(2013) 11 P&H CK 0305

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 14340 of 2011 (O & M)

Sultan Singh APPELLANT

Vs

State of Haryana RESPONDENT

Date of Decision : 29-11-2013

Acts Referred:

Citation : (2013) 11 P&H CK 0305

Hon'ble Judges : Surya Kant, J;Surinder Gupta, J

Bench : Division Bench

Final Decision : Disposed Off

Judgement

Surya Kant, J.—This order shall dispose of CWP Nos. 14340, 19320, 24150 of 201l, 4581 of 2012, 10094 and 10550 of 2013 as common questions of law and facts are involved in these cases. For better appreciation of the points in issue, a brief reference to the facts of each case is required to be made. CWP No. 14340 of 2011, Sultan Singh & Ors. v. State of Haryana & Ors.

Petitioner No. 1 and his five sons impugn the notifications dated 13th May, 2010 and 12th May, 2011 issued under sections 4 and 6 of the Land Acquisition Act, 1894 in respect of acquisition of their land measuring 30 kanals 12 marlas situated within the revenue estate of village Malpura, Tehsil & District Rewari. They are said to have constructed residential houses on different Khasra Numbers fully described in Para 2 of the writ petition where as many as six families are residing and the entire land has been developed as a ''Dhani'' [hamlet]. It is averred that the petitioners are agriculturists and the vacant land is used by them for growing vegetables or green fodder for cattle etc. The acquisition of the land, according to the petitioners, has taken away their only source of livelihood as it is a fertile agricultural land. The petitioners allege mechanical rejection of their objections submitted u/s 5A of the Act as well as discrimination meted out to them in the matter of release of their residential houses/land. The petitioners are said to be residing in their residential houses for the last over 50 years.

2. It may be mentioned at this stage that vide impugned notification dated 13th May, 2010, State of Haryana expressed its intention to acquire 494 Acres 3 Kanals 6 Marias land for the development of Industrial Sectors 15, 16 and 17 at Dharuhera, as an Integrated Complex for Industrial and other Public Utilities. The land proposed to be acquired comprised revenue estate of villages Kapriwas, Malpura and Ghatal Mahniawas, Tehsil & District Rewari. The final declaration u/s 6 of the Act was notified on 12th May, 2011 for the land measuring 435 Acres 1 Kanal and 12 Marias and the Award is said to have been passed on 10th May, 2013 for 430 Acres of land. A part of the petitioners'' land has also been included in Section 6 notification.

3. State of Haryana and Director, Industries have filed their written statement maintaining that the subject acquisition has been made for a bona-fide public purpose, namely, planned integrated complex for industrial and other public utilities to be developed by the State Agency, namely, Haryana State Industrial and Infrastructural Development Corporation Limited. This area was designated as ''industrial zone'' by the Town and Country Planning Department in the year 2007 and in conformity with the Development Plan that the subject acquisition has been made. It is maintained that the objections filed by landowners including the petitioners u/s 5A were duly considered by the Land Acquisition Collector, Rewari who submitted his recommendations to the State Government. Since HSIIDC is the Project Development and Implementation Agency, the State Government sought its comments on the recommendations received from the Land Acquisition Collector. In addition, the views of Deputy Commissioner, Rewari were also obtained. Thereafter, a team of senior officers led by Financial Commissioner and Principal Secretary, Industries and Commerce Department, Haryana visited each of the sites in respect of which objections were filed and after due deliberations and fair assessment by that team, that the final declaration u/s 6 notified.

4. As regard to the petitioners'' claim, it is averred in the written statement that six sets of objections were filed by them for the release of their land measuring 35 kanals 10 marlas on the plea that they have constructed six double storeyed residential houses. It was also mentioned that the land comprising Khasra Number 23/21/3[1-0] was donated by them to a religious mission vide registered Gift Deed where an Ashram was developed. Keeping in view the existing constructions and the recommendations made by the Land Acquisition Collector, the residential houses or other structures were decided to be released. Their vacant land was recommended for acquisition, hence in the notification issued u/s 6, residential houses and other structures were excluded. As regards the deprivation of petitioners from their only source of livelihood, it is explained that besides compensation, the petitioners as per the Rehabilitation Policy dated 09th November, 2010 are entitled to an Annuity for their long term sustenance, according to which a sum of Rs. 1,000/- per acre shall be paid for a period of 33 years along with an annual in- crease of Rs. 50/-. It is claimed that the amount of Annuity is invariably higher than the amount a landowner is able to get for his

agricultural land in the form of annual rent in most parts of the State. Respondents No. 1 and 2 have also placed on record the layout plan of the Industrial Estate, Dharuhera according to which the vacant land of the petitioners can not be released as it falls within the alignment of 45 meter wide road though their residential houses/structures stand exempted.

5. At the time of hearing of these cases, learned State Counsel handed-over a copy of the Government Notification dated 19th August, 2013 issued u/s 48[1] of the Act whereby 20 kanals 15 marlas additional land including 2.00 Kanals land of the petitioners has been further released from acquisition.

