

Women Education Trust & Another

v.

State of Haryana & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE G.S. SINGHVI HON'BLE MR. JUSTICE SHARAD ARVIND
BOBDE

Civil Appeal No. 4457, 4458, 4459, 4460, 4460, 4461 Of 2013 (Special Leave Petition
(Civil) No. 15772, 16746 Of 2011) | 07-05-2013

G.S. Singhvi, J.

1. Leave granted.

2. The importance of Section 5A of the Land Acquisition Act, 1894 (for short, 'the Act'), which represents statutory embodiment of one of the facets of the rules of natural justice, i.e., audi alteram partem, has been highlighted in several judgments of this Court including Nandeshwar Prasad v. U.P. Govt. (1964) 3 SCR 425, Munshi Singh v. Union of India (1973) 2 SCC 337, Narayan Govind Gavate v. State of Maharashtra (1977) 1 SCC 133, Shyam Nandan Prasad v. State of Bihar (1993) 4 SCC 255, Union of India v. Mukesh Hans (2004) 8 SCC 14, Krishan Lal Arneja (2004) 8 SCC 453, Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai (2005) 7 SCC 627, Essco Fabs (P) Ltd. v. State of Haryana (2009) 2 SCC 377, Babu Ram v. State of Haryana (2009) 10 SCC 115, Anand Singh v. State of U.P. (2010) 11 SCC 242, Dev Sharan v. State of U.P. (2011) 4 SCC 769, Radhy Shyam v. State of U.P. (2011) 5 SCC 553, Raghbir Singh Sehrawat v. State of Haryana (2012) 1 SCC 792, Kamal Trading (P) Ltd. v. State of West Bengal (2012) 2 SCC 25, Surinder Singh Brar v. Union of India (2013) 1 SCC 403, and Usha Stud and Agricultural Farms Pvt. Ltd. v. State of Haryana 2013 (5) SCALE 118.

3. In Raghbir Singh Sehrawat's case, this Court referred to earlier precedents and observed:

"In this context, it is necessary to remember that the rules of natural justice have been ingrained in the scheme of Section 5-A with a view to ensure that before any person is deprived of his land by way of compulsory acquisition, he must get an opportunity to oppose the decision of the State Government and/or its agencies/instrumentalities to acquire the particular parcel of land. At the hearing, the objector can make an effort to convince the Land Acquisition Collector to make recommendation against the acquisition of his land. He can also point out that the land proposed to be acquired is not suitable for the purpose specified in the notification issued under Section 4(1). Not only this, he can produce evidence to show

that another piece of land is available and the same can be utilised for execution of the particular project or scheme. Though it is neither possible nor desirable to make a list of the grounds on which the landowner can persuade the Collector to make recommendations against the proposed acquisition of land, but what is important is that the Collector should give a fair opportunity of hearing to the objector and objectively consider his plea against the acquisition of land. Only thereafter, he should make recommendations supported by brief reasons as to why the particular piece of land should or should not be acquired and whether or not the plea put forward by the objector merits acceptance. In other words, the recommendations made by the Collector must reflect objective application of mind to the objections filed by the landowners and other interested persons."

4. In *Kamal Trading (P) Ltd. v. State of West Bengal (supra)*, this Court made the following observations:

"It must be borne in mind that the proceedings under the LA Act are based on the principle of eminent domain and Section 5-A is the only protection available to a person whose lands are sought to be acquired. It is a minimal safeguard afforded to him by law to protect himself from arbitrary acquisition by pointing out to the authority concerned, inter alia, that the important ingredient, namely, "public purpose" is absent in the proposed acquisition or the acquisition is mala fide. The LA Act being an expropriatory legislation, its provisions will have to be strictly construed.

Hearing contemplated under Section 5-A(2) is necessary to enable the Collector to deal effectively with the objections raised against the proposed acquisition and make a report. The report of the Collector referred to in this provision is not an empty formality because it is required to be placed before the appropriate Government together with the Collector's recommendations and the record of the case. It is only upon receipt of the said report that the Government can take a final decision on the objections. It is pertinent to note that declaration under Section 6 has to be made only after the appropriate Government is satisfied on the consideration of the report, if any, made by the Collector under Section 5-A(2). As said by this Court in *Hindustan Petroleum Corpn. Ltd.*, the appropriate Government while issuing declaration under Section 6 of the LA Act is required to apply its mind not only to the objections filed by the owner of the land in question, but also to the report which is submitted by the Collector upon making such further inquiry thereon as he thinks necessary and also the recommendations made by him in that behalf.

