R.N.R.

Before M.M. Kumar & Jitendra Chauhan, JJ

RESHMA FOOTWEARS (P) LTD.,—*Petitioner*

versus

STATE OF HARYANA AND OTHERS,—*Respondents*

CWP No. 2308 of 2004 &

OTHERS CONNECTED PETITIONS

21st June, 2010

Constitution of India, 1950—Arts.14 & 226—Petitioner raising construction for residential-cum-industrial purposes and setting up an industrial unit after taking NOC from MC—Land sought to be acquired for public purpose—Some existing factories and residential houses released from acquisition—Industry set up by petitioners and residential area constructed by them acquired without any justification—Discrimination—Acquisition relating to area of petitioners liable to be struck down-Petitions allowed with costs, notifications u/ss 4 & 6 and subsequent proceedings quashed.

Held, that on the one hand, the respondent State by issuing letter dated 26th June, 1991 has laid down that survey of existing construction should be done before notification under Section 4 of the Act is issued and that the existing factories should not be acquired yet residential constructed area and running factory have been acquired without any justification. After framing of policy there was hardly any room for violating the same. There is no indication on the record that prior survey was undertaken and why the constructed area of the houses and factory/industry has been acquired. There is lack of justification in respect of releasing the land of other house owners/factory owners and acquiring the land belonging to the petitioners. The situation is the same with regard to the vacant area. Accordingly, on the ground of discrimination, the acquisition belonging to the area of the petitioner is liable to be struck down.

(Paras 21 & 22)

Arun Jain, Senior Advocate with Vishal Goel, Advocate,

Arun Palli, Senior Advocate with Tushar Verma, Advocate,

M. L. Sharma, Advocate,

J.L. Malhotra, Advocate,

Sanjay Kaushal, Advocate,

Harkesh Manuja, Advocate,

Ramesh Hooda, Advocate,

Surender Singh Dalal, Advocate,

J. S. Dhull, Advocate *for the petitioners.*

Kamal Sehgal, Addl. A.G. Haryana,

Rajiv Sharma, Advocate, *for UOI.*

Vandana Malhotra, Advocate, and Aman Chaudhary, Advocate, *for HUDA.*

M. M. KUMAR, J.

(1) This order shall dispose of a bunch of 22 petitions as the acquisition of land/buildings is sought to be made by common notifications initiating the acquisition proceedings. These petitions primarily involve acquisition of agricultural land, residential houses, and industrial units. The acquisition has been challenged on the principal grounds of procedural lapses alleging mandates of law, discrimination, violation of Articles 14, 19 and 21 of the Constitution, violation of principles of natural justice and infringement of the State policy for release of constructed areas.

(2) Brief facts of the case as culled out from CWP No. 2308 of 2004 are that the petitioner-M/s Reshma Footwears (P) Limited is a Company incorporated under the Companies Act, 1956, situated in the revenue estate of Sarai Aurangabad, Tehsil Bahadurgarh, District Jhajjar. In the year 1996 and 2000, the land was purchased at Sarai Aurangabad, Tehsil Bahadurgarh, District Jhajjar, on behalf of the Company by Shri Rajesh Kumar Garg,—*vide* sale deed No. 2044, dated 26th August, 1996 and by Smt. Amita Goyal and Shakuntala Devi,—*vide* sale deed No. 2156, dated 3rd August, 2000. The petitioner raised the construction for residential-cum-industrial purposes by spending a huge amount. An industrial unit for manufacture, sale and purchase of footwear was set up after taking No Objection Certificate from the Municipal Committee, Bahadurgarh. It is claimed that the site plan was also duly approved by the Municipal Committee, Bahadurgarh because the land in question is situated within the Municipal limits of Bahadurgarh. In that regard the petitioner also deposited the development charges of Rs. 63,515 to the Municipal Committee, Bahadurgarh (P-11 & P-12). The petitioner is an income tax payee unit and having all basic amenities like water, sewerage, electricity, telephone connections and has also obtained non-pollution certificate from the State Pollution Control Board. It is also paying various taxes such as house tax, income tax, sales tax, professional tax and development charges to the Municipal Committee, Bahadurgarh.

(3) On 17th April, 2002, respondent No. 7 State of Haryana issued a notification under Section 4 of the Land Acquisition Act, 1894 (for brevity, 'the Act') proposing to acquire land for a public purpose, namely, for residential, commercial and institutional Sector 1(Part) 10-11, (Part) 12 and 13 Bahadurgarh (P-41). On 14th May, 2002, the petitioner filed objections under Section 5-A of the Act and requested for release of its industrial unit from acquisition. On 10th April, 2003 a declaration under Section 6 of the Act was made acquiring the land in question (P-43).

(4) The respondents contested the writ petition by filing separate written statements. The stand taken by respondent Nos. 1 and 7 in the preliminary submissions of their written statement is that a bunch of five petitions challenging the same acquisition proceedings have already been dismissed by a Division Bench of this Court,—*vide* order dated 6th September, 2003 (Annexure R-1) passed in CWP No. 12764 of 2004 (Om Parkash Tehlan *versus* State of Haryana). Another writ petition,

