectors; the remaining to be covered in second phase. To translate this concept into a reality, a specific enactment in the form of the Capital of Punjab (Development and Regulation) Act, 1952 (hereinafter called the "Capital Act") was enacted. Another specific enactment in the form of Punjab New Capital (Periphery) Control Act, 1952 was also enacted. The aims and objects of the Periphery Act reads as follows:

The Punjab Government are constructing a New Capital named Chandigarh. The Master Plan providing for the future extension of the capital will extend over a much greater area than the area acquired so far the construction of the first phase of the Capital. To ensure healthy and planned development of the new city it is necessary to prevent growth of slums and ramshackle construction of the land lying on the Periphery of the new city. To achieve this object, it is necessary to have legal authority to regulate the use of the said land for purposes other than the purposes for which it is used at present.

4. The aforesaid Periphery Act came into force on 12.1.1953 and the same was published in the Government Gazette on 16.1.1953. As per provisions, the Administration declared land within a limit of 5 miles from the outer limits of Capital site of Chandigarh as notified under the Capital Act. Later on the said limits was extended upto 10 miles. as "Controlled Area" for the purpose of keeping it reserve for future extension of the City Chandigarh. In view of the provisions of the aforesaid Act, the Petitioners were entitled to use the land for the purpose of agriculture and its subservient use with the permission of the Competent Authority until the proper planning for extension of city Chandigarh was made.

5. The relevant provisions of the Periphery Act reads as follows:

Section 1 Short title and extend and commencement:

- (1) This Act may be called the Punjab New Capital (Periphery) Control Act, 1952.
- (2) It extends to the area adjacent to and within a distance of five miles on all sides from the outer boundary of the land acquired for the Capital of the State at Chandigarh.
- (3) It shall come into force at once.

6. Section 3 Declaration of controlled Area:

(1) The State Government may by notification in the Official Gazette declare the whole or any part of the area to which this Act extends to be a controlled area for the purposes of this Act.

(2) Not less than three months before making a declaration under Sub-section (1), the State Government shall cause to be published in the Official Gazette, and in at least two newspapers printed in a language other than English, a notification stating that it proposed to make such a declaration and copies of the notification or of the substance thereof shall be published by the Deputy Commissioner in such manner as may be prescribed at his office and in the area desired to be controlled.

7. Section 5 Restriction in a controlled area.

Except as provided hereinafter, no person shall erect or re-erect any building or make or extend any excavation, or lay out any means of access to a road, in the controlled area, save in accordance with the plans and restrictions and with the previous permission of the Deputy Commissioner in writing.

8. Section 6:

(1) Every person desiring to obtain the Permission A referred to in Section 5 shall make an application in writing to the Deputy Commissioner in such form and containing such information in respect of the building, excavation or means of access to which the application relates as may be prescribed.

(2) On receipt of such application the Deputy Commissioner, after making such enquiry as he considers necessary, shall, by order in writing, either

a. grant the permission, subject to such conditions, if any, as may be specified in the order; or

b. refuse to grant such permission.

(3) When the Deputy Commissioner grants permission subject to conditions, or refuses to grant permission under Sub-section (2), the conditions imposed or the grounds of refusal shall be such as are reasonable having regard to the circumstances of each case and the interest of the general public.

(4) The Deputy Commissioner shall not refuse permission to the erection or re-erection of a building if such building is required for purposes subservient to Agriculture:

Provided that where the Deputy Commissioner permits the erection or re-erection of a building under this subsection, such building shall be erected or, as the case may be, re-erected only in accordance with such conditions as may be prescribed.

(5) The Deputy Commissioner shall not refuse permission to the erection or re-

erection of a building which was in existence on the date on which the notification under Sub-section (2) of Section 3 was made, nor shall he impose any condition in respect of such erection or re-erection unless he is satisfied that there is a probability that the building will be used for a purpose or is designed in a manner other than that for which-it was used or designed on the date on which the said declaration was made.

(6) If at the expiration of a period of three months after an application under Sub-section (1) has been made to the Deputy Commissioner, no order in writing has been passed by the Deputy Commissioner, permission shall, without prejudice to the restriction signified in-the plans u/s 4 be deemed to have been given without the imposition of any conditions.

(7) The Deputy Commissioner shall maintain a register as may be prescribed with sufficient particulars of all cases in which permission is given or deemed to have been given or refused by him under this section, and the said register shall be available for inspection without charge by all persons interested and such persons shall be entitled to take extracts therefrom.

9. Section 10 Savings:

Nothing in this Act shall affect the power of Government or any other authority to acquire land or to impose restrictions upon the use and development of land comprised in the controlled area under any other law for the time being in force, or to permit the settlement of a claim arising out of the exercise of powers under this Act by mutual agreement.