Sub-section (3) of Section 6 of the LA Act makes a declaration under Section 6 conclusive evidence that the land is needed for a public purpose. Formation of opinion by the appropriate Government as regards the public purpose must be preceded by application of mind as regards consideration of relevant factors and rejection of irrelevant ones. It is, therefore, that the hearing contemplated under Section 5-A and the report made by the Land Acquisition Officer and his recommendations assume importance. It is implicit in this provision that

before making declaration under Section 6 of the LA Act, the State Government must have the benefit of a report containing recommendations of the Collector submitted under Section 5-A(2) of the LA Act. The recommendations must indicate objective application of mind."

5. In the last mentioned judgment, i.e., *Usha Stud and Agricultural Farms Pvt. Ltd. v. State of Haryana* (supra), this Court restated the proposition in the following words:

"The ratio of the aforesaid judgments is that Section 5-A(2), which represents statutory embodiment of the rule of audi alteram partem, gives an opportunity to the objector to make an endeavour to convince the Collector that his land is not required for the public purpose specified in the notification issued under Section 4(1) or that there are other valid reasons for not acquiring the same. That section also makes it obligatory for the Collector to submit report(s) to the appropriate Government containing his recommendations on the objections, together with the record of the proceedings held by him so that the Government may take appropriate decision on the objections. Section 6(1) provides that if the appropriate Government is satisfied, after considering the report, if any, made by the Collector under Section 5-A(2) that particular land is needed for the specified public purpose then a declaration should be made. This necessarily implies that the State Government is required to apply mind to the report of the Collector and take final decision on the objections filed by the landowners and other interested persons. Then and then only, a declaration can be made under Section 6(1)."

6. The principles which can be culled out from the above-noted judgments are as under:

(i) The rule of audi alteram partem engrained in the scheme of Section 5A of the Act ensures that before depriving any person of his land by compulsory acquisition, an effective opportunity must be given to him to contest the decision taken by the State Government/competent authority to acquire the particular parcel of land.

(ii) Any person interested in the land, which has been notified under Section 4(1) of the Act, can file objections under Section 5A(1) and show that the purpose specified in the notification is really not a public purpose or that in the guise of acquiring the land for a public purpose the appropriate Government wants to confer benefit upon private persons or that the decision of the appropriate Government is arbitrary or is vitiated due to mala fides.

(iii) In response to the notice issued by the Land Acquisition Collector under Section 5A(2) of the Act, the objector can make all possible endeavours to convince the Land Acquisition Collector that the acquisition is not for a public purpose specified in the notification issued under Section 4(1); that his land is not suitable for the particular purpose; that other more

suitable parcels of land are available, which can be utilized for execution of the particular project or scheme.

(iv) The Land Acquisition Collector is duty bound to objectively consider the arguments advanced by the objector and make recommendations, duly supported by brief reasons, as to why the particular piece of land should or should not be acquired and whether the plea put forward by the objector merits acceptance. In other words, the recommendations made by the Land Acquisition Collector should reflect objective application of mind to the entire record including the objections filed by the interested persons.

(v) The Land Acquisition Collector is required to submit his report and the recommendations to the State Government along with the record of proceedings to enable the latter to take final call on the desirability, propriety and justification for the acquisition of the particular parcel(s) of land.

(vi) The declaration under Section 6(1) of the Act can be issued only if the appropriate Government, on an objective application of mind to the objections filed by the interested persons including the landowners and the report of the Land Acquisition Collector, is satisfied that the land is needed for the particular purpose specified in the notification issued under Section 4(1) of the Act.

7. It is unfortunate that despite repeated judicial pronouncements, the executive authorities entrusted with the task of acquiring private land for any specified public purposes have time and again exhibited total lack of seriousness in the performance of their duties under the statute. Often they do not comply with the mandate of Section 5A of the Act, which is sine qua non for making a valid declaration under Section 6(1) of the Act.

8. This batch of appeals is illustrative of the malady that has afflicted the State authorities who are keen to acquire private lands in the name of planned development of various urban areas, but do not bother to comply with the relevant statutory provisions and the rules of natural justice.

9. For the sake of convenience, we have culled out the facts from the record of the appeal arising out of SLP(C) No.15772/2011 - Women Education Trust and another v. State of Haryana and others.

9.1 Appellant No.1 is a Trust. It was created in 2000 and the deed of Trust was executed on 24.7.2000.

9.2 In furtherance of the aims and objectives specified in the Trust deed, appellant No.1 started a school under the name and style 'Silver Oak Public School' in a tenanted building.

9.3 In 2001, the land comprised in Khasra Nos. 136/14/2, 136/5/2/1, 136/6 and 136/15/1 situated in Village Patti Kaisth Seth, Tehsil and District Kaithal was purchased in the name of appellant No.1 by registered sale deeds dated 19.2.2001 and 26.3.2001. After purchasing the land, appellant No.1 started construction of the school building, which was completed in June, 2002.

