
(2004) 10 P&H CK 0057

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 16 of 1995 in CWP No. 17401 of 1991 with L.P.A. No. 432,433,435 of 1995

State of Haryana and another

APPELLANT

Vs

S.D.Processors Pvt.Ltd., Panipat and another

RESPONDENT

Date of Decision : 26-10-2004

Acts Referred:

Citation : (2005) 2 ICC 507 : (2005) 1 PLR 700 : (2005) 1 RCR(Civil) 292

Hon'ble Judges : G.S.Singhvi, J and Ajay Kumar Mittal, J

Advocate : For the Appellant Nos. 1 to 2 in LPA Nos. 432, 433 and 435 of 1995, Shri P.K. Mutneja, Advocate. For the Appellant Nos. 3 and 4 in LPA No. 432 of 1995, Ms. Seema Narang, Advocate. For the Respondents in LPA Nos. 432, 433 and 435 of 1995, Shri Jaswant Singh, Sr. Deputy Advocate General, Haryana., Advocates for appearing Parties

Judgement

G.S. Singhvi, J.—The above noted four appeals are being disposed of by one order because common issues of fact and questions of law arise for determination by the Court. LPA No. 16 of 1995 has been filed by the State of Haryana and Land Acquisition Collector, Urban Estate, Panchkula against order dated July 7, 1994 passed by the learned Single Judge in Civil Writ Petition No. 17401 of 1991 vide which he quashed the acquisition of the land belonging to the respondents. The remaining appeals are directed against orders dated July 22, 1994 and July 7, 1994 of the learned Single Judge vide which he rejected the prayer of the appellants for quashing the acquisition proceedings.

The facts :

2. The Government of Haryana vide notification dated 23.2.1989 issued under Section 4 of the Land Acquisition Act, 1894 (for short, 'the Act') proposed acquisition of 176.56 acres of land situated in the revenue estate of Village Patti Taraf Insar, District Panipat and 90.86 acres of land in Patti Makodoom Jagdan, District Panipat for development and utilisation thereof as residential and commercial areas of Sector 17, Panipat. These included 5 bighas 4 biswas of land

belonging to the respondents in LPA No. 16 of 1995 and other parcels of land belonging to the appellants in LPA Nos. 432, 433 and 435 of 1995. The landowners (including the respondents in LPA No. 16 of 1995 and the appellants in other appeals) filed their objections. The Land Acquisition Collector vide his letter dated 17.11.1989 called upon the objectors to appear for personal hearing on 6.12.1989 and after hearing those who appeared on the appointed date, he submitted report dated 22.12.1989 with the recommendation that the notified land be acquired. Simultaneously, he noted the existence of several industrial units and other constructions on the land sought to be acquired and suggested that before issuing notification under Section 6 of the Act, a Committee may be constituted to take appropriate decision regarding the existing constructions. The State Government accepted his suggestion and constituted a Joint Site Inspection Committee (for short, 'the Committee') consisting of the officers of the Urban Estates Department and Haryana Urban Development Authority (for short, 'HUDA'). After inspecting the site on 5.1.1990, the Committee submitted a report with the recommendation that industrial, commercial and residential buildings of 'A' and 'B' classes, which existed at the time of issuance of notification under Section 4 of the Act, may be released together with proportionate open area but shops and poultry farms falling in the statutory green belt along the National Highway and in the Sector planned roads may not be left out of acquisition. Thereafter, Additional Director, Urban Estates, Haryana submitted note dated 13/14.2.1990, the sum and substance of which was that land of the existing industrial units be left out from acquisition along with proportionate open area. The State Government accepted the recommendations of the Committee. Thereafter, notification dated 22.2.1990 was issued for acquisition of only 146.21 acres of land in village Patti Taraf Insar.

3. After issuance of declaration under Section 6 of the Act, several representations were made by the landowners for release of their land by contending that they had raised the construction before the issuance of notification under Section 4 of the Act. The same were considered in the meeting held on 15.4.1991 under the Chairmanship of Additional Director, Urban Estate, Haryana and it was decided that the site may be again inspected. Accordingly, fresh site inspection was carried out by the Committee on 23.4.1991 and another report was submitted. The matter was then discussed in the meeting held on 10.2.1992 which was attended by Commissioner, Town and Country Planning Department, Haryana; Director, Urban Estates, Haryana and Deputy Commissioner, Panipat and it was decided that Director, Urban Estates, Haryana may again visit the site and find out a viable solution. The latter visited the site on 12.2.1992 along with Additional Director, Urban Estates, Haryana; Deputy Commissioner, Panipat; Superintending Engineer, HUDA, Karnal; Senior Town Planner (Enforcement), Estate Officer, Karnal; District Town Planner (Enforcement), Panipat and Land Acquisition Officer, Panchkula. Thereafter, it was decided to release some more parcels of land.

