

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.7454-7459 of 2012
(Arising out of SLP(C) Nos. 12877-12882/2011)

Surinder Singh Brar and others etc.etc.

Appellants

versus

Union of India and others

Respondents

with

CIVIL APPEAL NOS.7460-7463 of 2012
(Arising out of SLP(C) Nos. 13518-13521/2011)

CIVIL APPEAL NO.7464 of 2012
(Arising out of SLP(C) No. 13658/2011)

CIVIL APPEAL NO.7465 of 2012
(Arising out of SLP(C) No. 13758/2011)

CIVIL APPEAL NO. 7466 of 2012
(Arising out of SLP(C) No. 13784/2011)

CIVIL APPEAL NO.7467 of 2012
(Arising out of SLP(C) No. 13785/2011)

CIVIL APPEAL NO. 7468 of 2012
(Arising out of SLP(C) No. 13809/2011)

CIVIL APPEAL NO.7469 of 2012
(Arising out of SLP(C) No. 15355/2011)

CIVIL APPEAL NO.7470 of 2012
(Arising out of SLP(C) No. 15106/2011)

CIVIL APPEAL NO. 7471 of 2012
(Arising out of SLP(C) No. 15782/2011)

CIVIL APPEAL NO. 7472 of 2012
(Arising out of SLP(C) No. 16000/2011)

CIVIL APPEAL NO. 7473 of 2012
(Arising out of SLP(C) No. 16002/2011)

CIVIL APPEAL NOS. 7474-7475 of 2012
(Arising out of SLP(C) Nos. 26589-26590/2011)

CIVIL APPEAL NO. 7476 of 2012
(Arising out of SLP(C) No. 20417/2011)

CIVIL APPEAL NO. 7477 of 2012
(Arising out of SLP(C) No. 20740/2011)

CIVIL APPEAL NO. 7478 of 2012
(Arising out of SLP(C) No. 20919/2011)

CIVIL APPEAL NO. 7479 of 2012
(Arising out of SLP(C) No. 22693/2011)

CIVIL APPEAL NO. 7480 of 2012
(Arising out of SLP(C) No. 20853/2011)

CIVIL APPEAL NO. 7481 of 2012
(Arising out of SLP(C) No. 21305/2011)

CIVIL APPEAL NO. 7482 of 2012
(Arising out of SLP(C) No. 21612/2011)

CIVIL APPEAL NO. 7483 of 2012
(Arising out of SLP(C) No. 25890/2011)

CIVIL APPEAL NOS. 7484-7485 of 2012
(Arising out of SLP(C) Nos. 17892-17893/2011)

CIVIL APPEAL NO. 7486 of 2012
(Arising out of SLP(C) No. 20881/2011)

CIVIL APPEAL NO. 7487 of 2012
(Arising out of SLP(C) No. 27221/2011)

CIVIL APPEAL NO. 7489 of 2012
(Arising out of SLP(C) No. 35545/2011)

J U D G M E N T

G. S. Singhvi, J.

1. Leave granted.

2. Chandigarh, which is known all over the world as ‘the City Beautiful’, was planned by French Architect Monsieur Le Corbusier. The plan prepared by Le Corbusier in collab-

oration with two other architects, namely, Maxwell Fry and Jane Drew envisaged division of the city of Chandigarh into residential sectors with provision for markets, educational institutions, hospitals and other facilities.

3. After finalisation of the plan, the Government of Punjab acquired land of various villages for establishing Chandigarh as the new capital of the State and also constituted various committees including Land Scape Committee for implementing the plan. In the meeting of the Land Scape Committee held on 3.9.1954, the Divisional Forest Officer, Rupar (now Ropar) suggested that the land lying along the right bank of Sukhna Choe and the left bank of Patiala Ki Rao where plantation had been started by the Forest Department should be declared as reserved forest under Section 4 of the Punjab Land Preservation Act, 1900. This was approved by the Land Scape Committee, and Chief Engineer, P.W.D. was asked to furnish the details of the area. On receipt of necessary details of khasra numbers together with the plan of the area, which included residential and commercial plots, preliminary notification under Section 4 of the Indian Forest Act, 1927 was issued by the State Government on 28.2.1956 and final notification under Section 20 of that Act was issued on 3.2.1961 declaring 6724.19 acres land including about 6000 acres land which had already been utilised for construction of the first phase of Chandigarh, and about 280 acres land falling in the revenue estates of village Hallo Majra and village Dalheri Rajputan as reserved forest. The State Government also acquired hilly area measuring 6172.09 acres of Sukhna lake catchment during 1961-62, 1962-63 and 1963-64 for carrying out soil conservation works to reduce the silt in-flow into the lake. The Forest Department acquired 536.64 acres of land of various villages along Sukhna Choe during 1963-64 to carry out soil conservation and other improvemental works.

4. In 1966, the State of Punjab was reorganised under the Punjab Reorganisation Act, 1966 (for short, 'the 1966 Act') leading to the creation of the new State of Haryana and the Union Territory of Chandigarh and transfer of some territories to State of Himachal Pradesh. With this, 6706 acres land out of 6724.19 acres land declared as reserved forest vide notification dated 3.2.1961 was transferred to the Union Territory

of Chandigarh and 6127.09 acres of land constituting hilly catchment came to vest in the Central Government by virtue of Section 48(5) of the 1966 Act.

5. With the passage of time, Chandigarh became an important destination for education and attracted students from all over the country. However, the employment opportunities available in the city did not match the educational facilities and this resulted in exodus of talent from Chandigarh to other cities. In the beginning of 21st Century the Chandigarh Administration took steps to provide various incentives including allotment of land to the entrepreneurs desirous of setting up industries in the field of information technology because that was expected to generate huge employment. In the first instance, the Administration decided that 111 acres land, which had been acquired between 1950 and 1977 and was lying vacant, may be utilised for establishing a world class Information Technology Park in the name of Late Prime Minister Shri Rajiv Gandhi (for short, 'the IT Park'). This area was designated as Phase-I of the IT Park and the plots were allotted to the following:

JUDGMENT

S.No.	Name of Companies	Plot No.	Date of Allotment	Present Status	%age status of building	Size of land
1	Infosys	1	11.06.2004, 10.11.2005	Operational	100	30.21
Non-SEZ						
Built to Suit Sites						
S.No.	Name of Companies	Plot No.	Date of Allotment	Status of Operation		Size of land
1	Alchemist Ltd.	F-5	02.01.2006	Structure completed, expected to complete by Sep' 11	70	1.3
2	Amadeus	B-11	07.12.2005	Structure completed, expected to complete by Sep' 11	80	1.41
3	Bebo Technologies Ltd.	D-3	27.12.2006	Excavation done, expected to complete by Sep' 11	30	1.01
4	Compact Disc India	13	20.4.2009	Zoning plan issued, drawings will be submitted shortly	0	0.996
5	Damco Solutions Ltd.	13-A	16.8.2009	Zoning plan issued, drawings will be submitted shortly	0	0.9
6	FCS Software Solutions Ltd.	J-7	29.12.2005	Ground & First Floor operational	100	1.65
7	IDS Infotech Ltd.	1-8	2.1.2006	Excavation is on, expected to complete by Sep' 11	50	1.32
8	Karin Informatics Services Ltd.	14	01.06.2006	Applied for partial completion	100	1.5
9	Microtek International Pvt. Ltd.	A-12	02.01.2006	Structure completed, expected to complete by Sep' 11	85	1.46
10	Netsmartz Infotech (1) Pvt. Ltd.	E-10	07.08.2006	Applied for partial completion	100	1.76
11	Net Solutions	15	05.06.2006	Structure completed, expected to complete by Sep' 11	80	1.6
12	PCC Technology Group	C-4	17.03.2009	Letter of Allotment yet to be issued	0	1.1
13	RT Outsourcing Services Ltd.	16	12.06.2006	Building is complete & Ground Floor is operational	100	1.5
14	Second Foundation Inc.	G-9	15.12.2005	Structure completed, expected to complete by Sep' 11	95	1.48
15	Virsa Systems	H-6	28.12.2005	Structure completed, expected to complete by Sep' 11	80	1.3
16	DLF Infocity Developers Ltd.	2	23.12.2003	Already Operational since Sep' 05	100	12.5

6. Between 2000-2004 over 267 acres land was acquired for Phase-II of the IT Park and the plots were allotted to nine industries, the details of which are given below:

SEZ Main Campus Site			Phase II (in Acres)			
S.No.	Name of Companies	Plot No.	Date of Allotment	Status of Operation		Size of land
1	Wipro Technologies Ltd.	27	Resumed	Resumed	0	30
Campus Sites			(in Acres)			
S.No.	Name of Companies	Plot No.	Date of Allotment	Status of Operation		Size of land
1	Tech Mahindra Ltd.	22-23	26.05.2006	Operational since Oct'09	100	15
Built to Suit Sites			(in Acres)			
S.No.	Name of Companies	Plot No.	Date of Allotment	Status of Operation		Size of land
1	22nd Century Technologies Inc.	25-C	08.05.2008	Allotment awaited	0	0.67
2	KMG Infotech Pvt. Ltd.	25-A	05.04.2009	Allotment done, yet to submit drawings	0	1.1
3	Ramtech Software Solutions	26-A	12.03.2009	Drawings of proposed building submitted	0	0.52
4	Silicon Valley Systech Inc.	25-D	05.05.2008	SEZ approval awaited	0	0.67
5	Rolta India Ltd.	25-D		Resumed	0	2.98
Non-SEZ Campus Site			(in Acres)			
S.No.	Name of Companies	Plot No.	Date of Allotment	Status of Operation		Size of land
1	Bharti Airtel Ltd.	21	05.06.2006	Operational since Aug'09	100	5
2	e-Sys Technologies Ltd.	21		Under litigation	0	6

7. The land allotted to Wipro Technologies Ltd. (30 acres), Rolta India Ltd. (2.98 acres) and e-Sys Technologies Ltd. (6 acres) was subsequently resumed because they failed to set up their units.

8. Out of the remaining land of Phase-II, 135 acres was transferred to the Chandigarh Housing Board (for short, 'the Board') vide order dated 15.11.2005/1.12.2005 issued by the Finance Secretary, Chandigarh Administration for development of residential and other infrastructural facilities in the IT Park. The relevant portions of that order are extracted below:

- "1. The Administrator, Union Territory, Chandigarh-, is pleased to order to the transfer of 135 acres of land in the Chandigarh Technology Park at Kishangarh in favour of the Chandigarh Housing Board, Chandigarh, on free hold basis, for the execution of the project of development and residential and other infrastructural facilities in the said park. The price of the land, details of the land use and other terms and conditions of transfer of this land will be decided later on.
2. The Administrator, Union Territory, Chandigarh is further pleased to designate the Chandigarh Housing Board, Chandigarh as the Nodal Agency for executing the aforesaid project by engaging SBI Caps as consultants who would help fine tune the financial package, as also prepare the old document.
3. Broad guidelines are spelt out hereunder:-
 - I. The whole exercise would involve a joint venture with the private party through an agreement, but without creating a joint venture company.
 - II. No capital expenditure would be involved on the part of the Chandigarh Administration.
 - III. The building and sale of all property would be left to the private party but all money will be received in the first instant by the Chandigarh Housing Board so that there is no under reporting of gross revenues.