10. Section 11 Prohibition on use of land:

(1) No land within a controlled area shall, except with the permission of the State Government, be used for purposes other than those for which it was used on the date of notification under Sub-section (2) of Section 3; and no such land shall be used for the purposes of a charcoal-kiln, pottery-kiln, lime-kiln, brickfield or brickkiln except under, and in accordance with the conditions of a licence from the Deputy Commissioner on payment of such fees and under such conditions as may be prescribed

(2) The renewal of such licence may be made annually on payment of such fees as may be prescribed.

(3) No person shall be entitled to claim compensation for any injury, damage or loss caused or alleged to have been caused by the refusal to issue or renew a licence, except in case where such kiln was in existence at the time of the notification under Sub-section (2) of Section 3 and in which case an application shall lie to the arbitrator within three months of the order of refusal in the manner provided in Section 9.

11. 15. Exemption.- Nothing in this Act shall apply to

(a) any building erected or re-erected for bonafide personal residential purposes

and not above the height of eleven meters or for purposes subservient to agriculture in the abadi area of any village as defined in the revenue records and the area adjacent to the abadi area of any village which the Government identifies for village expansion through a notification, published in the Official Gazette, specifically to this effect subject to the condition that this area shall not exceed sixty per cent of the existing village abadi area:

Provided that no such building shall be used for commercial purposes;

(b) the erection or re-erection of a place of worship or a tomb or cenotaph or of a wall enclosing a grave-yard, place of worship, cenotaph or samadhi on land which is, at the time of the notification [under Sub-section (1) of Section 3], occupied by or for the purposes of such place of worship, tomb, samadhi, cenotaph or graveyard;

(c) Excavations (including wells) or other operations made in the ordinary course of agriculture;

(d) the construction of an unmettled road intended to give access to land solely for agricultural purposes

(e) Any area falling within the limits of local authority.

12. In pursuance to the aforesaid provisions, the concerned Authorities vide notification dated 5.9.1953 (P-2) declared an area as per the Schedules as controlled area including the land in question.

13. The State of Punjab was reorganised on November 1, 1966 into the States of Punjab, Haryana, Union Territory, Chandigarh and Himachal Pradesh, as per the provisions of the Punjab Reorganization Act, 1966 (hereinafter referred to as "the Reorganization Act").

14. Sections 87, 88 and 89 of the aforesaid Act which are relevant read as follows:

87.- Power to extend enactments to Chandigarh- The Central Government may, by notification in the Official Gazette, extend with such restrictions or modifications as it thinks fit, to the Union Territory of Chandigarh any enactment which is in force in a State at the date of the notification.

88. Territorial extent of laws. - The provisions of Part II shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to the State of Punjab shall, until otherwise provided by a competent Legislature or other competent authority, be construed as meaning the territories within that State immediately before the appointed day.

89. Power to adapt laws.- For the purpose of facilitating the application in relation to the State of Punjab or Haryana or to the Union Territory of Himachal Pradesh or Chandigarh of any law made before the appointed day, the appropriate

Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority.

15. Explanation.- In this section, the expression "appropriate Government" mean-

(a) as respects any law relating to a matter enumerated in the Union List, the Central Government; and

(b) as respects any other law, -

(i) in its application to a State, the State Government, and

(ii) in its application to a Union Territory, the Central Government.

16. The Periphery Act was also adapted by the Central Government for applying the same to the Union Territory of Chandigarh by notifying "The Punjab Reorganization (Chandigarh) (Adoption of laws on States and Concurrent subjects) Order, 1968 which came into force vide Gazette Notification dated 30.10.1968 which was republished on 20.11.1968 and came into force w.e.f. 1.11.1966 and by virtue of the said adaption, the provisions of the Periphery Act were made applicable in the Union Territory of Chandigarh. The relevant parts of the said notification is as under:

G.S.R 1945.- Whereas by Section 89 of the Punjab Reorganisation Act, 1966 (31 of 1966), the Central Government is empowered, by Order, to make such adaptations and modifications of any law made before the 1st day of November, 1966, relating to a matter in List II or List III in the Seventh Schedule to the Constitution, as may be necessary or expedient for the purpose of facilitating the application of such law in relation to the Union Territory of Chandigarh;

Now, therefore, in exercise of the powers conferred by the said Section 89, the Central Government hereby makes the following Order, namely:

1. (1) This Order may be called the Punjab Reorganisation (Chandigarh) (Adaptation of Laws on State and Concurrent Subjects) Order, 1968.

(2) It shall be deemed to have come into force on the 1st day of November, 1966.