4. In the case of M/s. S.D. Processors Private Limited (respondent No. 1 in LPA

No. 16 of 1995), it was found that as on the date of issuance of notification under Section 4 of the Act, construction had been made on 683 square meters of land and after that date, additional construction had been made on land measuring 311 square meters. Notwithstanding this, a decision was taken to release 994 square meters of land covered by construction and proportionate open area (total measuring 1988 square meters). Likewise, in the cases of other landowners, the constructions were left out/released from acquisition along with proportionate open area.

5. As a sequel to the release of land in two stages, award was made on 21.2.1992 only in respect of 134.74 acres of land of village Patti Taraf Insar and no award was passed in respect of the remaining land.

6. M/s. S.D. Processors and Smt. Raj Rani challenged the acquisition proceedings in Civil Writ Petition No. 17401 of 1991. The other appellants challenged the acquisition in Civil Writ Petition Nos. 18565 of 1991, 2334 of 1992 and 18026 of 1991. They pleaded that the acquisition of their land was vitiated due to violation of Section 5A of the Act, inasmuch as, they were not given opportunity of personal hearing. They further pleaded that the land left out/released from acquisition was not sufficient for their industries and the acquired portions could not be effectively utilised for the purpose set out in the notification issued under Section 4 of the Act. Another plea taken by them was that the impugned acquisition was liable to be nullified on the ground of discrimination because the land belonging to other persons had been left out from acquisition or released after issuance of declaration under Section 6 of the Act. In support of these assertions, the writ petitioners produced site plans showing the situation of their land and industries and copies of objections filed by them under Section 5A of the Act.

7. In similar but separate written statements filed on behalf of the State of Haryana, it was averred that the land had been acquired for a public purpose, namely, for development of residential and commercial areas of Sector 17, Panipat after complying with the procedure prescribed under Sections 4, 5A and 6 of the Act. It was further averred that the Land Acquisition Collector had given opportunity of personal hearing to the objectors who appeared on 6.12.1989 and declaration under Section 6 of the Act was issued after considering their objections along with the suggestions/recommendations made by the Land Acquisition Collector and the Committee.

8. The learned Single Judge allowed Civil Writ Petition No. 17401 of 1991 by observing that after release of 2 bighas and 6 biswas of land out of 5 bighas and 14 biswas belonging to the writ petitioners, the remaining land cannot be put to any meaningful use by the authorities for the purpose for which it was sought to be acquired. He further held that if the open space is acquired, it will be difficult for the petitioners to run the industrial unit, if not impossible. The relevant portion of order dated July 7, 1994 passed by the learned Single Judge is extracted below :

"As mentioned above, it is an admitted position that 2 bighas 6 biswas out of land measuring 5 bighas 14 biswas in between the boundary wall of the factory has been left out from acquisition and it is only 3 bighas 8 biswas of land which is an open space between the construction, referred to above, which has been acquired. It is also proved to the hilt that the entire industrial unit of the petitioner on both left and right side is surrounded by existing industrial units which too have either been not acquired or later left out from array of acquisition. It is, thus, evident that the open space measuring 3 bighas 8 biswas cannot be put to any meaningful use by the respondent authorities and in particular for the purpose for which the land has been acquired i.e., for the development and utilisation of land as residential and commercial area for Sector 17, Panipat. Also if the open space is acquired, it will be very difficult for the petitioner to run the industrial unit, if it may not be impossible. In the peculiar facts and circumstances of the case, thus, this Court is convinced that either the State should have acquired the entire property or left out from array of acquisition the vacant portion as well. Acquiring the land in such a way and not leaving from acquisition the open space would cause only miseries and hardships to the petitioner. Even the respondent State cannot put the open space to any meaningful use."

