

against respondent No. 4, does not appear to be justifiable nor any fresh grounds have been pleaded in the writ petition. The court, in matters of the kind, can at the most be concerned to hold an enquiry. Surely, if findings of the enquiry are to the dislikig of the petitioner yet an other enquiry can not be asked for. If such a prayer is to be accepted, there will be no end to this kind of litigation. To illustrate, if second enquiry is also ordered and same also turns in favour of respondent No. 4, can petitioner ask for third enquiry? In our view, answer to the question aforesaid has to be in negative. As mentioned above, insofar as officials/officers attached to the Council and against whom also allegations were made by the petitioner, are concerned, they have since already been charge-sheeted and are facing departmental enquiry. The complaint made by the petitioner with regard to various irregularities, as mentioned in the writ petition, has thus, culminated into proper proceedings and nothing more requires to be done. We find no merit in either of these writ petitions and dismiss the same.

(15) Before we may part with this order, we would only like to mention that the State of Punjab would do well if the enquiry initiated against the officials/officers of Municipal Council, as detailed in the written statement filed by Respondents 1 and 2, is concluded as expeditiously as possible and preferably within six months from the date a copy of this order is received by it.

(16) Parties are, however, left to bear their own costs.

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**S.C.K.**

*Before N.K. Sodhi & N.K. Sud, JJ*

HARI PARSHAD SHARMA & ANOTHER,—*Petitioners*

*versus*

STATE OF HARYANA & OTHERS,—*Respondents*

C.W.P. No. 5140 of 1998

7th September, 1999

*Constitution of India, 1950—Arts. 226/227—Land Acquisition Act, 1894—Ss. 4, 5-A & 6—Land sought to be acquired—Notification under Section 4 published—Objections under Section 5-A filed and the Land Acquisition Collector recommended to the State Government to release the land of the petitioners—However, recommendations not*

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*accepted and declaration under Section 6 published—Challenge thereto—Recommendations duly considered by the competent authority and the State Government decided to proceed with the acquisition proceedings—Writ dismissed being without any merit.*

*Held*, that the Land Acquisition Collector did recommend that the land of the petitioners be excluded but that recommendation after being duly considered by the competent authority was not accepted and it was decided that the land as notified including that of the petitioners be acquired. The argument that the acquisition proceedings are a colourable exercise of power by the State Government inasmuch as the notification issued on 21st June, 1982 acquiring 25 acres of land for the same purpose were allowed to lapse and thereafter, the impugned notifications were issued acquiring the land belonging to the petitioners is devoid of any merit. Merely because another land was sought to be acquired by the notifications issued on 21st June, 1982 does not mean that the present acquisition proceedings have come a colourable exercise of power. Hence, there is no merit in the writ petition and the same stands dismissed.

(Paras 3 & 4)

R.S. Mittal, Senior Advocate with Ms. Palika, Moga, Advocate,  
*for the petitioners.*

S.M. Sharma, DAG Haryana, *for Respondents No. 1 & 3.*

Anil Rathee, Advocate, *for Respondents No. 2 & 4.*

#### ORDER

*N.K. Sodhi, J*

(1) On the request of the Market Committee, Kaithal, the State Government initiated the process of acquiring a total area of 30 acres 2 kanals and 1 marlas of land for a public purpose namely for the establishment of a New Grain Market, Staff, Quarters, Rest House and Gadda Shed at Siwan, tehsil Kaithal district Kurukshetra. A notification, dated 22nd June, 1978, was issued under section 4 of the Land Acquisition Act (for short the Act) inviting objections to the acquisition. This land notified for acquisition was not found suitable as it was prone to floods and was a low lying area situated in a deep depression. No further steps were taken by the State Government and the notification was allowed to lapse. Thereafter another area measuring 25 acres and 3 kanals at Siwan was notified under section 4 of the Act for the same purpose. The provisions of Section 17 of the Act were invoked and both the notifications under sections 4 and 6 of