2. (1) In this Order,-

(a) appointed day" means the 1st day of November, 1966;

(b) existing law" means any State Act or Provincial Act in force immediately before the appointed day in the whole or any part of the territories now comprised in the Union Territory of Chandigarh and includes any rule, order, bye-law, scheme, notification or other instrument made under such State Act or Provincial Act, but does not include any law relating to a matter enumerated in

the Union List;

(c) "law" has the same meaning as in Clause (g) of Section 2 of the Punjab Reorganisation Act, 1966.

(2) The General Clauses Act, 1897, applies for the interpretation of this Order as it applies for the interpretation of a Central Act.

3. As from the appointed day, the existing laws and the Central Acts mentioned in the Schedule to this Order shall, until altered, repealed or amended by a competent Legislature or other competent authority, have effect subject to the adaptations and modifications directed by the Schedule or, if it is so directed, shall stand repealed.

4. Whenever an expression mentioned in column 1 of the Table hereunder printed, occurs (otherwise than in a title or preamble or in a citation or description of an enactment) in an existing law, whether an Act mentioned in the Schedule to this Order or not, then, in the application of that law to the Union Territory of Chandigarh, or as the case may be, to any part thereof, unless that expression is by this Order expressly directed to be otherwise adapted or modified or to be omitted, or unless the context otherwise requires, there shall be substituted therefore the expression set opposite to it in column 2 of the said Table, and there shall also be made in any sentence in which that expression occurs, such consequential amendments as the rules of grammar may require.

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TABLE

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(1) Punjab State; State of Punjab; whole of Punjab State; whole of the State of Punjab or Punjab where it refers to the State of Punjab.

Union Territory of Chandigarh.

(2) Punjab Government; Government of Punjab; Government of the State of Punjab; State Government; State Government of Punjab.

Central Government.

(3) High Court of Punjab; Punjab High Court.

High Court of Punjab and Haryana.

17. Where this Order requires that in any specified law, or in any section or other portion of such law, certain words shall be substituted for certain other words, or that certain words shall be omitted, that substitution or omission, as the case may be, shall, except where it is otherwise expressly provided, be made wherever the words referred to occur in that law or, as the case may be, in that section or portion.

18. The provision of this Order which adapt or modify any law so as to alter the manner in which, the authority by which, or the law under, or in accordance with, which, any powers are exercisable, shall not render invalid any notification, order, licence, permission, award, commitment, attachment, bye-law, rule or regulation, duly made or issued, or anything duly done, before the appointed day; and any such notification, order, licence, permission, award, commitment, attachment, bye-law, rule, regulation or thing may be revoked, varied or undone in like manner, to the like extent and in the like circumstances as if it had been made, issued or done after the commencement of this Order by the competent authority and under and in accordance with the provisions then applicable to such a case.

THE SCHEDULE

x x x x x 19. THE PUNJAB NEW CAPITAL (PERIPHERY) CONTROL ACT, 1952
(PUNJAB ACT 1 OF 1953)

Section 1.- For Sub-section (2), substitute-

(2) It extends to the whole of the Union territory of Chandigarh except the areas to which the Capital of Punjab (Development and Regulation) Act, 1952 (27 of 1952), extends.

20. The challenge in these writ petitions to the vires of the Periphery Act has been laid on the following grounds:

(1) The adoption of the Act is not legal and valid as the said Act was not adopted within two years of the formation of the Union Territory of Chandigarh with effect from 1.11.1966 and no such like Act was enacted by the Parliament. The Periphery Act was framed in 1952 to control and regulate the Periphery of the new proposed capital of State of Punjab i.e Chandigarh but in the year 1966, the entire territory of the Chandigarh and some rural area were declared as Union Territory and since that time, the Union Territory was working under the control of the Central Government and therefore, the specific purpose, object and nature of the Periphery Act came to an end in the year 1966 when Chandigarh was declared Union Territory.

(2) The Parliament did not enact any law relating to the Periphery nor any amendments were ever made in the Periphery Act to make it effective and applicable to the Union Territory formed after reorganization and therefore, the Respondents could not apply the provisions of the aforesaid Act in the Union Territory, Chandigarh.

(3) Even if the Periphery Act has been applied, the Chandigarh Administration/Central Government has failed to declare any controlled area as envisaged u/s 3 of the Act and therefore, the action of the Respondents applying the aforesaid law was illegal. It is the further case of the Petitioners that notification dated 5.9.1953 was not a valid notification to declare the controlled area for the Union

Territory of Chandigarh.

(4) The Act has lost its significance due to changed circumstances and is liable to be declared ultra vires of the Constitution of India.