4. The Chandigarh Housing Board will complete the process preliminary to the inviting of bids in 12 weeks or so and complete the work construction of the building within a period of 18 months or so."

9. Though, the ostensible object of transferring land to the Board was development of residential and other infrastructural facilities in the IT Park, the real purpose was to benefit the private developers and this became evident from the decision taken in the meeting of the officers of the Chandigarh Administration held on 30.3.2006. Paragraphs 1(a), 8 and 9 of the minutes of that meeting are reproduced below:

"1. Land Allotment.

- (a) The entire land including land under commercial will be allotted to CHB on free hold basis, however CHB will transfer the land under commercial use on lease hold basis as per the prevalent policy of Chandigarh Administration.

8. Modalities of disposal of service/studio apartments and commercial property

The service/studio apartments and the commercial property shall be transferred to the developer on lease hold basis. The developer would be quoting and paying to CHB one time cost of the service / studio apartments and the commercial property. 30% share will not be taken of the subsequent revenues from these two properties.

9. 10% Reservation for allotment to I.T. professionals.

10% dwelling units may be allowed to be purchased by I.T. companies established in Chandigarh or its employees. The detailed modalities will be worked out by CHB separately."

10. In furtherance of the aforesaid decision, the Board invited bids for disposal of the land. M/s Parsvnath Developers Limited, who gave the bid of Rs.821.21 crores was allotted 123.79 acres land. However, after issuing a glamorous advertisement with the title Parsvnath – PRIDE ASIA, Chandigarh (An Address for Aristocratic Living) to attract prospective buyers of residential and commercial properties, M/s Parsvnath Developers appears to have abandoned the project and raised certain disputes which are pending before the arbitrator.

11. Soon after transfer of almost half of the land acquired for Phase-II to a private developer, Land Acquisition Officer, Union Territory, Chandigarh (hereinafter described as, 'the LAO') sent Memo No. Teh.(LA)/LAO/2005/37365 dated 15.12.2005 to the Director, Information Technology, Chandigarh with reference to some meeting held on 9.12.2005 under the Chairmanship of the Finance Secretary-cum-Secretary Information Technology, Chandigarh and asked him to provide the drawing of 50 acres land adjoining the IT Park for facilitating its acquisition. That memo reads under:

“From

The Land Acquisition Officer,
UT, Chandigarh.

To

The Director Information Technology,
Chandigarh Administration,
Chandigarh.

Memo No. Teh (LA)/LAO/2005/37366

Dated, Chandigarh, the 15/12/05

Subject : Acquisition of land in Village Manimajra for 2nd phase of I.T. Park.

This refers to minutes of the meeting held on 09.12.2005 under the chairmanship of Sh. S.K. Sandhu, Finance Secretary/Secretary Information Technology, Chandigarh Administration, wherein it was emphasized to acquire 50 acres of land adjoining to the present I.T. Park in Kishangarh (Manimajra) for construction of 2nd phase of IT. Park.

You are, therefore, requested to **provide** drawing of the land required to be acquired so that further action to acquire the land is initiated.

Sd/-

Land Acquisition Officer,
UT, Chandigarh.”

12. The aforesaid memo sent by the LAO was clearly misleading because in the meeting held on 9.12.2005 no decision was taken for the acquisition of 50 acres land adjoining the IT Park. This is evinced from the contents of the minutes of the meeting held on 9.12.2005, which are reproduced below:

“Minutes of the meeting held on 9.12.2005 under the Chairmanship of Sh. S.K. Sandhu, Finance Secretary/Secretary Information Technology, Chandigarh Administration.

A meeting was held under the Chairmanship of Sh. S.K. Sandhu, Finance Secretary/Secretary Information Technology to review the progress of development of the first & second phases of Rajiv Gandhi Chandigarh Technology Park. The following officers were present :-

- 1.Smt. Renu Saigal, Chief Architect
- 2.Sh. V.K. Bhardwaj, Chief Engineer
- 3.Sh. Wazeer Singh Goyat, Land Acquisition Officer
- 4.Sh. Vivek Atray, Director Information Technology
- 5.Sh. N.S. Brar, Assistant Estate Officer.
- 6.Dr. Sanjay Tyagi, Director STPI Mohali.
- 7.Sh. M.L Arora, Senior Town Planner
8. Sh. Vaibhav Mittal, Promotion & Information Officer

The following decisions were taken:-

1. It was decided that the infrastructure development for the second phase consisting of 120 acres for I.T. services and 130 acres for non IT service may be taken up by the Engineering Department as per the lay out plan prepared by the Urban Planning Department.

2. It was decided to start the work of construction of the internal road which leads to Build to Suit Sites at C_T P Phase-1 on an urgent basis.

The road next to Infosys is to be shifted as already urgently.

3. It was decided that the Build to Suit Sites which have already been allotted would be formally handed over to the allottees and their construction may begin by next month.

4. It was also decided that the power line in the entire area comprising CTP Phase-I and Phase-II may be shifted underground along the roads.

5. Five new Build to Suit Sites have also been earmarked as per the plan in the CTP Phase-I. This plan was approved.

6. Regarding land scaping it was decided that Chief Architect UT, Chief Engineer UT and Director Information Technology will decide the final plan from the 3 plans received from Chandigarh College of Architecture.

7. The Porta Structure for the Reception/Help Desk would be set up by CE/UT immediately.

8. It was decided to close the access from Mansa Devi side & from Indira Colony urgently.

9. Zoning of the Build to Suit Sites would be Finalized by 12.12.2005.

Meeting ended with a vote of thanks to the chair.

(S.K.Sandhu)
FS/SIT”

13. The Director, Information Technology sent DO No. 107 dated 12.1.2006 to the LAO and requested him to take action as per the minutes of the meeting held on 9.12.2005. In turn, the LAO sent DO No.1294-95 dated 16.01.2006 to the Director and reiterated the instructions contained in memo dated 15.12.2005. After 4 days, he sent letter dated 16.1.2006 to the Finance Secretary in the context of some meeting held on 4.1.2006 and pointed out that 280 acres land including 50 acres land already decided to be acquired for IT Park was available for acquisition. That letter reads as under:

“From

The Land Acquisition Officer,
UT, Chandigarh

To,

The Finance Secretary,
Chandigarh Administration,
Chandigarh.

Memo No. Kgo (LA)/LAO/2006/1296

Dated, Chandigarh, the 16/1/06

Subject: Acquisition of remaining land in Village Manimajra, UT,
Chandigarh.

This refers to the minutes of the meeting held on 29.12.2005 under the chairmanship of the Finance Secretary-cum-Secretary, Information Technology, Chandigarh Administration, Chandigarh, wherein it was decided to acquire 50 acres of land adjoining to the present I.T. Park in village Kishangarh (Manimajra) for construction of 2nd phase of I.T. Park.

Accordingly, the Director Information Technology, UT, Chandigarh, vide this office Memo No.37365 dated 15.12.2005 was requested to provide drawing of the land required to be acquired so that further action is initiated, but no communication has been received till date.

Subsequently, in a meeting held on 04.01.2006, it was desired to acquire the land of Village Manimajra as maximum as can be. Accordingly, an intensive survey of the area has been got conducted, according to which it has been found that 280 acres of land in Village Manimajra is available for acquisition. It is clarified here that this 280 acres include 50 acres of land already decided to be acquired for I.T. Park. However, there are about 275 structures in the shape of small houses in the locality called ‘Shastri Nagar’, 32 Farm-houses, 2 Nurseries and 2 Poultry-farms. The proposed land to be acquired has been shown on the map enclosed herewith.

If this land is decided to be acquired, a sum of Rs. 165 crores (approximately) would be required on account of compensation for land and trees/structures. It is pertinent to mention here that the farm-houses, in fact, are orchards having costly fruit-bearing trees, hence compensation of these fruit-bearing trees would be invariably very high.

You are, therefore, requested to convey the decision on the aforesaid proposal.

Land Acquisition Officer
UT, Chandigarh.
Dated: 16/1/06”

14. Since, there was some confusion about the date of the meeting mentioned in the first line of the aforementioned letter, Dr Rajeev Dhawan, learned senior counsel for the Union Territory of Chandigarh gave an assurance on 6.9.2012, i.e., the date on which the order was reserved, that the relevant minutes will be handed over to the Court Master. Thereafter, Shri S. K. Setia, Joint Secretary (Estates), Chandigarh Administration filed affidavit dated 10.9.2012, paragraph 4 whereof reads as under:

“4. That in response to courts query, the deponent respectfully submits as under:

(i) There was no meeting held on 29.12.2005. This is a typographical error in the letter dated 16.01.2006. The correct date of the meeting is 09.12.2005. This is self evident from various letters on the original file which refer to 09.12.2005 which are explained and annexed below.

(ii) There was a meeting held on 04.01.2006, which was attended by Land Acquisition Officer; Director, IT and Jt. Secretary (Finance). However, no minutes were recorded for that meeting, which is referred to in the letter dated 16.01.2006.”

15. After three months, the Finance Secretary sent memo dated 18.4.2006 to the LAO requiring him to submit draft notification for the acquisition of 280 acres land in two parts. That letter reads as under:

“From

The Finance Secretary,
Chandigarh Administration,

No. PA/LAO/1019
Dt:20.4.06

To

The Land Acquisition Officer,

U.T. Chandigarh.

Memo No.43/3/157-UTFI(5)-06/2123

Dated, Chandigarh the 18.4.06

Subject: - Acquisition of land measuring 280 acres in village Kishangarh (Manimajra).

The matter regarding acquisition of land measuring 280 acres in village Kishangarh Manimajra has been discussed for the development of 2nd Phase of I.T. Park. It has been decided that the said land may be acquired in 2 parts, i.e. (140 acres + 140 acres). You are therefore requested to take immediate necessary action and send draft notification U/s 4 of the Land Acquisition Act immediately so that the process of acquisition is started.

Superintendent Finance-I
for Finance Secretary,
Chandigarh Administration.”

16. In compliance of the directive given by the Finance Secretary, the LAO sent the draft notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, ‘the Act’) for the acquisition of 104.83 acres land. The Adviser to the Administrator, Union Territory, Chandigarh (hereinafter described as, ‘the Adviser’) accorded his approval on 27.6.2006 and on the same day, the notification was sent for publication in the official gazette and the newspapers. The public purpose specified in the notification was “the provision of city level infrastructure, the regulated urban development of the area between Chandigarh and Mani Majra and the planned development and expansion of the Chandigarh Technology Park”. The first four paragraphs of the notification read as under:

“CHANDIGARH ADMINISTRATION
FINANCE DEPARTMENT
NOTIFICATION

No.43/3/229-UTF(5)-2006/ Dated:

Whereas it appears to the Administrator, Union Territory, Chandigarh, that the land in the locality specified below is likely to be needed for a public purpose namely for "the provision of city level infrastructure, the regulated urban development of the area between Chandigarh and Mani Majra; the planned development and expansion of Chandigarh Technology Park' in the village Mani Majra, H.B.No.375, Union Territory, Chandigarh.

