(2011) 04 P&H CK 0368

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 4981 of 2001

Jarnail Singh APPELLANT

Vs

State of Punjab RESPONDENT

Date of Decision : 19-04-2011

Acts Referred:

Conduct of Business Rules — Rule 18, 9
Constitution of India, 1950 — Article 226
Land Acquisition (Amendment) Act, 1894 — Section 11, 4, 4(1), 5A, 6
Punjab Regional and Town Planning and Development Act, 1995 — Section 100, 101, 102, 103, 104

Citation : (2011) 2 RCR(Civil) 960

Hon'ble Judges : MM. Kumar, J;Ajay Tewari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ajay Tewari, J.—At the very outset it is pertinent to mention here that out of the aforesaid bunch of petitions, CWP Nos. 7337 of 2001, CWP No. 5150 of 2002, CWP No. 8877 of 2001, CWP No. 8878 of 2001, CWP No. 8879 of 2001, CWP No. 8880 of 2001, CWP No. 8881 of 2001, CWP No. 8886 of 2001, CWP No. 8887 of 2001, CWP No. 8888 of 2001, CWP No. 8889 of 2001, CWP No. 8890 of 2001, CWP No. 8891 of 2001, CWP No. 8892 of 2001, CWP No. 7889 of 2001, CWP No. 20318 of 2003, CWP No. 20356 of 2003, CWP No. 17549 of 2001, CWP No. 17913 of 2001, CWP No. 17958 of 2001, CWP No. 201 of 2002, CWP No. 1302 of 2004, CWP No. 667 of 2004, CWP No. 3298 of 2005, CWP No. 6316 of 2003, CWP No. 5572 of 2002, CWP No. 40 of 2004, CWP No. 1735 of 2002, CWP No. 2541 of 2004, CWP No. 7427 of 2001, CWP No. 20386 of 2005, CWP No. 20382 of 2007. CWP No. 15287 of 2001, CWP No. 10675 of 2005, CWP No. 20393 of 2005, CWP No. 8459 of 2001, CWP No. 8178 of 2001, CWP No. 1340 of 2009, CWP No. 12668 of 2001, have been filed after the passing of the award.

2. In CWP No. 1460 of 2010, Suresh Kumar and others v. State of Haryana and others, a Division Bench of this Court on 29.01.2010 held as follows :-

Having heard learned counsel for the petitioners at a considerable length and perusing the paper book with his able assistance we are of the view that the instant petition lacks merit. It is conceded position on record that the award in the present case was announced on 27.6.2008 (P-7) and the instant petition has been filed on 27.1.2010. Even a supplementary award was also announced on 26.9.2008 (P-14). There is inordinate and unexplained delay in approaching the Court. There is a catena of judgments of Hon''ble the Supreme Court laying down the principle that no petition would be competent after announcement of award against the acquisition proceedings. Hon''ble the Supreme Court in para 29 of the judgment rendered in the case of Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others, , has observed as under :-

29. It is thus well settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loathe to quash the notifications. The High Court has, no doubt, discretionary powers to quash the notification u/s 4(1) and declaration u/s 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case, is hardly a ground for interference. The Division Bench of High Court was not right in interfering with the discretion exercised by the learned single Judge dismissing the writ petition on the ground of laches.

(Emphasis added)

8. Considering the issue of maintainability of the writ petition after declaration u/s 6 of the Act and passing of the award, Hon''ble the Supreme Court in the case of The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others, , in para 17 has held that after the award is passed no writ petition can be filed challenging the acquisition notice or against any proceeding thereunder....

9. Reliance may also be placed on the judgments of Hon''ble the Supreme Court rendered in the cases of Star Wire (India) Ltd. Vs. State of Haryana and Others, ; Swaika Properties Pvt. Ltd. and Another Vs. State of Rajasthan and Others, . It is, thus, well settled that no writ petition would be competent after passing of award because possession of land is taken and it is deemed to vest in the State Government free from all encumbrances.

3. Therefore, in view of the aforesaid decision, the Writ petitions filed after award are dismissed.

4. This order shall dispose of Civil Writ petitions bearing Nos. 4981 to 4989 of 2001, CWP No. 3814 of 2001, CWP No. 7476 of 2001, CWP No. 6604 of 2001, 7156 of 2001, 7108 of 2001, 5512 of 2001, 7050 of 2001 as common questions of law and facts are involved therein. Facts are being taken from CWP No. 7050

of 2001.