(5) The Act is in violation of Article 300A of the Constitution of India and interpretation of fundamental rights of the Petitioners as provided under Articles 14, 19 and 21 of the Constitution.

Some additional points as raised by Sh. Puneet Bali, Advocate are also noticed which are as under:

(6) The provisions of the Act are discriminatory which operate against the owners and in favour of the State and user.

(7) The act has been applied by the U.T. Administration itself in violation of its provisions.

21. To support the aforesaid argument, learned Counsel for the Petitioners have vehemently argued that the purpose that was sought to be achieved by enacting such a legislation has been defeated. The said Act was enacted in the year 1952 to cater to a growth of population upto 5 lakhs which in the present scenario is impossible to be applied. The changed circumstances have eroded that object and have made provisions of the Periphery Act a farce and totally impracticable. On one hand the controlled area as envisaged under the Periphery Act has lost its relevance and on the other hand, the Respondents have been using the controlled area at their whims and fancies for establishing commercial, industrial and other activities. Even the third phase of industrial area is sought to be established in the controlled area under the Periphery Act and on the other hand, the Respondents are not letting the residents of the villages to raise any construction and are rather demolishing all the constructions in the area being controlled area under the Periphery Act.

22. It is the further case of the Petitioners that on reorganization of the State of Punjab on 1.11.1966, the Periphery Act ceased to be applicable to the Union Territory of Chandigarh and there is no notification by way of adaptation of the Punjab New Capital Periphery (Control) Act, 1952 or issuance of a fresh notification declaring the controlled area. According to the learned Counsel for the Petitioners, the notification dated 20.11.1968 (Annexure R-1) for adoption of the Periphery Act was issued only after the lapse of two years and therefore, as per Section 89 of the Reorganization Act, there was no valid adoption. Learned Counsel has also referred to the fact that vide Annexure P-2 controlled area under the Periphery Act was declared on 5.9.1953 in the State of Punjab which ceases to operate on Reorganization of the State on 1.11.1966 and thereafter, no fresh notification was issued to declare the controlled area within the Periphery of Chandigarh and thus, in view of the absence of any valid law in support of the action of the Respondents being taken under the provisions of the Periphery Act is arbitrary and violative of the provisions of the Constitution and deserves to be

struck down as unconstitutional. Because the provisions of the Periphery act are wholly arbitrary, suppressive of the fundamental rights of the proprietors and deprive them of their fundamental right as it takes away the right to live with dignity and other sources of livelihood. The said Act has outlived its life and is only a tool in the hands of the Respondents to harass and humiliate the proprietors. Moreover, the provisions of the Periphery Act allows the Respondents to deprive and restrict the rights of a proprietor from using his own land without acquiring the same for public purpose and therefore, the same is violative of Articles 14, 19, 21 and 300A of the Constitution of India. Moreover, two satellite towns of Panchkula and Mohali have come up in the Periphery of Chandigarh in violation of the Periphery Act itself and as such, the provisions of Periphery Act have become obsolete and inapplicable to the declared controlled area which is now covered under the said territories. Because the Chandigarh Administration itself has been using the controlled area of Periphery of Chandigarh for its own purposes and planning and has regularized several illegal colonies.

23. In support of his case, learned Counsel for the Petitioners has relied upon the following observations of the Hon'ble Supreme Court in *Satyawati Sharma (Dead) by L.Rs. v. Union of India* and Anr. 2008 (3) ICC 326, which read as under:

It is trite to say that legislation which may be quite reasonable and rationale at the time of its enactment may with the lapse of time and/or due to change of circumstances become arbitrary, unreasonable and violative of the doctrine of equity and even if the validity of such legislation may have been upheld at a given point of time, the Court may, in subsequent litigation, strike down the same if it is found that the rationale of classification has become non-existent. In *State of Madhya Pradesh Vs. Bhopal Sugar Industries Ltd.*, , this Court while dealing with a question whether geographical classification due to historical reasons could be sustained for all times and observed:

Differential treatment arising out of the application of the laws so continued in different regions of the same reorganised, State, did not therefore immediately attract the clause of the Constitution prohibiting discrimination. But by the passage of time, considerations of necessity and expediency would be obliterated, and the grounds which justified classification of geographical regions for historical reason may cease to be valid. A purely temporary provision which because of compelling forces justified differential treatment when the Reorganisation Act was enacted cannot obviously be permitted to assume permanency, so as to perpetuate that treatment without a rational basis to support it after the initial expediency and necessity have disappeared.