the Act were issued on 21st June, 1982. The State Government exercising its powers under section 48 of the Act excluded/withdrew from acquisition an area of 51 kanals 5 marlas from the land notified for acquisition under the notification dated 21st June, 1982. The notifications under sections 4 and 6 of as also one under section 48 of the Act were challenged by Smt. Jai Kaur and others in civil writ petition 4884 of 1985. That writ petition stands admitted and is pending in this court. Dispossession of the petitioners therein has been stayed. It is not in dispute that the Land Acquisition Collector has not given an award under section 11 till date and, therefore, the entire proceedings initiated for acquisition have lapsed in view of the provisions of Sections 11-A of the Act. By a notification dated 18th July, 1994 issued under section 4 of the Act the State Government again notified yet another area of land for the same purpose of constructing a new grain market, office building, staff quarters, Rest House, Gadda shed etc. at Siwan. Objections were invited from all the interested persons. Petitioners filed their objections on 25th August, 1994 and while those objections were still pending they filed civil writ petition no. 13488 of 1994 in this court challenging the notification under section 4 of the Act. This writ petition was dismissed as premature on 20th October, 1994 and a direction was issued to the Land Acquisition Collector to decide the objections expeditiously. However, the State Government issued the declaration under section 6 of the Act on 28th April, 1995 and the land which was earlier notified on 18th July, 1994 was acquired. Petitioners again challenged the notification under section 6 of the Act by filing civil writ petition no. 8645 of 1995 which came up for hearing before a Division Bench on 30th May, 1997 and the same was allowed primarily on the ground that the objections filed by the petitioners had not been decided even though the declaration under section 6 of the Act had been issued by the State Government. The notification dated 28th April, 1995 was quashed and a direction issued to the respondents therein to decide the objections filed by the petitioners and thereafter it was left open to the authorities to issue a fresh notification in accordance with law. It may be mentioned that when this writ petition came up for motion hearing proceedings in the acquisition were stayed on 7th June, 1995. The Land Acquisition Collector then decided the objections filed by the petitioners and made his recommendations to the State Government in December, 1997. He recommended that the land of the petitioners along the road side be excluded from acquisition. On receipt of the report from the Land Acquisition Collector, the State Government considered the recommendations and by a notification dated 10th February, 1998 the declaration under section 6 of the Act has been issued acquiring the land which was earlier notified on 18th July, 1994

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under section 4 of the Act. The present writ petition has been filed challenging both the notifications as issued under sections 4 and 6 of the Act. Allegations of malafides have been levelled against Shri Harpal Singh, former Agriculture Minister, Haryana as, according to the petitioners, their land was acquired at his behest by the State Government but these allegations were not pressed at the time of arguments.

(2) In response to the notice issued by this court the respondents have filed their written statements controverting the allegations made in the writ petition.

(3) It was strenuously urged by the learned counsel for the petitioners that while deciding their objections under section 5-A of the Act, the Land Acquisition Collector made a recommendation to the State Government to release the land of the petitioners and that the State Government while taking final decision thereon did not take into consideration that recommendation and, therefore, the acquisition proceedings qua them are illegal. We find no merit in this contention. The learned Deputy Advocate General, Haryana produced before us the original records and having perused the same we find that the Land Acquisition Collector did recommend that the land of the petitioners be excluded but that recommendation after being duly considered by the competent authority was not accepted and it was decided that the land as notified including that of the petitioners be acquired.

(4) It was then urged that the acquisition proceedings are a colourable exercise of power by the State Government inasmuch as the notifications issued on 21st June, 1982 acquiring 25 acres of land for the same purpose were allowed to lapse and thereafter the impugned notifications were issued acquiring the land belonging to the petitioners. This argument is also devoid of any merit. The notification under section 48 of the Act withdrawing some area from acquisition stand challenged in this court in civil writ petition no. 4884 of 1985 and the dispossession of the petitioners therein has been stayed. According to the petitioners these notifications have been withdrawn though the respondents claim that the acquisition proceedings lapsed because the Land Acquisition Collector did not give his award within the specified period. Be that as it may, these notifications are no longer subsisting and the State Government thereafter chose to acquire the land covered by the impugned notifications including that of the petitioners. Merely because another land was sought to be acquired by the notifications issued on 21st June, 1982 does not mean that the present acquisition proceedings have come a colourable exercise of

power. No meaningful argument could indeed be advanced to show as to how the acquisition proceedings were a colourable exercise of power by the State Government. Initially when the writ petition was filed the petitioners made allegations of *mala fides* against Shri Harpal Singh, former Agriculture Minister but those allegations were given up and his name was deleted from the memorandum of parties by order dated 13th November, 1998. We have no hesitation in rejecting this argument of the learned counsel for the petitioners.

(5) No other point was raised.

(6) In the result, there is no merit in the writ petition and the same stands dismissed. No costs.

(7) Office is directed to list civil writ petition no. 4884 of 1985 for final hearing after informing the counsel for the parties.

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**J.S.T.**

*Before N.K. Sodhi & N.K. Sud, JJ*

VIPAN KHANNA,—*Petitioner*

*versus*

COMMISSIONER OF INCOME TAX, AMRITSAR & OTHERS,—  
*Respondents*

C.W.P. No. 17615 of 1998

5th July, 2000

*Income Tax Act, 1961—Ss. 142, 143, 147, 148 & 154/155—Direct Tax Laws (Amendment) Act, 1987—Ss. 143 & 147—Petitioner claiming depreciation @ 50% against the permissible rate of 40%—I.T.O. restricting the claim to 40% and adding the excess depreciation to the returned income—Petitioner challenging the adjustment made by the I.T.O.—Commissioner allowing the appeal and deleting the additional amount—I.T.O. initiating proceedings under Section 147 for assessing the income which had escaped assessment due to excessive claim of depreciation—Assistant Commissioner requiring the petitioner to produce the books of accounts and furnish the information on various points—Deputy Commissioner rejecting the appeal of the petitioner—Challenge thereto—Whether the Assessing Officer can launch inquiry into the issues which were not connected with the claim of depreciation—Held, no—Such inquiry could only be made by issuing a notice under Section 143(2) within the stipulated period—No notice under Section 143(2) served on the assessee within the stipulated period of 12 months*