9.4 By notification dated 11.11.2002 issued under Section 4(1) of the Act, the Government of Haryana proposed the acquisition of 110.88 acres land including the land belonging to appellant No.1 for commercial, professional, institutional areas and also for green belt adjoining Sector 19-20, Kaithal.

9.5 Appellant No.2, who is the President of appellant No.1 filed objections under Section 5A(1) of the Act to oppose the proposed acquisition. The reasons put forward by appellant No.2 to persuade the State Government not to acquire the land on which school building had already been constructed are contained in paragraph Nos. 2, 6, 18, 19 and 20 of the objections, which are reproduced below:

"2. All the objectives of the Trust are given in the above said Trust Deed. One of the main objectives of the Trust is to improve the educational standards of the females in Haryana particularly in District Kaithal as they are the most backward in this regard in the whole of Asia. (See Research of Dr. Sonali Chaudhary, School Administration in Haryana, P.O.).

6. The Trust started getting the building constructed on the land (Registered sale deeds are three, but the piece of land is one) after the registration of the land. A sum of Rs.73,772/- was deposited in the Kaithal Municipality vide its receipt no.26 Book 121 dated 28.2.2001, as desired by it for sanctioning the plan, as development charges, security etc. (Attached photo copy of the receipt. Annexure 6 Page 30).

18. Sir, one of the four purposes as mentioned in your notification is to create institutions in the land proposed to be acquired by your goodself by the HUDA. Sir, HUDA constructed one School with huge costs in Sector 19 of HUDA, Kaithal. This building, is lying vacant from the day it was constructed.

Another school plot is lying vacant in HUDA Sector 19 and HUDA Sector 20. There are no takers either for the constructed school or for the vacant school plots in the developed HUDA Sectors.

19. Sir, Silver Oak Public School, the oldest and the best school run by dedicated and qualified educationists is fulfilling the needs of students of Kaithal area since 1979. The school shifted to its new above said building of the Trust in 2001. Initially the trust purchased only around 2400 sq. yds. of land. As per the Affiliation Byelaws of CBSE and now Haryana Govt. also minimum of two acres of land is required for a school to be recognized by either Board. We thought as the entire land surrounding the present school building was lying vacant, we shall buy another two acres of land. Sir, now as you have acquired the entire land surrounding the present school building of the trust, the trust shall not be able to purchase land adjoining to it or near it in the future also due to acquisition.

Hence you are requested to allot around two acres of land to the Trust after the acquisition proceedings are completed on nominal charges around it enabling it to seek recognition from the CBSE Board. The students living in Sectors 19-20 of HUDA are also the students of this school. (Annexure 12 and 13. Page 53 and 54).

20. Sir, the acquisition of Trust land, building having temple and running school is not like other acquisitions of land and houses of stones and concrete, it is the question of future of hundreds of students studying in this school, their existence and faith. Here we are not dealing with non-living things but with human lives full of aspirations and expectations. What about the male and female staff working in the school? The moment the news of acquisition spread in the town hundreds of worried parents and children came to me inquiring about their future, prospects. As further building cannot be constructed under these circumstances, the school will, be adversely affected as for the new admissions are concerned in March, 2003. Policy in this regard is made in Jan. 2003. Due to this reason (imposition of Section 4 on this land and building) trust shall have to suffer heavy financial losses due to non-increase in strength in March 2003."

9.6. Land Acquisition Collector, Urban Estate, Panchkula issued notice dated 5.9.2003 and called upon appellant No.2 to remain present at PWD Rest House, Kaithal for further proceedings. According to the appellants, the Land Acquisition Collector was not present on the appointed date and the objections were heard by Shri Raj Bir (Patwari) in the presence of Shri Prakash Chand (Naib Tehsildar) and Shri Sharma (Kanoongo). In the reply affidavit filed before the High Court, the respondents controverted this assertion and claimed that opportunity of hearing was given by the Land Acquisition Collector, who recommended that the land on which school building had been constructed may not be acquired.

9.7 The pleadings filed before the High Court and this Court and the documents produced by the parties do not show that the State Government had considered the objections filed by the appellants and other landowners together with the report of the Land Acquisition Collector and the recommendations made by him. However, from the declaration made under Section 6(1) of the Act for the acquisition of land measuring 110.13 acres it can be inferred that the State Government did not accept the recommendations of the Land Acquisition Collector.