Now, therefore, this Notification under the provisions of Section 4 of the Land Acquisition Act, 1894 for the information of all concerned that it is hereby notified that the land in the said locality is to be needed for the said purpose.

And in exercise of the powers conferred by the aforesaid Section read with Government of India, Ministry of Home Affairs, Notification Number 3612 dated 8th October, 1968, the Administrator, Union Territory, Chandigarh, is pleased to authorize the Officers for the time being engaged in undertaking this work with their servants and workmen to enter upon and survey the land in the locality and do all other acts required or permitted by that Section.

The person interested can file their objections under Section 5-A of the Land Acquisition Act, 1894, within one month from the publication of the Notification before the Land Acquisition Collector, Union Territory, Chandigarh."

17. On 2.8.2006, another notification was issued for the acquisition of 167.50 acres land for the same purpose.

18. Surinder Singh Brar, who is one of the appellants in the lead case submitted representation dated 12.7.2006 to the Administrator, Union Territory, Chandigarh (hereinafter described as, 'the Administrator') and prayed that the land in question may not be acquired because large number of trees had been grown by the landowners and cutting of the same will adversely impact the environment and ecology of the area. Shri Brar emphasized that the land already acquired for IT

Park was lying unutilized and, therefore, there was no justification to acquire additional land. The Administrator rejected the representation of Shri Brar vide his letter dated 31.7.2006, which is reproduced below:

“General (Retd.) S.F. Rodrigues
 PVSM, VSM
 Governor of Punjab
 and
 Administrator
 Union Territory, Chandigarh

RAJ BHAVAN
 CHANDIGARH 160019
 JULY 31, 2006

I am in receipt of your representation dated 12.7.2006 regarding land acquisition & related issues. The issues raised mostly pertain to changes in the existing law, for which decisions are to be taken at different levels. The Administration has to perform its duty within the existing laws and therefore, there are a number of factors which have to be taken into account. The Administration has been acquiring the land for various development projects being implemented for the public good. You will agree that the future of U.T., Chandigarh does not lie in agriculture. Rather, we have to concentrate and invest in those sectors, where the factor productivity is relatively higher, and which offer our youth opportunities for advancement.

Land is the primary and essential requirement for any project and therefore the Administration has to go for its acquisition. The rate of compensation is determined as per the existing provisions of law and keeping in view the judgements of Hon'ble Supreme Court and High Courts. The collector rates in Chandigarh have been revised twice, during the last year and the compensation has recently been paid to the tune of Rs. 40 to Rs. 45 lacs per acre. The award is further subject to legal scrutiny by courts, as the land owner has the liberty to approach them. You would appreciate that the Government is not a profit making organization and no surpluses are being generated from the acquisition of land. In fact, the so called surplus is the value addition due to the change of land use, which is invested for the development of the U.T. It would also be worthwhile to remind you that the Administration has to incur huge expenditure for the creation of public utility services and a large portion of

the acquired land has to be kept vacant, to maintain the character of the city.

Apart from the above, Chandigarh Housing Board is taking care of the oustees, under its scheme of 1996. There really is no scope for any discretion in the process.

Yours sincerely,

[General (Retd.) S.F. Rodrigues
PVSM, VSM].”

19. Some of the landowners including Brig. Kuldip Singh Kehlon, who is one of the appellants in the appeal arising out of SLP (C) Nos.13518-13521/2011 filed an application under the Right to Information Act, 2005 ('RTI' Act) and sought information on various issues which had direct bearing on the acquisition of their land. Senior Town Planner-cum-Central Public Information Officer, Chandigarh Administration sent reply dated 22.7.2007, the relevant portions of which are extracted below:

“The information of the paras relating to this office is as under:-

3 (vii) FAR Allowed in IT Park Area:

a.Built to suit site (BTS)	1.25
b.Campus sites	0.5

However, FAR can be increased to 0.75 on payment.

4(c) The Development Plan of the area being acquired: -

Planning for Ph.-1 and Ph.-II of Rajiv Gandhi Technology Park has been done. However the III phase of Chandigarh Technology Park is being acquired and planning for the same will be done after the acquisition and on receipt of survey plan from the Engineering Department, U.T., Chandigarh.

4(d) The area in question is not yet planned hence, detail of area cannot be provided.

4(1) THE PLANNING OF Phase I & II of the Rajiv Gandhi Technology Park has been completed. In the side area the planning has been done for IT and other related services/uses to IT Park i.e., Hotel, Grid Sub Station, Tube Wells, Commercial Area, reserve etc.

4(j,k) It is a policy matter to be decided at higher level.

5 (a) Originally the Chandigarh was planned for five lacs of population. As per the 2001 census the total population of Chandigarh is 9 lacs and it is envisaged that in the year 2021 the approximate population of Chandigarh will be 18 lacs approximately on the basis of growth rate projections.

(c) There is no legal master plan of the city. However, the planning of the land available within the jurisdiction of Chandigarh is being undertaken as per the future demands and needs of the city.”
(emphasis supplied)

20. The appellants and other landowners filed objections under Section 5A(1) of the Act, the salient features of which were:

“(a) The purpose for which the land is proposed to be acquired is not in fact 'public-purpose'.

(b) The proposed acquisition is not in consonance with the Environment Law and proposed development will certainly damage the ecology of Sukhna Choe catchments area.

(c) This acquisition is against the provisions of the Forest (Conservation) Act, 1980, which does not allow deforestation leading to environmental deterioration.

(d) The Chandigarh Administration has not obtained permission of the Government of India for changing the land use of the land sought to be acquired.

(e) The acquisition of land would involve chopping down of hundreds of fruit and non-fruit bearing trees of more than 15 years age.

(f) This area works as lungs to the residents of the City. After acquisition of this area and construction of high buildings, no breathing area will left for the residents of Chandigarh.

(g) The land is being acquired for four different purposes, but the Administration itself does not know as to how much area would be utilized for each and individual purpose.

(h) The Chandigarh Administration has acquired large chunks of land over past 15 years, most of which is still lying unutilized or encroached. He enumerated a number of notifications issued by the Chandigarh Administration vide which the lands have been acquired by the Chandigarh Administration.

(i) The land is being acquired with the intention of profiteering.

(j) The Chandigarh Administration has not been able to provide a proper plan for the development and utilization of the land to be acquired.

(k) The Administration has not framed any scheme for rehabilitation of the landowners whose land is acquired and they have been uprooted more than once.

(l) Only 10% of the flats would be built on 129 acres of land given to Parsvanath Developers and the developer is likely to accrue immense tax relief on the basis of the units being built in the SEZ.

(m) Most of the land stands already acquired and reserved for I.T. Park has not so far utilized then what is the necessity to acquire this land.

(n) Where the acquisition of this land will uproot the farmers from their livelihood and abode, it would immensely damage the green cover of the city and about 50000 fully grown trees would also be chopped down. The Administration on one hand does not allow even a tree to be cut, though it is on the metalled road in terms of Forest Act, then how the Administration would afford to cut the 20 years old fruit/non-fruit bearing trees.

(o) The acquisition of land is in violation of the Punjab New Capital (Periphery) Control Act, 1952. The Periphery Control Act was enacted to ensure the outskirts of the city as green belt.”

21. For the sake of reference, some of the objections filed by Shri Surinder Singh Brar and Shri Kuldip Singh Kahlon are reproduced below:

Surinder Singh Brar:

“Notification not proper hence liable to be quashed:

The impugned notification is liable to be quashed as the public purpose mentioned therein is vague as it is not possible for the

right holders to raise objections against the same under section 5-A of the Land Acquisition Act, 1894 effectively. The total area under acquisition is less than 168 acres. There are four purposes mentioned for which the land is sought to be acquired without specifying as to how much land is needed for each purpose. The four purposes mentioned are:

- i) the provision of city level infrastructure
- ii) the regulated urban development of area between Chandigarh and Mani Majra
- iii) the planned development
- iv) expansion of Chandigarh Technology Park.

The petitioner does not know as to how much area is needed for either of these purposes, what is the meaning of city level infrastructure and what is the difference between regulated urban development and planned development. In fact 100 acres of land is not big enough an area for either of the purposes in itself. Therefore, to enable the right holders to raise objections effectively they must know as to how much area is required for each purpose and how the purposes mentioned are different from each other, particularly item numbers (i), (ii) and (iii).

The impugned acquisition proceedings have been undertaken without the concurrence of the Defence Ministry, Government of India. Chandigarh is surrounded by strategic defence installations like the Mullapur Garibdas Air Force Station, Head Quarters of the Western Command at Chandimandir, Chandigarh Air Force Station, Kasauli Air Force Station, etc. Infact the Mullapur Garibdas Air Force Station houses most modern missiles and radars while Chandimandir houses a strategic communication centre. Thus, urbanising the area in Village Mani Majra, District Chandigarh may lead to compromising with the security of the nation.

Violation of the Periphery Act:

The impugned notification itself is violative of the provisions of the Periphery Control Act in so far as the permissions required under the said Act have not been obtained by the Chandigarh Administration. The Chandigarh Administration is a separate entity from the authorities exercising the powers under the Periphery Control Act. To the knowledge of the objectors no permission has been obtained, as of date, by the Chandigarh Administration for the development of the aforementioned land from the authority under the Periphery Control Act and consequently the entire acquisition proceedings are illegal, null and void.