5. The petitioners are owners of 90 acres of land in village Sohana in District Ropar. The respondent No. 1 issued notification u/s 4 of the Land Acquisition Act (hereinafter referred to as ''the Act'') on 21.2.2000 for the purpose of setting up a residential urban estate in the area of revenue estate of village Sohana. The petitioners who are original residents of that village and have their houses along with their land which constitute a portion of the notification u/s 4, raised objections(Annexure P-3) u/s 5A of the Act challenging the acquisition and alleged that in the year 1996 Punjab Government had framed a scheme called "Farmers Friendly and land Pooling Exchange Scheme" as per the contents of which for every acre of land transferred by the land owner to PUDA he will be given back approximately 1000 square yards after development and land owners were further advised not to sell their land. Therefore, the acquisition was violative of the principles of estoppel. Those objections were not decided and on 2.2.2001 a notification u/s 6 of the Act was issued and now steps are being taken to issue notice u/s 9. It was further averred that residential urban estates can only be made in accordance with The Punjab Regional and Town Planning and Development Act, 1995 (''the Act of 1995'' for short). The Act of 1995 provides for a powerful body known as Board to select the area for development and then special authority viz. Punjab Urban Planning and Development Authority (PUDA) is provided to implement the project under the guidance and advice of the Board but unfortunately the respondent No. 1 has started acquiring the land without complying with the provisions of the Act of 1995. PUDA has not complied with the provisions of Section 56 which was mandatory. As per Chapter II of the Act, Section 3 provides establishment of a board and section 4 provides constitution of the Board. Even no master plan has been made by PUDA before issuance of the notification The notifications also do not disclose as to what was the public necessity which would be fulfilled for establishing urban estate for the extension of Mohali. It has been alleged that by doing this PUDA wants to achieve its commercial objective.

6. It is also pertinent to mention here that the area covered by the impugned notifications falls in the New Capital Periphery Act, therefore, the sale transactions in this area were nil. Govt. has fixed compensation at the rate of Rs. 8 lacs per acre which is very low and while determining the same, no committee comprising member of Parliament, local MLA or Sarpanch of the village was constituted. It is further averred that the said notifications have already been challenged in various writ petitions, one of them being CWP No. 5512 of 2001 and status quo has been ordered to be maintained qua possession in that writ petition. It was further averred that though notification u/s 6 was issued on 06.12.2000 yet even before that date, on 27.11.2000 respondent PUDA made an advertisement in the press for sale of plots in the land sought to be acquired.

7. In reply to the petition, the respondents filed separate written statements. It has been averred therein that in order to ensure orderly growth and

development of this periphery area, in the immediate vicinity of Chandigarh, the planning and development of SAS Nagar project as phase 2 of Chandigarh in the Punjab area was taken up in the year 1967-68. This project was basically conceived as an urban estate and the master plan of SAS Nagar covering an area of 5500 acres approximately spread over sectors 48 to 73 was prepared by the State Government. Even before the Act of 1995 came into force, expansion of Mohali was already contemplated as is evident from Annexures R-1 and R-1/T. Thereafter the Department of Town and Country Planning marked out the Sectors 76 to 80 and prepared a map. Based upon these proposals a decision was taken in a meeting that took place on 25.8.1995 to expand the existing township by adding sectors 76 to 80. Thus, the development of sectors 76 to 80 of SAS Nagar by the PUDA formed a part of the residential sectors as conceived in the Draft Outline Master Plan proposal. In any case it also formed a part of the initial planning of the area that was carried out even prior to coming into force of the 1995 Act.

8. It has been further averred that in the year 1991 the Government of Punjab in the Department of Housing and Urban Development with the approval of the Governor in Council issued orders dated 29.04.1991 vide which all the assets and liabilities of the urban estate in Punjab were transferred to the Punjab Housing Development Board. In compliance with the above said orders the Government of Punjab enacted the Act of 1995 and u/s 17(1) of this Act, PUDA has been established vide notification dated 30.06.1995. With the enactment of this Act, 1st meeting of the Board was held on 12.7.95 wherein it was decided that the planning agency for preparation of master/regional plan would be the Town and Planning Wing of the Department of Housing and Urban Development. In its 4th meeting held on 22.1.1996 the Planning and Design Committee considered the proposal with regard to the extension of SAS Nagar and the same was approved in principle. Thereafter the matter was considered in the Project Approval Committee in its meeting held on 9.4.1997 and the matter with regard to acquisition of 1250 acres of land for the new sectors i.e. Sector 76 to 80 of SAS Nagar was approved by the said Committee.

9. It has been further averred that in order to commence the process of notifying planning areas and preparing outline master plans a proposal for notifying the Local Planning Area of SAS Nagar was discussed in the 2nd meeting of the Punjab Regional and Town Planning and Development Board held on 2.2.1996 wherein it was decided that the Local Planning Area of SAS Nagar be notified u/s 56(1) of the Act of 1995 so that the outline master plan for future growth and development of SAS Nagar could be prepared. Objections were also invited form the affected persons. The plan that was prepared for calling for objections already had the grid pattern for sectors 76 to 80 on the same. The objections and suggestions received from the public were discussed in the 5th meeting of the Board held on 15.11.1999 in which decision to notify the area was taken taking into consideration all aspects.