bearing No. 11370 of 2003 pertaining to the same acquisition was dismissed on 30th April, 2004 in terms of the order passed in CWP No. 12764 of 2004 (R-2). However, the factual position regarding acquisition of land by issuance of notifications dated 17th April, 2002 and 10th April, 2003 has not been disputed. It has been stated that the provisions of the Act have been religiously complied with, inasmuch as, after issuance of notification under Section 4 of the Act on 17th April, 2002, the same was also published in the two daily newspapers, namely, 'Haribhoomi' (Hindi) dated 21st April, 2002 and 'The Hindu' (English) dated 23rd April, 2002. Similarly, declaration was made on 10th April, 2003 under Section 6 of the Act and it was also published in the aforestated newspapers on 16th April, 2003. The *munadi* in the locality by beat of drums was also made. The entry in the *Rapat Roznamcha* was made,—*vide* Rapat No. 361, dated 18th April, 2002 and Rapat No. 334, dated 17th April, 2003 respectively. After completing all the necessary formalities, the award was announced on 25th June, 2004. In the parawise reply on merit, it has been stated that the objections filed by the petitioner under Section 5A of the Act were duly heard on 31st October, 2002 by the Collector after giving opportunity of hearing to the petitioner through its representative. It has been denied that any land/constructed area in village Sarai Aurangabad has been released by the Government. It is claimed that the acquisition proceedings have been carried out religiously in accordance with law. With regard to existence of construction at the time of issuance of notification under Section 4 of the Act, it has been admitted in paras 8 and 10 of the written statement that there was some construction over the land in dispute but the same has been acquired by the respondent State after considering the objections under Section 5A of the Act as well as reports of the Collector and Joint site Inspection Committee.

(5) In the written statement filed on behalf of respondent Nos. 3 and 6, the stand taken in the preliminary objections is that the site of the petitioner is located in the residential zone as per the draft development plan 2021 of Bahadurgarh Town, notified in the Haryana Gazette,—*vide* notification dated 30th October, 2003 (R-1). In the reply on merits, it has been stated that the building of the petitioner is being used for industrial purpose and not for residential purposes and the site falls within Controlled Area Bahadurgarh as well as extended Municipal Committee Limit of Bahadurgarh.

(6) At this stage, it is pertinent to notice that the facts and the stand taken by the respondents in other cases is almost similar, as noticed

in the preceding paras. The following table gives a bird's eye view of the other cases :—

Sr. No.	CWP No.	Year	Nature of the land acquired	Description of the construction, if any	Whether construction prior to issuance of notification under Section 4 of the Act (Yes or No.)	Whether written statement filed or not. If yes by whom	Whether factum of construction prior to notification u/s 4 denied.
1	8223	2003	Residential	Petitioners purchased residential plots and constructed small houses in Krishna Nagar, Bahadurgarh, which is fully developed	Yes	Affidavit dated 12-7-2004 has been filed by the Special Secretary, Urban Estates Deptt. Haryana	Parawise reply not given. Only practice of the Govt. regarding release of land explained in the affidavit
2	12811	2003	Residential	Petitioners purchased land and constructed houses	Yes	No	No
3	12812	2003	Residential	Detail not forthcoming	Yes	No	No
4	15298	2003	Residential	Residential houses as detailed in the head note and para Nos. 1 to 3 of the petition	Yes	Yes. By LAC-respondent Nos. 1 & 3	Admitted existence of construction but in scattered manner, which is disturbing the planning process. Denied that there was any 'A' Class construction
5	16672	2003	Agriculture	Land is highly fertile. Petitioner laid down RCC pipes etc. for irrigation	No	Yes. LAO on behalf of respon-dent Nos. 3 to 6	Denied the Averments made in the petition. Referred various earlier judgments of this Court wherein same notifications have been upheld *vis.* CWP No. 12764 of 2004, and connected petitions decided on 6-9-2003

1	2	3	4	5	6	7	8
6	2625	2004	Industrial	Petitioner got the site plan approved from Municipal Committee, Bahadurgarh after depositing the requisite fees. Raised construction prior to Section 4 notification and running small scale unit	Yes	Yes, District Town Planner, Jhajjar, on behalf of respondent Nos. 3 and 6	Construction admitted but it is unauthorized construction without prior permission of the competent authority as required under Section 8 of the Act No. 41 of 1963
7	2753	2004	Industrial	Petitioner got the site plan approved from Municipal Committe, Bahadurgarh after depositing the requisite fees. Raised construction prior to Section 4 notification and running industrial unit.	Yes	Yes, District Town Planner, Jhajjar, on behalf of respondent Nos. 3 and 6	Construction admitted but it is unauthorized construction without prior permission of the competent authority as required under Section 8 of the Act No. 41 of 1963
8	3290	2004	Mixed (School and residence)	Petitioner Nos. 1, 3, 5 purchased different pieces of land,—*vide* sale deed dated 28-1-2002 separately. Petitioner No. 7 and 8 purchased the land on 21-3-2002 and 23-3-2002 respectively. Petitioner No. 2 purchased the land,—*vide* sale deed dated 20-6-2002 (after notification under Section 4), mutation was sanctioned on 17th July, 2002 (Para 4 of the writ petition)	Not clear	No	No

1	2	3	4	5	6	7	8
9	5967	2004	Industrial	Petitioner established small scale industries in the area owned and possessed by it.	Yes	No	No
10	6017	2004	Industrial	Petitioner purchased the land,—*vide* sale deeds dated 1-9-1998 and 25-3-2002, raised construction and set up an industrial unit.	Yes	Yes. District Town Planner, Jhajjar on behalf of respondent Nos. 3 to 6	Petitioners raised unauthorized construction without prior permission of the competent authority. Petitioner's site is located in the residential zone and falls within the controlled area around Bahadurgarh town.
						Replay on behalf of respondent HUDA	No effective reply has been filed.
						LAO on behalf of respondent Nos. 1 & 7	Construction admitted. Rest same averments as in CWP No. 7528 of 2004.
11	6107	2004	Flour Mill-cum-Residential since Dec. 1995	Petitioner purchased the plot,—*vide* sale deed dated 9-5-1995. After getting the site plan approved by MC, Bahadurgarh, depositing of requisite fee and documents, raised construction of Flour Mill. Photographs attached.	Yes	Yes. District Town Planner, Jhajjar on behalf of respondent Nos. 3 to 6	Petitioners raised unauthorized construction without prior permission of the competent authority. Petitioner's site is located in the residential zone and falls within the controlled area around Bahadurgarh town.
						Reply on behalf of respondent Nos. 2, 4 and 5	Acquisition has been made as per the provisions of the Act. Denied that the construction of the petitioner is of 'A' Class.