Over the past 15 years the Chandigarh Administration has compulsorily acquired huge chunks of land in Village Manimajra, District Chandigarh purportedly for various public purposes. However, in most cases the areas acquired have not been fully utilized and are either lying vacant or have been encroached

upon. In this scenario the action of the Chandigarh Administration to acquire another huge chunk of land in Village Manimajra under the impugned notification is incomprehensible and cannot be justified. The details of the notifications issued under Sections 4 and 6 of the Land Acquisition Act, 1894 whereunder land has earlier been acquired by Chandigarh Administration in Village Manimajra, District Chandigarh but large chunks whereof are still lying unutilized or under encroachment are as under:

- Notification No.3/117-UTFI(4)-89/12204 dated 11.9.1989 issued under Section 6 of the LA Act covering 29.07 acres of land in Village Manimajra, District Chandigarh for the public purpose of "resident-cum-commercial complex scheme no.2";
- Notification No.3/117-UTFI(4)-89/12209 dated 11.9.1989 issued under Section 6 of the LA Act covering 39.27 acres of land in Village Manimajra, District Chandigarh for the public purpose of "residential-cum-commercial complex scheme no.2 and construction of multi-specialty hospital";
- Notification No.3/117-UTFI(4)-89/12539 dated 18.10.1989 issued under Section 6 of the LA Act covering 29.75 acres of land in Village Manimajra, District Chandigarh for the public purpose of "residential-cum-commercial complex scheme no.2"
- Notification No.3/117-UTFI(4)-89/12544 dated 18.10.1989 issued under Section 6 of the LA Act covering 37.55 acres of land in Village Manimajra, District Chandigarh for the public purpose of "residential-cum-commercial complex scheme no.2";
- Notification No.3/117-UTFI(4) 1361 dated 13/14.2.1990 issued under Section 6 of the LA Act covering 36.37 acres of land in Village Manimajra, District Chandigarh for the public purpose of "residential-cum-commercial complex scheme no.2";
- Notification No.3/117-UTFI(4)-90/1366 dated 13/14.2.1990 issued under Section 6 of the LA Act covering 21.51 acres of land in Village Manimajra, District Chandigarh for the public purpose of "residential-cum-commercial complex scheme no.2";
- Notification No.3/117-UTFI(4)-91/7628 dated 8.8.1991 issued under Section 6 of the LA Act covering 40.84

acres of land in Village Manimajra, District Chandigarh for the public purpose of "residential-cum-commercial; complex scheme no.3";

- Notification No. UTFI(4)-93/903 dated 29.1.1993 issued under Section 6 of the LA Act covering 54.37 acres of land in Village Manimajra, District Chandigarh for the public purpose of "residential-cum-commercial complex and for the construction of a college building and sports stadium etc. scheme no.3";
- Notification No. UTFI(4)-93/906 dated 29.1.1993 issued under Section 6 of the LA Act covering 39.96 acres of land in Village Manimajra, District Chandigarh for the public purpose of "residential-cum-commercial complex and for the construction of municipal park and public utility building scheme no.3";
- Notification no.A-32017/15/PI/91/28 dated 27.11.1991 issued under Section 4 of the LA Act covering 56.14 acres of land in Village Manimajra, District Chandigarh for the public purpose of "setting up nurseries".

Public purpose not defined:

In the impugned notification the Chandigarh Administration has proposed to acquire the land for the alleged public purpose of:

"....the provision of city level infrastructure, the regulated urban development of the area between Chandigarh and Mani Majra, the planned development and expansion of Chandigarh Technology Park" in village Manimajra.

The setting-up or expansion of a technology park, for which the land in dispute is also sought to be acquired, is not a public purpose. In fact, the Chandigarh Administration itself has neither developed nor is it running the technology park but has allotted the land to DLF Ltd., a private entrepreneur for this purpose. DLF Ltd. has profited by selling the area further to other private companies. Thus the whole idea behind the impugned acquisition proceedings is to assist a private entrepreneur to profiteer. No person from the ordinary public will be benefited in any way. In today's age and economy a private entrepreneur can very well purchase land by private negotiations instead of the State assisting him.

If the Chandigarh Administration is bent upon urbanising the green belt against all respect for the ecology and environment, then why are the landowners themselves not allowed to develop their land within the set development plan as opposed to taking the land away from the small agriculturists and selling it further

to private developers at a huge profit, thus playing the role of land brokers.

As no real public purpose has clearly been defined by the Chandigarh Administration in the impugned notification i.e building roads for common use etc. it is clear that it is for the purpose of a particular industry only. The Chandigarh Administration ought to define in clear terms as to what it means by public purpose. How does a particular private industry become a "public purpose".

The purported purposes for which the land in dispute is sought to be acquired under the impugned notification are the provision of city level infrastructure, the regulated development of the area between Chandigarh and Manimajra, the planned development and expansion of Chandigarh Technology Park. The said alleged public purposes mentioned in the impugned notification are extremely vague and non-specific leaving one completely in the dark as to what actually the Chandigarh Administration intends to do with the acquired land. No particular residential or commercial scheme has been drawn up by the Chandigarh Administration for acquiring the land in dispute. The acquisition of valuable land under the impugned notification thus amounts to a colourable exercise of power by the Chandigarh Administration.

Under the impugned notification the purported public purpose for which the land in dispute is being acquired is stated to be planned and regular development as well as provision of city level infrastructure. It is not understandable as to how the same land can be developed to provide city level infrastructure which necessarily means urbanization. The concern for the ecology and environment is completely necessary. Rather the acquisition under the impugned notification would lead to complete destruction of the land sought to be acquired under the impugned notification.

The public purpose must not only be specified in the notification issued under Section 4 of the Land Acquisition Act, 1894 but in order to enable an objector to effectively object under Section 5-A the details of the public purpose, alongwith the details of the scheme, the plans etc. must be available in the office of the Land Acquisition Collector for perusal of the objector. In the present case as no such plan/scheme is available in the office of the Land Acquisition Collector or any other office, it is apparent that the alleged public purpose is merely an attempt by the Chandigarh Administration to acquire the land with the sole object of using it at a later date for whatsoever purpose that may be required.

No public purpose has been spelt out nor any public purpose has been established for the proposed acquisition. In any case the proposed construction of the IT Park is not a conducive measure because of the fact that it is closer to the defence area adjoining Chandimandir and can interfere in the communication system and sensitive defence installations. The public purpose mentioned is vague and as such it is not possible for the right holders to raise objections against the same, under section 5-A of the Land Acquisition Act, 1894 effectively.

Violation of Environmental and Forest Laws:

The land in dispute is very close to the Sukhna Lake and adjacent to the Sukhna Choe and the area declared as a reserved forest. If the land in dispute and its surrounding areas are allowed to be urbanised it will result in the degradation of the habitat and disturb the thousands of migratory birds which come every year to the Sukhna Lake. It may be mentioned here that the Sukhna Lake is a wetland declared by the Central Government and is a protected area and is known as the Sukhna Wildlife Sanctuary. If high rise buildings are allowed to be constructed on the land being acquired under the impugned notification it will affect the migratory route of the thousands of birds which make their nests in the Sukhna Lake area after migrating from as far as Siberia in Russia. Permitting urbanisation next to the Sukhna Lake and next to the surrounding reserve forest will be a death knell for the precious wildlife and fauna existing there. Though trees may be able to survive the onslaught of urbanisation, wild animals and birds certainly will not be able to do so and they would have to move to safer habitats away from human habitation.

It would also be pertinent to mention here that the land sought to be acquired is forest land as also agricultural land. The proposed acquisition will result in the extinction, uprooting & leveling of these trees which are in the prime of life. The proposed acquisition is violative of the climate and environmental laws.

The acquisition of the land in dispute would involve chopping down of fruit bearing trees and non fruit bearing trees. Under the provisions of the Forest Act no tree in Chandigarh can be cut without permission of the Central Government. In case the Central Government decides not to grant the permission to the Chandigarh Administration to chop down trees standing on the land in dispute, the entire acquisition proceedings would end up in a nullity with wastage of huge sums of money and man-hours.

The land sought to be acquired under the impugned notification is basically agricultural land on which, apart from crops, there

are hundreds of fruit bearing trees and non-fruit bearing trees standing. This green area acts as a barrier between the urbanized areas in Chandigarh and Panchkula in Haryana. This green and forested area also helps in stopping soil erosion into the Sukhna Choe. The removal of this green and forested area would result in soil erosion which is like to cause flash floods in the rainy season thus putting in danger the city of Chandigarh itself. As such the dangers to the ecology and subsequently to the city itself can well be imagined if the acquisition under the impugned notification is allowed to stand. The havoc caused along the banks of the choe and in the village of Kishangarh in particular during the recent rainy season is not something to be taken lightly. With the urbanization and choking of Sukhna Choe/Lake catchment area Chandigarh itself will be liable to immense danger of floods which can be life threatening to its citizen as we have seen in the recent past. The Chandigarh Administration needs to define its role viz a viz the citizen, is it here to protect us or to endanger our lives. Chandigarh needs to be protected and that is what the Chandigarh Administration should be doing.

That in any case, no resolution for change has been passed for conversion of the proposed land from the zoning area which is forest land area/green belt prior to the date of the publication of the notice. Thus the notification is vitiated on this ground alone.

The proposed acquisition will also disturb the ecological plants and flora and fauna of the area because the proposed acquisition will also disturb the dense forest area having more than 50,000 grown trees which are more than 30 years old. Forests and orchards are the lungs of a city and have a very important environmental function to perform. Such lands cannot be acquired under the provisions of Land Acquisition Act, 1894.

The Chandigarh Administration has not carried out an Environmental Impact Assessment study which is extremely necessary before an exercise of this magnitude is carried out. Further more it needs to be pointed out that if the recent happenings in the country are any indication, it is essential to carry out a geological study of the area and conduct surveys before deciding to demolish the green belt around Chandigarh which the Chandigarh Administration has not done. Every place cannot be suitable for the multi-storied monsters of steel and concrete that are bound to come up on the land once acquired. Nature is beautiful but it does demand obedience to its ordinances. When violated the earth erupts and we have earthquakes. Man cannot continue to 'pick nature's pocket'. He must discipline himself.

No Planning/Scheme exists and Discrimination:

The impugned notification is illegal and void in as much as no plans are available in the office of the Land Acquisition Collector with respect to the alleged city level infrastructure to be set up. There is no plan available for the protection of the ecology and environment and for setting up/expansion of the Chandigarh Technology Park.

The petitioner reserve their rights to file such objections as and when these plans are made available.

On enquiry, the petitioner was informed that no the plans for the Chandigarh Technology Park and the scheme for protection of ecology and environment of Sukhna Choe Watershed was available in the office of the Land Acquisition Collector. A representative of the petitioner was informed by the office of the Chief Architect that none of the above particulars/scheme/site plans were available with them as none have been framed/drawn up by the Chandigarh Administration nor is relevant urban planning data available. It is thus apparent that in the absence of any detail plans and data with respect to the avowed public purpose, the alleged public purpose is a mere sham and, therefore, violates the rights of the petitioner to effectively object to the proposed acquisition in terms of Section 5-A of the Land Acquisition Act, 1894. Consequently the entire proceedings are illegal, null and void.

The Chandigarh Administration has not even designated a planning agency that could have shown how the area under acquisition is to be developed and utilized. The Chandigarh Administration has not been able to produce a proper plan for the development of the so-called Technology Park. No consideration seems to have been taken of the following points:

- a) geographical features that is physiography, climate, water, soils and other physical resources;
- b) means of communication and accessibility;
- c) distribution of the present and future population;
- d) industrial location and growth trends;
- e) economic base and commercial activities;
- f) preservation of historical and cultural heritage;
- g) urban expansion and periphery management;
- h) ecological and environmental balance;
- i) balanced regional development of the City Beautiful;
- j) dispersal of economic activities to alleviate pressure on the city.

It is clear that no such plan existed at the time issuance of the impugned notification and therefore the petitioner have been

denied a basic right of examining the plans and other documents asked for.”

Kuldip Singh Kahlon:

“VIOLATION OF PERIPHERY CONTROL ACT:

The land in question falls within the periphery of Chandigarh and the Periphery Control Act, 1951 regulates its use. The purpose of this legislation is to prohibit any activity that is non-agricultural and to that extent even prohibits the landowners from constructing houses for their own living. The UT Administration, has been forcefully implementing this Act and penalizing those who violate any of its provisions.