CWP No. 19320 of 2011, M/s. ARS Enterprises Pvt. Ltd. v. State of Haryana & Ors.:

6. The petitioner is a Company incorporated under the Companies Act, 1956. Land measuring 17.21 Acres in village Malpura, District Rewari was owned by M/s. Utility Engineers [India] Limited, who went into liquidation pursuant to a winding-up petition instituted in the High Court of Delhi. The petitioner Company purchased the entire unit of M/s. Utility Engineers [India] Limited which included land, building, plant, machinery and other accessories in public auction held on 09th December, 2004. Sale Certificate was issued in favour of the petitioner on 13th May, 2005 [P-2], though it took possession of all the assets on 27th December, 2004.

7. Since the above stated land of the petitioner along with structure has also been acquired vide the impugned notifications, the aggrieved petitioner alleges discrimination and the pick and choose policy in the matter of release of the acquired properties besides asserting that the industrial factory of 70,000 square feet is intended to be utilised by it for industrial purposes only, namely, the same purpose for which it has been acquired. The petitioner is said to have represented for the release of its land and property on 06th April, 2011.

8. State of Haryana and its Director, Industries have filed their written statement defending the subject acquisition. A preliminary objection of non-submission of objections by the petitioner u/s 5A has been taken and in addition to various pleas which have been briefly mentioned in Para Nos. 4 and 5 above, the following additional plea has also been taken:-

''3........the petitioner company purchased the land vide sale certificate dated 13.05.2005 during the course of liquidation proceedings. It is submitted that the petitioner company did not make any efforts to utilize the land for the permitted use after purchasing the land. At the time of Section 4 notification, the land in question was lying under disuse and no industrial activity was going on. Therefore, the petitioner is not entitled to seek release of this land on the strength of the industrial activity being carried out on the subject land. In fact the petitioner company has not attached any evidence to the effect that it ever used the land for industrial activity so far.

4. That it is respectfully submitted that the CLU permission was granted in the name of M/s. Utility Engineers [India] Limited in the year 1984. The petitioner company has not disclosed that the CLU permission has been changed in their name. In case, the CLU permission has not been changed in their name, they can not seek benefit of the CLU permission granted to the previous landowner company and taken benefit thereof.

[Emphasis applied].

9. The petitioner has filed its replication reiterating that the subject property was purchased after making a huge investment for the purpose of reviving the industry and various steps to avail cash credit facilities from Indian Overseas Bank were taken in the year 2008-09 but before the petitioner could actually revive the industry, the impugned acquisition has been made.

CWP No. 24150 of 2011, M/s. Delton Cables Limited v. State of Haryana & Ors.

10. The petitioner is a Limited Company incorporated under the Companies Act, 1956 and is a unit of the Delton Cables Group which was set up in the year 1948. The petitioner is stated to be one of the leading manufacturer of electrical and telecommunication Cables. The petitioner is owner in possession of land measuring 195 kanals 13 marlas, i.e., 24.454 Acres, fully described in Para 6 of the writ petition, situated in the revenue estate of village Malpura, District Rewari. The petitioner''s land is adjoining the National Highway No. 8. Out of the petitioner''s above stated land, 74 kanals of land described in Para 7 of the writ petition has been acquired vide the impugned notifications. The petitioner filed its objections u/s 5A explaining that it has already been granted change of land use for both the parcels of its land and the building plans of its industrial unit were duly approved by the Director, Town and Country Planning, Haryana vide Memos dated 15th March, 1982 and 4th January, 1983 and it has a unit with covered area of 4,16,778 square feet. The petitioner explained in its objections that out of the proposed acquisition of its 9.25 acres of land, only about 4.25 acres is required for widening the National Highway No. 8, Sector Road, Service Road and Green Belt. The remaining about 5 Acres of land is said to be needed by the petitioner for expansion of its industrial unit.

11. Since the petitioner''s objections did not find favour and its land measuring 9.25 Acres has been included in Section 6 notification, the petitioner impugns the acquisition on various grounds including that the subject land is eminently needed [i] for shifting of the petitioner''s another industrial unit at Nazafgarh which was a rented premises and is required to be vacated after 16 years'' prolonged litigation with the owner; [ii] the petitioner entered into a MOU on 24th April, 1993 with Taihan Electric Wire Company Limited and Tomen Corporation for establishment of a joint venture Company in India and pursuant thereto, TDP Copper Limited was incorporated. The vacant land is required for implementation of the above stated project for which the building plans were got approved from the Director, Town and Country Planning, Haryana but the

construction could not be raised due to applicability of Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963; [iii] the petitioner has thereafter entered into another MOU with a USA and Maxicon Company for the expansion of its existing Unit for which the Project Report has been prepared and since the petitioner intends to utilise the vacant land for expansion of its industrial activities, its acquisition for the same purpose is totally arbitrary; [iv] the objections u/s 5A have been mechanically rejected in violation of the settled law; [v] the consideration of objections u/s 5A by the State Government on the basis of comments given by HSIIDC is contrary to natural justice as HSIIDC itself being beneficiary of the acquisition, there was a conflict of interest.