1	2	3	4	5	6	7	8
12	6137	2004	Industrial	Petitioner purchased the land,—*vide* sale deeds dated 10-7-1995 and 15-5-2000. After getting the site plan approved by MC, Bahadurgarh, depositing of requisite fee and documents, raised construction of industrial unit.	Yes	Yes. District Town Planner, Jhajjar on behalf of respondent Nos. 3 to 6	Petitioners raised unauthorized construction without prior permission of the competent authority. Petitioner's site is located in the residential zone and falls within the controlled area around Bahadurgarh town
						Reply on behalf of respondent Nos. 2, 4 and 5	Acquisition has been made as per the provisions of the Act. Denied that the construction of the petitioner is of 'A' Class.
13	6172	2004	Industrial	Petitioner purchased the land,—*vide* sale deed dated 23-10-1997. After getting the site plan approved by MC, Bahadurgarh, depositing of requisite fee and documents, raised construction of industrial unit.	Yes	Yes. Reply on behalf of respondent Nos. 2, 4 and 5	Denied that the construction of the petitioner is of 'A' Class.
14	7528	2004	Agricul-tural	Land is being used for agriculture purposes, which is highly fertile and double crop growing, Irrigated through tubewell. Emphasised that the respondents should comply with the Regional Plan 2001 under the mandatory provisions of National Capital Region Planning Board Act, 1985	No construction	Yes. By LAO on behalf of respondent Nos. 3 to 6	Denied the averments made in the petition. Referred various earlier judgments of this Court wherein same notifications have been upheld vis. CWP No. 12764 of 2004, and connected petitions decided on 6-9-2003 (R-1)

1	2	3	4	5	6	7	8
15	9122	2004	Industrial	Land was purchased by two sale deeds dated 13-12-95 and 14-12-95. After raising construction the petitioners are running industrial unit as also using the building for their residence.	Yes	Yes. District Town Planner, Jhajjar on behalf of respondent Nos. 3 to 6	Petitioner raised unauthorized construction without prior permission of the competent authority. Petitioner's site is located in the residential zone and falls within the controlled area around Bahadurgarh town.
						Reply on behalf of respondent HUDA	No effective reply has been filed.
16	9124	2004	Industrial	Petitioners established their small scale industries much prior to Section 4 notification.	Yes	Yes. Estate Officer-HUDA for respondent No. 2	Acquisition has been made by the State Government in accordance with the provisions of the Act.
17	9204	2004	Factory	Petitions using the land for the purpose of drying of card board and running a factory in the name of M/s Balore Hathkargha Board Udyog.	Yes	No	No
18	11074	2004	Industrial	Petitioner got the site plan approved from Municipal Committee, Bahadurgarh after depositing the requisite fees. Raised construction much prior to Section 4 notification and running factory.	Yes	Yes. LAO on behalf of respondent Nos. 1 & 7	Same averments as in CWP No. 7528 of 2004.

1	2	3	4	5	6	7	8
19	11721	2004	Residential	Claimed that the petitioner purchased plot prior to Section 4 notification and raised construction comprising of 8 rooms, kitchen, latrine, bath room and boundary wall and living there Photographs attached	Yes	No	No
20	11809	2004	Residential	Claimed that the petitioner raised construction prior to Section 4 notification comprising of 2 rooms, kitchen, latrine, bath room and boundary wall and living there	Yes	Yes By Chief Coordinator Planner (NCR), Haryana, Panchkula on behalf of respondent No. 3 Estate Officer, HUDA on behalf of respondent Nos. 2, 4 and 5	Construction admitted Award of the built up area has not been announced
21	11813	2004	Residential	Claimed that the petitioner purchased plot prior to Section 4 notification and raised construction comprising of 2 x30, one room of 14x14, kitchen, latrine, bath room and boundary wall and living there.	Yes	Yes, LAO on behalf of respondent Nos. 1 and 7	Land has been acquired in accordance with the provisions of the Act. No objection under Section 5A of the Act was filed by the petitioner Petitioner is not recorded as owner in possession of the land in question in the revenue record Similar writ petition being CWP No. 11370 of 2003 has been dismissed on 30th April, 2004 Vague reply has been given regarding construction in para 2 on merits

(7) Mr. M.L. Sharma, learned counsel for the petitioner has made the following broad submissions :—

(i) The acquisition proceedings are vitiated because substance of the notification issued under Section 4 of the Act was not published in the locality nor was the substance of the notification displayed at the conspicuous places. According to the learned counsel it is a mandatory provision and failure to comply with the procedure vitiates the notification issued under Section 4 of the Act. In support of his submission, learned counsel has placed reliance on a judgment of Hon'ble the Supreme Court rendered in the case of **Raja Ram Jaiswal** *versus* **Collector (District Magistrate) Allahabad, (1).** He has also relied upon another judgment of Hon'ble the Supreme Court in the case of **State of Mysore** *versus* **Abdul Razak Sahib, (2)** and two Full Bench judgments of this Court rendered in the cases of **Rattan Singh** *versus* **State of Punjab, (3)** and **Kashmiri Lal** *versus* **State of Punjab, (4).** He has also relied upon a Division Bench judgment of this Court rendered in the case of **Man Singh** *versus* **State of Punjab, (5)** and a Single Bench judgment of this Court rendered in the case of **Punjab State** *versus* **Sansar Preet Mandal, (6).**