10. It has been averred that 102 acres of land under litigation is not in one block and is spread out all over the area under acquisition. Due to the stay orders granted by this Court the development could not be completed leading to the situation that the areas which are not under litigation cannot be put to any proper use. On merits most of the contents of the petition have been denied.

11. It is also stated that out of 1264 acres of land about Rs. 100 Crores have already been spent towards acquisition and the remaining area which is in dispute in the present writ petition only comes to the tune of 102 acres in which Rs. 13 Crores are required to be paid to the landowners who are litigating in the various writ petitions. On merits the contents of the petition have been denied.

12. After notice of motion was issued in this petition, stay of dispossession was ordered.

13. It would also be pertinent to mention here that during the pendency of this petition, the Punjab Government passed an order dated 19.05.2003 exercising its power u/s 178(2) of the Act seeking to exempt the process of development of the aforesaid sectors from the provisions contained in Chapters VIII, X and XII of the 1995 Act.

14. Petitioner Jasmer Singh had filed another petition bearing CWP No. 29 of 2004 decided by a Division Bench of this Court on 26.09.2007 whereby the exemptions granted by the State government u/s 178(2) of the Act of 1995 were challenged on the ground that resorting to the provisions of Section 178(2) of the 1995 Act in order to circumvent the statutory provisions as contained in Chapters VIII, X and XII of the Act is a result of mala fide action of the respondents who have not only tried to defeat the provisions of law but have also sought to defeat the orders of this Court whereby dispossession of the petitioner had been stayed when a challenge to the acquisition proceedings was made. That writ petition was dismissed on 26.09.2007. It is also noteworthy that the judgment itself refers to the present group of writ petitions and traces linkage between that petition and the present group of writ petitions. In the present writ petitions also some of the important grounds on which the impugned notifications are being challenged are those relating to the non-compliance of the Punjab Housing Board Development Act, 1972 (the Act of 1972'' for short), the Act of 1995 and allegations of arbitrariness, mala fide and falsification of record. Thus a detailed reference to the said judgment would be appropriate. The said judgment noticed that SAS Nagar (Mohali) was conceptualized to include Sectors 53 to 81 out of which Sectors 53 to 75 were developed in the first phase and the planning for developing Sectors 76 to 80 is only a continuation of the existing Sectors with a view to expand the township of SAS Nagar (Mohali) in order to meet the future housing and other needs. Further that the present expansion was conceived as a development of Phase-III of the City of Chandigarh so as to meet the burgeoning demand of housing to satiate the need of the people for being accommodated in the wake of the saturation achieved by Chandgiarh City. The plan for expansion was prepared on 15.07.1994, which was approved on

15.06.1995 culminating into a decision on 25.08.1995, whereas the 1995 Act came into existence on 1.7.1995. Thus, the seeds of development plan were conceitedly sown prior to the coming into force of he 1995 Act. The said conceptualization; the ultimate acquisition, and the exemption u/s 178(2) of the 1995 Act formed an umbilical cord between the two i.e. the existing township of SAS Nagar(Mohali) and the present extension; the severance of which have rendered the present project as being sill born. The Bench held as follows :-

Adverting to the impugned order, we notice that it makes into consideration various difficulties being faced by the respondents which propelled them to resort to the exercise of power u/s 178(2) of the 1995 Act. Amongst the reasons, the few major considerations were the challenge to the acquisition qua 10% of the said land as against 90% which was already available and for which the acquisition was complete; approximately a sum of Rs. 100 Crores having been disbursed to the land-owners, whereas the writ petitions who had challenged the acquisition were entitled to only Rs. 14 Crores approximately as compensation which would have paid to them., had they accepted the acquisition.

One important aspect, which has to be borne in mind was the fact that out of a total about 1264 acres, which was proposed to be acquired, about 1162 acres already stood acquired and only 102 acres was under litigation. As 90% of the land being available for development and 10% left over land was under litigation. As 90% of the land being available for development and 10% left over land was under litigation made it impossible to develop 90% of the land as developed and approximately utilized as 10% of the land under litigation was scattered all over Sectors 76 to 80 in small, different pockets which was proving to be a major obstacle for development of the land including laying of road network and sewage.

The township of SAS Nagar (Mohali) recorded the highest rate of growth of population necessitating to urgency to take up a planned development and to prevent haphazard growth and the city of SAS Nagar (Mohali) is a satellite town of Chandigarh which had already achieved saturation of sorts with no room to take in anything more even after it had extended its wings to the limits.

In our opinion, the reasons which has gone into the exercise of the power u/s 178(2) of the 1995 Act is sufficiently plausible which reflects the adequate concern and the on-going process of achieving the object of development of the extension of the existing township of SAS Nagar (Mohali) and does not seem to be, in any manner, a decision which is seeped in irrationality and arbitrations or being a deliverance of a malicious and colourable exercise of power.