9. The other writ petitions were dismissed with the observations that the industrial units of the petitioners can run with the left out open space and the remaining land can be used for the purpose for which it was sought to be acquired. For the sake of reference, the relevant extracts of order dated July 22, 1994 passed in Civil Writ Petition No. 18565 of 1991, which is subject matter of challenge in LPA No. 432 of 1995, and orders dated July 7, 1994 passed in Civil Writ Petition No. 2334 of 1992 and 18026 of 1991, which are subject matter of challenge in LPA Nos. 433 and 435 of 1995 respectively, are reproduced below :

"Order dated July 22, 1994 passed in Civil Writ Petition No. 18565 of 1991

Even though the prayer in the writ petition is for quashing notifications issued under Sections 4 and 6 of the Land Acquisition Act dated 23.2.1989 and 22.2.1990 respectively, the only prayer made by the learned counsel appearing for the petitioners at the time of arguments is that the vacant space along with the constructed portion where the factory is situated should be left out from the array of acquisition. In the context of the facts of the case, the solitary prayer made by the learned counsel cannot possibly be accepted. The petitioners owned 10216 square yards out of which only 1930 square yard was constructed area. In all, 6 bighas and 8 biswas of land has either been not acquired or released from array of acquisition. It is, thus, clear that far more vacant area than that of the constructed area has been left out. After perusing the site plan Ex. P3, it cannot be said that the acquired area cannot be put to any meaningful use by HUDA. Moreover, the industrial unit of petitioner can well run with the left out open space.

Finding no merit in this petition, I dismiss the same leaving the parties to hear

their own costs.

Order dated July 7, 1994 in Civil Writ Petition No. 17402 of 1991

Total acquired land of petitioners herein was 8 bighas 17 biswas out of which 8 bighas 14 biswas of land has been left out from the array of acquisition. No meaningful argument has been raised by learned counsel for the petitioners to get the remaining land released.

Dismissed. No costs.

Order dated July 7, 1994 passed in Civil Writ Petition No. 18026 of 1991

Challenge herein is to the notifications issued under Sections 4 and 6 of the Land Acquisition Act on February 23, 1989 and February 23, 1990 respectively.

The solitary point pressed at the time of arguments is that after leaving the constructed portion of the petitioner measuring 4 bighas 10 biswas of total land measuring 11 bighas 3 biswas, the vacant portion, so acquired, could not be put to any meaningful use as the same is flanked on all sides by existing buildings which have been left out from the array of acquisition. It is also contended that unless proportionate area to that of constructed area is left out, constructed area cannot be of any use to the petitioners.

After perusing the records of the case and in particular, site plan, Annexure P2, I am unable to concur with the contentions raised by learned counsel for the petitioners. There is big vacant plot towards Northern side of the plot of petitioners. Petitioners' acquired area along with other plots can certainly be divided into various plots and allotted to those, who apply for the same. In so far as contention of learned counsel with regard to proportionate area is concerned, it has been specifically mentioned in the written statement that land measuring 4 bighas 10 biswas, which has not been acquired, includes proportionate vacant area to that of constructed area.

Finding no merit, I dismiss this writ petition leaving, however, the parties to bear their own costs."

10. Before proceeding further, we consider it proper to take cognizance of the additional affidavits filed by the parties in pursuance of orders dated January 15, 2004 and October 8, 2004 passed in LPA No. 16 of 1995 and otherwise. The particulars of these affidavits along with the relevant extracts of some of them read as under ;

(i) Affidavit dated 29.1.2004 of Shri Narender Mahajan, Director, S.D. Processors Private Limited. He has placed on record list (Annexure AR1) of 37 industrial units which are said to be in existence prior to the issuance of notification under Section 4 of the Act; list (Annexure AR2) of 78 commercial establishments/units existing on Barsat Road; photographs of industrial activities (Annexure AR3) and map (Annexure AR4).

(ii) Affidavit dated 3.3.2004 of Shri Bhaskar Chatterjee, Financial Commissioner and Principal Secretary to Govt. Haryana, Town and Country Planning Department. Paragraphs 3 to 6 of his affidavit read as under :

"3. That after the issuance of the notification under Section 4 on 23.2.1989, the landowners/interested persons including the respondents filed objections under Section 5A of the Land Acquisition Act, 1894 against the acquisition of land and requested for release of land on the grounds of 'A' Class constructions existing at site and industrial units existing prior to notification under Section 4.

4. That with regard to status of industrial units it is submitted that 52 industries of 'A' and 'B' Class structures were in existence at the time of issuance of notification under Section 4 of the Act *ibid*.

5. That the Municipal limit of the Panipat town was extended in 1975 after the declaration of Controlled Area and as a result some owners of the industrial units got the building plans approved from the Municipal Council/Committee, Panipat.

