

# SUPREME COURT OF INDIA

Mohan Singh Gill

Vs.

State of Punjab

C.A.Nos.3177-3178 of 2015

(Anil R.Dave and A.K.Sikri JJ.)

25.03.2015

## JUDGMENT

**A.K. SIKRI, J.**

1. Leave granted.

2. These appeals arise out of the common judgment dated April 29, 2011 passed by High Court of Punjab and Haryana at Chandigarh whereby number of writ petitions which were filed challenging the acquisition of land measuring 192.75 acres vide two notifications, both dated 10.08.2009, issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') were dismissed. As a consequence, validity of the notifications has been upheld, holding that acquisition for public purpose for development of Missing Link-II from Dhandra Road to Sidhwan Canal via Malerkotla Road, Ludhiana as well as for development of residential urban estate along proposed road from Dhandra Road to Sidhwan Canal via Malerkotla Road, Ludhiana, is just and proper.

3. It is clear from the above that two notifications were issued on the same day i.e. on 10.08.2009. Vide first notification, land was acquired for development of Missing Link-II on the route mentioned above. By the second notification, land was sought to be acquired for the development of residential urban estate along with the proposed road, mainly to adjust oustees of the above said road. Land acquired by the first notification was 192.75 acres whereas by the second notification, land measuring 59 acres 1 kanal 12 marlas was acquired. After the aforesaid notifications under Section 4 of the Act, two notifications both dated 10.08.2009 under Section 6 of the Act were issued and consequent thereupon,

Award No.4 dated 07.08.2010 pertaining to the first notification and Award No.3 dated 07.08.2010 pertaining to the second notification were passed. Validity of all these notifications was the subject matter of the writ petitions.

4. In order to appreciate the present dispute in its correct perspective, it is necessary to consider some important background facts pertaining to construction of what has been termed as 'Missing Link-I' - which is inextricably linked to the present acquisition. It is a matter of record that a bypass is being constructed to connect Ferozepur Road to Sidhwan Canal aiming at decongesting Ludhiana City of the traffic problems. Major portion of the road had already been constructed, which were shown in the site plan filed in the High Court as Annexure R/1/7. From point A to point D and again from point E to point F, these portions had already been constructed. However, there were two Missing Links namely between point D to point E and point F to point G. Missing Link from point D to E has been shown as 'Missing Link-I'. The respondent-State had issued the notification dated 12.05.2003 under Section 4 read with Section 17(4), followed by the notification dated 13.05.2003 under Section 6, to acquire land measuring 11 acres 3 kanal 9 marlas for construction of Missing Link- I. Pursuant thereto, the land was acquired vide Award No.1 dated 24.08.2005. This acquisition was challenged but the said challenge failed as writ petitions were dismissed and decision of the High Court was upheld by this Court as well.

5. It is in this scenario, for providing road from point F to point G (Missing Link-II), the impugned notification dated 10.08.2009 was issued for the aforesaid public purpose. As per the Government, the bypass had been planned and realignment done keeping in view the availability of the land so that it may not affect the existing buildings and in order to solve the increasing traffic problems in future so as to ensure free and smooth flow of the traffic. The realignment was approved by the Punjab Regional and Town Planning and Development Board (hereinafter referred to as the 'Board') in its meeting dated 06.08.2009. That led to the passing of Award No.4 dated 07.08.2010.

6. Simultaneously, second set of notifications were issued for acquisition of land for development of residential urban estate to adjust oustees of the above said road. According to the Government, with the acquisition of the land to complete Missing Link-II, the residents of the said land had to be ousted. In order to adjust those oustees, it became necessary to acquire the land for development of residential urban estate to rehabilitate such oustees.

7. Insofar as first notification is concerned, it was challenged on various grounds including the plea that the said acquisition for proposed road i.e. Missing Link-II, is an inviable option and there is total lack of application of mind on the part of the respondent-Government in acquiring the land in question. It was also argued that land was not utilised entirely for the construction of the aforesaid proposed road i.e. Missing Link-II but a large portion of the acquired land was used for other purpose viz. commercial purpose which is not the purpose stated in the notifications. Number of other technical and legal objections were taken including the objection that the proposed bypass road has not been shown in the master plan and, therefore, the same could not be developed by acquiring the land without first making amendments in the master plan. However, none of these arguments have found favour with the High Court. Insofar as second notification is concerned, there is not much discussion in the impugned judgment and the counsel for all the parties agreed that this Court itself should decide the issue on merits.