9.8 The appellants challenged notifications dated 11.11.2002 and 7.11.2003 in Writ Petition No.18/2004 mainly on the ground that the State Government did not consider their objections in a correct perspective and the acquisition proceedings are ultra vires the provisions of Section 5A of the Act. The appellants also raised the plea of discrimination by asserting that the State Government had released other parcels of land but their land was not released despite the fact that they had already constructed 'A' class building and were running a school. The averments contained in paragraphs 14, 15, 16, 17 and 18 of the writ petition, which constitute the foundation of the appellants' challenge to the acquisition proceedings are as under:

"14. That in the present case, the Land Acquisition Officer was not even present on 19.9.03 when the objections were heard. He was absent. His subordinates heard the objections and noted down the Statements of the petitioners and other land owner objectors.

15. That the provisions of Section 5A are mandatory. Providing opportunity of hearing by the Land Acquisition Collector is the essence of Section 5A of the Land Act. He is to make a report to State Govt, which is taken into consideration before issuing Section 6 Notification. Providing of personal hearing to the objectors consisted in hearing the objectors by the Land Acquisition Collector. This powers cannot be delegated. The report has to be made by the land acquisition collector. This power also cannot be delegated. The provisions of personal hearing cannot either be given a go bye or it cannot be treated as a formality or eye was. If the land acquisition collector is not present then he cannot hear the objections himself. He cannot at the same time make a proper and effective report. The report made by the collector is taken into consideration by the State Govt, before issuing Section 6 Notification. In this case the provisions of Section 5A have not been complied with in as much as personal hearing was not granted by the Land Acquisition Collector.

16. That the respondents issued notification under Section 6 of the Land Act on 7.11.2.003. Certain area where buildings were constructed had been left out. It is not known to the petitioners whether it has been left out on the basis of report or otherwise. The copy of the notification acquiring land of the petitioner where A class constructed building of the School is in existence before the Section 4 Notification and where the school is running in full bloom is included in the notification.

A copy of the notification under section 6 of the Land Acquisition Act dt.7.11.2003 is attached as Annexure P-9.

17. That it is relevant to mention here that the Chief Administrator HUDA has issued a Policy letter to the Addl. Director, Urban Estate, HUDA and Chief Controller, Finance, HUDA on 26.6.91 among other things to the effect that existing factories should not be acquired and would be released from proceedings of section 4 notification. It is also instructed that constructed area of A and B Grade should be left out of acquisition. Copy of the policy letter dt.26.6.91 is attached as annexure P-10.

18. That great discrimination and favoritism has been exercised by the respondents in not acquiring/releasing certain buildings which are situate near to the school of the petitioner trust. The petitioner trust is on the right side of the road whereas a building on the left side of the road at a distance of 100 to 150 mtrs. From the School has been left out of acquisition. The photograph of that building is attached as Annexure P-11."

9.9 In the counter affidavit filed by Shri Rajesh Jogpal, Land Acquisition Collector, Urban Estate Department, Hissar, Haryana on behalf of respondent Nos.1 and 2, it was averred that the acquisition has been made after complying with the relevant statutory provisions and the appellants' land was not released because it falls within the green belt. Shri Jogpal specifically averred that the Land Acquisition Collector had given personal hearing to each of the objectors. Shri Jogpal also justified the non-acquisition of one parcel of land measuring 0.75 acres by stating that there is a religious place, i.e., Dargah Sekh Majar, which is worshiped by the general public. However, he did not controvert the appellants' assertion that many other parcels of land had been left out. The same is the thrust of the written statement filed on behalf of Haryana Urban Development Authority.

9.10 During the pendency of the writ petitions, the Division Bench of the High Court passed various interim orders, two of which are extracted below:

Order dated 28.4.2007

"Various site-plans including the one prepared by the Revenue Authorities have been examined with the help of Revenue Officials, who are present in the Court.

There is no doubt that a green belt on both sides has been carved out alongside the road which connects two, existing highways on both sides of acquired land.

However, the green belt which is stated to cover the petitioners' school, also covers nearly 17-18 acres of land for the Police Lines. Therefore, unless the respondents include the land for

Police Lines they simply cannot, in all fairness, included the School in the green belt because between the School and the road, exists some portion of Police Lines.

Faced with this situation, learned counsel for the respondent -State seeks time to obtain instructions to clarify the position.

To come up on 22.5.2007."

Order dated 27.2.2008

"Learned State counsel while placing reliance upon a policy of the State Government framed on 26.10.2007, has submitted that in case where an interim order of stay granted by this Court, the petitioner whose land has been acquired, is entitled to consideration by Director, Urban Estates and accordingly, it has been submitted that the petitioner may appear before the Director, Urban Estates (Haryana), Yojna Bhawan, Madhya Marg. Sector 18-A, Chandigarh on 24.3.2008 and 25.3.2008 at 10:00 A.M. and his case shall be considered by taking into account the claim made in the writ petition by treating it as a representation.