(ii) Mr. Sharma has then submitted that the right of hearing contemplated under Section 5A of the Act is a right akin to fundamental right and, therefore, after hearing of the objections by the Land Acquisition Collector, the reasons for rejecting the objections or the consolidated order is required to be communicated to the objectors/interested persons, especially when the prices of the land has increased manifold. He has maintained that non-communication of reasons would result into violation of the principles of natural justice and the right of the

(1) (1985) 3 S.C.C. 1
(2) AIR 1973 S.C. 2361
(3) 1976 P.L.J. 356 (FB)
(4) 1983 P.L.J. 549 (FB)
(5) 1980 P.L.J. 414 (DB)
(6) 1990 L.A.C.C. 617 (P & H)

petitioners would be prejudiced as they would have no say before the State Government which is to determine the issue finally. In support of his submission, learned counsel has placed reliance on the judgments of Hon'ble the Supreme Court rendered in the cases of **Gulabras Keshavrao Patil** *versus* **State of Gujarat,** (7) and **Hindustan Petroleum Corporation Ltd.** *versus* **Darius Shapur Chenai (8)**. Learned counsel has substantiated his argument by submitting that the function of the Land Acquisition Collector while making recommendations under Section 5A of the Act are quasi-judicial in nature and, therefore passing of speaking order is mandatory for rejecting or accepting the objections. He has also contended that communication of such an order/recommendation to the land owners/objectors is part of the principles of natural justice. In that regard he has placed reliance on the judgments of Hon'ble the Supreme Court rendered in the cases of **State of Mysore** *versus* **V.K. Kangan, (9) Shri Mandir Sita Ramji** *versus* **Governor of Delhi, (10) Farid Ahmed Abdul Samad** *versus* **Municipal Corporation of the City of Ahmedabad, (11).**

(iii) Another submission made by the learned counsel for the petitioners is that plain land, residential houses and factories etc. belonging to influential persons have been released from acquisition, which is arbitrary and smacks of discrimination. He has emphasised that it is a colourable exercise of power where pick and choose formulas have been applied. According to the learned counsel, the notification acquiring the land involves four villages. In village Bahadurgarh 58.16 acres, in village Balaur 25 acres and in village Barketabad 4.79 acres of land have been released from acquisition whereas the houses, factories and plain area belonging to the petitioners have not been released. In support of his submission, learned counsel has

(7) (1996) 2 S.C.C. 26
(8) (2005) 7 S.C.C. 627
(9) (1976) 2 S.C.C. 895
(10) AIR 1974 S.C. 1868
(11) (1976) S.C.C. 719

placed reliance on a latest judgment of Hon'ble the Supreme Court rendered in the case of **Hari Ram and another** *versus* **The State of Haryana and others (12)** and has drawn our attention to some scathing remarks made by Hon'ble the Supreme Court against the respondent State with regard to favoritism in releasing the land from acquisition. In respect of industrial unit, he has drawn our attention to CWP No. 9204 of 2004 where the factory belonging to that petitioner has been released from acquisition whereas the stand taken in the cases of the present petitioners is that the existence of factory is not compatible for the scheme of residential area. He has also referred to various instances where the houses, like the one belonging to the petitioners have been excluded whereas those of the present petitioners have been acquired. The other instances with regard to plain land have also been cited. According to the learned counsel, the construction raised by the petitioners whether in respect of the factory or in respect of the residential area have not been denied and it is conceded that it was raised before issuance of notification under Section 4 of the Act. In that regard he has placed reliance on the report dated 27th January, 2004 of the Joint Inspection Committee under the Chairmanship of Shri Shyamal Mishra, IAS, Administrator, HUDA, Faridabad. A perusal of the aforesaid report shows that an area measuring 12.44 acres in village Baktarabad was withdrawn from acquisition without giving any reason.

(iv) Learned counsel has then submitted that once the petitioners have raised construction after obtaining sanction to the site plan then the principle in the nature of estoppel would come into play. Placing reliance on the averments made in paragraphs 6 to 11 of CWP No. 2308 of 2004, Mr. Sharma has argued that the sanction was accorded on 22nd September, 2000 (P-9) and the building was to be raised within a period of one year i.e. on or before 21st September, 2001. After sanctioning of the site plan the petitioner had raised construction (P-13). The

(12) (2010) 3 S.C.C. 621

other connected documents placed on record are the deposit of amount for development charges in the Municipal Council, Bahadurgarh (P-10 & P-11). He has also referred to various documents showing the issuance of sales tax number. Even sanction was accorded by the Haryana State Pollution Control Board on 14th September, 2000 (P-22). He has also attached the electricity bills (P-23 to P-26), telephone bills (P-27 to P-30) and Sales Tax receipts (P-31 and P-32). On the basis of the aforesaid, learned counsel has argued that before notification under Section 4 of the Act was issued on 17th April, 2002, the factory was constructed and was in production. Therefore, there was legitimate expectation that after religiously complying with detailed provisions of law, the petitioner would enjoy his property without any objection from any quarter. In that regard, he has placed reliance on a Division Bench judgment of this Court rendered in the case of **Eros City Developers Private Ltd.** *versus* **State of Haryana (13)**. He has further submitted that in cases where the land is situated in municipal area and no declaration has been made under the Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963 (for brevity, 'the 1963 Act'), then no permission for change of land use is required to be obtained. According to the learned counsel a notification declaring the area under dispute as Controlled Area under Section 4 of the 1963 Act was issued on 30th October, 2003 (R-1) and same cannot be given retrospective effect because it would result into demolishing a number of houses/residences, factories and commercial establishments. He has submitted that in such a situation no acquisition is permissible when the State agencies themselves have accorded sanctions. In that regard he has placed reliance on two Division Bench judgments of this Court rendered in the cases of **State of Haryana** *versus* **Kartar Singh (14)** and **Mahant Ram** *versus* **State of Punjab, (15)**