8. Mr. Nidhesh Gupta, learned senior counsel who appeared in three appeals out of four, targeted the judgment of the High Court, insofar as it relates to the first acquisition namely acquisition of land for Missing Link-II is concerned, by raising following arguments:

In the first place, he pleaded that the land in question was utilised for the purposes different from what is stated in the notification. It was the submission that though the purpose was Missing Link-II for development (Dhandra Road to Sidhwan Canal via Malerkotla Road, Ludhiana), as a matter of record, a large part of the acquired land was used for a totally different purpose viz. commercial purpose, which according to him is impermissible in law. He referred to the replies filed by the official respondents wherein the factum of land being used for commercial purpose had been admitted. He pointed out that the width of Missing Link-II had been kept at 450 feet whereas the proposed road is only 200 feet and on both the sides two commercial pockets of 100 feet and 150 feet respectively are going to be developed. He also pointed out that objections were submitted under Section 5-A of the Act which related to the stated public purpose only. As the use of part of the land for the commercial purpose was not stated in the notification and the appellants were kept in dark, they could not file objections to the same and were thereby deprived of their legitimate right to file effective objections. He pleaded that it amounted to violation of the provisions of Section 5-A of the Act by depriving the appellants from giving opportunity to submit their objections to the aforesaid use of land which was not stated in the impugned notifications. He further argued in this behalf that

the utilisation of land for purpose other than the purpose stated not only defeats the right available under Section 5A of the Act but the consequence thereof would be to acquire the land under Section 17 of the Act viz. in exercise of emergent powers and that could not be done without following the procedure contained in that section. Related submission of Mr. Nidhesh Gupta was that utilising the major chunk of land for developing commercial area clearly showed that the land of the appellants was acquired to finance the project of constructing the road. According to him, such an action is per se arbitrary as land of the appellants could not be acquired for such a purpose thereby depriving them of their right to livelihood. He took this argument on a higher pedestal by submitting that such an act amounted to violation of Article 21 of the Constitution.

9. Another submission of Mr. Nidesh Gupta was that the proposed road (Missing Link-II) and the changes made therein are contrary to the master plan inasmuch as master plan does not show such a road and, therefore, there could not be any construction of any road without there being a provision made in the master plan. He referred to Section 77 of Punjab Regional and Town Planning and Development Act, 1995 which prescribes the mandatory procedure that has to be followed without making the changes in the master plan and submitted that the construction of the road amounted to violation of this provision as well.

10. Ms. S. Janani, who appeared for the other appellant led by Mr. M.L. Saggar, senior advocate, also highlighted the aforesaid contentions argued by Mr. Nidhesh Gupta and elaborated the same with facts and figures from the record. In addition, another thrust of their submission was that alignment of the road was changed thereby creating Missing Link-II and this was not only arbitrary but without application of mind as well.

11. Mr. Rakesh Khanna, learned Additional Solicitor General, argued the matter on behalf of respondent No.3, namely Greater Ludhiana Area Development Authority (GDADA), strongly refuting the aforesaid submissions of the appellants. He referred to the various meetings that had taken place before the final decision was taken in respect of the realignment of the road. He was at pains to submit that it was a bona fide policy decision taken to complete the Missing Link-II inasmuch as other route for completing this road would have resulted in uprooting the settled habitation in much more substantial measure. In order to demonstrate it, learned senior counsel had drawn our attention to various maps as well. He also referred to the judgment of the High Court where this material has been noted and discussed elaborately, while upholding the acquisition.

12. It is clear from the aforesaid that in so far as the first notification is concerned, where the land is acquired for the purpose of constructing Missing Link-II, it has two facets. First relates to the construction of the road itself, popularly known as Missing Link-II. Second facet thereof is the permissibility of the utilisation of the part of the land for commercial purpose which was not so stated in the impugned notifications.