The second limb of the argument of the learned counsel for the petitioner that exemption having been given subsequent to the acquisition notifications under Sections 4 and 6 of the 1894 Act imply a retrospective operation does no stand the scrutiny of law.

Section 178(2) of the 1995 Act contemplates that "If the State Government is of the opinion that the operation of any provision of this Act causes any undue hardship or circumstances exist which render it expedient so to do, it may, subject to such terms and conditions as it may impose, by general or special order, exempt class of persons or areas, from all or any of the provisions of this Act."

In view of this, the power of the State Government to grant exemption u/s 178(2) cannot be doubted and the said power can be exercised at any stage even if an action has been taken strictly following the provisions of the 1995 Act, provided it forms a valid opinion by giving cogent reasons to resort to the said Section. This would not render the grant of exemption from a retrospective effect as it is only after traversing on the path of decision making on route to the achieving of the object sought to be met under the 1995 Act that the State can become aware of the existence of the circumstances causing hardship for which it will form an opinion regarding the expediency to resort to the powers u/s 178(2) of the said Act. To our minds, that has been done substantially.

We are also mindful of the fact which has been brought to our notice that the entire challenge to the acquisition pertains to only 102 acres of land out of total acquisition of 1264 acres and this fact has also been noticed in the impugned order. The land under litigation is also scattered in small pockets from all over the remaining land i.e. 1162 acres for which the acquisition is complete and compensation has been paid.

One such substantial acquisition has been completed, the same cannot be held to be mala fide merely because a small percentage of landowners felt otherwise, unless it is shown that the rights of the individual land-owners have been violated or there has been discrimination qua them. Besides, this small percentage of land is likely to impede and hamper the entire project and derail the development. These small pockets of lands will not only from islands of unplanned areas in a sea of planned area, but will also stand out a sore thumb, in a developed area.

We, however, leave this question open as the challenge to the acquisition has been made in other writ petitions which we are not dealing presently. But, we certainly wish to observe to defeat the entire acquisition is a valid consideration for exercise of power u/s 178(2) of the 1995 Act.

As a sequel to our discussion above, we hold that the exemption granted by the State Government u/s 178(2) of the 1995 Act, vide order Annexure P-2, was justified in law and in the circumstances of the case.

Hence, this writ petition, being devoid of any merit, is dismissed.

15. A SLP against that judgment was dismissed by the Hon''ble Supreme Court vide order dated 26.10.2007 in SLP(C) No. 19139 of 2007.

16. Our attention has also been drawn to a judgment and order of the Hon''ble Supreme Court in Civil Appeal No. 8431 of 2010, Amarjit Singh and others v.

State of Punjab dated 29.09.2010 wherein the acquisition for the neighbouring sectors of Mohali was challenged. As per the Hon''ble Supreme Court the following questions had fallen for determination in that case :-

(1) Whether the exemption of the land under acquisition from the provisions of Section 14 and Chapters VIII, X and XII of the Punjab Regional and Town Planning and Development Act, 1995 in terms of notification dated 10th February, 2004 issued u/s 178(2) of the said Act suffers from any legal infirmity ?

(2) If the answer to question No. 1 be in the affirmative whether the acquisition under challenge is rendered bad for non-compliance with the provisions of the Act above mentioned, and

(3) Whether the absence of any rehabilitation measures renders the acquisition in question legally bad. If not, whether the Land Pooling Scheme'' can be made applicable to the acquisition of the land acquired from the appellants.

With regard to question No. 1, the Hon''ble Supreme Court held as follows :-

A plain reading of sub-section (2) above would show that the State Government is empowered to exempt any class of persons or areas from all or any of the provisions of the Act in cases where in the opinion of the State Government the operation of any such provisions would either cause undue hardship or the grant of exemption is otherwise expedient. According to the respondents the power to exempt was in the present case exercised by the Government not only because it was expedient to do so, but also because it was necessary to avoid hardship to the allottees. The notification sets out the circumstances in which the exercise of power was found necessary by the Government. It states that SAS Nagar(Mohali) was planned to include sectors 53 to 81 long before the coming into force of the Punjab Regional and Town Planning and Development Act, 1995. Sectors 53 to 75 were developed in the first phase after acquiring the land required for the same under the Land Acquisition Act. This was followed by acquisition of land for sector''s 76 to 80 which further extended the township to meet the ever increasing housing needs of the people of Punjab.

The exemption notification then refers to a decision taken in a meeting held on 25th August, 1995 whereunder the existing township was to be further extended by addition of a few more sectors. Sectors 80, 81, 88 and 89 were in pursuance of the said decision taken up for development after obtaining approval of the competent authority. A preliminary Notification u/s 4 of the Land Acquisition Act proposed an area of 417.39 acres in sector 81 and 688.89 acres in sectors 88 and 89 for acquisition.