The provisions of the Periphery Control Act cannot apply differently for the public and differently the Administration. This would be arbitrary and discriminatory and be violative of all settled principles and tenets of law. The public purpose for which the land is being acquired is not covered or permitted by the periphery control act, and therefore, the notification is void ab initio. The State cannot be the violator of its own laws to the detriment of the public. The notification deserves to be withdrawn on this account alone.

MARKET VALUE, MAKING UNDUE AND ILLEGAL PROFIT BY THE UT ADMINISTRATION/ITS AGENCIES:

The sole purpose of the Administration appears to be is to use public funds to acquire land and sell it at high profits. The market value of land is artificially suppressed by disallowing any activity, other than agriculture, by the UT Administration. The market forces are not allowed to operate so long as land is in the hands of the landowners.

The Collector Tate therefore cannot and does not reflect the market value of the land. This situation changes when the land is in the hands of the UT Administration or its Agencies, This is proved from the fact that 129 acres of land in village Manimajra was acquired in the year 2002 and compensation between Rs. 9-12 lacs per acre was paid by the UT Administration. The same was transferred to Chandigarh Housing Board at no cost, which further sold at profit to developers namely: Parsvanath Developer Private Limited for a sum of Rs. 821.21 crores or approx. 630 lacs per acre. This is approximately 70 times the collector's rate.

It is important to note that undeveloped land was sold to this company, which means that the UT Administration acquired land at low price and without making any investment on it sold it at a higher profit. This is extremely unfair to the farmers who have struggled rate does not reflect a realistic/actual value of the land, in this area. Going by the sale mentioned above, the market value of the land in village Manimajra is not less than Rs.630 lacs per acre.

VIOLATION OF MASTER PLAN:

The development of Chandigarh is regulated by its Master plan. The land proposed to be acquired falls in the ecologically fragile green belt along the lake and Sukhna choe. Any land use change will not only threaten the environment of the city but will also disturb the habitat of a large species of flora and fauna. It is public knowledge that no layout plan for this area has been neither prepared nor other formalities completed as mandated by the land acquisition Act and the FCs Standing Order 28. Acquisition of land without first amending the master Plan by following due procedure prescribed by law and without clearance from the Ministry of Environment and Forests will be bad in law.”

22. The LAO heard the objectors, briefly noticed the substance of their objections but did not deal with any one of them and submitted separate reports in relation to the two notifications with identical observations, which are extracted below:

“OBSERVATIONS:

After seeing the revenue record and spot inspection, I find no merits in the objections raised by the Objectors. Because, for the future extension of the Capital and to ensure healthy & planned development, and further, to prevent growth of slums and ramshackle construction on the land lying on the periphery of the 'new city', area of 10 miles on all sides from the outer boundary of the land was declared as 'controlled area'. In order to have legal authority to control and regulate the use of the land, the Punjab New Capital (Periphery) Control Act was enacted in 1952. The

structures as existed on the site called Shastri Nagar have been raised in violation of the Punjab New Capital (Periphery) Control Act, 1952. The Capital of Punjab (Development and Regulation) Act, 1952 and the Punjab New Capital (Periphery) Control Act, 1952 (two Acts governing the planning and development of UT, Chandigarh) envisaged Chandigarh as urbanized town or capital city in which ramshackle construction is antithetical to the very concept and planning of Chandigarh. This is clear from the Statement of Objects and Reasons and Section 1(2) of the latter act which are reproduced hereunder for ready reference that whole of the area of UT was part of 'Capital Project' and was kept reserved for future expansion to be required and acquired: -

"Statement of Objects and Reasons.- The Punjab Government are constructing a New Capital named "Chandigarh". The master plan providing for the future extension of the Capital will extend over a much greater area than the area acquired so far the construction of the first phase of the Capital. To ensure healthy and planned development of the new city it is necessary to prevent growth of slums and ramshackle construction on the land lying on the periphery of the new city. To achieve this object it is necessary to have legal authority to regulate the use of the said land for purposes other than the purposes for which it is used at present."

1(2) It extends to that area of the State of Punjab which is adjacent to and is within a distance of ten miles on all sides from the outer boundary of the land acquired for the Capital of the State at Chandigarh as that Capital and State existed immediately before the 1st November, 1966."

"5. Restrictions in a controlled area. - Except as provided hereinafter, no person shall erect any building or make or extend any excavation, or lay out any means of access to a road, in the controlled area save in accordance with the plans and restrictions and with the previous permission of the Deputy Commissioner in writing."

His Excellency the Governor of Punjab and Administrator, UT, Chandigarh has already conveyed his version, vide letter dated 31.07.2006 to one of the Objector - Sh. S.S. Brar, IPS (Retd.) that the Administration has been acquiring the land for various development projects being implemented for the public good. He

further emphasized that the future of Union Territory, Chandigarh does not lie in agriculture, but we have to concentrate and invest in those sectors, where the factor productivity is relatively higher, and, which offer our youth opportunities for advancement. For that matter, the land is primary and essential requirement for any project, and therefore, the Administration has to go for its acquisition.

The objection that the Administration has made huge profits out of land acquisition is baseless. The rate of compensation is determined as per the existing provisions of law, The determination of compensation of land is based on a very sound principle of average as enunciated and upheld by the Hon'ble Supreme Court in various judgements as a sound basis for calculating market value. The Collector rates for agricultural land have been revised twice in the last year. While acquiring the land, the land owners are not only paid the award calculated on the basis of Collector's rate, but solatium @ 30% on the value assessed on the basis of Collector's rate and additional market-value @ 12% per annum on the value assessed on the basis of Collector's rates is also paid through the award. It is worth mentioning that the same parameters are being followed while making the assessment of compensation in the other states also in the country. The award is further subject to legal scrutiny by courts, as the land owner has the liberty to approach them.

The Administration is not a profit-making organization and no surpluses are being generated from acquisition or from further allotment of land. In fact, lot of funds are spent on public utility services like water-supply, sewerage, electricity-supply, laying of roads, power-plants, welfare-activities, public amenities, public-toilets, dumping-grounds, sewerage-treatment plants, Educational Institutions, Hospitals, Electricity Grid Station, Tubewell and Community Centres, etc. Some land is allotted at subsidized rates also in public interest for religious, charitable, community/institutional purposes and for rehabilitation of slum-dwellers.”

23. Thereafter, the office of the Finance Secretary prepared a note incorporating therein the observations of the LAO. The Finance Secretary recorded his comments and the Adviser appended his signature signifying his approval to the

recommendations of the LAO. For the sake of reference, the office note and the comments of the Finance Secretary are reproduced below:

“Subject: Report u/s 5-A for acquisition of land measuring 104.83 acres in Manimajra – Notification u/s 6.

The Land Acquisition Officer has requested to accord Administrative approval for the issuance of notification Under Section of the Land Acquisition Act and also for the acceptance of recommendations after receiving objections Under Section 5 A from the Land Owner with regard to acquisition land measuring 104.83 acres acquisition of land for the purpose namely "the provision of city level infrastructure, the regulated urban development of the area between Chandigarh and Manimajra: the planned development and expansion to Chandigarh Technology Park in Village Manimajra, U.T. Chandigarh.

The Administration had issued notification Under Section 4 of the Act for the acquisition of said land. The Land Acquisition Officer has invited objections and sixteen land owners have filled their objections.

Sh. P.C. Dhiman appeared on behalf of some land owners objected to the acquisition of land on the ground that there are large number of fruit bearing trees on the agriculture land. The illiterate land owners have only the sole mode for their livelihood. Most of the land acquired by the administration earlier has not been utilized. It has further been objected that emaciate compensation is being given to the land owners whereas the slum dwellers occupying government land are being rehabilitated and the land owners are being made home less. The Administration is acquiring land for the public purpose for pocketing hefty profits by giving the land to private developers. No rehabilitation scheme for the land owners have been framed.

Some other land owners have also raised the similar objections. Mrs. Ritu Joshi objected that the land is being acquired is being given for the commercial activities whereas, she has not permitted the land for the hotel project when she applied once.

The Land Acquisition Officer after examining objections has found no merits, because for future extension of capital and to ensure healthy and planned development and further to prevent growth of slums, this was required to be acquired. The Land Acquisition Officer has further stated that the structure existing on the site called Shastri Nagar has been raised in violation of the periphery control act. The objection that the Administration is paying meager compensation is baseless as reported by the Land Acquisition Officer. The compen-

sation is determined as per the existing provision of the law. The landowners are not only paid to award calculated on the basis of the collector rate but also solatium @ of 30% and additional market value @ rate of 12 % per annum. The award has further subject to the legal scrutiny by courts, as the land owners has the liberty to approach them.

The Administration is not a profit-making organization and no surpluses are being generated from acquisition or from further allotment of land. In fact, lot of funds are spent on public utility services like water-supply, sewerage, electricity-supply, laying of roads, power-plants, welfare-activities, public amenities, public-toilets, dumping-grounds, sewerage-treatment plants, Education Institutions, Hospitals, Electricity Grid Station, Tube well and Community Centers etc. some land is allotted at subsidized rates also in public interest for religious, charitable, community/institutional purposes and for rehabilitation of slum-dwellers. As regards rehabilitation of landowners is concerned, though, there is no provision in the land Acquisition Act to provide houses to the villagers whose land has been acquired, but the Chandigarh Housing Board is taking care of such Oustees under the Chandigarh Allotment of Dwelling Units to the Oustees of Chandigarh Scheme, 1996.

Keeping in view the recommendations made by the Land Acquisition Officer after receiving objections Under Section 5- A for the acquiring land measuring 104.83 acres in village Manimajra may be accepted and the case may kindly be sent the AA for according approval and issuance of notification under Section 6 is added below at flag 'Y'.

Submitted for order please.”

JUDGMENT

“Subject: Land Acquisition Case: Village Manimajra, Hadbast No.375, Union Territory, Chandigarh.

Reference PUC, the Land Acquisition Officer has sent a report under section 5- A for acquiring land in the revenue estate of Village Manimajra for public purposes namely "the provision of city level infrastructure, the regulated urban development of the area between Chandigarh and Manimajra, the planned development and expansion of Chandigarh Technology Park". This acquisition is for the Phase III of the Rajiv Gandhi Technology Park.

In this case, the notification for acquiring land measuring 104.83 acres under section 4 was issued on 27.6.2006. The Land Acquisition Officer invited objections from land owners. 16 persons filed their objections in all.

The Land Acquisition Officer heard the pleadings of the objectors/their counsels. The gist of their pleadings have been cited by the LAO from pages 412-415 of his report (PUC).

The findings of the LAO in respect of each set of objections can be read at pages 416-418 of his report. The LAO has found no merits in the objections of the land-owners (objectors). The LAO has filed the objections as being devoid of merit and has finally recommended that the land notified under section 4 be acquired.

On examination of these reports, it is found that the LAO's findings are in order. Therefore, approval may be granted to the proposal to issue a notification under section 6 (placed at flag 'Y') in respect of land measuring 104.83 acres in Village Manimajra, Hadbast No.375, U.T., Chandigarh.