Put up for further consideration on 10.4.2008. If any decision is taken, the same shall be placed on the record by the said date."

9.11 In furtherance of the aforesaid orders, the Chairman of appellant No.1 appeared before the Director, Urban Estates Department, Haryana and prayed that the land belonging to the school may be released from acquisition. However, his plea was rejected by the Director vide order dated 5.4.2008, which reads thus:

"In pursuance of these orders, on behalf of the petitioners of CWP No. 18 of 2004, Shri Kamlesh Chaudhary, Chairman of the Women Education Trust appeared on 24.3.2008.

The representative for the petitioners stated that they have deposited 73772/- as development charges to Municipal Council, Kaithal on 28.2.2001 and further stated that house tax is also being charged by Municipal Council, Kaithal. But, no proof regarding payment of house tax was produced by the representative for the petitioners. He further argued that permission for change of land use was not obtained by them because the area was not planned and no development plan was prepared at the time of construction. He further stated that the petitioners are the owners of the land measuring 2400 Sq. yards bearing Khasra Nos. 136/5/2/1, 6 & 15/1 of village Patti Kaisth Seth, Tehsil & District Kaithal on which school building exists and further pleaded that one of the purposes of acquisition is institutional and

their building is also for institutional use. He also produced the copies of the judgments passed by the Hon'ble Punjab and Haryana High Court in the cases of United Rice Land Ltd. V/s State of Haryana and Pritam Singh V/s State of Haryana and others in support of his contention of

that Act No. 41 of 1963 does not override Municipal Act". He further stated that his daughter Dr. Sonali Chaudhary is highly educated being M. A., Ph. D. and is running this school by constituting a "Women Education Trust."

District Town Planner, Kaithal along with his staff and Sh. Parkash Chand, appeared and stated that the structure is of 'A' class and a public school is running in it, so it is not proper to acquire this structure/site.

District Town Planner stated that the whole area requested for release falls within 100 meters wide restricted belt of the bye pass to the Ambala-Kaithal-Uklana Fatehabad scheduled road prescribed under Section 3 of the 'Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (Act No. 41 of 1963).

I have seen the location of the site on the Sajra Plan placed at Annexure 'A' I have also gone through the scheme of Act No. 41 of 1963.

Section 2(3) of the Act *ibid* gives definition of bye-pass, which is as follows:

2(3) "Bye-Pass" means a road provided as a permanent diversion to scheduled road, whether such diversion is situated within or without the limits of a local authority and whether it is constructed before or after the commencement of this Act.

Further Section 3 and Section 7-A of the Act *ibid* are reproduced below for the better appreciation of the issue at the hand:-

3. Prohibition to erect or re-erect buildings along scheduled roads- No person shall erect or re-erect any building or make or extend any excavation or lay out any means of access to a road within one hundred meters of either side of the road reservation of a bye-pass or within thirty meters on either side of the road reservation of any scheduled road not being bye-pass.

7A Power of relaxation - The Government may, in public interest, relax any restrictions or conditions in so far as they relate to land use prescribed in the controlled area in exceptional circumstances.

The construction has been raised in violation of the provision of Section 3 of the Act *ibid*. The Act doesn't provide any relaxation for the restrictions imposed under Section 3. The Government is empowered only to relax the land use restrictions in the Controlled area under Section 7-A of the Act *ibid* as described in the Development Plan prepared under Section 5 of the Act *ibid*. The construction has been raised after submitting the building plans to the Municipal Council.

The site is although located in the extended Municipal limits but the land use proposals of the development plan is applicable because the site was part of Controlled area at the time of extension of Municipal limits. This fact has been taken note of while making provision in the amended Section 302 of the Municipal Act, 1973. Hence the building plans submitted to the authority not competent to entertain such matters cannot be deemed to have been approved. The Municipal Authorities cannot approve the building plans in violation of Section 3 of the Act *ibid*.

Keeping in view the above mentioned facts and circumstances of the case, I find no ground to consider the release of the above said structure raised in violations of the Act No. 41 of 1963. The representation is, therefore, rejected. The party may be informed accordingly."

9.12 On 4.10.2010, the Division Bench of the High Court referred to order dated 28.4.2007 and directed the respondents to explain as to why the appellants may not be granted relief as was done by the State Government by releasing 85 houses falling in the green belt. On 7.1.2011, the High Court passed the following order:

Order dated 7.1.2011

"Heard in part.