6. That reports of Land Acquisition Collector and Joint Site Inspection Committee constituted by the Government for release of land for Sectors 13 and 17 were considered by the Government. The Joint Inspection Committee (JIC) submitted its report to the Government vide their report dated 23.4.1991. JIC in their report pointed out that the industrial units located in the proposed acquired area were quite old and were in working condition. It was not found feasible to acquire these factories simply to widen the Barsat Road. Hence the committee recommended that only vacant blocks of land should be acquired and no premises of the old running factory should be acquired. However, JIC recommended acquisition of all old small structures of 'A' and 'B' category with covered area less than 30 Sq. Mtr. It was felt by the committee that all 'A' class factories/buildings which were in existence before the issuance of notification under Section 4 but were notified under Section 6 because the owner did not file any objection should be released; otherwise, it would involve unnecessary litigation. The committee, however, did not recommend release of structures which were constructed after the issuance of notification under Section 4 of the Land Acquisition Act, 1894.

This case was examined at the Government level and it was felt that all the buildings of 'A' and 'B' class which existed prior to Section 4 notification should be released except the structures falling on the green belt and on the sector roads. Though no reason was mentioned in the Government correspondence with regard to releasing of industrial units in a residential Sectors 13 and 17, Panipat, yet it can be presumed that consideration at that time was that in case running industrial units are acquired, the Government will have to pay huge compensation, would lead to unemployment and would involve a lot of litigation. Moreover, Sectors 13 and 17 are located close to the old town where mixed land use is prevailing and some of the industries are functioning in the residential areas. It would be relevant to mention here that so far two industrial units

running in this sector have obtained permission for change of land use. Action against rest of the units is in progress."

(iii) Additional affidavit dated 11.10.2004 of Shri Devinder Kaushik, Land Acquisition Collector, Urban Estate, Haryana, PanchkulacumSDO (Civil), Kalka. Paragraphs 4 to 7 of this affidavit read as under:

"4. That the objections were duly heard on 6.12.1989 camp at Panipat by the Land Acquisition Collector and Shri Narinder Mahajan, one of the Directors of the M/s. S.D. Processors Pvt. Ltd. appeared on behalf of the respondent. After providing proper opportunity of hearing, the Land Acquisition Collector made report on individual objections and sent a proforma report vide U.O. No. 5643 dated 26.12.1989 through proper channel to Govt. and then Land Acquisition Collector made general suggestions to the Govt. that before the issuance of declaration under Section 6 to acquire the land in question, a committee should be constituted so that it may be decided as to which constructed areas are to be released or which are to be acquired, as he had personally visited the site and there existed huge constructions in the notified area. The proforma report relating to land of the respondent/petitioner is given as under :

S. No.

Name of the petitioner

Total land under acquisition with khasra No.

Total constructed area

Type of construction

Whether constructed before or after

215.

Sh. Narender Mahajan

3000 Sq. Yds. comprising Khasra Nos. 3804, 3805, 3806

2 Factory shed under construction along with boundary wall

`A" class

After u/s 4.

Recommendation

by the LAC

The appropriate decision regarding acquisition is to be taken by the committee.

On the suggestions of the then Land Acquisition Collector, the Govt. had constituted the Joint Site Inspection Committee to inspect the site and to take decision to acquire the land in question before the issuance of declaration under

Section 6. After the site inspection, the Joint Site Inspection Committee reported that as per survey report of Distt. Town Planner Staff after issuing the notification under Section 4 in Sector 17, Panipat, 200 structures of various types were identified. Test check of these structures was made by the Inspection Committee on 5.1.1990 by visiting the spot (area under acquisition). The structures were of 5 categories, namely, (i) industrial units (ii) Service Station (iii) Commercial Units (iv) Poultry Farm (v) Residential. It was recommended by the Joint Site Inspection Committee that the Industrial Units, Commercial Units and all residential buildings of 'A' and 'B' class existed at the time of issuance of notification under Section 4 may be released to the extent of their covered area together with proportionate open area. Other units viz. shops and poultry farm etc. falling in the statutory green belt along with National Highway and in the sector planned road should not be left out of acquisition. However, any other Poultry Farm etc. which can be adjusted may be accommodated.

5. That no land of the respondent/petitioner was recommended to be left out from the acquisition on the basis of objections under Section 5A filed by the objector and thereafter the declaration under Section 6 was issued on 22.2.1990 acquiring 146.21 acres of land in Village Patti Insar including the land of the respondent/petitioner comprising in Khasra Nos. 3804, 3805, 3806 measuring 5 bighas 4 biswas.