13. Insofar as first aspect is concerned, we find from the impugned judgment that the High Court has dealt with this aspect very lucidly with precision. As pointed out above, attempt of the counsel was to demonstrate that there already exist enough links and it was not necessary to propose the road. It was also argued that the realignment was not a wise decision.

14. Attempt was also made to point out that this purpose for which land was acquired had become redundant in the changed circumstances. However, after going into the matter in depth and examining the records, we are satisfied that the High Court has correctly concluded that it is for the authorities, who are engaged in the development and planning of a city, to ascertain the need to acquire the land for creating infrastructure, such as roads etc. It is a matter of record that there exists a road from point A to point D and again from point E to point F. There are two Missing Links namely Missing Link-I from point D to point E and Missing Link-II from point F to point G. The land which was acquired for Missing Link-I, almost in similar circumstances, was subject matter of litigation but the attempts of the landholders failed right upto this Court as the challenge to the said notification was thwarted.

15. We also find that there have been due deliberations by the competent authorities deciding upon the realignment of the road leading to proposed Missing Link-II. We do not find any arbitrariness in the exercise done at the highest level inasmuch as the Chief Minister himself approved the revised plans. It is not the function of this Court to compare the Missing Link-II with alternate route suggested by the appellants and to come to the conclusion which out of the two would be more appropriate.

16. Insofar as argument predicated on the master plan is concerned, the High Court has brushed aside this very argument with the following discussion:

"Further the argument of the learned counsel for the appellants that the proposed Bye Pass road has not been shown in the Master Plan and therefore, the same cannot be developed by acquiring the land is without any

force. As shown by the learned counsel for the respondents the realignment of the Missing Link-II which falls in Zonal Plan-I has been notified as per the provisions of the Punjab Act vide notification No.1379 dated 24.02.2011 Annexure R-1/8 and the same has been shown in the Zonal Plan of zone No.1 Annexure R-1/9. The argument of the learned counsel for the appellants that the alleged realignment of the road has not been done in accordance with the provisions of Section 76/77 of the Punjab Act, is also without any merit. From the facts established on record, it is clear that the changes have been necessitated which have arisen out of implementation of the proposals as made in the master plan and such realignment has been made in public interest and after notification of the same which is clear from Annexure R-1/8. Interpretation as given by learned counsel for the appellants of Section 76 of Punjab Act cannot be accepted. Section 76 of Punjab Act reads as follows:

"Amendment of Master Plan- (1) At any time after the date on which the Master Plan for an area comes into operation, and at least once after every ten years, after that date, the Designated Planning Agency shall after carrying out such fresh surveys as may be considered necessary or as directed by the [State Government] prepare and submit to the [State Government], a Master Plan after making alterations or additions as it considers necessary.

(2) The provisions of [sections 70 and 75] shall mutatis mutandis as far as may be possible, apply to the Master Plan submitted under sub- section (1)."

A perusal of Section 76(1) of Punjab Act clearly indicates that the Master Plan can be amended at any time after the date on which the Master Plan for an area comes into operation and not after 10 years from such date as argued by the learned counsel for the appellants. Even otherwise, the High Court is of the view that, in the present case, Section 76 of Punjab Act has no applicability and in fact the realignment has been done under Section 77 of the Punjab Act and, thus, there is no violation of the provisions of the Punjab Act.

17. We are in agreement with the aforesaid findings arrived at by the High Court. We would like to record here that in the affidavit dated May 06, 2014 filed by the respondent-authorities, it is specifically averred that the alignment of the Missing Link-II between the Railway line and Sidhwan Canal/crossing Malerkotla Road has never been changed. Just below the point where the Missing Link-II crosses