A.A.'s approval would be required in this case.

SSF
28.2.2007

AA

Sd
28.2.2007”

24. On the same day, the declarations issued under Section 6(1) were published in official gazette dated 28.2.2007, the relevant portions of which are extracted below:

“Whereas it appears to the Administrator, Union Territory, Chandigarh that the land in the locality specified below is likely to be needed for a public purpose & namely "the provision of city level infrastructure, the regulated urban development of the area between Chandigarh and Manimajra the planned development and expansion of Chandigarh Technology Park in Village Manimajra, H. B. No. 375, Union Territory, Chandigarh. Now, therefore, this declaration is made under the provision of Section 6 of the Land Acquisition Act, 1894 and with Govt. of India, Ministry of Home affairs. Notification No. SO 3612 dated 8th October, 1968 informing all to whom it may concern that the land mentioned in the specifications noted below is needed for the above mentioned public purpose. The Land Acquisition Collector Chandigarh is hereby directed to take further action for the acquisition of the said land under Section 7 of the Land Acquisition Act, 1894.

The plans of the land may be inspected in the office of Land Acquisition Collector, UT, Chandigarh.”

(emphasis supplied)

25. The appellants challenged the acquisition proceedings in Writ Petition

No.5065/2007 and batch and prayed that Notifications dated 26.6.2006, 2.8.2006 and 28.2.2007 be quashed. They pleaded that the acquisition of their land was vitiated due to violation of the mandate of Sections 4, 5A and 6 of the Act inasmuch as in the garb of acquiring land for a public purpose, the Chandigarh Administration wanted to favour private developers; that the purpose specified in the notifications issued under Section 4(1) was vague and on that account they could not effectively avail the opportunity of filing objections under Section 5A(1); that the objections filed by them were not considered by the LAO and the competent authority and the declarations under Section 6(1) were issued without application of mind; that the acquisition was vitiated because the matter was not considered by the committee constituted under the notification issued by the Government of India under Section 3(3) of the Environment (Protection) Act, 1986 (for short, 'the 1986 Act') and Rule 5(3) of the Environment (Protection) Rules, 1986 (for short, 'the 1986 Rules').

26. The Division Bench of the High Court relied upon the judgments of this Court in *Aflatoon v. Lt. Governor of Delhi* (1975) 4 SCC 285, *Gandhi Grah Nirman Sahkari Samiti Ltd. v. State of Rajasthan* (1993) 2 SCC 662, *State of T.N. v. L. Krishnan* (1996) 1 SCC 250, *Ajay Krishan Shinghal v. Union of India* (1996) 10 SCC 721 and *Sooraram Pratap Reddy v. District Collector, Ranga Reddy District* (2008) 9 SCC 552 and held that the public purpose specified in Notifications dated 26.6.2006 and 2.8.2006 was not vague; that the Chandigarh Administration had complied with the provisions of Sections 4, 5A and 6(1) of the Act; that the existence of a definite plan was not a condition precedent for the

acquisition of land; that the landowners had been given opportunity to file objections and that the declaration was issued after considering the same. The High Court also referred to the judgments of this Court in *Somawanti v. State of Punjab* AIR 1963 SC 151 and *Ganga Bishnu Swaika v. Calcutta Pinjrapole Society* AIR 1968 SC 615 and held that the declaration issued under Section 6(1) was conclusive and was not open to judicial review. The High Court further held that the special audit got conducted by the Government of India in the context of the acquisition of land for Phases I and II of the IT Park did not have any bearing on the acquisition of land for Phase III; that the decision taken by the Ministry of Home Affairs, Government of India to put the acquisition proceedings on hold did not adversely affect the declaration issued under Section 6(1) because final decision in the matter was required to be taken by the Chandigarh Administration and further that non-compliance of the National Rehabilitation Policy was inconsequential.

27. Shri Rakesh Dwivedi, learned senior counsel appearing for the appellants Surinder Singh Brar and others, relied upon Notification dated 14.8.1989 issued under Article 239(1) of the Constitution to show that the power vested in the appropriate Government under Sections 4(1) and 6(1) of the Act, which is exercisable by the President in relation to the Union Territories was delegated to the Administrator and argued that in the absence of delegation of power to the Adviser by the President, the latter could not have sanctioned the impugned acquisition by approving the recommendations of the LAO. Learned senior counsel emphasized that in view of Notification dated 14.8.1989, only the

Administrator could exercise powers under the Act and that too subject to the control of the President and no other authority could have exercised that power. Shri Dwivedi further argued that the declaration issued under Section 6(1), is not in consonance with the plain language of the section because even the Adviser did not consider the reports submitted by the LAO under Section 5A(2) along with the record of proceedings and did not record his satisfaction that the land was needed for a public purpose. Learned senior counsel submitted that use of the expressions 'it appears' and 'likely to be needed' in the notifications issued on 20.8.2007 show that the Adviser, whose approval preceded the issuance of declaration under Section 6(1), had not applied mind to the reports of the LAO. Shri Dwivedi then argued that the reports prepared by the LAO are vitiated due to non-application of mind because he did not objectively consider the objections filed under Section 5A(1) and mechanically made recommendations for the acquisition of land for Phase III ignoring that about half of the land acquired for Phase II had been alienated to the private developers, namely, Parsvnath Developer and Kujjal Builders to enable them to construct residential complex and hotel respectively which had nothing to do with the public purpose specified in the notifications issued under Sections 4(1) and 6(1). Learned senior counsel further argued that the existence of a plan is *sine qua non* for the acquisition of land for planned development of the area between Chandigarh and Mani Majra and expansion of IT Park and, in the absence of a definite plan, there was no justification to acquire the land in question. He sought support for this argument from the reply given by the Central Public Information Officer to Brig Kuldip Singh Kehlon and pointed out

that the Chandigarh Administration was not following the “Chandigarh Inter-State Capital Regional Plan, 2001” approved by the Coordination Committee set up by the Ministry of Urban Development in 1984. Learned senior counsel also referred to the findings recorded in the Special Audit Report and the One-Man Committee headed by Shri Arun Ramanathan, which was appointed by the Government of India, to show that the land acquired for Phases I and II of IT Park had not been utilized and submitted that there is no justification whatsoever for the acquisition of additional land.

28. Shri Dinesh Dwivedi, learned senior counsel appearing for some other appellants, pointed out that general delegation of power by the President to the Administrator vide Notification dated 1.11.1966 issued under Article 239(1) of the Constitution stood superseded by Notifications dated 8.10.1968, 1.1.1970 and 14.8.1989 insofar as the exercise of power under the Act is concerned and the Adviser, to whom the powers were delegated by the Administrator under Section 3 of the Chandigarh (Delegation of Powers) Act, 1987 (for short, ‘the 1987 Act’), was not entitled to exercise the power vested in the appropriate Government under Sections 4(1) and 6(1) of the Act.

29. Shri Shekhar Naphade, learned senior counsel who appeared for the appellants in the appeals arising out of SLP(C)Nos.13518-13521/2011 referred to the objections filed by his clients under Section 5A(1) of the Act and argued that the High Court committed serious error by refusing to quash the acquisition proceedings ignoring that the Chandigarh Administration had not sought clearance

from the designated committee constituted under Notifications dated 27.1.1994 and 14.9.2006 issued under Section 3(3) of the 1986 Act read with Rule 5(3) of the 1986 Rules. Shri Naphade relied upon the judgment of this Court in *Karnataka Industrial Areas Development Board v. C. Kenchappa*, (2006) 6 SCC 371 and argued that non-consideration of the appellants' plea that the acquisition would adversely impact the environment and ecology of the area is sufficient for quashing the notifications impugned in the writ petitions. Learned senior counsel submitted that the satisfaction envisaged in Section 6(1) of the Act pre-supposes that 'the appropriate Government' has taken an informed decision after due application of mind to the record and was satisfied about the need of the land for a public purpose and in these cases, the competent authority had not at all applied mind to the recommendations made by the LAO and the objections filed by the landowners.

30. Shri Neeraj Jain, learned senior counsel argued that the High Court committed serious error by negating the appellants' challenge to the acquisition of their land ignoring its impact on the environment and the fact that the declaration under Section 6 could not have been issued without objectively considering this important aspect. Learned senior counsel also highlighted that a major chunk of the land acquired for Phase II had been transferred to the developers for residential and commercial purposes and argued that there was no justification for the acquisition of additional land in the name of expanding the IT Park.

31. Learned counsel appearing for the other appellants largely adopted the arguments of Shri Rakesh Dwivedi, Shri Dinesh Dwivedi and Shri Shekhar

Naphade and submitted that the entire acquisition should be quashed because the functionaries of the Chandigarh Administration did not apply mind to the relevant issues including adverse impact of the acquisition on the environment and ecology of the area.

32. Shri Rakesh Khanna, learned Additional Solicitor General, produced copy of Notification dated 8.10.1968 issued under Article 239(1) of the Constitution and xerox copies of the notings recorded by the officers of the Ministry of Home Affairs on the report prepared by the Inquiry Officer in the light of the Special Audit Report. He also produced the decision taken by the Home Minister on 23.9.2010, which reads as under:

“I have seen the notes as well as the final recommendations of AS(CS) on pages 31 and 32/n. I am in broad agreement with the recommendations on pages 31 and 32/n subject to the following:

(i) If any Advisory is required to be issued to the UT Administration, a draft of the Advisory may be put up to me first through HS.

(ii) Where the Inquiry Officer has agreed with the audit findings, they may be reduced to the form of a preliminary show cause notice and the preliminary show cause notice may be issued to those who have been found, prima facie, responsible and the comments obtained on why disciplinary proceedings and such other action as permissible under law should not be taken against them. The show cause notice may be drawn up and issued by 30.9.2010 and they may be given time until 15.10.2010 to reply to the preliminary show cause notices.

(iii) Where the IO has not agreed with the findings of the audit, they may be referred to the CCA(H) for his comments. This may be done by 30.9.2010 and the CCA(H) may be requested to offer his comments by 15.10.2010.

(iv) Any review of the powers delegated to the Administrator of Chandigarh may be done only in consultation with the Administrator. The proposals may be put up to me first through HS and then I shall give directions on how the Administrator should be consulted.

(v) The Inquiry Report may also be forwarded to the CVC for such action as CVC may deem fit.”