12. The petitioner also alleges discrimination as according to it the land of M/s. Pashupati Spinning and Weaving Mills at Kapriwas, the details whereof are given in Para 26 of the writ petition, has been released from acquisition though a mere structure had been raised in the year 1994 and no industrial activities were being run. Similarly, the land measuring 47 kanals 10 marlas of M/s. Chetak Logistic Limited as per details given in Para 27 of the writ petition has been released to favour that Company even when no objections u/s 5A were filed. A pointed reference is also made to the information obtained under RTI [Annexure P-29[Colly] which contains the recommendations made by Land Acquisition Collector or the Officers'' Committee to suggest indiscriminate release of land in favour of some industries, while denying such benefit to the petitioner.

13. State of Haryana and its Director, Industries have filed written statement defending the acquisition. In addition to various pleas which are briefly mentioned in Para Nos. 4 and 5 of this order, they have averred in specific that the area of the running industrial unit of the petitioner was not even proposed to be acquired and only the vacant land for which CLU permissions obtained on 20th April, 1987 and 20th April, 1982, had expired with the efflux of time due to inaction of the petitioner, has been acquired. It is maintained that the acquired vacant land of the petitioner is needed for the 50 meter wide statutory green belt along National Highway No. 8 on which no construction can be made. As regard to the plea of discrimination taken by the petitioner, Paras 26 and 27 of the written statement being relevant are reproduced below:-

''26..........it is respectfully submitted that M/s. Pashupati Spinning and Weaving Mills Limited had obtained change of land use permission and there was a running industrial unit, therefore, their land was excluded at the time of issue of Section 6 declaration. While in the case of M/s. Pashupati rest of the land is not in the existing industrial unit, it is different story in the case of the petitioners. The existing factory building is over almost 2 acres of land whereas an additional 13 acres of land was not included in the acquisition, which is more than sufficient for the petitioners'' expansion plans.

27.........it is respectfully submitted that M/s. Chetak Logistics Hub, situated in village Kapriwas Tehsil & District Rewari did not file objections u/s 5A. However, they filed a representation for release of their land by stating that they had obtained Change of Land Use permission from the competent authority. The Company had also constructed warehouse over their land. The team during the site visit also observed that there was a warehouse constructed on the site. Hence, it was decided to exclude the land from acquisition at the time of Section 6 declaration".

[Emphasis applied].

14. A self-speaking order dated 24th December, 2012 passed by Principal Secretary, Industries and Commerce Department rejecting the petitioner''s application dated 21st April, 2011 has also been appended [R-1], Para 4.5 whereof reads as follows:-

''4.5 It is also observed here that though the applicant company had obtained the CLU permission for the land in dispute and the building plans were also approved but it is a also a fact that the applicant company did not raise any construction over the land in question. The validity of the said ''change of land use'' permission was only for a period of two years extendable by one year as per the provisions of the Punjab Scheduled Roads and Controlled Areas [Restriction of Unregulated Development] Act, 1963. The applicant Company can not claim the benefit of the CLU approval granted in the year 1982 which lapsed in the year 1984 and no documentary evidence has been submitted by the applicant company to show that any extension in respect of validity of the Change of Land Use permission had ever been applied for or granted by the competent authority. The applicant company has stated in paragraph 15 of its application that there is a running unit only over land measuring 23 kanals 16 marlas comprising in Khasra No. 29//24[7-3], 25[7-7], 41//4[4-13] and 5/ l[4-13] of village Malpura, Tehsil and District Rewari. It is pertinent to mention here that total land of the company is 195 kanals 13 marla. Even the applicant Company in its application [paragraph 13] has stated that the land measuring 79 kanals 03 marlas is being used as storage yard, even though no such storage was observed at site during the site inspection. As a matter of fact, the land excluded from acquisition proceedings at the initial stage itself, i.e., from Section 4 notification [i.e. 121 kanal 13 marla] was more than sufficient not only for meeting its expansion plans but also for use as a storage yard".

[Emphasis applied].

15. The petitioner has filed replication reiterating its plea and has also placed on record a copy of the settlement arrived at between the petitioner and its landlords of Nazafgarh Unit whereunder the petitioner is required to vacate the building of the said industrial unit.

CWP No. 4581 of 2012, M/s. IFCI Infrastructure Development Ltd. v. State of Haryana & Ors.

16. The petitioner Company is a 100% subsidiary of IFCI Limited - a Public

Financial Institution and has been incorporated under the Companies Act, 1956.

17. IFCI as a Financial Institution runs a host of activities like providing loan or various other financial assistance to different sectors including industrial sector throughout the country. M/s. Pashupati Spinning and Weaving Mills Limited [respondent No. 4] was also given financial assistance by IFCI for setting up a composite textile unit at village Kapriwas, near Dharuhera in the year 1980 for which the above said industry mortgaged the entire industrial land measuring 343 kanals 6 marlas as a security against the loan. The Industrial Unit though came into commercial production but eventually started running into losses and could not pay the loan taken from IFCI and several other co-lenders like IDBI, Canara Bank, PNB, Bank of Baroda, State Bank of Patiala etc. etc. Due to nonrepayment of the outstanding loans, reference of the said Industry was filed before the BIFR who declared it a sick industry on 14th July, 2005. The Industry thereafter entered into negotiation for the settlement of its outstanding dues and transferred the ownership of its land measuring 72 kanals out of the total industrial unit in favour of the IFCI''s nominee, namely, the petitioner Company towards full and final settlement of the loan account. This is how the petitioner became owner of the land measuring 72 kanals [9 acres], fully descripted in Para 2 of the writ petition. The said land has also been acquired vide the impugned notifications dated 13th May, 2010 and 12th May, 2011 issued under Sections 4 and 6 of the Act.