the Malerkotla Road is an angular curve near village Gil (in Hadbast 263). This is explained by pointing out that in the map filed the 10 km long road is divided into 6 segments: A-B already constructed, B-C already constructed, C-D already constructed. D-E is Missing Link-I which has since been constructed in the year 2012-13. E-F already constructed and F-G is the Missing Link-II. Missing Link-II is further divided into points F and F1 i.e. the road between Dhandra Road to Railway Crossing, F-1 to F-2 the Missing Link-II road between existing Railway Crossing and Malerkotla Road and F2 to G i.e. between Malerkotla Road and Sidhwan Canal. Point G is just near Lohara village. It is also pointed out that in the blown-up portion of the Traffic & Transportation plan (which is not revenue based) of the Master Plan again this road from Firozpur Road till Sidhwan Canal is marked as Points A, B, C, D, E, F, F1, F2 and G. The road crosses the Railway Line at point F1, the existing railway crossing. The Missing Link-II road crosses Malerkotla Road at point F2 just above point H, the curved road of Gill Village at point H and ends at Point G, just near Village Lohara. The deponent has also filed Aks Shajra map, zonal plan of the area, and plan showing alignment of Missing Link-II. From these plans, an attempt is made to demonstrate that at no point of time there is any variation in the alignment of Missing Link-II between the portions F1 to G, be it Master Plan, Revenue Plans or Zonal Development Plan. The only change in alignment has been made between the portion F and F1 which was necessitated during the implementation of the Master Plan to avoid the area in which there was heavy construction existing. The realigned road between Point F and F1 is passing through open areas avoiding the constructed areas.

18. We are, thus, satisfied on the basis of the records that the plea of the appellants that the alignment of the road between Points F and G from Traffic & Transportation Plan of the Master Plan has been shifted by about 3 - 4.5 kms on the Northern side is not correct.

19. As a consequence, insofar as need of land for the construction of Missing Link-II is concerned, the same stands duly established and for acquisition of this chunk of land, there cannot be any exception.

20. This leads us to the second facet of this notification. As noted above, the width of road for Missing Link-II is 200 feet. However, the land acquired is 450 feet. Land beyond 200 feet on either side is sought to be utilised by constructing shops on both sides of the road. We have already recorded the submissions of the appellants on the basis of which this part of acquisition is questioned. To recapitulate the same briefly, it was argued:

(a) such a purpose is not stated in the notification which mentions the acquisition only for the purpose of construction of Missing Link-II. Under the garb of this notification, the respondents cannot utilise the part of the land for commercial purpose.

(b) In the absence of any such purpose mentioned in the notification issued under Section 4 of the Act, the appellants were deprived of purposeful and effective opportunity to file objections under Section 5-A of the Act.

(c) The hidden purpose of utilising the major chunk of land for developing commercial area shows that the land of the appellants was acquired to finance the project of constructing the road. According to the appellants, it is clearly impermissible.

21. Learned counsel for the appellants has referred to the judgment of this Court in *Tulsi Co-operative Housing Society, Hyderabad etc. v. State of Andhra Pradesh and others etc.*[1], wherein this Court while upholding the acquisition, had directed that lands had to be utilised for the purposes for which they were acquired. For the same proposition, judgment in *Narpat Singh etc. v. Jaipur Development Authority and Another*[2] was relied upon.

22. The respondents have attempted to meet this challenge by explaining that in the notifications it was categorically stated that plans of the land may be inspected in the office of the Land Acquisition Collector (LAC). The plans which were displayed in the office of the LAC and filed on record, show that this part of the land to be utilised for the commercial purpose. The land owners were, therefore, fully made aware of the use of the land. They were given an opportunity to file their objections under Section 5-A of the Act. However, no objection was submitted by the affected persons alleging that development of commercial area along side of Missing Link-II was improper or should not be done. On that basis, it is argued, relying on the decision of this Court in the case of *Delhi Administration v. Gurdip Singh Uban and Others*[3], that those claimants who had not filed objections to the Section 4 notification cannot now be permitted to contend before Court that the Section 5-A inquiry is vitiated.

23. We have pondered over this issue in depth with reference to the record and find force in the submissions of the learned counsel for the appellants. It is clear from the facts noted above that in the notification dated 10.08.2009 issued under Section 4 of the Act, public purpose which is stated is "Missing Link-II for development (from Dhandra Road to Sidhwan Canal via Malerkotla Road), Ludhiana....". Thus,

the land owners were informed that the land is sought to be acquired for the construction of Missing Link-II. From the reading of this notification, it is difficult to visualize by a common person with reasonable prudence that the part of land is sought to be exploited for commercial development as well. Obviously, when the purpose stated is construction of Missing Link- II, the objections would be filed by land owners having focus on the said stated purpose in mind. Had the land owners been told that major part of the land is going to be utilised for commercial purpose as well, they would have filed their objections to the proposed move. With no specific stipulation in this behalf in the notification under Section 4 of the Act, the persons whose land was sought to be acquired were deprived of an effective opportunity to file the objections under Section 5-A of the Act. It hardly needs to be mentioned that filing of objections under Section 5-A of the Act is, in substance, the only procedural safeguard/right given to the land owners. It is for this reason that violation of Section 5-A of the Act has been treated as fatal by this Court in number of cases as it becomes violative of principles of natural justice. The importance of objections under Section 5-A of the Act has been highlighted in *Usha Stud and Agricultural Farms Pvt. Ltd. and others v. State of Haryana and others*[4] as under:

"23. Section 5-A, which embodies the most important dimension of the rules of natural justice, lays down that any person interested in any land notified under Section 4(1) may, within 30 days of publication of the notification, submit objection in writing against the proposed acquisition of land or of any land in the locality to the Collector. The Collector is required to give the objector an opportunity of being heard either in person or by any person authorised by him or by pleader. After hearing the objector(s) and making such further inquiry, as he may think necessary, the Collector has to make a report in respect of land notified under Section 4(1) with his recommendations on the objections and forward the same to the Government along with the record of the proceedings held by him. The Collector can make different reports in respect of different parcels of land proposed to be acquired.

24. Upon receipt of the Collector's report, the appropriate Government is required to take action under Section 6(1) which lays down that if after considering the report, if any, made under Section 5-A(2), the appropriate Government is satisfied that any particular land is needed for a public purpose, then a declaration to that effect is required to be made under the signatures of a Secretary to the Government or of some officer duly authorised to certify its orders. This section also envisages making of

different declarations from time to time in respect of different parcels of land covered by the same notification issued under Section 4(1). In terms of Clause (ii) of the proviso to Section 6(1), no declaration in respect of any particular land covered by a notification issued under Section 4(1), which is published after 24.9.1989 can be made after expiry of one year from the date of publication of the notification. To put it differently, a declaration is required to be made under Section 6(1) within one year from the date of publication of the notification under Section 4(1).

25. In terms of Section 6(2), every declaration made under Section 6(1) is required to be published in the Official Gazette and in two daily newspapers having circulation in the locality in which the land proposed to be acquired is situated. of these, at least one must be in the regional language. The Collector is also required to cause public notice of the substance of such declaration to be given at convenient places in the locality. The declaration to be published under Section 6(2) must contain the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area or a plan is made in respect of land and the place where such plan can be inspected.

26. Section 6(3) lays down that the declaration made under Section 6(1) shall be conclusive evidence of the fact that land is needed for a public purpose.

27. After publication of the declaration under Section 6(1), the Collector is required to take order from the State Government for the acquisition of land and cause it to be measured and planned (Sections 7 and 8). The next stage is the issue of public notice and individual notice to the persons interested in the land to file their claim for compensation. Section 11 envisages holding of an enquiry into the claim and passing of an award by the Collector who is required to take into consideration the provisions contained in Section 23.

28. In *Munshi Singh v. Union of India*, (1973) 2 SCC 337, this Court emphasised the importance of Section 5-A in the following words:

"7. ...Sub-section (2) of Section 5-A makes it obligatory on the Collector to give an objector an opportunity of being heard. After hearing all objections and making further inquiry he is to make a report to the appropriate Government containing his recommendation on the objections. The decision of the appropriate Government on the

objections is then final. The declaration under Section 6 has to be made after the appropriate Government is satisfied, on a consideration of the report, if any, made by the Collector under Section 5-A(2). The legislature has, therefore, made complete provisions for the persons interested to file objections against the proposed acquisition and for the disposal of their objections. It is only in cases of urgency that special powers have been conferred on the appropriate Government to dispense with the provisions of Section 5-A."

29. In *State of Punjab v. Gurdial Singh*, (1980) 2 SCC 471, the Court observed as under:

"16. ...it is fundamental that compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons. Save in real urgency where public interest does not brook even the minimum time needed to give a hearing land acquisition authorities should not, having regard to Articles 14 (and 19), burke an enquiry under Section 17 of the Act. Here a slumbering process, pending for years and suddenly exciting itself into immediate forcible taking, makes a travesty of emergency power."