(13) 2008 (2) R.C.R. 291

(14) 1989(1) Recent Criminal Reports 164

(15) 1984 P.L.J. 52

(v) The last submission made by the learned counsel is that the policy framed by the respondent State on 26th October, 2007 is fully applicable to all these cases because it exempts/excludes any construction from acquisition, which has been raised in accordance with law. In that regard he has drawn our attention to letter dated 26th January, 1991 where the general policy has been laid down and the same has been followed and applied for releasing the constructed areas belonging to various other persons. In any case, Mr. Sharma has placed reliance on the judgment of Hon'ble the Supreme Court rendered in the case of **State of U.P.** *versus* **Smt. Pista Devi, (16)** and argued that constructed area should not either be acquired or some alternative arrangements for rehabilitation of those oustees have to be made.

(8) Mr. Kamal Sehgal, learned State counsel has vehemently controverted the submissions made by the counsel for the petitioner. Referring to the averments made in the preliminary submissions of the written statement filed on behalf of respondent Nos. 1 and 7 and the record of the State, Mr. Sehgal has submitted that notification under Section 4 of the Act has been duly published in the gazette as well as in two newspapers, one in the vernacular in Hindi and the other in English daily, namely, 'Hari Bhoomi', dated 21st April, 2002, and 'The Hindu', dated 23rd April, 2002 respectively. Likewise, declaration under section 6 of the Act was also published in both the newspapers. Learned counsel has further submitted that publication in the locality was carried out by way of Munadi and writing of Rapat Roznamcha,—*vide* Rapat No. 361, dated 18th April, 2002 and Rapat No. 334, dated 17th April, 2003. He has referred to the record to point out that notices were pasted at all conspicuous places in the village. Therefore, he has submitted that there is no infringement of the procedural requirement and the judgments relied upon by the learned counsel for the petitioner are not attracted to the facts of the present case.

(9) Mr. Sehgal has also controverted the submission of the counsel for the petitioner that right of hearing contemplated by Section 5-A of the Act would include the recording of detailed reasons for rejecting the objections and the communication of those reasons to the objectors/ interested persons. Referring to the record, the learned State counsel has

(16) AIR 1986 S.C. 2025

argued that not only the Collector has granted hearing to all the objectors it has also recorded reasons in its report. He has mentioned that there is close application of mind. Mr. Sehgal has maintained that there is no question of any prejudice being caused if no reasons are recorded and communicated to the petitioner. In support of his submission, Mr. Sehgal has placed reliance on the judgment of Hon'ble the Supreme Court rendered in the case of **Kalumiya Karimmiya** *versus* **State of Gujarat, (17)** and argued that hearing under section 5-A of the Act would not become invalid on account of failure to furnish a copy of the report after hearing. Mr. Sehgal has also placed reliance on the observations made by Hon'ble the Supreme Court in the case of **Delhi Administration** *versus* **Gurdip Singh, (18)** and argued that no reasons are required to be mentioned in the declaration made under section 6 of the Act and if the satisfaction recorded by the State Government is challenged then the record can be produced before the Court and the State could satisfy the Court regarding justification expressed in the declaration. According to the learned counsel the aforesaid argument was raised before Hon'ble the Supreme Court but was rejected in the case of **Hindustan Petroleum Corporation Ltd.** *(supra).* Therefore, it should be taken as well settled that neither recording of reasons nor communication of the report by the Collector to the land owner is fatal to the declaration which may be made under Section 6 of the Act.

(10) On the other issue, Mr. Sehgal has submitted that there is no absolute bar to acquire constructed area as long as it is required for enforcing a public purpose. According to the learned counsel, the State policy aims at excluding the constructed area from the acquisition ordinarily speaking but in a case where the constructed area is necessary for enforcement of the public purpose then constructed area could also be acquired by payment of compensation for it. For the aforesaid proposition, Mr. Sehgal has placed reliance on a Division Bench judgment of this Court rendered in the case of **Swet Chem Antibiotics Ltd.** *versus* **State of Haryana (19).** He has then argued that there is no discrimination and the constructed area, which is residential in character, has also been released from acquisition whereas the other area has been acquired. However, he has not been able to answer the specific argument raised by the counsel

(17) (1977)1 S.C.C. 713

(18) (2000) 7 S.C.C. 296

(19) 2009(1) P.L.R. 797

for the petitioner that the industry similarly situated to that of the petitioner has been released from acquisition in CWP No. 9204 of 2004, whereas contrary stand has been taken in the present case. He has also submitted that there is no estoppel against the statute or statutory power.

(11) His last submission is that in pursuance of amendment made by Act No. 5 of 2003 in the Haryana Municipal Act, 1973 (for brevity, 'the Municipal Act'), a notification has been issued under Section 203-D concerning controlled area, which is covered by the provisions of the Municipal Act and permission under the 1963 Act is mandatory.