24. On the other hand Ms. Lisa Gill, learned Counsel appearing on behalf of the Respondent-Administration has argued that the provisions of Section 88 of the Punjab Reorganization Act as well as notification dated 5.9.1953 declaring the controlled area are applicable and the Chandigarh Administration has already adopted the provisions of the Periphery Act and the notification by passing an

order, namely, The Punjab Reorganization and Delhi High Court (Adaption of Laws on Union Subjects) Order, 1968 which was published in the Gazette on 30.10.1968 and has come into force with effect from 1.11.1966 and according to this notification, the laws mentioned in the Schedule to this order until altered, repealed or amended by a competent Legislature or other competent Authority have effect, subject to the adaptations and modifications directed by that Schedule. Learned Counsel has also pointed out that Periphery Act finds mention in the said Schedule. Ms. Lisa Gill has also pointed out that in view of the provisions of Section 88 of the Punjab Reorganization Act, 1966, and the aforesaid adoption order, the argument raised on behalf of the counsel for the Petitioners is misconceived and the provisions of the Periphery Act in the controlled area as declared by the notification dated 5.9.1953 continue to be applicable and there was no need for any fresh notification declaring the controlled area. It was further pointed out by the learned Counsel for the Respondents and by making a reference to the aims and objects of the Act, that the Act was enacted to keep the land in the Periphery of the Capital City of Chandigarh reserved for future growth of the city so as to stop the haphazard construction.

25. Learned Counsel for the Respondents has further argued that there is a presumption to the Constitutional validity of an Act and therefore, a person challenging the same has to make the foundation of facts which is necessary for laying down such a challenge and in the present case, the aforesaid facts on the basis of which such a challenge could be raised to the Constitution validity, are missing. Moreover, learned Counsel has further argued that no discriminatory use of the land in question is made out and the controlled area is used for a permissible use as provided under the aforesaid Act. The argument of the learned Counsel for the Petitioner that the U.T. Administration itself has allowed the construction of Phase-III of the Industrial Area or has permitted to raise colonies was also repelled submitting that such use was made after acquisition of the land in the controlled area and not prior to that and there is no restriction on the acquisition of a controlled area. Learned Counsel has also refuted the argument regarding arbitrariness of the Chandigarh Administration by submitting that there is no specific averment in any of the writ petitions. Ms. Lisa Gill, Advocate, learned Counsel for the Respondents has vehemently argued that in fact, keeping in view the present scenario, it is much more important to preserve the area and every individual cannot be allowed to develop the same as per his own choice as the same will lead to a utter chaos. In order to achieve the planning of the Capital city of Chandigarh restrictions are necessary and in view of the aforesaid arguments, learned Counsel for the Respondents has prayed that the writ petitions are liable to be dismissed.

26. It was further argued on behalf of the Chandigarh Administration that CWP Nos. 10464, 10465, 11117, 11407, 10137, 10645, 10177, 11249, 9750, 10892, 10073, 10296, 10309, 10353, 10461, 10462, 10463 of 2007 are also liable to be dismissed shortly on the ground that the same are premature as the Petitioners

have been asked only to show cause as to why an enquiry be not made for demolishing their structures which have been constructed in violation of the provisions of the Periphery Act. Moreover, the Petitioners have been given an opportunity and they have not replied to the same and if they have made constructions after obtaining necessary permission, the same can be shown. On the basis of the aforesaid argument, learned Counsel has prayed that the writ petitions be dismissed.

27. We have heard the learned Counsel for the parties and perused the records and documents produced before this Court.

28. The facts are not in dispute. The Petitioners are owners of the land in question which constitutes within the Periphery of City of Chandigarh and falls within the territorial limit as notified in the Schedule of the Punjab New Capital (Periphery) Control Act, 1952. It is also not in dispute that the controlled area was declared u/s 3 of the Periphery Act vide notification dated 5.9.1953 and no fresh notification was issued by the Union Territory, Chandigarh. However, it is not in dispute that the outer limit of the area was increased from 5 miles to 10 miles beyond the boundaries of the area covered and notified by the Capital Act and by way of amendment, the provisions of this Act were extended to the whole of the Union Territory of Chandigarh except the areas to which the Capital of Punjab (Development and Regulation) Act, 1952 (27 of 1952) extends.