30. In *Shyam Nandan Prasad v. State of Bihar*, (1993) 4 SCC 255, this Court reiterated that compliance of Section 5-A is mandatory and observed:

"10. ...The decision of the Collector is supposedly final unless the appropriate Government chooses to interfere therein and cause affectation, suo motu or on the application of any person interested in the land. These requirements obviously lead to the positive conclusion that the proceeding before the Collector is a blend of public and individual enquiry. The person interested, or known to be interested, in the land is to be served personally of the notification, giving him the opportunity of objecting to the acquisition and awakening him to such right. That the objection is to be in writing, is indicative of the fact that the enquiry into the objection is to focus his individual cause as well as public cause. That at the time of the enquiry, for which prior notice shall be essential, the objector has the right to appear in

person or through pleader and substantiate his objection by evidence and argument."

31. In Raghbir Singh Sehrawat's case, this Court referred to the judgments in *Munshi Singh v. Union of India*, (1973) 2 SCC 337, *State of Punjab v. Gurdial Singh*, (1980) 2 SCC 471, *Shyam Nandan Prasad v. State of Bihar*, (1993) 4 SCC 255, *Union of India v. Mukesh Hans*, (2004) 8 SCC 14, *Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai*, (2005) 7 SCC 627, *Radhy Shyam v. State of U.P.*, (2011) 5 SCC 553 and observed:

"39. 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.

40. 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."

32. In *Kamal Trading (P) Ltd. v. State of West Bengal* (supra), this Court again considered the scope of Section 5-A and observed:

"13. Section 5-A(1) of the LA Act gives a right to any person interested in any land which has been notified under Section 4(1) as being needed or likely to be needed for a public purpose to raise objections to the acquisition of the said land. Sub-section (2) of Section 5-A requires the Collector to give the objector an opportunity of being heard in person or by any person authorised by him in this behalf. After hearing the objections, the Collector can, if he thinks it necessary, make further inquiry. Thereafter, he has to make a report to the appropriate Government containing his recommendations on the objections together with the record of the proceedings held by him for the decision of the appropriate Government and the decision of the appropriate Government on the objections shall be final.

14. 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.

15. 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 Corporation 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.

16. 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."

33. 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 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).

24. The aforesaid dicta was reiterated recently in *Women's Education Trust and another v. State of Haryana and others*[5] emphasising the importance of Section 5-A in the following words:

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

5.1. The rule of audi alteram partem engrained in the scheme of Section 5- A 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.

5.2. 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.

5.3. 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.

5.4. 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.

5.5. 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.

5.6 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.

6. 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. 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."

[Emphasis Supplied]

25. We, thus, are of the opinion that appellants are deprived of proper and reasonable opportunity of persuading the authorities concerned to spare that part of the land which is not required for construction of Missing Link-II but is intended to be used for commercial purpose. We are not influenced by the arguments of the respondents that in the drawings which were kept for inspection, this part of land is shown for commercial development. First of all, it is disputed by the appellants and nothing is produced on record by the respondents to substantiate this plea. In any case, we are of the view that such a drawing by itself would not meet the mandatory requirement of the Act in the absence of specific stipulation in this behalf in the notification itself.

26. In the aforesaid backdrop, we find strength in the submission of the appellants that the hidden purpose for acquiring "surplus" land, i.e. the land apart from what is required for constructing Missing Link-II, was to develop it as commercial area (which is not stated in the acquisition notification) so that the finances could be arranged for construction of road or for some other purpose. This cannot be treated as public purpose. If the land was to be utilised for commercial purpose, there has to be a proper planning into it and it needs to be demonstrated that utilisation of the land serves some public purpose. We do not find it to be so in the present case.

27. Mr. Khanna had cited certain judgments in support of his submission that even if the land is acquired for one particular purpose, the authorities are empowered to utilise the same for another public purpose. However, it is permissible in those circumstances where the original purpose for which the land was acquired had to

be changed for some valid reasons. Even that is not the case herein. From the very beginning, the authorities had in mind to use the extra chunk of land for commercial purpose but the same was not even stated in the notifications issued under Sections 4 or 6 of the Act. It is stated at the cost of the repetition that insofar as notifications are concerned, purpose mentioned is construction of Missing Link-II, and in this scenario, the authorities cannot acquire more land than what is required for construction of Missing Link-II. The notifications to the extent they acquire land over and above which is needed for construction of Missing Link-II are, thus, held to be bad in law and set aside.