(12) We have heard arguments of the learned counsel for the parties in detail and have minutely perused the record. It is pertinent to notice that notification under section 4 of the Act has been duly published in the official gazette on 17th April, 2002. The notification was also published in the English as well as Hindi daily newspapers, namely, 'The Hindu', dated 23rd April, 2002, and 'Hari Boomi', dated 27th April, 2002. It is significant to notice that substance of the notification was published in the locality by beat of drum and Munadi was carried out by loud voice in all the villages where the land was acquired particularly in and around the acquired land. There are numerous reports on the record showing that a copy of the notification was also pasted on the notice board of the Tehsil office. The notifications were also pasted on the walls of public areas. Similar other reports are also available on record. It is also explicit from the record that declaration under Section 6 of the Act was made on 10th April, 2003 and it was also published in both the aforesaid newspapers i.e. 'The Hindu' (English) and 'Hari Bhoomi' (Hindi) on 16th April, 2003. Likewise, the publication in the locality was carried out by beat of drum and Rapat Roznamcha in that regard has also been prepared and entered, which are dated 17th April, 2003/18th April, 2003. In the publication made in the locality there is a clear indication that Shizra plan of the land could be inspected at the office of District Town Planner, Jhajjar, Bahadurgarh and the Land Acquisition Collector, Faridabad. Another fact which is clear from the record is that the Land Acquisition Collector heard the objections and a perusal of the file shows that report under Section 5-A of the Act was prepared. Summary of objections was entered with the recommendations for and against the acquisition. Even a report dated 21st March, 2003, prepared by the Joint Inspection Committee under the

Chairmanship of Shri Shyamal Misra, IAS, Administrator, HUDA is also on record, which recommended that Pocket-'Y' shown is Shizra Plan and notified under Section 4 of the Act falls on the other side of Bahadurgarh and Jhajjar road which may not be acquired. The aforesaid area be acquired at the time of acquisition of that sector i.e. Sector No. 3. The Committee recommended the acquisition of the remaining entire area of those sectors by issuing notification under Section 6 of the Act. Accordingly, notification under Section 48 of the Act appears to have been issued for withdrawal of acquisition of an area measuring 12.44 acres and therefore no notification under section 6 of the Act in respect of the aforesaid area was issued. It is in the light of the aforesaid facts that we now proceed to examine the arguments of the parties.

(13) The first argument concerning non-publication of the substance of the notification in the locality under Section 4 of the Act or its affixation in the public area and locality at conspicuous places would not be available and does not have any substance. The learned State counsel has produced before us voluminous record to show that substance of the notification was not only published by a beat of drum, notifications were also published by affixation at conspicuous places in and around the acquired land. The notifications were also published by affixation and by displaying the same on the notice Board of the Tehsil office with the clear indication that the *Shizra* plan of the land could be inspected at the office of District Town Planner, Jhajjar, Bahadurgarh and the Land Acquisition Collector, Faridabad. Therefore, no benefit of the judgments of Hon'ble the Supreme Court in the case of **Abdul Razak (supra)** *and* **Raja Ram Jaiswal** ***(supra)*** could be extended to the petitioner.

(14) The second submission made by the learned counsel for the petitioner is that once the right of hearing under Section 5-A of the Act has been put at the pedestal, akin to the fundamental right then it is mandatory for the Collector to record reasons and supply copy of the report to the petitioner. The aforesaid argument is completely devoid of merit because in the case of **Kalumiya Karimmiya** ***(supra)***, Hon'ble the Supreme Court had the opportunity to consider the similar argument and had rejected the same. A specific submission was raised and rejected that a copy of the report of the Collector, under Section 5-A of the Act, must be furnished to the objectors in order to complete the procedure of opportunity of

hearing and also to comply with the principles of natural justice. The views of Hon'ble the Supreme Court are extracted below :

> " ..... We are unable to accept this submission. Although, ordinarily, there should be no difficulty in furnishing a copy of the report under Section 5A to an objector, when he asks for the same, it is not a correct proposition that hearing under Section 5A is invalid because of failure to furnish a copy of the report at the conclusion of the hearing under said section. Unless there are weighty reasons, a report in a public enquiry like this, should be available to the persons who take part in the enquiry. But failure to furnish a copy of the report of such an enquiry cannot vitiate the enquiry if it is otherwise not open to any valid objection. Apart from this solitary ground, our attention has not been drawn to any infirmity in the hearing under Section 5A. We are therefore, unable to hold that the said enquiry under Section 5A was invalid."

(15) In so far as the 2nd part of this argument is concerned, we find firstly that reasons have been recorded in the detailed report given in respect of every individual objector. All the same, recording of reasons in declaration made under Section 6 of the Act is not the requirement of law. In para 15 of the judgment in the case of **Hindustan Petroleum Corporation *(supra)***, Hon'ble the Supreme Court has opined that once the report has been submitted by the Collector to the appropriate Government with his recommendation alongwith the record then the Government has to consider the same and render a decision thereon. In para 20, it has further been observed that in case acquisition is challenged before the Courts then the State can always justify the same by producing the record showing due application of mind. Therefore, we do not find any substance in the second submission made by the counsel for the petitioner.