29. The challenge to the vires of the Periphery Act has been raised on the ground that there was no adoption of the Punjab New Capital (Periphery) Control Act, 1952 within 2 years of the formation of Union Territory, Chandigarh with effect from 1.11.1966 as provided u/s 89 of the Reorganization Act, nor any such notification was issued by the Union Territory, Chandigarh to extend the aforesaid Act in the Union Territory, Chandigarh and the notification (Annexure R-1) issued on 20.11.1968 adopting the Periphery Act was of no consequence as the same was issued after a lapse of 2 years and thus, the Periphery Act is not applicable in the Union Territory, Chandigarh. In the absence of any valid adoption or enactment by the competent Authority, the action of the Respondents to enforce the provisions of the said Act qua the land in question was illegal and therefore, is liable to be set aside. It is the further case of the Petitioners that in any case, even if by virtue of the aforesaid notification dated 20.11.1968, the Periphery Act was applicable in the Union Territory, Chandigarh yet the same could not be applied in the absence of any notification declaring the controlled area as envisaged under the provisions of Section 3 of the said Act as the notification dated 5.9.1953 (Annexure P-2) was applicable in the State of Punjab and with the formation of Chandigarh with effect from 1.11.1966 the same ceased to operate and there was no fresh notification issued by the Respondents.

30. The argument raised by the learned Counsel for the Petitioners is liable to be rejected in view of the provisions of Sections 87, 88 and 89 of the Reorganization Act. By virtue of provisions of Section 88, the Periphery Act and the notifications dated 5.9.1953 declaring the controlled area is applicable in the territory of

Chandigarh even after reorganization of the State of Punjab. The Periphery Act has been given continuity after 1.11.1966 by virtue of Section 88 of the Reorganization Act and its non-adoption u/s 89 vide notification dated 20.11.1968 do not effect its validity and it cannot be said that in the absence of fresh notification u/s 3(1) under the Act, no action can be taken against the Petitioners. The non-adoption of the Act u/s 89 did not abrogate the old Act. Even the other contention of the learned Counsel for the Petitioners that the notification for adopting the Periphery Act in the Union Territory of Chandigarh was issued on 20.11.1968 i.e. beyond the period of 2 years as envisaged u/s 89 of the Reorganization Act, is without any basis and is liable to be rejected. Counsel for the Respondents has placed on record a notification dated 30.10.1968 adopting the existing laws i.e. Periphery Act in the Union Territory, Chandigarh and in fact, Notification dated 20.11.1968 (Annexure R-1) in CWP No. 15528 of 2005 on which reliance has been placed upon by the Petitioners shows that the said notification was republished on 20.11.1968. Thus, as a matter of fact, the Periphery Act was adopted by the Chandigarh Administration within 2 years from the formation of the Union Territory, Chandigarh as envisaged under the provisions of Reorganization Act.

31. It may also be useful to refer to the definition of "Existing laws" given in the order called as The Punjab Re-organization (Chandigarh) (Adaptation of Laws on State and Concurrent subjects) Order, 1966 which reads as follows:

Existing law" means any State Act or Provincial Act in force immediately before the appointed day in the whole or any part of the territories now comprised in the Union Territory of Chandigarh and includes any rule, order, bye-law scheme, notification or other instrument made under such State Act or Provincial Act, but does not include any law relating to a matter enumerated in the Union List.

32. By virtue of the aforesaid definition of "Existing laws", it could not be disputed by the learned Counsel for the Petitioners that even the notification dated 5.9.1953 issued by the erstwhile State of Punjab declaring the controlled area in the Periphery of City of Chandigarh was saved and is applicable. In fact learned Counsel for the Petitioners could not challenge the applicability of the Periphery Act to the land in question in view of the notification dated 30.10.1968 and the provisions of Sections 87 to 89 of the Reorganization Act.

33. It is also useful to refer to the following judicial precedents on the point in issue:

In Madan Tarlok Singh and Others Vs. Union of India (UOI) and Others, a Full Bench of this Court after taking note of Sections 87, 88, 89 and 90 of the Reorganization Act observed as under:

The position, that emerges after the reorganisation, is that the laws prevailing in the State of Punjab before its reorganisation, were to remain applicable to the reorganised territories, that is, the territories transferred to Himachal Pradesh; the territories declared as Union territories, the territories forming the State of

Haryana; and to what was left of undivided Punjab. That is how, the Professions Tax Act became applicable to the Union Territory of Chandigarh. The Chandigarh Administration has been recovering the same from the residents of the Union Territory" who were covered by its provisions. So far as the State of Punjab is concerned, it has repealed this Act; and now in the territories of Punjab, no such tax is recovered.

34. So far as the first contention is concerned, it presents no difficulty. The Act was applicable to the Union Territory of Chandigarh even before it was made such territory, for it was an integral part of the undivided Punjab. Moreover, the combined reading of Sections 87 to 90 of the Reorganisation Act clinch the matter.

35. A Single Bench of this Court in *Jarnail Singh Vs. Union Territory of Chandigarh and Another*, , has further held that Section 89 of the Reorganization Act is only to enable the Government within a two-year period to amend, adapt or modify by an executive order the existing laws which by virtue of Section are to continue to govern the territory of the erstwhile Punjab State without any time-limit. After that period such power of the Government alone will end but not such continuance of those laws.