33. Dr. Rajeev Dhawan, learned senior counsel appearing for the Union Territory of Chandigarh relied upon Notification dated 1.11.1966 by which the President conferred the powers and functions of the State Government upon the Administrator and Notification dated 25.2.1988 issued under Section 3(1) of the 1987 Act vide which the Administrator delegated the powers vested in him under various State laws to the Adviser and argued that the impugned acquisition cannot be nullified on the ground that the notifications under Sections 4(1) and 6(1) were issued without the approval of the Administrator. Dr. Dhawan submitted that the notifications challenged before the High Court cannot be declared illegal on the ground that the Administrator had not accorded sanction to the acquisition of land for Phase III of IT Park because no such point was argued on behalf of the appellants. He then submitted that the Advisor to the Administrator is equivalent to the Chief Commissioner and the Chief Commissioner and the Administrator of a Union Territory are of coordinate rank. Learned senior counsel then argued that the acquisition of the appellants' land cannot be quashed on the ground that the purpose specified in Notifications dated 26.6.2006 and 2.8.2006 was not a public purpose or that the same was vague. He submitted that the appellants cannot make a complaint on this score because they had filed detailed objections under Section

5A(1), which were duly considered by the LAO. Dr. Dhawan emphasised that the declaration issued under Section 6(1) is in consonance with the language of the statute and argued that the High Court did not commit any error by refusing to quash Notifications dated 28.2.2007 on the ground that in the first part thereof the satisfaction of the appropriate Government has not been recorded. Learned senior counsel further argued that the existence of a master plan or lay-out plan is not *sine qua non* for the acquisition of land because the purposes specified in Section 4(1) notification were identified public purposes. He pointed out that substantial portion of the land acquired for Phase I and Phase II of IT Park had been allotted to IT industries and the remaining portion was used for roads, parks, etc., and argued that the cancellation of allotment of three IT companies cannot lead to an inference that the acquired land has not been utilised for development of IT Park. In the end, Dr. Dhawan argued that the findings recorded by the Special Audit Team and the One-Man Committee cannot be made basis for quashing the acquisition of land for Phase III of IT Park. In support of his arguments, learned senior counsel relied upon the judgments in *Somawanti v. State of Punjab* (supra), *Ganga Bishnu Swaika v. Calcutta Pinjrapole Society* (supra), *Aflaton v. Lt. Governor of Delhi* (supra), *Gandhi Grah Nirman Sahkari Samiti Ltd. v. State of Rajasthan* (supra), *State of T.N. v. L. Krishnan* (supra) and *Ajay Krishan Shinghal v. Union of India* (supra).

34. We have given serious thought to the respective arguments and carefully scrutinized the record of these petitions as also the files made available by Shri Sudhir Walia, learned counsel for the Chandigarh Administration.

35. We shall first consider the question whether the Advisor to the Administrator had the jurisdiction to approve the acquisition of the appellants' land. For deciding this question, it will be useful to notice the provisions of Article 239 of the Constitution (amended and unamended) and the notifications issued under that Article. The same read as under:

"Prior to 1-11-56

"After 1-11-56

Art. 239. Administration of States in Part C of the First Schedule. - (1) Subject to the other provisions of this Part a State specified in Part C of the First Schedule shall be administered by the President acting to such extent as he thinks fit, through a Chief Commissioner or a Lieutenant Governor to be appointed by him or through the Government of a neighbouring State.

Provided that the President shall not act through the Government of a neighbouring State save after –

- (a) consulting the Government concerned and
- (b) ascertaining in such manner as the President considers most appropriate the views of the people of the State to be so administered.

239. Administration of Union territories. - (1) Save as otherwise provided by Parliament by law, every Union territory shall be administered by the President acting, to such extent as he thinks fit, through an administrator appointed by him with such designation as he may specify.

(2) Notwithstanding anything contained in Part VI, the President may appoint the Governor of a State as the administrator of an adjoining Union territory, and where a Governor is so appointed, he shall exercise his functions as such Administrator independently of his Council of Ministers.

Substituted by the Constitution (Seventh Amendment) Act, 1956."

(2) In this article, references to a State shall include references

to a part of a State.”

“MINISTRY OF HOME AFFAIRS

New Delhi, the 1st November, 1966

S.O.3269.- Whereas under section 4 of the Punjab Reorganisation Act, 1966 (31 of 1966), the territories specified therein form the Union territory of Chandigarh on and from the 1st day of November, 1966.

And whereas under section 88 of the said Act, the provisions of Part II of the said Act shall not be deemed to have effected any change in the territories to which any law in force immediately before the 1st day of November, 1966, extends or applies, and territorial references in any such law to the State of Punjab shall, until otherwise provided by a competent legislature or other competent authority, be construed as meaning the territories within that State immediately before the said day;

And whereas the powers exercisable by the State Government under any such law as aforesaid are now exercisable by the Central Government;

Now, therefore, in pursuance of clause (1) of article 239 of the Constitution, and all other powers enabling him in this behalf, the President hereby directs that, subject to his control and until further orders, the Administrator of the Union territory of Chandigarh shall, in relation to the said territory, exercise and discharge, with effect from the 1st day of November, 1966, the powers and functions of the State Government under any such law.

[No.13/1/66-CHD]”

“No.5/1/66-CHD
GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS
NEW DELHI-II, the 1st November, 1966.

NOTIFICATION

G.S.R.1675-In exercise of the powers conferred by clause (1) of article 239 of the Constitution, the President hereby directs that all orders and other instruments made and executed in the name

of Chief Commissioner of Union Territory of Chandigarh shall be authenticated by the signature of a Secretary/a Deputy Secretary an Under Secretary, an Assistant Secretary in any of the departments of the Chandigarh Administration.

Sd/-
A.D.Pande,
JOINT SECRETARY”

“NOTIFICATION

New Delhi, the 8 October, 1968,

S.O. 3612 – In pursuance of clause (1) of article 239 of the Constitution, and in partial modification of the notification of the Government of India in the Ministry of Home Affairs No.S.O. 3269 dated the 1st November, 1966, in so far as it relates to the exercise of powers and functions under the Land Acquisition Act, 1894 (1 of 1894) by the Administrator of the Union territory of Chandigarh, the President hereby directs that, subject to his control and until further orders, the powers and functions of the appropriate Government under -

(i) the Land Acquisition Act, 1894 (1 of 1894), except those of the Central Government under the provisos to sub-section (1) of section 55, and

(ii) the Land Acquisition (Companies) Rules, 1963,

shall also be exercised and discharged by the Administrator of the Union territory of Chandigarh, within the said Union territory.

[No.F.2/8/68-UTL]

Sd/-
(K.R. Prabhu)
Joint Secretary to the Govt. of India.”

“GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS

NEW DELHI-1, the 1st January, 1970
11th Pausa, 1891

NOTIFICATION

S.O. 157 – In pursuance of clause (1) of article 239 of the Constitution, and in partial modification of the notification of the Government of India in the Ministry of Home Affairs No.S.O. 3371, dated the 1st November, 1966, in so far as it relates to the exercise of powers and functions under the Land Acquisition Act, 1894(1 of 1894) by the Administrator of the Union territory of Himachal Pradesh, and in supersession of the notifications of the Government of India in the Ministry of External Affairs No. S.O. 3165, dated the 5th November, 1963, and in the Ministry of Home Affairs Nos. S.O. 190, dated the 8th January, 1964, S.O. 3953, dated the 21st December, 1966 and S.O. 3612, dated the 8th October, 1968, the President hereby directs that, subject his control and until further orders, the powers and functions of the appropriate Government under-

- (i) the Land Acquisition Act, 1894 (1 of 1894), except those of the Central Government under the provisos to sub-section (1) of section 55, and
- (ii) the Land Acquisition. (Companies) Rules, 1963,

shall also be exercised and discharged by the Administrator of every Union territory (whether known as the Administrator, Chief Commissioner or the Lieutenant Governor), within the respective Union territories.

(No.F.2/8/68-UTL)

Sd/-
(P.N. KAUL)
DEPUTY SECRETARY TO THE GOVT. OF INDIA”

“BHARAT SARKAR / GOVERNMENT OF INDIA
GRIH MANTRALAYA / MINISTRY OF HOME AFFAIRS

New Delhi, the 14th Aug, 89

NOTIFICATION

S.O. 642(E) In pursuance of clause (1) of Article 239 of the Constitution and in suppression of all previous notifications relating

to the exercise of power; and functions under the Land Acquisition Act, 1894 (1 of 1894) by the Administrator of various Union Territories except as respects things done or omitted to be done before such suppression, the president hereby directs that subject to his control and until further orders, the powers and functions of the appropriate government in relation to a Union Territory shall also be exercised and discharged by the administrator of such Union Territory (Whether known as Administrator, Chief Commissioner or lieutenant governor) within the respective union territory under:-

- (i) the land acquisition Act 1894 (1 of 1894) except the functions exercisable by the Central Government under the provision to sub-section (1) of section 55 of the said Act; and
- (ii) the land acquisition (Companies) Rules, 1963.

NO.U-11030/1/89-UTL/

Sd/-

(Ashok Nath)

Joint Secretary to the Govt. of India”

36. Notification dated 25.2.1988 issued under Section 3(1) of the 1987 Act as also Notifications dated 2.6.1984, 30.5.1985, 27.11.1999, 8.5.2003, 1.10.2004, 4.11.2004 and 17.11.2004 on which reliance was placed by Dr. Rajeev Dhawan are reproduced below:

“CHANDIGARH ADMINISTRATION

HOME DEPARTMENT

Notification

The 25th February. 1988.

No. LD-88/1302.—In. exercise of the powers conferred by sub-section (1) of section 3 of the Chandigarh (Delegation of Powers) Act, 1987 (No. 2 of 1988), the Administrator, Union Territory, Chandigarh is pleased to direct that any power, authority or jurisdiction or any duty which the Administrator may exercise or discharge by or under the provisions of any law, rules or regulations as are applicable in the Union Territory, Chandigarh on the date of this notification shall be exercised or discharged by the Adviser to the Administrator except in cases or class of

cases (as mentioned in the Schedule annexed hereto) which shall be submitted to the Administrator for final orders:—

SCHEDULE

- (i) Proposals regarding suspension, remission of sentences under section 432 of the Code of Criminal Procedure.
- (ii) Cases raising question of policy and cases of administrative importance.
- (iii) Cases which effect or are likely to effect peace and tranquility of the State.
- (iv) Cases which effect the relations of Union Territory Administration with other State Governments, the Supreme Court or the High Court.
- (v) Constitution of Advisory Boards under the various laws providing for detention of persons without trial.
- (vi) Proposals for the prosecution, dismissal, removal or compulsory retirement of any Class-I Officer.
- (vii) Proposals for the appointment of any Class-I Officer.
- (viii) Proposals regarding framing of rules of Class-I Officers including amendment of these rules.
- (ix) Cases relating to the application of Acts of Parliament or extension of any State Act under section 87 of the Punjab Reorganisation Act to the Union Territory, Chandigarh.
- (x) Cases where modification of the orders passed by the predecessors of the present Administrator are involved.
- (xi) Proposals for the creation or abolition of Class-I posts.
- (xii) Such other cases or class of cases as the Administrator may consider necessary or such other cases where his orders are necessarily to be obtained under a Statute, for instance granting sanction to the launching of prosecution under section 196 Cr PC or any other Criminal Law.

By order and in the name
of Administrator
(Sd.)
P. K. VERMA,
Home Secretary,
Chandigarh Administration.”

“No.U.14020/17/84 - UTS
Government of India
Ministry of Home Affairs

New Delhi-110001, the 2nd June, 1984.