6. That after the issuance of declaration under Section 6, on various representation a meeting was held on 15.4.1991 under the Chairmanship of the then Addl. Director, Urban Estate, Haryana, Panchkula and it was decided that a fresh site inspection will be made on 23.4.1991. The fresh committee was constituted with regard to the report dated 5.1.1990 of the Joint Site Inspection Committee for adjustment of structures in Sectors 13 and 17, Panipat. The fresh report dated 23.4.1991 of Joint Site Inspection Committee was sent to Commissioner, Town and Country Planner for perusal. Thereafter, on large scale representation received from this area, the Commissioner, Town and Country Planner discussed all the issues involved in the case in a meeting with the Director, Urban Estate, Haryana, Panchkula and Deputy Commissioner, Panipat on 10.2.1992. It was decided in this meeting that Director, Urban Estate, Panchkula may visit the site with a view to find justifiable solution to the problem.

7. That the Director, Urban Estate, Haryana Panchkula along with Addl. Director, Urban Estate, Panchkula, Deputy Commissioner, Panipat, Superintending Engineer, HUDA, Karnal, Senior Town Planner (Enforcement), Panipat and Land Acquisition Officer, Panchkula visited the site on 12.2.1992. Keeping in view the recommendation of the Deputy Commissioner, Panipat and policy of the Deptt. governing release of land and suggestions made by the Deputy Commissioner, Panipat vide his letter No. 35/PH dated 16.1.1992 the constructed area along with proportionate area measuring 2 bighas 6 biswas (1988 square meter) out of total land 5 bighas 4 biswas of respondent/petitioner was ordered to be released out of the acquisition keeping in view the 683 Sq. meter constructed area before

the issuance of notification under Section 4 and 311 sq. meter constructed after issuance of notification under Section 4 vide Director, Urban Estate, Endst. letter No. S2/92/156469 dated 1920/2/92.

The award in respect of the land acquired in Village Patti Insar measuring 134.74 acres only out of the total land notified under Section 6 measuring 146.21 acres was made and announced on 21.2.1992. No award was made qua 11.47 acres of land including the land of the respondent/petitioner which had been ordered to be released from the acquisition. The possession of the land for which the award had been made and announced was taken over and handed over to the beneficiary Deptt. i.e. HUDA on the day of award under Section 16 of the Land Acquisition Act except the land for which the orders of stay, status quo and stay dispossession has been passed by any competent Court of law."

(iv) Affidavit dated 13.10.2994 of Shri Narinder Mahajan. Paragraphs 4, 7, 8 and 9 that affidavit read as under :

"4. That para 4 is admitted to the extent that Shri Narinder Mahajan, Director of the respondent appeared on their behalf in response to the objections under Section 5(a). Instead of the Land Acquisition Collector sitting there, he only found the Kanungo and Patwari sitting out there to hear objections. The Kanungo inquired whether Mr. Mahajan had any document to support his case for the release of land. Photocopies of the documents were given to him. No hearing however was provided. In this regard, it is necessary to state that objections are to be heard under Section 5(a)(ii) of the Land Acquisition Act only by the Collector. Collector has been defined in Section 3(c) to mean the Collector of a district including Deputy Commissioner and another officer specially appointed by the appropriate Govt. to perform the functions of a Collector under the Land Acquisition Act. It is respectfully submitted that neither the Kanungo nor the Patwari were Collectors under Section 3(c) of the Act. The report made as produced in the said para is a fabrication to the extent while this aspect would be negated by the fact that in the Auditors report of the reports from financial year 1.4.1998 to 31.3.1999, amount of Rs. 7,21,240/ has been spent on the construction of building of the factory at Barsat Road, Panipat. Photocopies of Auditor's report are appended as Annexure P14. The present respondent had obtained Registration of Sales Tax in 1989 itself and they were liable to pay sales tax w.e.f. 14.4.1989. A photocopy of Sales Tax Form No. 15 is appended as Annexure P15. This aspect clearly shows that the building already stood established and the machinery installed, commercial production started from 19.4.1989. It also goes on to show that the building on this date at least was 6 months old because it took complete 6 months to establish the machinery in the factory. This aspect would be further evident by the order of the Asstt. Excise and Taxation Officer cum Assessing Authority under the Haryana General Sales Tax Act, 1973 dated 24.6.1991. He accepted the assessment case of the answering respondent showing the validity period to have started from 19.4.1989. Copy of the order is appended as Annexure P16. The aspect can be looked from another