(16) The petitioner has raised the issue concerning releasing of residential or industrial areas which have been constructed. A perusal of the table prepared in para 6 would show that wherever residential or industrial areas are shown and construction is claimed, the same is raised before issuance of notification under Section 4 of the Act. For example, the first item on the table shows CWP No. 8223 of 2003, which is a

residential house and which is stated to be fully developed and construction has been raised prior to Section 4 notification. Likewise Item Nos. 2, 3, 4, 19, 20 and 21 also depicts the similar position. Item Nos. 6, 7, 9, 10, 11, 12, 13, 15, 16, 17 and 18 deals with industrial constructions, which were admittedly raised before issuance of notification under Section 4 of the Act. However, only in Item Nos. 5 and 14 the agricultural land is involved, which has no construction. A perusal of the table further shows that all items concerning residential houses have small areas and construction has been raised after obtaining sanction of the site plan. The petitioner has pointed out that in village Bahadurgarh 58.16 acres area has been released; in village Balour 25 acres area has been released and likewise in village Bakhtabad 4.79 acres of land has been released from acquisition. A specific reference was made in CWP No. 9204 of 2004, where factory belonging to that petitioner has been released whereas in the case of the petitioner stock reply has been proffered that the factory/residence area belonging to the present petitioner falls within non-conforming area which are for non compatible purpose. The letter dated 26th June, 1991 (P-48), sent by the Chief Administrator, HUDA to various other authorities would show that as a matter of policy existing factory should not be acquired and should be released from proceedings initiated under Section 4 of the Act. The constructed area of 'A' and 'B' Grade should be left out of acquisition and that survey of existing construction be undertaken before issuance of notification under Section 4 of the Act. Similar views have been expressed in the meeting dated 20th February, 2003, which was held by PHD Chambers of Commerce and Industry, New Delhi, with the Commissioner and Secretary, Department of Industries, Haryana. In the inter-active sessions various issues concerning industry were highlighted by the Members of the PHD Chamber before the Commissioner and Secretary Industries and they agreed to initiate follow up action, *inter alia,* on the following issues :

> "6. **Acquisition of Land in Behrampur and Begum Pura Khatola area of Gurgaon.**
>
> The members from Gurgaon expressed concern at the imposition of Section 4 for acquisition of land in Behrampur and Begum Pura village. In these areas more than 100 small and medium size units are already operating and only few pockets of land are

available. The existing units have already taken the required permissions for operating ? These pockets of land would be needed for expansion purpose by the existing industry.

Therefore, all existing units and their land be exempted from the final acquisition notification and also the land proposed for industrial use. Construction of which has not taken place as yet, should be exempted after taking an undertaking from these entrepreneurs that the land will not be used for any purpose except Industrial.

In his response, the Commissioner and Secretary, Industries informed that as a Policy, the State Government does not acquire land where Industries are operating. He advised the District Town Planner to inspect the land use and submit a report."

(17) The aforesaid factual position would highlight the background policy of the State which has been in operation since 1991 and accordingly the constructed residential as well as industrial units are ordinarily exempted from acquisition. The aforesaid policy was subject matter of consideration before Hon'ble the Supreme Court in the case of **Hari Ram (supra).** After referring to the judgment rendered in the case of **Sube Singh** *versus* **State of Haryana (20),** their Lordships have observed in paras 25 and 26 as under :–

"25. The only guideline discernible from the aforesaid letter dated 26th June, 1991 is that survey of existing construction should be done before notification is issued under Section 4 of the Land Acquisition Act; that an existing factory should not be acquired and it should be released from the proceedings of Section 4 notification and that constructed area of 'A' and 'B' grades should be left out of acquisition.

26. In *Sube Singh* this Court has already held that classification on the basis of nature of construction cannot be validly made and such policy is not based on intelligible differential and a rational basis germane to the purpose. The policy articulated in the letter dated 26th June, 1991, thus hardly helps the respondents.

(20) (2001) 7 S.C.C. 545

Rather it is seen that neither the aforesaid policy nor any other policy has been followed by the State Government while releasing land of various land owners whose lands have been acquired in the same acquisition proceedings. As a matter of fact, the only policy that seems to have been followed is; "you show me the fact and I'll show you the rule."

(18) Hon'ble the Supreme Court also made a reference to various orders releasing the land/constructed area from acquisition and proceeded to hold that the release of land from acquisition has been arbitrary and unfair. The only principle which is followed in the State of Haryana is *'You show me the face and I'll show you the rule'*. On the basis of the aforesaid unfair treatment given to similarly situated persons, Hon'ble the Supreme Court indicted the respondent-State in para 43 by observing as under :

"43. It is unfair on the part of the State Government in not considering representations of the appellants by applying the same standards which were applied to other landowners while withdrawing from acquisition of their land under the same acquisition proceedings. If this Court does not correct the wrong action of the State Government, it may leave citizens with the belief that what counts for the citizens is right contacts with right persons in the State Government and that judicial proceedings are not efficacious. The action of the State Government in treating the present appellants differently although they are situated similar to the landowners whose lands have been released cannot be countenanced and has to be declared bad in law."

(19) In the instant case also the factory belonging to Daya Chand, Jagat Kishore and Taran Kumar sons of Deep Chand of village Balore, Tehsil Bahadurgarh, District Jhajjar, has been released, which is also situated in the so called residential zone and excuse put forward by the respondents in not releasing the factory of the petitioner in Daya Chand's case (CWP No. 9204 of 2004) was that the land comprised in Rectangle No. 34//9, measuring 7 Kanals 11 Marlas, was being used for the purpose of Drying Card Board. Then land comprised in Khasra No. 34//10/2, measuring 3 Kanals 11 Marlas, was being utilised for the purposes of running a factory in the name and style of 'M/s Balore Hat Kargha Board Udyog'. Therefore,

the land owners had claimed that Khasra No. 35//16//2 has a Well. The aforesaid area was released from acquisition and the learned State counsel could not controvert the aforesaid fact. Likewise, vacant land to the tune of 24.9 acres in village Balore itself has been released from acquisition. It has also not been disputed that a huge residential area has also been released from acquisition.