The exemption notification goes on to state that acquisition of land for sectors 76 to 80 started by the Government was challenged by the landowners mainly on the ground that the provisions of the Town Planning & Development Act, 1995 were not complied with. The High Court of Punjab and Haryana had in these petitions stayed the dispossession of the owners while granting liberty to the respondents to proved with the matter subject to the final orders of the Court. The notification finally makes a reference to the fact that Mohali has recorded the highest rate of growth of population of Class 1 cities giving rise to considerable increase in the demand for housing, in turn giving rise to haphazard development in the area if planned development of the sectors in question is not immediately taken up and plots made available to the allottees. The Government was, in the above backdrop, of the opinion that it was expedient to exempt the areas falling in sectors 81, 88 and 89 from the operation of Section 14 and those contained in Chapters VIII, X and XII of Punjab Regional and Town Planning and Development Act, 1995. It was also of the opinion that the prospective allottees would suffer hardship in case the Government does not grant exemption to the area falling in the above sectors from the provisions referred to above.

The operative portion of the exemption notification reads :

In exercise of the powers conferred upon the State Government u/s 178(2) of the Pun-jab Regional and Town Planning and Development Act, 1995 and keeping in view the larger public interest and planned development of the area, the State Government hereby exempts the area falling under Sectors 81, 88 and 89 being developed as expansion of existing township o SAS Nagar(Mohali) from the operation of provisions of Section 14 and consequently of the uncomplied provisions in Chapters VIII, X and XII, i.e. Section 56 to 60, 70 to 78 and 91 to 138 of the Punjab Regional and Town Planning and Development Act, 1995."

None of the circumstances referred to above is, in our opinion, irrelevant or extraneous to the exercise of the power of exemption vested in the Government u/s 178(2) of the Act. What is significant is that Mohali was identified for planned development by addition of sectors 53 to 81 even before the Punjab Regional and Town Planning and Development Act, 1995 came into force. The proposed development was to be carried out under the provisions of Punjab Urban Estate (Development and Regulation) Act, 1964 and Punjab Housing Development Board Act, 1972. It is true that initially the plan was limited to the addition of sectors 53 to 81 but the third phase with which we are concerned comprised not only development of sector 81 which was a part of the original plan but also included sectors 88 and 89.

It is also evident from the notification that compliance with the provisions of the Punjab Regional and Town Planning and Development Act, 1995 was found to be impracticable primarily because of the tremendous pressure on land kin and around Mohali for housing purposes especially because the township has witnessed phenomenal growth over the years. The notification in our opinion rightly stated that if immediate steps were not taken to develop the outskirts of the township it would lead to large scale unplanned and haphazard mushrooming of housing colonies and commercial establishments in the area. Delay in the finalization of the outline Master Plan, comprehensive master plan and a town planning scheme thus had the potential of frustrating the very purpose underlying the legislation that is aimed at better planning, regulation, development and use of land in the planning area. The Government was in that view well within its power to evaluate the options available to it, making a choice and taking appropriate action to prevent any such disorganized and haphazard development in as much as the Government did so and decided to invoke its powers u/s 178(2) of the Act, it committed no illegality. On the contrary, the Government has by taking timely action prevented a situation where the area around the township of Mohali would have on account of tremendous pressure for conversion of land to non-agricultural use developed into a large slum as is the bane of many other cities in the country where statutory authorities charged with duties of urban development have failed to keep pace with the housing needs of the populace. It is noteworthy that the Government had prevented such haphazard and unplanned development even in sectors 76 to 80 by exempting the land falling in the said sectors from the operation of the provisions of the Punjab Regional and Town Planning and Development Act, 1995. The said exemption was assailed by the land owners but upheld not only by the High Court but even by this Court in appeal That, the power of exemption could be exercised in situations similar to the one in hand thus stands amply established.

The contention of Mr. Gupta that just because the formulation of master plans and town planning schemes takes tome cannot be a good ground or the Government to grant exemption from the operation of the statutory provisions may be unexceptionable for the law must be allowed to take its course howsoever cumbersome and time-consuming the process may be. But is not he cumbersome and time-consuming process alone that has led to the issue of the ademption notification. It was realistic assessment of the ground realities requiring urgent action that made adherence to the letter of law impracticable. The Government was of the opinion that failure to take immediate action for developing these sectors will lead to unplanned and haphazard construction activities in the area. It was the cumulative effect of all the circumstances referred to in the notification that led to the issue of the exemption notification.

We need to remember that Section 178(2) empowers the Government to grant exemption from the operation of the Act on the twin grounds of hardship and expediency. For the Government to exercise its power of exemption on the ground of expediency two requirements must be satisfied viz. (i) that circumstances exist which render it expedient to grant the exemption & (ii) the Government upon a consideration of those circumstances forms an opinion that it is expedient to do so. The latter requirement is more in the nature of a subjective satisfaction of the Government while the former is dependent on objection consideration of the circumstances that are germane. Once the existence of circumstances that are relevant to the exercise of the power of exemption are found to exist the formation of the opinion by the Government about the expediency of granting an exemption is a matter on which the Court would be slow to interfere unless the decision is shown to be a colourable exercise or vitiated by any extraneous motive or consideration.