18. The aggrieved petitioner impugns the acquisition of its land mainly on the plea of discrimination as according to it [i] land of M/s. Chetak Logistic Limited - respondent No. 5 has been released without any objections u/s 5A by that Company only on the ground that Warehousing shed was found to have been constructed at the time of Joint Site Inspection by the Officers'' Committee but the petitioner''s claim has been brushed aside on the plea of non-submission of objections u/s 5A; [ii] the petitioner has already taken effective steps by preparing a plan for utilisation of the acquired land; [iii] the project envisaged by the petitioner would generate employment and revenue for the State; [iv] the petitioner''s land is a part and parcel of M/s. Pashupati Spinning and Weaving Mills'' chunk of land for which CLU permission had already been granted.

19. State of Haryana has filed its written statement maintaining that the acquisition has been made for a bona-fide public purpose. Besides reiterating various pleas taken in their replies in the connected cases, the State has raised the following preliminary submissions questioning the bona-fide of the petitioner:-

''3. That the petitioner Company, as per their own averments, had acquired the subject land from M/s. Pashupati Spinning and Weaving Mills as part of the One Time Settlement [OTS] Scheme in lieu of their unpaid outstanding loans. The OTS in respect of the outstanding amount of Rs. 1.68 Crores upto 2008 was settled at the principal outstanding amount of Rs. 5.59 Crores, in lieu o f which it accepted the subject land measuring 9 acres. It is interesting to note that the sale deed for the said land was executed on 29.9.2008 for an amount of Rs. 1.70

Crores as shown in Annexure P/2. The petitioner needs to be called upon to explain the said inconsistency. In case the said land has been accepted in lieu of the settled amount of Rs. 5.59 Crores, it is a clear case of evasion of stamp duty or else there is a serious issue on the OTS itself. This shows the questionable conduct of a Public Limited Company.

4. That though the petitioner Company accepted the subject land in lieu of the OTS, it never took the trouble of applying for the ''change of land use'' from the competent authority for the intended use till the issue of Section 4 notification. As such it can not claim any special consideration in its favour in this behalf, especially when the subject land has been lying vacant at site all throughout".

[Emphasis applied].

20. Site Plan [R-1] has also been appended to canvass that various industrial plots besides 20 meter wide road are proposed to be carved out on the acquired land of the petitioner.

21. Respondent No. 4 - M/s. Pashupati Spinning and Weaving Mills has also filed its written statement explaining that 72 kanals land was transferred to the petitioner vide sale deed dated 29th September, 2008 in satisfaction of the debt owed by it to IFCI Limited. It is claimed that respondent No. 4 never defaulted in its payment to Ca-nara Bank, PNB, Bank of Baroda or State Bank of Patiala etc. It is further explained that the possession of the land was given to the petitioner after removing all the constructions except the defunct affluent treatment plant which was not causing any problem and was to be removed as and when the petitioner would ask respondent No. 4 to do so and that the petitioner never approached it for the removal of that defunct plant. As regard to the release of the land of respondent No. 4, it is specifically averred that objections u/s 5A were duly submitted and it was on consideration of the same that respondent No. 4''s land was released. Contrary to it, the petitioner did not file objections and, thus, can not compare its claim with respondent No. 4.

22. The Managing Director of Respondent No. 5 - M/s. Chetak Logistic Limited has also filed his written statement, explaining that his land has been released from acquisition on the recommendations made by Joint Site Inspection Team. It is revealed that the released land was purchased by the Managing Director in his individual capacity vide sale deed dated 31st August, 2007, he being the successful bidder in the public auction held by Haryana Financial Corporation. The said land had already been granted change of land use permission on 17th May, 1982 and pursuant to such permission, Warehousing Sheds had been constructed which were found at the spot by the Joint Site Inspection Team. It is averred on this premise that the petitioner can not claim any parity as neither the petitioner obtained CLU permission nor raised any construction which could bring its case within the fore-corners of the Government Policy dated 26.10.2007 for the release of existing structures.

CWP No. 10094 of 2013, M/s. Delton Cables Pvt. Ltd. v. State of Haryana & Ors.

23. The petitioner Company in this second petition has impugned order dated 24th December, 2012 passed by Principal Secretary, Industries and Commerce Department, Haryana [P-8] whereby its application dated 21st April, 2011 u/s 15A of the Act has been rejected. The application was moved for the release of the acquired land. The State Government has turned down the petitioner''s application inter-alia observing that [i] the validity of proceedings up to Section 4 notification is not contested; [ii] the factory building is located only over the piece of land measuring about 2 acres which has not been acquired, rather another adjoining area about 13.4 acres has also been left out for any future expansion; [iii] the objections filed u/s 5A were taken on record, duly considered and were decided after giving an opportunity of hearing to Smt. Rakesh Verma, a very senior functionary and Director of the Company and [iv] the petitioner did not utilise the land after obtaining CLU permission on 20th April, 1982 which was valid for a period of two years only.