(20) During the course of arguments, Mr. M.L. Sharma, learned counsel for the petitioner has also pointed out that the land comprised in Khasra Nos. 1//16, 17, 24, 25, 2//6/1, 6/2, 7, 8/1, 8/2, 11, 12, 13/1, 13/2, 14/15, 18/1, 18/2, 19, 20, 21 and 10//5/1, 5/2, 26, measuring 12.14 acres, situated in the revenue estate of Barktarabad, Bahadurgarh, which was acquired for Sectors 10, 12 and 13, has been released,—*vide* letter No. 7602, dated 25th September, 2003, after declaration under Section 6 of the Act was made. The aforementioned land belonged to Sarvshri Det Ram, Shri Ram and Sheo Singh sons of Silk Ram, Ajit Singh son of Heera Lal, residents of Sarai Aurangabad, Tehsil Bahadurgarh, District Jhajjar, and Haniff Poddar c/o Mahavir Traders, M-77, Street No. 3, Shashtri Nagar, Delhi-52. Learned counsel for the petitioner has also placed on record a photocopy of the aforementioned letter dated 25th September, 2003, which is taken on record as Mark-'A'. Likewise, land comprised in Khasra Nos. 587, 631/1 Min, 3274/642 Min, 681, 691, 692, 694 Min, measuring 5.66 acres, situated in the revenue estate of village Bahadurgarh, and another piece of land comprised in Khasra Nos. 13//12/2, 25//5/1, 5/2, 5/3, 5/4 and 5/5, measuring 0.33 acres, situated in the revenue estate of village Balore, was also released,—*vide* notification dated 21st June, 2004 under Section 48 of the Act, which is much after declaration dated 10th April, 2003, made under Section 6 of the Act. The aforesaid facts would prove hostile discrimination against the petitioners because the industry set up by them or smaller residential area constructed by them would not stand on different footing. Even plain agricultural land which is scattered could have been acquired. The observations made by Hon'ble the Supreme Court in **Hari Ram's case** *(supra)* would fully apply to the facts of the present case and there is clear violation of Article 14 of the Constitution.

(21) We are not impressed with the stance of the respondent-State. On the one hand, the respondent State by issuing letter dated 26th June, 1991 has laid down that survey of existing construction should be done before notification under Section 4 of the Act is issued and that the existing factories should not be acquired yet residential constructed area and running factory have been acquired without any justification. In paras 8 and 9 of a recent judgment rendered in the case of **Bondu Ramaswamy *versus* Bangalore Development Authority and others, (CA No. 4097 of 2010, decided on 5th May, 2010)** emphasis has been laid by Hon'ble the Supreme Court on undertaking proper survey or application of mind while formulating development scheme before inclusion of land of a person in an acquisition proceedings. Para 89 of the judgment reads thus :

> "When BDA prepares a development scheme it is required to conduct an initial survey about the availability and suitability of the lands to be acquired. While acquiring 16 villages at a stretch, if in respect of any of the villages, about 30% of the area is not included in the notification under Section 4(1) though available for acquisition, and out of the remaining 70% area which is notified, more than half (that is about 40% of the village area) is deleted when final notification is issued, and the acquisition is only of 30% area which is non-contiguous, it means that there was no proper survey or application of mind when formulating the development scheme or that the deletions were for extraneous or arbitrary reasons. Including of the land of a person in an acquisition notification, is a traumatic experience for the landowner, particularly if he was eking out his livelihood from the land. If large areas are notified and then large extents are to be deleted, it breeds corruption and nepotism among officials. It also creates hostility, mutual distrust and disharmony among the villagers, dividing them on the lines of 'those who can influence and get their lands deleted' and 'those who cannot'. Touts and middlemen flaunting political connections flourish, extracting money for getting lands deleted. Why subject a large number to citizens to such traumatic experience ? Why not plan properly before embarking upon acquisition process ? In this case, out of the four villages included at the final stages of finalizing the

development scheme, irregularities have been found at least in regard to three villages, thereby emphasising the need for proper planning and survey before embarking upon acquisition."

(22) The aforesaid para echo the same views which were expressed by a Division Bench of this Court in the case of **Hari Chand *versus* State of Haryana (21)** (of which one of us M.M. Kumar, J.) is a member. Therefore, we are of the view that after framing of policy there was hardly any room for violating the same. There is no indication on the record that prior survey was undertaken and why the constructed area of the houses and factory/industry has been acquired. There is also lack of justification in respect of releasing the land of other house owners/factory owners and acquiring the land belonging to the petitioners. The situation is the same with regard to the vacant area. Accordingly on the ground of discrimination, the acquisition belonging to the area of the petitioner is liable to be struck down.

(23) Before parting, we may like to deal with one argument raised by Mr. Sehgal. According to the learned counsel, the residential and industrial area has been declared to be controlled area under Section 4 of the 1963 Act. He has maintained that by an amendment made by Act No. 5 of 2003 in the Municipal Act permission for change of land use still was required in respect of the area situated within the area of Municipal Committee. Therefore, the construction raised by the petitioner and others in their residential houses or factories after obtaining permission from the Municipal Committee would still be illegal as no permission has been taken for change of land use. We are not impressed with the submission and the stand of the respondent-State because it is admitted position that construction was raised before 17th April, 2002 when notification under Section 4 of the Act was issued. Admittedly, the amendment as well as notification dated 30th October, 2003 would not apply to the area which has been constructed earlier to that notification. Therefore, we find no substance in the aforesaid argument raised by the learned counsel.

(24) For the reasons afore-mentioned, this petition succeeds and the notifications issued under Sections 4 and 6 on 17th April, 2002 and 10th April, 2003 and subsequent proceedings in respect of the land belonging

(21) 2009(2) L.H. (P & H) 880

to the petitioner are hereby quashed. The petitioners shall be entitled to their cost, which is quantified at Rs. 10,000 in each of the petitions.

(25) A copy of this order be placed on the file of connected cases.