17. With regard to question No. 3, the Hon''ble Supreme Court held that the land pooling scheme in question was only prospective in nature.

18. It is in the above mentioned legal and factual background that arguments have been considered.

19. Learned counsel for the petitioners have firstly argued that the exemption granted was only with respect of'' uncomplied provisions''. To appreciate this argument it would be appropriate to reproduce the order granting exemption which is as under :-

1. WHEREAS S.A.S. NAGAR (MOHALI) was planned to include Sectors 53 to 81, out of which Sectors 53 to 75 were developed in the first phase under the provisions of the Punjab Urban Development Estate (Development and Regulation) Act, 1964 and the Punjab Housing Development Board Act, 1972 and land to develop these sectors was acquired under the provisions of Land Acquisition Act, 1894 and the reasons stated in the notification acquiring the land was for setting up of residential and industrial urban estate.

2. AND WHEREAS the plan for developing sectors 76 to 80 is a continuation of the existing sectors with a view to expanding the town of Mohali to meet the future housing and other needs.

3. AND WHEREAS before the Punjab Regional and Town Planning Development Act, 1995 came into force, expansion of Mohali was already contemplated by the Punjab Housing Development Board which took over the assets and liabilities of Urban Estates of the State of the Punjab under notification dated 29.04.1991.

4. AND WHEREAS the department of Town and Country Planning prepared a plan as per the decision taken in a meeting held on 25.08.1995 to expand the existing township by adding sectors 76 to 80.

5. AND WHEREAS the development of sectors 76 to 80 at Mohali by PUDA formed a part of the residential sectors as conceived in the Draft Outline Master Plan proposal.

6. AND WHEREAS Govt. of Punjab initiated proceedings to acquire 1274 acres of land under the provisions of Land Acquisition Act. 1894 through Land Acquisition Collector, Mohali. Notification under sections 4 and 6 were issued. Thereafter, the land was handed over to Estate Officer, PUDA, Mohali.

7. AND WHEREAS when land compensation awards had either been passed or were in the process of being finalised, a series of civil writ petitions were filed by few of landowners(rep-resenting about 10% of the total area to be acquired).

8. AND WHEREAS one of the grounds pleaded in the above said writ petitions was that unless and until a Master Plan or Regional Plan or Town Planning Scheme was finalized under the provisions of the Punjab Regional and Town Planning and Development Act, 1995, the land could not be acquired.

9. AND WHEREAS the Hon''ble Punjab and Haryana High Court vide order dated 30.05.2001 stayed all proceedings regarding acquisition of land. Subsequently, a Division Bench of the Hon''ble High Court vide order dated ''10.09.2001 conformed the stay of dispossession but gave liberty to PUDA to continue further proceedings subject to final orders of the Hon''ble Court.

10. AND WHEREAS a notification u/s 58 of the Punjab Regional and Town Planning and Development Act, 1995 for specifying the total planning area of Mohali was issued on 6.3.2000 and the Town and Country Planning Department prepared a Draft Outline Master Plan for further growth and development of the area.

11. AND WHEREAS the Punjab Urban Development and Planning Authority(PUDA) floated a scheme for allotment of residential plots in the new sectors, held draw of lots for eligible applicants, issued letters of intent of about 4000 allottees, received payment of 25% of the tentative price and promised to hand over the possession by December, 2002 which could not be done in view of the stay granted by the Hon''ble Punjab and Haryana High Court on the ground of noncompliance of some of the provisions of 1995 Act.

12. AND WHEREAS to follow the procedure in letter and spirit, actions as stipulated u/s 14 and provisions of Chapter VIII, X and XII, i.e. Section 56 to 60, 70 to 80 and 91 to 138 of 1995 Act were also required to be taken.

13. AND WHEREAS PUDA has expressed its constraints and difficulties faced in development of Sectors 76 to 80 due to stay granted by the Hon''ble Punjab and Haryana High Court on the ground of noncompliance of some of the provisions of 1995 Act in the following terms.

(a) Out of a total of about 1264 acres, about 1162 acres already stand acquired and only 102 acres under litigation.

(b) 90% of the land is already available for development but due to 10% left over land being under litigation, the available 90% land cannot be developed and appropriately utilized since 10% of the land under litigation is scattered all over the sectors 76-80 in small, different pockets and is proving to be a major obstacle for development of the land including laying of road network and sewage.

(c) Rs. 100 Crores(approx.) has already disbursed as compensation to the land owners and the only Rs. 13 Crores (approx.) remains to be disbursed to the land owners of the land under litigation.