36. It may also be noticed that in the case of *State of Punjab and Others Vs. Balbir Singh and Others*, , the Hon"ble Supreme Court held that when there is no change of sovereignty and it is merely an adjustment of territories by the reorganization of a particular State, the administrative orders made by the Government of the erstwhile State continue to be in force and effective and binding on the successor States until and unless they are modified, changed or repudiated by the governments of the successor States. There exists no principle in support of the stand that administrative orders made by the Government to the erstwhile State automatically lapsed and were rendered ineffective on the coming into existence of the new successor States.

37. In the case of *Sada Singh Vs. The State of Punjab and Another*, , this Court has held that the Periphery Act had been given continuity after November 1, 1966, by virtue of Section 88 of the Reorganisation Act and its adaptation u/s did not affect its validity.

38. Even a Division Bench of this Court in the case of *Chief Commissioner. Union Territory. Chandigarh and Ors. v. Sushil Flour. Dal and Oil Mills*. ILR (1983) P&H 1 has held that by virtue of the provisions of the Punjab Reorganisation Act, the existing laws applicable to the erstwhile State of Punjab were made ipso facto applicable to the Union Territory of Chandigarh.

39. It is also useful to refer to the judgment of this Court in *Association of Private Educational Institutions (Regd.) Vs. Chandigarh Administration and Others*, . The relevant paragraph of the aforesaid judgment reads as follows:

On December 19, 1952, the President's Act was repealed and its provisions were

re-enacted with some modification in the present Capital of Punjab (Regulation and Development) Act, 1952. The concern of the legislature for the planned development and regulation of the new capital of the city is again manifest from the following objects and reasons of the supplementary legislation in the shape of the Punjab New Capital (Periphery) Control Act, 1952:

The Punjab Government are constructing a New Capital named "Chandigarh". The Master Plan providing for the future extension of the Capital will extend over a much greater area than the area acquired so far, for the construction of the first phase of the Capital. To ensure healthy and planned development of the new city it is necessary to prevent growth of slums and ramshackle construction on the land lying on the Periphery of the new City. To achieve this object it is necessary to have legal authority to regulate the use of the said land for purposes other than the purposes for which it is used at present.

40. It is, thus, clear that the legislature wanted to regulate plan development of the new capital City, as is evident from the Preamble of the 1952 Act, which is in the following terms:

An act to make certain provisions in respect of the development and regulation of the Capital of Punjab.

In our opinion, the provisions contained in the Act of 1952 do not in any manner encroach upon the fundamental rights of the members of the Petitioner association to establish training and coaching institutions/centres. The regulatory measures envisaged by the Act of 1952 do not prevent the institution, to whom the Petitioner is representing from purchasing land and erecting building in accordance with the relevant rules and regulations. Thus, in our opinion, the Act cannot be declared unconstitutional.

41. A Division Bench of this Court in Amarjit Singh's case (supra). (CWP No. 9060 of 2005 decided on 26.2.2006) has approved the observations of this Court in Association of Private Educational Institution's case (supra) upholding the vires of Periphery Act. The relevant para is reproduced as under:

The contention of Ld. Counsel for the Petitioner that the provisions of the Punjab New Capital (Periphery) Control Act, 1952 are ultravires, needs to be noticed only to be rejected for the reason that the vires of this Act have been specifically upheld in AIR 1999 Punjab and Haryana 43. Furthermore, the Petitioners appear to be not so serious in their plea as on the one hand they are challenging the vires of this Act, yet they have also tried to take benefit therefrom in as much as they have claimed shelter under the same very provisions. This shelter is based on the plea that the State cannot acquire land within the Periphery of Chandigarh as the land use is frozen. Strong reliance has been placed on the judgment in Sanjeet Singh Grewal. Not only has this judgment been clearly distinguished on facts but in the subsequent case of CWP 14195 of 1991 decided on 17.12.2003 to which reference has already been made above it has been held that Section 5 of the 1952 Act only restricts development work without the previous sanction of

the Deputy Commissioner but places no restriction on the acquisition of land for a public purpose. Thus, the plea of the Petitioners is without merit.

42. The argument of the learned Counsel for the Petitioners that in the changed circumstances, the provisions of the Periphery Act have lost its significance and therefore, with the passage of time, the said Act is liable to be declared ultra vires, is again without any merit. Rather keeping in view the present scenario of haphazard growth and the scarcity of land and keeping in view the aims and objects of the said enactment which was primarily to keep the land reserved for future growth of Chandigarh, it has become much more important to preserve the area and every individual cannot be allowed to develop the same as per his own choice as the same will lead to an utter chaos. In order to achieve the planning of the Capital city of Chandigarh, the restrictions against haphazard construction are absolutely necessary. No doubt, the right to hold property is a constitutional right under Article 300A of the Constitution of India and nobody can be deprived of his land without payment of compensation. Article 300A of the Constitution rests on the doctrine of eminent domain and guarantees a constitutional right against deprivation of property save by authority of law.