Mr. Kamal Sehgal, is directed to file an affidavit of the Secretary, Department of Home, on or before 18.1.2011, to show that:

(i). As to what extent the land acquired for the police line would be maintained as green belt

(ii). As to under what provision of law 100 meter green belt is required to be maintained alongside the road in question

(iii). Whether any scheme was prepared when the land was proposed to be acquired to carve out green belt in dispute

(iv). Whether green belt measuring 100 meters has been ordered to be maintained within the acquired area in question only or alongside the entire road in question?

(v). Whether the land under acquisition was situated within the municipal limits when notification under Section 4 of the Land Acquisition Act, was issued"

9.13 In furtherance of the aforementioned order, an affidavit was filed on behalf of the respondents, the relevant portions of which are extracted below:

"1. That the land belonging to home department, Haryana, falling in green belt i.e. 100 meters in 17/18 acres of land out of total land of 55 acre 7 kanal 11 marla, would be utilized/maintained only as green belt as per provision of the Punjab Schedules Road and Controlled, Areas Restriction of Unregulated Development Act, 1963 (for brevity Act of 1963) and Development Plan Kaithal. The necessary orders in this regard are being issued to the concerned authorities.

2. That Section 3 of the Act of 1963 provides for Prohibition on erection or re-erection of buildings along scheduled roads/bye-pass, which is reproduced as under.

3. Prohibition to erect or re-erect buildings along with scheduled roads-No person shall erect or re-erect any building or make or extend any excavation or lay out any means of access to road within ne hundred meters of either side of the road reservation or a bye-pass or expressway or within thirty meters on either side of the road reservation of any scheduled road not being bye-pass or expressway."

(iii) That at the time of initiation of the acquisition proceeding there was no scheme to curve out green belt in dispute. However, the land was a part of agriculture zone of Development Plan 2001 notified on 16.6.1981 and there was provision of green belt towards Sector 19/20 of the Road which is now designated as bye - pass in the development plan Kaithal, 2021. However, it is submitted here that as per the Draft Development Plan (Kaithal Development Plan 2021) dated 9.10.2006, the provision of green belt of 100 meters has been kept on the both sides of the bye-pass including the side of Sectors 32 and 33, Kaithal.

(iv) . That as per the development plan dated 9.10.2006, 100 meters green belt is required to be maintained along side the entire bye-pass on NH-65 as undertaken in the Kaithal Development Plan 2021.

(v). That in this regard, it is submitted here that the land under acquisition was situated within the municipal limits when notification under Section 4 of the Land Acquisition Act was issued. The land involved in the present litigation came within limits vide notification No.18/3/93-331 dated 31.12.1997."

10. After considering the pleadings of the parties and the provisions of the Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963, the Division Bench of the High Court opined that the road on which the building had been constructed by the appellants is not only National Highway - 65 but is also a bye-pass. Some of the observations made in that regard are extracted below:

"It is not in dispute that National Highway-65 starts from Ambala and goes to Hisar through the city of Kaithal. The documents Annexures P- 22 and P-23 do not establish in any way that the road is only a scheduled road i.e National Highway-65 and is not a Bye Pass. There is nothing on record to establish the location of National Highway No.65 in the city of Kaithal neither there is any document to show the original location of the National Highway-65 which was passing through the areas of city Kaithal at the time of its creation in the year 1998. However, one thing has been established on record that the road running through the city and which is in front of the land in question definitely connects the two parts of the scheduled road i.e. National Highway-65 on either side of the city i.e. from Ambala side and Hisar side. As per the definition given in the Act, "Bye Pass" means a road provided as a permanent diversion to a scheduled road, when such diversion is situated within or without the limits of a Local Authority, whether it is constructed before or after commencement of this Act. It could not be disputed by the learned counsel for the petitioners that the land in question definitely connects the two parts of the scheduled road on either side of the city. There is not even an attempt to argue on behalf of the petitioners that the road map of National Highway-65 as shown in the master plan 2021, is in existence since the creation of the aforesaid scheduled road. In view of the aforesaid facts and the provisions of law, there is no escape from holding that the road running through the city of Kaithal in front of the land in question is a Bye Pass road which is connecting two parts of the scheduled road on either side of the city."

11. The appellants' plea of discrimination was rejected by the High Court in the following words:

"During the course of various hearings, the petitioners had also raised an argument to the effect that the land belonging to Police Lines which adjoins the land of the petitioners also falls in the alignment of 100 meter width green belt but the same has been exempted and therefore, the petitioners have been treated with hostile discrimination. However, the aforesaid argument is liable to be rejected on the ground that in the affidavit dated 22.11.2010 filed on behalf of the respondents, it has been clearly undertaken that the area falling within the alignment of 100 meter wide green belt belonging to the police lines which was exempted will be kept as a greenbelt.