(d) Mohali has recorded the highest rate of growth of population at present 57.14 % among the class-I cities and because of enormous pressure of population there is a considerable increase in the demand for housing. Consequently, a rapid disorganised and illegal development in the area is seriously and genuinely apprehended if the plan development of the sectors is not immediately taken up and the plots made available to allottees/prospective allottees. This problem had arisen in the past also and in the absence of adequate machinery it will be difficulty for PUDA/Government to prevent haphazard, ramshackle and unplanned growth.

14. AND WHEREAS on the basis of the material placed before the Government of Punjab, the Government is of the opinion that operation of the provisions contained in Section 14 and consequently of uncomplied provisions of Chapter VIII, X and XII, i.e. Sections 56 to 60, 70 to 78 and 91 to 138 of Punjab Regional and Town Planning and Development Act, 1995 is causing undue hardship to the allottees/prospective allottees and to the general public for the reasons stated above and the Government of Punjab is of the opinion that the circumstances exist which render it expedient to exempt the area and falling under Sectors 76b to 80 being developed as expansion of the existing township of S.A.S. Nagar(Mohali) from the operation of Section 14 and consequently of the uncomplied provisions contained in Chapter VIII, X and XII i.e. Sections 56 to 60, 70-78 and 91-138 of Punjab Regional and Town Planning and Development Act, 1995 in the larger public interest as the compliance of the said uncomplied provisions is a time consuming process and requires lot of resources and man power for its finalisation which is likely to cause considerable delay in the development of Sectors 76 to 80.

NOW THEREOF, in exercise of the powers conferred upon the State Government u/s 178(2) of the Punjab Regional and Town Planning and Development Act, 1995 and keeping in view larger public interest and planned development of the area the State Government hereby exempts the areas falling under sectors 76 to 80, being developed as expansion of the existing township of S.A.S. Nagar(Mohali) from the operation of provisions contained in Chapter VIII, X and XII i.e. Sections 56 to 60, 70 to 78 and 91-138 of Punjab Regional and Town Planning and Development Act, 1995.

As per the scheme of 1995 Act firstly the Board declares and notifies any area to be Regional, Local Planning Area or site for new town u/s 56. After the selection of the site, Planning Agency is designated u/s 57. The Planning Agency first has to prepare the land use map u/s 59 and has to publish a public notice to that effect u/s 59(2) and then outline Master Plan is to be prepared u/s 70 and thereafter, Draft Comprehensive Master Plan is to be prepared u/s 71. u/s 71(3)(f) area that is to be acquired for public purpose is designated by the planning agency in the said Draft Comprehensive Master Plan. u/s 73, a notification and public notice is to be published regarding preparation of the Draft Comprehensive Master Plan & for inviting objections from the public. Thereafter, a Town Development Scheme u/s 91 has to be prepared for the purpose of implementation of the provisions of Master Plan. Then u/s 93, a Draft Scheme is to be prepared and notice is to be issued with regard to preparation of the same & for inviting objections from the public.

20. Learned counsel have argued that even as per the respondents themselves the provisions of Section 42 were not exempted and, therefore, this Court has to

determine whether these unexempted provisions have been complied with. As per them since there was no reference by the authority under the Act the acquisition was illegal.

21. In our considered opinion this ingenious argument seeks to bring in from the back door what has been rejected specifically by the decision of CWP No. 29 of 2004 (supra). In that judgment the supervening authority of the Government has been unequivocally recognised, and thus to argue that the authority could not make a valid reference in view of the provisions of Chapter VIII, IX and X of the Act would tantamount to reopening the whole gamut of the exemption which, as noticed above, has been conclusively upheld.

22. The second argument of the learned counsel was that the petitioners were entitled to get the benefit of the land pooling scheme. It may be mentioned that the land pooling scheme of 1996 was never finally approved by the competent authority. However, thereafter on 22.07.2008 the following order was passed :-

Mr. Mattewal, Advocate General, Punjab says that the next cabinet meeting will consider the problems of those persons whose land has been acquired for the proposed Sectors of Mohali and those who have not taken the compensation.

In the meeting, the Cabinet will also take into consideration that the case of such persons are dealt with at par with other similarly situated persons and that no discriminatory approach is adopted.

Let Advocate General, Punjab, also call a meeting in his office with Chief Secretary, Government of Punjab, Secretary, Housing Urban Development and Chief Administrator, GMADA, and a decision be taken by this Committee, in the best interest of the planned development of SAS Nagar, Mohali as well as in the interest of the persons whose land are subject matter of acquisition. The representatives of the petitioners will also be associated with the committee.

Let decision be taken by the aforesaid Committee within a period of eight weeks and that decision be placed on record before the next date of hearing.

Re-notify for hearing on 23.10.2008.