24. The petitioner on the other hand has challenged the above stated order broadly on the same grounds which it has taken in the first writ petition i.e., CWP No. 24150 of 2011.

CWP No. 10550 of 2013, Sat Pal & Ors. v. State of Haryana & Ors.

25. The petitioners who are son, grand-sons or other family members of Mukh Ram of village Kapriwas, District Rewari have averred that they are owners in possession of the land measuring 64 kanals 8 marlas, fully described in Para 2 of the writ petition, situated in the revenue estate of village Kapriwas, District Rewari. They are said to have set up a Poultry Farm and a Samadhi over the land which has been acquired vide the impugned notifications dated 13th May, 2010 and 12th May, 2011 issued under Sections 4 and 6 of the Act. The petitioners impugn the acquisition on the ground of it being discriminatory and irrational. Their another grievance is that the Poultry Farm has not been released from acquisition though it amounts to an industrial activity for which the land is sought to be acquired. They claim to have constructed residential houses also.

26. Since the respondents have, during the course of hearing, placed on record comprehensive site plan depicting the location of the acquired land of different petitioners, we did not deem it necessary to obtain a separate written statement in this case.

27. The point of commonality being the impugned notifications dated 13th May, 2010 and 12th May, 2011 though challenged on different grounds, we have heard learned counsel for the parties at some length and have gone through the paper-books as well as government records with their assistance. The following issues arise for determination in these cases:-

[i] Whether objections u/s 5A filed by most of the petitioners have been considered and decided in accordance with law?

[ii] Whether those petitioners who did not submit objections u/s 5A can be

permitted to challenge the acquisition of their land/properties?

[iii] Whether the acquisition or release of the land/properties has been made discriminately and on pick and choose basis?

QUESTION No. 1: Whether objections u/s 5A filed by most of the petitioners have been considered and decided in accordance with law?

28. It was vehemently contended on behalf of the petitioners that many of them had submitted objections u/s 5A which were required to be adjudicated by the Land Acquisition Collector. However, in total derogation of his statutory powers, the Land Acquisition Collector sent a report without expressing his own views and left it to the discretion of the State Government to release the land or not. The State Government followed the procedure which is alien to the Scheme of the Statute and sought opinion of HSI-IDC who is the sole beneficiary of the acquisition. The comments sent by HSIIDC in support of the acquisition have influenced the decision making process heavily. The State Government, for the reasons best known to it, also constituted a High Powered Officers'' Committee for Joint Site Inspection and its recommendations are de-facto the final decision of State Government. It was contended that the composition of such a Committee is unknown to the Statute, hence the entire decision-making process adopted by the State Government is vitiated in law.

29. Controverting the petitioners'' allegations, learned Counsel for the State and HSIIDC urged that each and every objection filed u/s 5A was duly considered by the Land Acquisition Collector. The Joint Site Inspection Team comprising senior and responsible officers visited every site to assist the Government in the decision-making process. The objectors were duly heard and thereafter only the same were decided with a proper application of mind. They maintained that in the absence of any bar under the Statute, the State Government is competent to evolve any transparent, fair and just mechanism to arrive at the right conclusion. The Committee was constituted for the aid and advice of the State and unless the law prohibits, the petitioners can not be heard to question the procedure adopted by the State, more so when they appeared before the Inspecting Team and took a chance of favourable consideration.

30. In the light of authoritative pronouncements in [i] Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, [ii] Raghbir Singh Sehrawat Vs. State of Haryana and Others, and [iii] Surinder Singh Brar and Others Vs. Union of India (UOI) and Others, a fair opportunity of hearing to the objectors, dispassionate consideration of theirplea against acquisition of land, due application of mind by the Land Acquisition Collector while making recommendations and impartial and judicious consideration of such objections, or other relevant material is sine-qua-non for a valid declaration of acquisition u/s 6 of the Act. Since Section 6 notification need not contain reasons, the decision of appropriate Government preceding the notification must disclose the rationality, bona-fide public purpose and observance of procedural propriety. To say it

differently, the procedure contemplated under the Act, it being an ex-propriatory legislation, must be strictly construed and followed. It would thus be imperative upon the State Government to ensure that [i] the acquisition is based upon a uniform pattern; [ii] two similarly placed owners have not been treated differently; [iii] the object of acquisition is of paramount public importance; and [iv] the exemption or release of any part of the proposed or acquired land does not hamper with such public purpose.

31. Applying these parameters to the facts and circumstances of the case in hand, suffice it to observe that the genuineness of the public purpose of acquisition has been questioned by none. It is a matter of record that Dharuhera has come up as one of the prominent industrial hub in the State of Haryana. The entire area including the one falling in the subject acquisition has been notified as an ''industrial zone''. The acquired land is to be developed by a State Agency, namely, HSIIDC. Its not a case where the State can be accused of robbing the farmers for undue enrichment of private developers and builders. The tentative Site Plan appended with the written statement or produced during the course of hearing unveils carving out of hundreds of industrial plots of different sizes to be allotted by HSIIDC. The acquisition has been made indeed in public interest and for the industrial growth of the State.