angle also, namely, the answering respondent had applied to the Director, Import and Export, Asaf Ali, New Delhi for importexport code. They were granted Import Export Code bearing ISC No. 0589037846 vide letter dated 20.2.1989. Copy appended as Annexure P 17. All these factors clearly show that the factory already stood established on the date of the issuance of the notification under Section 4. These documents are in addition to the documents already produced with the Civil Writ Petition as Annexures P2, P3, P4, P5 and P6. Thus, the Report showing that on 26.12.1989, as per performa report, two factory sheds were under construction along with boundary wall. The documents clearly negated this aspect. Rest of the para relating to the joint site inspection is admitted. One other aspect need to be considered, namely, in para 7, the appellants themselves admit that 683 sqm. land was already stood constructed before issuance of notification under Section 4 and 311 sqm. was constructed after notification. In fact, the appellants are going by conjectures and surmises. The objection preferred under Section 5(a) clearly shows that the construction was complete by the year 1988. Even the map was produced along with objections. The map in 1991 was produced along with the writ petition also.

7. Para 7 is admitted except to the extent that only 683 sqm. was constructed before issuance of notification under Section 4 and 311 sqm was constructed after issuance of notification. In fact, the entire building had been constructed before notification under Section 4. The building constructed has been shown in Annexure P1. In this regard, the averments made in reply to para 4 supra are reiterated.

8. Para 8 is admitted. In fact, the possession of the land continues with the answering respondent even till date and the answering respondent is still continuing their business on the premises in question. The turnover of the answering respondent has exceeded 1.5 crores. They are paying a sales tax of Rs. 6 lacs to the State Government.

9. Para 9 is denied for want of knowledge. Even on equity, no useful purpose will be served in acquiring the land of the answering respondent, inasmuch as, the land is within Municipal limits. The answering respondent has been paying house tax right from the beginning. The factory of the answering respondents is surrounded on all corners by different factories. There is no pollution caused by the factory of the answering respondent. There is no dyeing carried out. The waste is sold which consists of thread and buttons. The buttons are sorted and sold in the local market, whereas bukram is taken away by local kabaris."

11. Shri Jaswant Singh, learned Senior Deputy Advocate General, Haryana submitted that order dated July 7, 1994 passed by the learned Single Judge in Civil Writ Petition No. 17401 of 1991 is liable to be quashed because the reasons assigned by him for quashing the acquisition of the respondents' land are legally untenable. He pointed out that as per the recommendations made by the Committee and the authorities of the Urban Estates Department, the government had released 2 bighas and 6 biswas (1988 square meters) of land of the

respondents despite the fact that at the time of issuance of notification under Section 4 of the Act, only 683 square meters was covered by construction and additional construction of 311 square meters had been raised during the pendency of the acquisition proceedings. He then argued that the observation made by the learned Single Judge that the respondents will not be in a position to run the mill due to lack of space is based on surmises and pure conjectures because no evidence was produced by them to show that 994 square meters of open land was not sufficient for running the mill. Shri Jaswant Singh referred to the orders passed by the learned Single Judges in other writ petitions as well as orders dated 15.1.2004 passed by the Division Bench in LPA No. 885 of 1995 Arjan Dev and others v. State of Haryana and another and LPA No. 434 of 1995 Ashok Kumar and others v. State of Haryana and others and argued that the order impugned in LPA No. 16 of 1995 should be set aside because the same would frustrate the purpose of acquisition. He emphasised that the government had taken a policy decision to release the land of the industrial units along with proportionate open area and no discrimination was practised qua the respondents and, therefore, the learned Single Judge was not justified in quashing the acquisition of their land ignoring the fact that 2 bighas and 6 biswas of land had been released from acquisition.

12. Shri P.K. Mutneja defended the order passed by the learned Single Judge in Civil Writ Petition No. 17401 of 1991 by arguing that the open area left by the government was not sufficient for running the mill and the acquired land cannot be used for any other purpose. He referred to site plans marked Annexures P1 and AR4 to show that the acquired land is surrounded by the construction of the respondents and other industries and submitted that the same cannot be used for residential or commercial purposes of Sectors 13 and 17. Shri Mutneja also referred to two additional affidavits dated 29.1.2004 and 19.10.2004 of Shri Narender Mahajan, Director of respondent No. 1 S.D. Processors Pvt. Ltd. and the documents annexed therewith to show that the respondents cannot run the industrial unit without adequate open space and submitted that the order under challenge may not be disturbed. He then argued that the acquisition proceedings should be quashed because declaration under Section 6 was issued without complying with the mandatory provision contained in Section 5A of the Act and the orders passed by the learned Single Judge in Civil Writ Petition Nos. 18565 of 1991, 2334 of 1992 and 18026 of 1991 should be set aside because he did not consider the all important issue relating to violation of Section 5A of the Act and discrimination. Shri Mutneja emphasised that the tenor of the orders passed in the writ petitions suggesting that no other point was argued by the counsel appearing for the appellants is misleading because the question of denial of opportunity of hearing was specifically raised in the writ petitions and pressed at the time of hearing. At the end of his submissions, Shri P.K. Mutneja made a grievance that the land belonging to the appellants in LPA No. 433 of 1995, which is covered by the constructed area, has not been left out/released with proportionate open area, as was done in the cases of other industrial units.