28. This brings us to the validity of second notification. As already mentioned above, 55.41 acres of land has been acquired vide notification No.3 dated 07.08.2010 and the public purpose stated is "Development of Urban Estate, mainly to adjust oustees of Missing Link-II (Dhendra Road to Sidhwan Canal via Malerkotla Road, Ludhiana)". The main plank of attack of the appellants to this notification is that land of the appellants could not be acquired to rehabilitate other persons, and in the process rendering the appellants homeless and landless. Such an action was arbitrary and illegal which also amounted to depriving the appellants of their livelihood. It was also argued that in the process, the changes which made were much more serious violating the master plan. It was also argued that the aforesaid stated purpose is totally vague, since it only says that the same is for the development of a residential urban estate. It was argued that the public purpose of "residential" has been held by this Court to be vague in *Madhya Pradesh Housing Board v. Mohd. Shafi*[6]:

14. Apart from the defect in the impugned notification, as noticed above, we find that even the "public purpose" which has been mentioned in the schedule to the notification as "residential" is hopelessly vague and conveys no idea about the purpose of acquisition rendering the notification as invalid in law. There is no indication as to what type of residential accommodation was proposed or for whom or any other details. The State cannot acquire the land of a citizen for building some residence for another, unless the same is in 'public interest' or for the benefit of the "public" or an identifiable section thereof. In the absence of the details about the alleged "public purpose" for which the land was sought to be acquired, no-one could comprehend as to why the land was being acquired and therefore was prevented from taking any further steps in the matter.

[Emphasis Supplied]

29. It was also submitted that the notification acquiring land for the Missing Link road is for an area of approx. 74.52 acres. Yet, more than 55.41 acres of land has been acquired for adjusting the oustees of the said road. Thus, the acquisition is for a far greater area than what was required even as per the stated public purpose inasmuch as 55.41 acres of land was sought to be given to those from whom 74.52 acres of land was taken.

30. Mr. Gupta concluded his arguments with the submission that such an acquisition was not at all necessary, apart from being illegal, unfair, unjust and against the principles of natural justice as the appellants are being ousted from their land in order to accommodate, adjust and rehabilitate others who are similarly situated as the appellants. In other words, the appellants are being rendered oustees in order to accommodate other oustees. Such a patently unjust and unfair action cannot, by any stretch of imagination, be termed as 'public purpose' as grave harm, loss and injustice is being caused to the appellants for no sustainable reason. He also emphasised that the land from which the appellants are being ousted, in order to accommodate other oustees, is the sole source of livelihood for the appellants. Part of the acquired land is agricultural, part of it is inhabited and part of it has functioning industries. As such, there is no rationale whatsoever in uprooting well established livelihoods merely to accommodate others. The respondents action evidences absolutely no application of mind as there is vacant agricultural land nearby where the oustees could have been adjusted. It is argued that the real reason behind present acquisition is that in actual fact the respondent-government intends to use the acquired land for profit-making purposes. It is submitted that the respondents are planning to use the major part of the land under acquisition for commercial purposes.

31. The aforesaid arguments of the appellants was sought to be negated by Mr. Rakesh Khanna with the submission that the specific stand was taken by the respondents that the eligible land owners / structure holders of Missing Link-II road as well as urban estate both will be considered for allotment of plot/house as per oustee policy of the State Government. It was submitted that there are 949 land owners involved in this acquired land for Missing Link-II and urban estate. Firstly, it is only 48 of them who are before this Court. Therefore, 901 of them have no objection to the acquisition. Secondly, even out of the 48 owners, only 33 appellants were parties before the High Court and 15 have filed SLP for the first time being SLP No. 14124 of 2012. Two of them being appellants in SLP No. 15365 of 2012, have since withdrawn the SLP.

32. After considering the submissions of counsel for the parties on either side and on going through the records, we find force and merit in the case set up by the respondents. The defence put up by the respondent authorities, as noted above in the submissions of Mr. Rakesh Khanna, appears to be attractive wherein it is stated that the purpose of acquisition of this land is not only to accommodate the oustees of the land owners whose land was acquired for construction of Missing Link-I, the acquired land shall be used to provide shelter to the appellants and others who will be divested of their land. In this behalf, it is stated that all 949 land owners will be entitled for allotment of plots as per the oustees policy.