32. It is the respondents'' case that after the receipt of report u/s 5A from the Land Acquisition Collector that the comments of Project Executor - HSIIDC were obtained and thereafter the Site Inspection was carried out by a team of senior officers. We do not find any provision in the Act or evolution of any such principle in the cited decisions that the State Government must restrict its decision-making process within the periphery of the report of the Land Acquisition Collector or the objections made by the owners. For taking a holistic view in a case where a big chunk of land comprising more than 400 acres was acquired, the State Government was well within its right to seek assistance of the stakeholders and the expert advisors to make up its mind and arrive at a definite decision. So long as the decision-making process does not suffer from the vice of irrationality, extraneous considerations or excessive delegation of its power by the State, we find no illegality committed in the procedure adopted in the instant case, more so when it leads to a fair, just and equitable decision.

33. We have seen the tentative Site Plan depicting the location of the land/ property of each petitioner. We do not find any apparent reason of heart-burning or to allege arbitrary acquisition of the petitioners'' land/properties. We say so for the reasons that - [i] in Sultan Singh''s case [CWP No. 14340 of 2011], all the residential houses and other structures are said to have been released from acquisition. Their vacant land falls within the alignment of 45 meter wide road and thus can not be released. Otherwise also, the acquired land can not be released only on the plea that it is used for agricultural or related activities, as in that event no acquisition of land can sustain; [ii] in the case of M/s. ARS Enterprises Private Limited [CWP No. 19320 of 2011], the land was purchased

and possession taken in December, 2004. The industrial shed was already in existence. The petitioner for more than 5 = years did not even submit a proposal to the Department to set up an industrial unit or for any other related activity. The property was apparently purchased and kept for speculative gains on account of escalation of real estate value. The respondents have, on the other hand, proposed to utilise it for several industrial plots and also for green belt and 30 to 20 meter wide roads; [iii] in the case of Delton Cables Limited, [CWP No. 24150 of 2011], the petitioner is undoubtedly a well reputed industry whose intention of future expansion need not be doubted. But the fact of the matter is that its industrial unit is located over almost two acres of land which was not even proposed to be acquired. In addition, more than 13 acres vacant land has also been released which is more than sufficient for the petitioner''s expansion plans. Most of the acquired land is needed for statutory green belt abutting the National Highway, service road etc. where no construction can be permitted to be raised. The public utilities proposed to be developed would be of great advantage to the petitioner as well. Pertinently, the petitioner obtained CLU permissions in the year 1982 and again in 1987 for utilisation of its vacant land but no construction was made and both the CLU permissions expired; [iv] IFCI Infrastructure Limited [CWP No. 4581 of 2012], has nothing to say except that it was in the process of finalising a project to be set up on the land transferred to it by M/s. Pashupati in 2008. The petitioner''s own case is that the above said land was transferred to it for settlement of the loan amount of Rs. 1.68 Crores against which IFCI agreed to receive the principal amount of Rs. 5.59 Crores. The petitioner as an extended hand of IFCI thus took the land in lieu of the agreed loan amount and thereafter sat over the subject land on ''as is where is'' basis only for profiteering through escalated value. The petitioner is neither an industrial Company nor has an object to set up industries. Its land was nothing but repayment of loan amount in ''kind''. Its acquired land is totally vacant for which neither the petitioner obtained CLU permission nor ever submitted any industrial project. The petitioner is conspicuously silent and has not chosen to controvert the specific objection taken by the State as to how the land valued equivalent to Rs. 5.59 Crores has been transferred in favour of the petitioner for a paltry sale consideration of Rs. 1.70 Crores; [v] similarly in the case of Sat Pal & Ors., [CWP No. 10550 of 2013], there is nothing on record to suggest any residential house over the acquired land. There exists a small Kotha and structure of a defunct poultry farm. The rest of the land is vacant and barren and there is no legal impediment against its utilisation for industrial purposes.

34. Since the objections submitted by some of the petitioners have been rejected broadly for the reasons drawn in the preceding paragraph, we are of the view that the decision of the State Government in arriving at that conclusion can not be termed arbitrary or taken without any application of mind. QUESTION No. II:- Whether those petitioners who did not submit objections u/s 5A can be permitted to challenge the acquisition of their land/properties?

35. As regard to those petitioners who could not submit objections u/s 5A, it was

urged that non-submission of objections was totally inconsequential as the release of land was sought on the ground of discrimination which surfaced only after issuance of Section 6 notification. The representations made by those petitioners who did not file objections u/s 5A, thus ought to have been entertained and accepted on merits. The petitioners in this regard relied upon the decision of Hon''ble Supreme Court in Rajinder Kumar & Ors. v. State of Haryana & Ors., 2013[1] HLR, 514.

36. There can hardly be any quarrel that if the expropriation of a property is challenged on the ground of post-acquisition discriminatory action of the State, the aggrieved owner can not be nonsuited on the hyper-technical plea of non-filing of objections u/s 5A of the Act. Some of the petitioners did not file objections u/s 5A of the Act in these cases. Nonetheless, they are held entitled to agitate their grievances in view of the specific allegation that the land[s] of M/s. Chetak Logistics [a Company of Mr. Parkash Tapase] and M/s. Pashupati Spinning and Weaving Mills have been released while issuing Section 6 notification allegedly without their objections u/s 5A of the Act. The respondents too have admitted the fact that the owner of at-least one of the released property did not file any objections u/s 5A of the Act. Since the respondents have chosen to release the land, for the reasons to be dealt with in the later part of this order, even in the absence of objections u/s 5A, we are of the view that the petitioners too have locus-standi to invoke the jurisdiction of this Court for consideration of their claim on merits. This issue stands answered accordingly.