13. Ms. Seema Narang, learned counsel appearing for appellant Nos. 3 and 4 in LPA No. 432 of 1995 supported Shri P.K. Mutneja and argued that acquisition of the land in question should be declared as nullity on the ground of violation of Section 5A of the Act.

14. In reply to the last submission of Shri P.K. Mutneja, learned Senior Deputy Advocate General, on instructions from the Land Acquisition Collector, gave out that the constructed area of the land belonging to the appellants in LPA No. 433 of 1995 has been left out/released from acquisition. Simultaneously, he stated that if the land covered by the constructed area has not been left out with proportionate open area, then needful will be done in accordance with the policy of the State Government as reflected in the affidavit of Shri Devinder Kaushik, Land Acquisition Collector, Urban Estates, Haryana, Panchkula, which has been filed in LPA No. 16 of 1995 along with C.M. No. 1034 of 2004.

15. We have given serious thought to the entire matter and carefully perused the record including the additional affidavits filed by the parties and the files produced by the learned Senior Deputy Advocate General.

16. We shall first deal with LPA Nos. 432, 433 and 435 of 1995. A reading of the averments contained in Civil Writ Petition No. 18565 of 1991 and order dated July 22, 1994 passed by the learned Single Judge, which is subject matter of LPA No. 432 of 1995, shows that even though the appellants had challenged the notifications issued under Sections 4 and 6 of the Act on several grounds, the only point pressed before the learned Single Judge was that vacant space should be left out from the acquisition. The learned Single Judge noted that 6 bighas and 8 biswas of land belonging to the appellants had either not been acquired or released from acquisition and observed that this was much more than the constructed area of their industrial unit, i.e., 1930 square yards. The learned Single Judge then referred to the site plan and rejected the plea of the appellant that the acquired area cannot be put to any meaningful use by the HUDA on whose behalf the land was acquired.

17. The record of Civil Writ Petition No. 2334 of 1992 and order dated July 7, 1994 passed by the learned Single Judge, which is subject matter of LPA No. 433 of 1995, shows that out of the total 8 bighas and 17 biswas of land belonging to the appellants, which was sought to be acquired, 8 bighas and 14 biswas had been ultimately left out. The learned Single Judge noted that no meaningful argument was raised by the learned counsel to justify the release of the remaining land and accordingly dismissed the writ petition.

18. The record of Civil Writ Petition No. 18026 of 1991 and order dated July 7, 1994 passed by the learned Single Judge, which is subject matter of challenge in LPA No. 435 of 1995, shows that the only point argued before the learned Single Judge was that after leaving out the constructed portion along with proportionate open area measuring 4 bighas and 10 biswas out of the total land measuring 11 bighas and 3 biswas, the vacant portion could not be put to any meaningful use.

The learned Single Judge, after taking note of the site plan Annexure P2, observed that the vacant area can certainly be divided into various plots and allotted to the deserving applicants.

19. In none of the above mentioned cases, the writ petitioners (appellants herein) applied for review of the order of the learned Single Judge on the ground that reference made therein to the point argued by their counsel was factually incorrect and, as a matter of fact, other points had also been argued. Not only this, in none of these cases, the appeal is accompanied by an affidavit of the Advocate who had appeared before the learned Single Judge that he had pressed the challenge to the acquisition proceedings on the grounds other than those mentioned in the impugned orders, but the same were not considered by the learned Single Judge. Therefore, we do not find any justification to entertain the argument of Shri Mutneja and Miss Seema Narang that acquisition proceedings should be nullified on the ground of violation of Section 5A of the Act or discrimination.