In view of the stand taken by State, arguments regarding hostile discrimination, is unsustainable. However, in view of the aforesaid stand taken, the respondents are bound to maintain the aforesaid land of police lines as a greenbelt."

12. We may now briefly notice the facts of the other appeals. Appeal arising out of SLP(C) No.16746/2011 - Jai Chand v. State of Haryana and others

13.1 Jai Chand purchased land measuring 12 kanals 2 marlas comprised in rectangle No.136, Killa No. 5/2/1, 6 and 15 situated at Patti Kaisth Seth, Kurukshetra Road, Kaithal by sale deeds dated 23.5.1985 and 25.5.1985. He constructed a residential house, a godown and quarters for the employees. He also developed a nursery on the land.

13.2 In response to the notice issued under Section 4(1) of the Act, Jai Chand filed objections dated 10.12.2002 and prayed that his lands may not be acquired because he had already raised 'A' class construction apart from 605 feet long pucca road to connect Dhand Road Godown and the residence and also developed a nursery.

13.3 The other facts are identical to the case of Women Education Trust.

Appeal arising out of SLP(C) No.18427/2011 - Gulshan Kumar and another v. State of Haryana and others

14.1 The appellants purchased land measuring 150 sq. yds. and 325 sq. yds., respectively, situated outside Seth bye-pass, Kaithal vide sale deeds dated 13.3.2002. After purchasing the land, they constructed service centre under the name and style M/s. Aneja Automobiles for repairing automobiles, etc.

14.2 They filed objections dated 5.12.2002, the relevant portions of which are extracted below:

"2. That the applicant after purchase the said land raised construction over it and other adjacent land owned by his wife Smt. Sarit Rani and business of service centre of repairing Auto Mobiles Car etc. under the name 'Aneja Auto Mobiles' is getting loan from the Bank. The said land is surrounded by already constructed buildings. The applicant had set up business for away from the Main Kaithal Town, keeping in mind the all present complications, but the Govt. instead of helping in setup of unemployed youth is bent upon to dislodge them and in case the said land and building of the applicant is acquired, he shall come on road and bear irreparable loss and injury.

As far as purpose for the acquisition is concerned, sufficient land is already lying vacant for commercial, institutional and for green belt in the adjoining Sector-19 and 20.

The required land is not adjoining of Sector-19 & 20 and is situated on other side of main road of Sector 19 and 20. The purpose of requirement of land should not be to bring the long settled people on road."

14.3 The other facts are identical to the case of Women Education Trust.

Appeal arising out of SLP(C) No.31898/2011 - Balbir Singh and another v. State of Haryana and others

15.1 Appellant No.1 - Balbir Singh is an ex-serviceman. In 2001, he constructed shop-cum-house on land falling in rectangle No.119, Killa No.3/2, 4, 7, 8 measuring 635 sq. yds. situated in Village Patti Kaisth Seth, Tehsil and District Kaithal. 15.2 In response to the notice issued under Section 4(1) of the Act, the appellants filed objections, the relevant portions of which are extracted below:

"3. That the applicants/objectors hereby file following objections:-

i) That the Balbir Singh S/o Sh. Jai Karan, Yash Pal Singh Harpal Singh Ss/o Sh. Balbir Singh are owners of the land in 118/5/3, 119/1/2/2/2/1, 9/1, 9/2, 10/2/3 vide mutation No. 8763/1, 8764 dated 24.10.2001.

ii) That out of the above land 150 Sq. Yr & have been sold to Gulshan Kumar Aneja S/o Sh. Chaman Lai & 325 Sq. Yr. Smt. Sarita Rani w/o Gulshan Kumar vide registry No. 7761/1 dated 13.3.2002 & 7162/1 dated 13.3.2002

iii) That we have done earth feeling to bring to the level of the road for which a sum of Rs. 1.55 lacs has been spent out.

iv) That the building was constructed much before the National Highway was declared and I have reconstructed it after demolishing the old one to suit my requirement of a Restaurant & residence for which a sum of Rs. 8 lacs has been spent out.

v) That this Restaurant is only our source of livelihood and we will be rendered jobless.

4. That the land proposed to be acquired is very costly as it is along with National Highway and falls within the Municipal Limit. The cost of this land is Rs. 2000/- per sq. yard. So it will be a great burden to Govt. Exchequer.

5. It has been directed to the State Govts. By the Supreme Court that no constructed area is to be acquired and our area is situated between the junk of built area around it.

6. That the majority of the plots in the said area to be acquired have constructed their houses workshops, SSI units dairies, Temple, School etc. & it will render them homeless & jobless.

It has been mentioned in the notification that the area proposed to be acquired is adjoining Sector 20 & 19 of the HUDA which is wrong as this proposed area is opposite Sector 20 & 19 of HUDA and National

Highway and Devi Lai Park situates there. The notification against the actual dimension described there so the notification itself is wrong according to actual facts, it deserves to be withdrawn."