QUESTION No. [III]:- Whether the acquisition or release of the land/properties has been made discriminately and on pick and choose basis?

37. The compulsory acquisition under the 1894 Act is permissible only for a ''public purpose'' as defined in Section 3[f] of the Act. Unless the purpose of acquisition falls within the ambit of permissible object on a strict construction, the invocation of power of eminent domain can not sustain. On the same analogy, if a property has been expropriated in public interest for a public good, such interest can not be jeopardised or derailed by releasing the acquired property for the benefit of a few individuals. In a competitive claim between ''public interest'' vis-a-vis an ''individual''s interest'', the latter has to bow before the former. These principles would be equally applicable where under the garb of a pretended public purpose, the private properties are acquired for the actual benefit of a few affluent individuals. There have been numerous instances of acquiring the land of poor or marginalised farmers to serve them on a platter to private developers-cum-builders. Such an action of the State, if proved, shall amount to colourable exercise of power for want of bona-fide.

38. The formation of a definite opinion in respect of a public purpose, conceptualisation of a well defined project to achieve such public purpose, identification of the land to be the best suited for such public purpose, acquisition of such land after minutely complying with the mandatory procedure laid down under the Act, coupled with the timely payment of just and fair compensation to

the affected owners are the mandatory pre-conditions for a valid and lawful acquisition within the frame-work of 1894 Act. If there is any procedural lapse or an error in the decision-making process, the power u/s 15A can be invoked and the requisite correctional steps can be taken. Similarly, at the post-acquisition stage, if there exist valid grounds, power u/s 48[1] can be invoked by the State Government to withdraw from the acquisition of any land of which possession has not been taken. This power, however, can not be exercised arbitrarily and without following the defined guidelines. In other words, Section 48 does not empower the appropriate Government to indulge in pick and choose or release the land for irrational, hidden or extraneous considerations.

39. State of Haryana has also formulated a policy dated 26th October, 2007 which has been slightly modified vide later policy dated 24th January, 2011. The said policy enables the State to release a property from acquisition provided that:-

....

2. Any request or application where structures have been constructed will only be considered for the release u/s 48(1) provided the structure exists prior to Section 4 and is inhabited.

3. Any factory or commercial establishment which existed prior to Section 4 will be considered for release.

4. Any religious institution or any building owned by community will also be considered for release.

5.......

40. The afore-said part of the policy has been approved by the Hon''ble Supreme Court in Patasi Devi Vs. State of Haryana and Others, We, however, do not wish to comment on some of the Paras of this policy nor does this order is a seal of approval of the entire policy as the same are not under challenge in these proceedings.

41. Since the State has resolved to release an acquired property save it falls within the parameters of its policy-decision, we are of the view that the validity and propriety of the release of a property from acquisition has to be considered within the frame-work of such policy decision only, provided further that the order is not passed to achieve any oblique motive and is not influenced by tainted considerations.

42. We may, thus, consider whether or not the decision of the State in releasing some of the acquired properties on the basis of which the petitioners have attempted to build-up their case of discrimination, falls within the ambit of above stated policy decisions.

43. The first objectionable case pleaded on behalf of most of the petitioners is of M/s. Chetak Logistics Limited who is stated to be a Private Limited Company of

an ''affluent person''. Land of M/s. Chetak Logistics:

44. Parkash Tapase was granted CLU permission on 17th May, 1982 for the land measuring 46 kanals 12 marlas situated in village Kapriwas, District Rewari, ''for manufacturing of LPG Cylinders and ancillary unit", followed by approval of building plans on 16th September, 1982. The Industrial Unit in the name of M/s. Rukmani Enterprises Private Limited was set up after obtaining loan of Rs. 30 lacs from Haryana Financial Corporation. The Company, however, went into losses and could not repay the loan. The unit was taken over u/s 29 of the State Financial Corporation Act on 14th January, 1997 and after several attempts, its assets were sold through open auction/inviting bids for Rs. 3.20 Crores on 12th January, 2006. The Sale Deed was executed in the name of Jai Karan Sharma son of Jagdish Parshad Sharma, on 23rd May, 2007.

45. It was, thus, a case where the CLU permission was actually utilised and the industrial unit was set up and made operational. The unit was sold much before the issue of Section 4 notification. The allegations of undue favouritism to Parkash Tapase who is stated to be son of a former Governor, are indeed totally against the record as he has no concern whatsoever after the HFC took over the unit in the year 1997.