23. Pursuant thereto the committee gave a report which was put before the Council of Ministers on 21.08.2008 which approved following proposals :-

a) The compensation propose to be offered for every acre of land is as under -

i) Half of the developed residential areas

ii) Half of the developed commercial area.

b) The acquiring Department may, however, be also given the discretion to vary the norms with the passage of time and the topographical position of the land to be acquired. For awarding the compensation either the normal provisions of the Land Acquisition Act would apply or the package as given have to be accepted as in on acquisition scheme different modes of compensation would not be feasible.

c) The earlier decision taken by the Cabinet Sub-Committee on 04.10.2007 referred to in para No. 1.1 be implemented by the Department of Local Government and the PSIEC as Town Planning Scheme on experimental basis.

d) The compensation to be allowed under the Land Pooling Scheme has to take prospective effect.

e) The policy shall be applicable for Urban Development Authorities i.e. Housing Department, Local Government Department, PUDA, GMADA, Improvement Trust and as far as possible to Industry Department prospectively.

24. Since, as mentioned above, the Hon''ble Supreme Court in the case of Amarjeet Singh(supra) has specifically upheld the prospective nature of the land pooling scheme no benefit can be granted to the petitioners.

25. The second limb of arguments relates to discrimination. Learned counsel for the petitioners have argued that while their lands have been acquired, the lands of others have been re-allotted in an arbitrary and illegal manner. Thus, learned counsel have contended that the whole acquisition has to be set aside. This argument gives rise to two issues. Learned counsel for the respondents have urged that in the first place the argument regarding discrimination is misconceived and secondly, even if for the sake of arguments it is accepted that the power to re-allot has not been exercised fairly then that action would be severable from the action of acquisition and would not result in voiding the main acquisition.

26. In our view the second contention is well merited. Even if the reallotment is invalid that would be severable from the exercise of acquisition. Our view can be supported by the authoritative dictum of the Hon''ble Supreme Court in Shin Satellite Public Co. Ltd. Vs. Jain Studios Limited, , Satyawati Sharma v. Union of India, 2008 (2) R.C.R. (Civil) 805 : 2008 (1) R.C.R. (Rent) 457 : 2008 (3) R.A.J. 95 : (2008) 5 SCC 297 , G. Vallikumari Vs. Andhra Education Society and Others, , Dadu @ Tulsidas Vs. State of Maharashtra, and State of Tamil Nadu and Another Vs. P. Krishnamurthy and Others, . The re-allotment has been specifically challenged in CWP Nos. 13256 of 2007, 3109 and 5443 of 2002, 15282 of 2006 and 5466 of 2005 and those have been, for this reason, ordered to be separated form this bunch of petitions and heard independently. In the circumstances the arguments and precedents relating to the alleged discrimination and its effect are not being noticed.

27. Learned counsel have further argued that Section 11 of the Land Acquisition Act has not been followed. The said Section reads as under :-

S. 11. Enquiry and award by Collector (1) On the day so fixed, or any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given u/s 9 to the measurements made u/s 8, and into the value of the land [at the date of the publication of the notification u/s 4, subsection (1)], and into the respective interests of the persons claiming the compensation and shall make an award under his hand of -

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him,

Provided that no award shall be made by the Collector under this subsection without the previous approval of the appropriate Government or of such officer as the appropriate government my authoriose in this behalf:

Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.

(2) Notwithstanding anything contained in subsection (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms for such agreement.

(3) The determination of compensation for any land under subsection (2) shall not, in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.

(4)...

11-A. Period within which an award shall be made - (1) The Collector shall make an award u/s 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period the entire proceedings for the acquisition of the land shall lapse :

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act. 1984 the award shall be made within a period of two years from such commencement.

28. Reliance has been placed on State of U.P. and Others Vs. Rajiv Gupta and Another, .

29. The argument is two fold. Firstly, that the award is not complete since the various parameters of subsection (1) have not been fulfilled and secondly, the previous approval of the appropriate Government has not been obtained.

30. With regard to the first argument it has been contended that the award does not delay the apportionment of the said compensation. The award is annexed

with the written statement. We have been taken through the original record by learned counsel for the respondents. We find that in the original document the apportionment is clearly mentioned.

31. With regard to the second argument it is contended that under the General Clauses Act the State Government means the Governor and the order granting approval had to be passed in the name of the Governor but was not so done. However, as per the standing orders of the State Government and Rules 9 and 18 of the Conduct of Business Rules, we find that the Principal Secretary, Housing and Urban Development cannot be held to be incompetent to give the approval. Reliance is being placed on The State of Uttar Pradesh Vs. Mohammad Naim, .

No other point has been urged.

In the circumstances these writ petitions are dismissed with no order as to costs.

There is one COCP No. 1077 of 2006 also. Since this matter relates to CWP Nos. 13256 of 2007, 3109 and 5443 of 2002, 15282 of 2006 and 5466 of 2005, the same be heard along with the said petitions.