15.3 The other facts are identical to the case of Women Education Trust.

Appeal arising out of SLP(C) No.17214/2012 - Roshan Lal Dhanda and another v. State of Haryana and others

16.1 The appellants purchased land measuring 2 kanals 13 marlas and 15 marlas near bypass chowk, Kurukshetra Road, Kaithal vide registered sale deeds dated 27.12.2001. Thereafter, they raised residential building by spending Rs.20 lakhs.

16.2 In response to the notice issued under Section 4(1) of the Act, they filed objections under Section 5A(1) and prayed for release of their land by asserting that they had raised a residential house and their family members were residing therein and that many other parcels of land were lying vacant which could be used for commercial, institutional and other purposes.

16.3 The other facts are identical to the case of Women Education Trust.

17. We have heard learned counsel for the parties and scanned the record.

18. In our opinion, the impugned order is liable to be set aside on the short ground that the High Court disposed of the batch of writ petitions by simply advertng to the facts of CWP No.18/2004. While doing so, the High Court completely ignored that in each case, the interested persons had filed separate objections under Section 5A(1) and the Land Acquisition Collector had made separate recommendations. The High Court did not direct its attention to the factual matrix of the individual cases and dismissed all the petitions by erroneously assuming that the issues of facts and law involved therein were identical. The disposal of a batch of cases is attractive both for the Bar and the Bench because in most of the cases, the lawyer(s) appearing for the petitioner(s) in the main matter advances arguments and the remaining lawyers simply adopt those arguments. The Court finds it convenient to decide all the cases by one order because that saves the time and energy, which is otherwise required to be spent in dealing with individual matters. However, at times, this strategy results in more litigation because appeals and special leave petitions are filed, as has been done in these cases, with the grievance that the matter was decided without even taking cognizance of the grievance made by the individual petitioner. We may hasten to add that the methodology of deciding a batch of petitions by one order may work well if the facts of the cases constituting the batch are identical or almost identical.

19. We are also of the view that the High Court committed serious error by negating the appellants' plea of discrimination. Admittedly, 95 persons whose land was released from acquisition had raised construction in the area earmarked for the green belt. The appellants had also raised similar construction. The only difference between the constructions made by the appellants and the others was that of the size. In our view, difference in the size of the

plots did not constitute a valid ground for discrimination between those who had raised construction on the land which fell within the green belt and the High Court was not at all justified in approving the decision of the competent authority not to release the appellants land ignoring that the other similar parcels of land on which constructions had been made had not been acquired. The statement made in the affidavit filed on behalf of the State Government that out of the land allotted for police lines, Kaithal, the area earmarked for green belt will be kept open was also not sufficient for recording a finding that the appellant had not been subjected to discriminatory treatment.

20. What is most surprising is that the High Court did not even deal with the issue relating to application of mind by the Government to the report submitted by the Land Acquisition Collector under Section 5A(2) along with his recommendations. The documents produced before the High Court and this Court do not show that the State Government had objectively applied mind to the recommendations made by the Land Acquisition Collector and felt satisfied that the land in question deserves to be acquired for the purpose specified in the notification issued under Section 4(1). The record also does not contain any indication as to why the State Government did not consider it proper to accept the recommendations of the Land Acquisition Collector. Therefore, there is no escape from the conclusion that the impugned acquisition is ultra vires the provisions contained in Section 6 of the Act.

21. In view of the above conclusion, we do not consider it necessary to deal with and decide the issue relating to applicability of the provisions of Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963 and the notifications issued under that Act and feel that ends of justice will be served by setting aside the impugned order and remitting the matter to the High Court for fresh disposal of the writ petitions with liberty to the parties to urge all legally permissible contentions.

22. In the result, the appeals are allowed, the impugned order is set aside and the matters are remitted back to the High Court for fresh disposal of the writ petitions filed by the appellants.

23. The parties may, if so advised, file additional affidavits and documents before the High Court within a period of 12 weeks. It is also made clear that at the time of re-hearing of the writ petitions, the parties shall be free to urge all legally permissible contentions in support of their respective cause.

24. Leave granted.

25. For the reasons recorded in the Non-Reportable judgment which is placed on the file, the appeals are allowed, the impugned order is set aside and the matters are remitted back to the High Court for fresh disposal of the writ petitions filed by the appellants. The parties may, if

so advised, file additional affidavits and documents before the High Court within a period of 12 weeks. It is also made clear that at the time of re-hearing of the writ petitions, the parties shall be free to urge all legally permissible contentions in support of their respective cause.