33. It is also to be borne in mind that out of 949 land owners, whose land is sought to be acquired by the instant impugned notification, majority of them, numbering 901 persons, have raised no objection to the acquisition and even accepted the compensation. Only 48 affected persons challenged the notification before the High Court. After the High Court dismissed the challenge vide impugned judgment, out of these 48 only 15 had preferred to come to this Court. We have also noted that as per the oustees policy of rehabilitation, all persons who have built up structures over the land, will be entitled for allotment of plot. There were 128 structures on the Missing Link-II and 36 structures in the urban estates. Therefore, 164 structure holders will be entitled for allotment of plots. Besides this, all 949 land owners will be entitled for allotment of plots as per the oustees policy. As per the plan for the area which is placed by the appellants at the time of hearing, there are in total 452 residential plots only in the urban estates which will be, by and large, sufficient for rehabilitation of the eligible allottees. It was also brought to our notice that the Government is providing free registration/zero stamp duty if the land owners purchase land within Punjab, equal to the amount of compensation received, within two years from the date of receiving of compensation. Several land owners, who have received compensation, had already availed this benefit. For all these reasons, we would not like to go into the validity of challenge made to the second notification.

34. At the same time, it is necessary to reflect upon some pertinent aspects of the case which were highlighted by the appellants. An attempt was made by the appellants to show that there is vacant agricultural land nearby which is more suitable for the purpose for which appellants land is sought to be acquired. On this basis, a suggestion was mooted that the Government should consider acquiring the said land nearby as there is vacant agricultural or barren land nearby. It was also argued that the notification acquiring land for the Missing Link road is for an area of approx. 74.52 acres. Yet, more than 55.41 acres of land has been acquired for adjusting the oustees of the said road. Thus, the acquisition is for a far greater area

than what was required even as per the stated public purpose inasmuch as 55.41 acres of land are sought to be given to those from whom 74.52 acres of land was taken. However, it is not for this Court to consider as to which particular piece of land is more suited for acquisition by the authorities. Likewise, though, prima facie, it appears that acquisition of 55.41 acres of land to rehabilitate the oustees whose land acquired measuring 74.52 acres is quite substantial, it is not for this Court to decide as to what should be the extent of land that needs to be acquired for this purpose. It is for the Government to look into these aspects. For this purpose, we give liberty to the appellants to make a suitable representation to the respondents in this behalf within a period of 30 days from today. If such a representation is preferred, the same shall be considered in accordance with law and decision thereupon shall be taken within 2 months from said representation. However, this liberty of making representation is going only to the appellants herein, which benefit shall not enure to those who have not approached this Court. We also expect that the Government shall take a pragmatic view and would not consider the representation with closed mind. While deciding the representation, the authorities will particularly consider the following aspects:

- (a) Whether the land of the appellants herein, keeping in view the total area involved, be released as not required if the remaining land is sufficient for the purpose for which the said land is acquired?
- (b) Even if some more land is needed for the stated purpose, whether it would be possible to release the land of the appellants and acquire vacant agricultural or barren land nearby which may be more suitable?
- (c) It may also be kept in mind that the land of the appellants is not only Abadi land, the appellants have their residential houses or industrial/commercial premises as well.
- (d) The authorities may also keep in mind the location of the land of the appellants and consider as to whether different chunks of land owned by the appellants are scattered in between rest of the land acquired and on that count, is it possible or not to hive off the land of the appellants?

35. However, we make it clear that while affording this opportunity to the appellants to make a representation, we are not providing fresh cause of action to the appellants, though, we expect the respondents to consider the representation with open mind.

36. The upshot of the aforesaid discussion would be to allow these appeals partly in the manner indicated above. However, there shall be no order as to costs.

[1] (2000) 1 SCC 533 [2] (2002) 4 SCC 666 [3] (2000) 7 SCC 296 [4] (2013) 4 SCC 210 [5] (2013) 8 SCC 99 [6] (1992) 2 SCC 168