20. Even otherwise, we are convinced that the appellant's plea regarding denial of opportunity of personal hearing is untenable and is liable to be rejected. None of them had controverted the assertion contained in the written statement filed on behalf of the State Government that after considering the recommendations made by the State Government, a policy decision was taken to leave out the constructed portion of the industrial unit along with proportionate open area. In additional affidavit dated 11.10.2004 of Shri Devinder Kaushik, it has been averred that the Land Acquisition Collector had heard the landowners on 6.12.1989 and then made report on individual objection. He also suggested that the government may constitute a Committee to take decision on the issue of releasing constructed area. The State Government accepted his suggestion and constituted the Committee which, after inspecting the site, made recommendation for release of the constructed portion of the industrial units along with proportionate open area. The government accepted the recommendations of the committee and decided to release the constructed area of the industrial units along with proportionate open area. Subsequently, the representations made by other landowners were considered and some more land was released from acquisition. All this is clearly indicative of the fact that the Land Acquisition Collector had submitted report after considering the objections filed under Section 5A of the Act. Not only this, even the State Government gave due consideration to the points raised by the objectors and decided to release the land covered by the constructed area along with proportionate open area for industrial units. It is, thus, clear that the landowners were given effective hearing and their objections were duly considered up to the level of the State Government. The affidavits of Shri Narender Mahajan suggesting that opportunity of hearing had not been given to the objectors sans credibility because the same are conspicuously silent about the fact that notification under Section 6 of the Act was issued by the government after duly considering the recommendations made by the Land Acquisition Collector and the Committee.

21. We are further of the view that the learned Single Judge did not commit any error when he observed that the acquired land can be put to a meaningful use commensurate with the purpose of acquisition, i.e., for development and utilisation as residential and commercial areas of Sector 17, Panipat. A perusal of the site plans produced by the appellants along with their writ petitions unmistakably shows that the acquired land can be utilised by HUDA for the purpose of acquisition.

22. The argument of Shri P.K. Mutneja that the acquired land of the appellants should be left out because the same is necessary for carrying out industrial activities and future expansion cannot be accepted because no tangible evidence had been placed on the record of the writ petitions to show that the appellants are not able to run their industries by using the proportionate open area left out of acquisition.

23. This leaves us with the consideration of LPA No. 16 of 1995. A reading of order dated July 7, 1994, which is subject matter of challenge in this appeal, shows that the learned Single Judge, after taking note of the fact that 2 bighas and 6 biswas out of total land measuring 5 bighas and 14 biswas belonging to the respondents had been released from acquisition, nullified the acquisition of the remaining land by observing that as per site plan Annexure P1, the acquired portion of the land was surrounded by industries and the same cannot be utilised for achieving the purpose of acquisition.

24. We have carefully perused the site plan (Annexure P1) and find that there exists some construction of the land belonging to the respondents and there is a vacant plot with opening of two sides on the road. After the roads, there exists the buildings of other industrial units and some shops. However, on the basis of material placed on the record of the writ petition and the appeal, it is not possible to record a firm finding that the acquired land cannot be put to any meaningful use and particularly for the purpose specified in notification issued under Section 6 of the Act. In our opinion, instead of deciding the issue on the basis of sketchy material produced before him, the learned Single Judge should have remitted the matter to the concerned authorities with a direction to carry out fresh inspection of the site and then determine whether the acquired portion of the land could be effectively utilised for achieving the purpose of acquisition.

25. In the result, LPA Nos. 432, 433 and 435 of the 1995 are dismissed with the direction that if the constructed area of the industry of appellant M/s. Mahalakshmi Spinning Mills (appellant in LPA No. 433 of 1995) has not been left out with proportionate open area, then needful shall be done by the concerned authorities within next two months.

26. LPA No. 16 of 1995 is disposed of in the following terms :

(i) The order of the learned Single Judge is set aside.

(ii) Within one month from today, the State Government shall constitute a

Committee consisting of Director, Urban Estates, Haryana and other senior officers of the HUDA and Town Planning Department. The Committee shall inspect the site of the land of the respondents and determine whether vacant area can be put to a purposeful use by the HUDA on whose behalf the acquisition was undertaken. While doing so, the Committee shall also keep in mind the need of the industry of respondent No. 1.

(iii) If the Committee comes to the conclusion that the acquired land can be effectively used by the HUDA, then the respondents shall have to surrender possession of the acquired land, else the same shall be released by the State Government. In that event, the respondents shall be paid compensation in accordance with law.

(iv) The respondents are also given liberty to make a written representation to the State Government/Committee for release of the remaining land.

(v) Till the matter is decided afresh, the parties shall maintain status quo as is obtaining today. This would necessarily mean that the appellants shall not interfere with the possession of the respondents and the latter shall not raise further construction or alienate the land to any other person.