43. It may also be seen that the provisions of the Periphery Act do not restrict the use of the land in question by its owners but have only put reasonable restrictions on the use of the same. As brought to the notice of this Court under the provisions of the aforesaid Act, statutory rules have been framed providing the procedure for erection/re-erection of houses in or outside the abadi area in the Periphery of Chandigarh. The provisions of the Act itself provides an inherent machinery for the proper regulation and implementation of the provisions. Even Section 15 of the Periphery Act provides exemption from the applicability of the Act in the case of construction of buildings for residential purposes or for purposes subservient to agriculture in the abadi area of any village as defined in the revenue records besides other exemptions. Even the erection or re-erection of place of worship or a tomb or cenotaph or of a wall enclosing a grave-yard, place of worship or Samiti etc. are exempted from the provisions of the Periphery Act. Moreover the orders passed by the competent Authority under the provisions of the said Act are appealable/revisable and therefore, proper safeguard has been provided.

44. The argument of the learned Counsel for the Petitioners that the Act is arbitrary and discriminatory as the same denies the use of the land by its owners by putting restrictions upon them viz-a-viz the Administration which can acquire the said land and use the same in any manner, is again without any merit. It is clear from the provisions of the Periphery Act that there is no discretion to use such land by any group/class of persons. In view of the provisions of the Periphery Act as noticed above, the land in question could not be used for any other purpose except agriculture and its subservient use. A restriction was imposed prohibiting erection or reerection of any building in the controlled area, save in accordance with the plans and restrictions and with the previous

permission of the Deputy Commissioner in writing. It is clear from the provisions that the vision behind enacting Periphery Act was to ensure future extension of the Capital in a healthy and planned way. It was necessary to prevent growth of slums on the land lying in Periphery of the new City and to achieve this object, it was necessary to have legal Authority to regulate the use of the said land for purposes other than the purposes for which it is used at present. It is only after acquisition of the land in question that the Chandigarh Administration is allowing construction for the new projects on such land. There is no restriction put by the provisions of the said Act for acquisition of the land within the Periphery of the Union Territory of Chandigarh and therefore, it cannot be said that the Act gives unbridled and unguided power to the Administration and the provisions of the said Act are discriminatory against the owners of the land or the Administration itself is violating the provisions of the Act. The argument that the Respondent-Administration is using the same according to their whims and fancies for establishing commercial, industrial and other activities is also liable to be rejected as the Chandigarh Administration has acquired the land in the Periphery only and thereafter, it is being used in a planned way.

45. In *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, it was authoritatively laid down that the presumption is always in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. A law applying to one person or one class of persons is constitutional if there is sufficient basis or reason for it.

46. It may also be observed that there is no dispute with the proposition that the law may be constitutional when enacted but with passage of time, the same may be held to be unconstitutional in view of the changed situation but in the present case no such fact has been demonstrated on the basis of which the provisions of the Periphery Act can be rendered unconstitutional.

47. In view of the aforesaid discussion and the judicial precedents and the law laid down in the judgments cited above, we are of the view that challenge to the vires of the Periphery Act is without any basis and thus, we uphold the provisions of the Act.

48. In some of the writ petitions, though there is no challenge to the vires of the Periphery Act, however, action of the Respondent-Administration in issuing notices u/s 12(2) for demolition of their structures which have been constructed in violation of the provisions of the Periphery Control Act has been challenged. According to the learned Counsel for the Petitioners, before issuing the aforesaid notice/order, no enquiry was made about the unauthorized alleged construction made by the Petitioners and therefore, the said notices are liable to be set aside. In our view, the writ petitions are liable to be dismissed shortly on the ground that the same are premature. A perusal of the impugned notices would show that the competent Authority on reaching to a tentative view has issued notices to the Petitioners to show cause as to why an enquiry be not made against them and

further demolition orders be not passed for the unauthorized constructions raised by them. Instead of submitting their replies to the aforesaid notices, the Petitioners have approached this Court. In case the Petitioners have made constructions after obtaining necessary permission or their action is not in violation of the provisions of the Act, they can submit the same before the competent Authority and there is no reason that before passing any order of demolition, the competent Authority will not look into any such submission made by the Petitioners. In any case, any such order passed by the competent Authority is also appealable.

49. Thus, we find no merit in these writ petitions and the same are dismissed.