46. It is, however, not denied by the respondents that the auction purchaser did not file objections u/s 5A of the Act. The respondents have come up with a categoric stand that Officers'' team led by Financial Commissioner and Principal Secretary, Industries and Commerce Department including Managing Director, HSI-IDC etc. on 22nd April, 2011 visited the sites in respect of which objections had been filed. The purpose of the site visit was to appreciate the ground position of the constructions/existing structures as to whether such structures were being used for industrial or ancillary purposes. The officers team while visiting the Gujjar-Ghatal road where the premises of M/s. Pashupati Spinning and Weaving Mills and R.L. Allied were located, noticed another huge structure in the shape of a Warehouse of M/s. Chetak Logistics. The Officers Committee inspected the said premises as well, took various photographs and earmarked the location on the Shijra Plan. The Committee having found that a complete industrial unit with various Warehousing Godowns was in existence, it recommended the release of the aforesaid land and property as its acquisition would have been contrary to the Government''s own Policy dated 26th October, 2007. The auction-purchaser also had submitted a representation for the release of his property though the same was submitted after expiry of the period prescribed u/s 5A of the Act.

47. It emerges from the above narrated facts that the acquisition of land and Warehousing Sheds of M/s. Chetak Logistics for the purpose of ''industrialisation'', would have been otherwise contrary to the principles laid down by the Hon''ble Supreme Court in a recent decision in V.K.M. Kattha Industries Pvt. Ltd. Vs. State of Haryana and Others, Nonetheless, it acquires significance that the State Government volunteered to take correctional

measures even without receiving objections u/s 5A from the affected owner.

M/s. Pashupati Spinning and Weaving Mills Limited:-

48. The second instance given by the petitioners is of M/s. Pashupati Spinning and Weaving Mills Limited. It is the petitioners - IFCI and M/s. Del-ton Cables Limited''s own case that the above stated Industrial Unit was set up way back in the year 1980. It is also admitted by them that the Unit started commercial production but went into losses in early nineties and was declared a sick company. Since the industrial unit was in existence much before the start of acquisition process, the Company has made sincere efforts for its revival as it sold the land to IFCI for repayment of the loan and has not defaulted in payments of other financial institutions as averred by it. The Company also filed objections u/s 5A, for the release of its land to the extent it is occupied by the industrial unit or to be utilised for ancillary industrial purposes. Such a claim of the Industry falls within the scope of Clause [3] of the policy dated 26th October, 2007 and its acceptance, thus, apparently can not be faulted. The petitioners incorrectly say that the above named Company did not file objections u/s 5A of the Act.

49. While there may not be any illegality in releasing the land/property of M/s. Chetak Logistics or M/s. Pashupati Spinning and Weaving Mills from acquisition per-se but it is imperative upon the State Government to be considerate and extend similar treatment to all other similarly placed landowners. As has been noticed above, it was totally incidental and fortuitous that the Officers'' Committee happened to visit Gujjar-Ghatal road and just found the huge structure of Warehousing Sheds belonging to M/s. Chetak Logistics. As the Committee had gone to visit only those sites in respect of which objections u/s 5A were received, it is more than possible that there may have been several other alike structures which were left un-released from acquisition. For Chetak Logistics it was a prudential escape as the visit of its site was never on the agenda of the Officers'' Committee. The others similarly placed may not have been so fortunate. Since no exercise was undertaken to identify the structures/ buildings of other owners who though did not submit objections u/s 5A but their properties deserved to be released under the policy dated 26th October, 2007, the authorities are obliged to re-ascertain the facts and extend the benefit of Government policy or the State Government''s decision to all and one except those structures which stand isolated. Howsoever well intent may be the Government''s decision to release the land and building of M/s. Chetak Logistics, the denial of such benefit to other unidentified but deserving landowners would amount to denial of equality before law. We can not lose site of the fact that some of the petitioners have also not filed objections u/s 5A but on fact-situation they might be at par with M/s. Chetak Logistics notwithstanding the conclusion drawn by us in Para No. 34 of this order. To say it differently, we hold that even if a landowner did not file objections u/s 5A but is able to make out a case of denial of parity, he can seek equality and such consequential benefits as have been

granted to other similarly placed owners.

50. In all fairness, it may be mentioned that Shri Pattar, learned Sr. DAG, Haryana as well as Shri Kamal Sehgal, learned counsel for HSIIDC relied upon the decision dated 09th May, 2013 of a Division Bench of this Court dismissing CWP No. 13659 of 2012, Om Parkash Goyal & Ors. v. State of Haryana & Ors. wherein also the same acquisition was challenged and one of the pleas taken was that the petitioners had obtained CLU permission immediately after purchasing the land. This Court dealt with various contentions, however, the plea of discrimination in the matter of release of land/properties even in the absence of Section 5A objections was neither raised nor considered in that case.

51. For the reasons afore-stated, the ''public purpose'' of the acquisition being a salutary step towards the regulated industrialisation of the State is upheld. However, the denial of benefit of Government Policy for the release of different types of land or properties from acquisition to other landowners including the petitioners only on the plea of non-submission of objections u/s 5A is declared illegal and annulled. Similarly, in rest of the cases, the claim of parity if made out, would also require re-consideration. The respondents are consequently directed to depute the Officers'' team to visit the entire area under acquisition and consider the desirability of releasing those land or properties [including of the petitioners] which fulfill the criteria of the Government Policy then applicable. The Officers'' Committee shall be at liberty to invite fresh claims in this regard but only those buildings/structures shall be considered for exemption which were in existence at the time of issue of Section 4 notification. The exercise in this regard shall be completed within a period of three months and till then status-quo with regard to the existing structures shall be maintained. Disposed of.