NOTIFICATION

Consequent upon the concurrent appointment of Shri B.D. Pande, Governor of Punjab, as Administrator of the Union Territory of Chandigarh, Shri K. Banarji, IAS (UT : 1954 1/2), Chief Commissioner, Chandigarh will be redesignated as Adviser to the Administrator of the Union Territory of Chandigarh.

(Baleshwar Rai)
Deputy Secretary to the Government of India.”

“(FOR PUBLICATION IN THE GAZETTE OF INDIA
PART I SECTION 2)

No.U.14020/17/84 – UTS. Pt.

Government of India

Ministry of Home Affairs

New Delhi-110001, the 30th May, 1985.

NOTIFICATION

Consequent upon the concurrent appointment of Shri Arjun Singh, Governor of Punjab, as Administrator of the Union Territory of Chandigarh, Shri K. Banarji, IAS (UT : 1954 1/2), Chief Commissioner, Chandigarh will be redesignated as Adviser to the Administrator of the Union Territory of Chandigarh.

(Baleshwar Rai)
Director.”

“CHANDIGARH ADMINISTRATION
DEPARTMENT OF PERSONNEL

NOTIFICATION

The 27 November, 1999

No.1015-GOI-IH (4)-99/22972

Consequent upon the appointment of Lieutenant-General (Retd.) Jack Frederick Ralph Jacob, PVSM, Governor of Punjab as Administrator of the Union Territory of Chandigarh in addition to his duties as Governor of Punjab vide order of the President of India, dated the 19th November, 1999 conveyed vide Rashtrapati Bhawan communication bearing No.F.29-CA(I)/99, dated the 19th November, 1999, Lieutenant General (retd.) Jack Frederick Ralph Jacob, PVSM has assumed charge as Administrator of the Union Territory of Chandigarh on the forenoon of 27th November, 1999 .

N. K. Jain
Home Secretary
Chandigarh Administration.”

“CHANDIGARH ADMINISTRATION
DEPARTMENT OF PERSONNEL

NOTIFICATION

The 8th May, 2003

No.IH (4)-2003/8264

Consequent upon the appointment of Shri Justice Om Prakash Verma (Retd.), Governor of Punjab as Administrator of the Union Territory of Chandigarh in addition to his duties as Governor of Punjab vide order of the President of India, dated the 2nd May, 2003, conveyed vide Rashtrapati Bhawan communication bearing No.F.31-CA(I)/2003, dated the 2nd May, 2003. Justice Om Prakash Verma (Retd.) has assumed charge as Administrator of the Union Territory of Chandigarh on the forenoon of 8th May, 2003 .

R. S. Gujral,
Home Secretary
Chandigarh Administration.”

“CHANDIGARH ADMINISTRATION
DEPARTMENT OF PERSONNEL

NOTIFICATION

September, 2004
Ist Oct. 2004

No.IH (4)-2004/18018

Consequent upon the appointment of Dr. Akhlaq-ur-Rahman Kidwai, Governor of Punjab as Administrator of the Union Territory of Chandigarh in addition to his duties as Governor of Punjab vide order of the President of India, dated the 28th September, 2004 conveyed vide Rashtrapati Bhawan communication bearing No.F.31-CA(I)/2004, dated the 28th September, 2004, Dr. Akhlaq-ur-Rahman Kidwai has assumed charge as Administrator of the Union Territory of Chandigarh on the afternoon of 30th September, 2004 .

R. S. Gujral,
Home Secretary
Chandigarh Administration.”

“CHANDIGARH ADMINISTRATION
DEPARTMENT OF PERSONNEL

NOTIFICATION

4.11.2004

No.22/S/39/IH (4)-2004/20197

Consequent upon the appointment of Dr. Akhlaq-ur-Rahman Kidwai, Governor of Punjab as Administrator of the Union Territory of Chandigarh in addition to his duties as Governor of Punjab vide order of the President of India, dated the 30th October, 2004 conveyed vide Rashtrapati Bhawan communication bearing No.F.31-CA(I)/2004, dated the 30th October, 2004, Dr. Akhlaq-ur-Rahman Kidwai has assumed charge as Administrator of the Union Territory of Chandigarh on the forenoon of the 3rd November, 2004 .

R. S. Gujral,
Home Secretary
Chandigarh Administration.”

“CHANDIGARH ADMINISTRATION
DEPARTMENT OF PERSONNEL

NOTIFICATION

The 17th November, 2004

No.22/S/39/IH (4)-2004/20890

Consequent upon the appointment of General (Retd.) S. F. Rodrigues, PVSM, VSM, Governor of Punjab as Administrator of the Union Territory of Chandigarh in addition to his duties as Governor of Punjab vide order of the President of India, dated the 8th November, 2004, conveyed vide Rashtrapati Bhawan communication bearing No.F.31-CA(I)/2004, dated the 8th November, 2004, General (Retd.) S. F. Rodrigues, PVSM, VSM, has assumed charge as Administrator of the Union Territory of Chandigarh on the afternoon of 18th November, 2004 .

R. S. Gujral,
Home Secretary
Chandigarh Administration.”

37. We may also take cognizance of Notifications dated 12.1.2001, 15.1.2003, 11.9.2003, 21.11.2003, 1.1.2007 by which different officers of Indian Administrative Service were appointed/given charge of the post of Adviser, Union Territory, Chandigarh. The same read as under:

“CHANDIGARH ADMINISTRATION
DEPARTMENT OF PERSONNEL

NOTIFICATION

Dated, the 12th January, 2001.

No.59(GOI)-IH (4)-2001/786

Consequent upon her appointment as Adviser to the Administrator, Union Territory, Chandigarh, Ms. Neeru Nanda, IAS (AGMU:71) took over charge of the said post with effect from 12.01.2001 (forenoon) from Smt. Vineeta Rai, IAS (AGMU:68).

R. S. Gujral,
Home Secretary
Chandigarh Administration.”

“CHANDIGARH ADMINISTRATION
DEPARTMENT OF PERSONNEL

NOTIFICATION

Dated, the 15.1.2003.

No.IH (4)-2002/913

Consequent upon his appointment as Adviser to the Administrator, Union Territory, Chandigarh, Sh. Virendra Singh, IAS (AGMU:1969) took over charge of the said post with effect from the forenoon of 8.1.2003.

R. S. Gujral,
Home Secretary
Chandigarh Administration.”

“CHANDIGARH ADMINISTRATION
DEPARTMENT OF PERSONNEL

ORDER

In pursuance of the Government of India, Ministry of Home Affairs, New Delhi's order bearing Endst. No. 14020/9/2002-UTS.I, dated the 10th September, 2003, the Administrator, Union Territory, Chandigarh is pleased to relieve Sh. Virendra Singh, IAS (AGMU:69), of the charge of Adviser to the Administrator, Union Territory, Chandigarh, with immediate effect.

2. In pursuance of the aforesaid orders of the Government of India dated the 10th September, 2003, the Administrator, Union Territory, Chandigarh, is further pleased to entrust the current charge of the post of Adviser to the Administrator, Union Territory, Chandigarh to Sh. R.S. Gujral, IAS (HY:76), Home Secretary, Chandigarh Administration, in addition to his own duties, until further orders.

Chandigarh, dated
The 11th September, 2003

(By order and in the name
of Administrator, Union
Territory, Chandigarh)

Ashok Sangwan,
Joint Secretary Personnel,
Chandigarh Administration”

“CHANDIGARH ADMINISTRATION
DEPARTMENT OF PERSONNEL

NOTIFICATION

Dated, the 21.11.2003.

No.IH (4)-2003/21655

Consequent upon his appointment as Adviser to the Administrator, Union Territory, Chandigarh, Sh. Lalit Sharma, IAS (AGMU:1971) has taken over the charge of the said post with effect from the afternoon of 21.11.2003, relieving Sh. R.S. Gujral, IAS (HY-1976), Home Secretary, Chandigarh Administration, of this additional charge.

R. S. Gujral,
Home Secretary
Chandigarh Administration.”

“CHANDIGARH ADMINISTRATION
DEPARTMENT OF PERSONNEL

NOTIFICATION

Dated, the 01.01.07

No.22/2/47-IH (4)-2007/19619

Consequent upon his appointment as Adviser to the Administrator, Union Territory, Chandigarh, Sh. Pradip Mehra, IAS (AGMU:1975) assumed the charge of the said post with effect from the afternoon of 30.09.2007.

Krishna Mohan,
Home Secretary
Chandigarh Administration.”

38. The unamended Article 239 envisaged administration of the States specified in Part C of the First Schedule of the Constitution by the President through a Chief Commissioner or a Lieutenant Governor to be appointed by him or through the Government of a neighbouring State. This was subject to other provisions of Part VIII of the Constitution. As against this, amended Article 239 lays down that

subject to any law enacted by Parliament every Union Territory shall be administered by the President acting through an Administrator appointed by him with such designation as he may specify. In terms of Clause (2) of Article 239 (amended), the President can appoint the Governor of a State as an Administrator of an adjoining Union territory and on his appointment, the Governor is required to exercise his function as an Administrator independently of his Council of Ministers. The difference in the language of the unamended and amended Article 239 makes it clear that prior to 1.11.1956, the President could administer Part C State through a Chief Commissioner or a Lieutenant Governor, but, after the amendment, every Union Territory is required to be administered by the President through an Administrator appointed by him with such designation as he may specify. In terms of Clause 2 of Article 239 (amended), the President is empowered to appoint the Governor of State as the Administrator to an adjoining Union Territory and once appointed, the Governor, in his capacity as Administrator, has to act independently of the Council of Ministers of the State of which he is the Governor.

39. A reading of the Notification issued on 1.11.1966 shows that in exercise of the power vested in him under Article 239(1), the President directed that the Administrator shall exercise the power and discharge the functions of the State Government under the laws which were in force immediately before formation of the Union Territory of Chandigarh. This was subject to the President's own control and until further orders. By another notification issued on the same day, the President directed that all orders and other instruments made and executed in the name of the Chief Commissioner of Union Territory of Chandigarh shall be

authenticated by the signatures of the specified officers. These notifications clearly brought out the distinction between the position of the Administrator and the Chief Commissioner insofar as the Union Territory of Chandigarh was concerned. Subsequently, the President appointed the Governor of Punjab as Administrator of the Union Territory of Chandigarh and separate notifications were issued for appointment of Adviser to the Administrator. The officers appointed as Adviser are invariably members of the Indian Administrative Service.

40. After about 2 years of the issuance of the first notification under Article 239(1) of the Constitution, by which the powers and functions exercisable by the State Government under various laws were generally entrusted to the Administrator, Notification dated 8.10.1968 was issued and the earlier notification was modified insofar as it related to the exercise of powers and functions by the Administrator under the Act and the President directed that subject to his control and until further orders, the powers and functions of 'the appropriate Government' shall also be exercised and discharged by the Administrator. Notification dated 8.10.1968 was superseded by Notification dated 1.1.1970 and the President directed that subject to his control and until further orders, the powers and functions of 'the appropriate Government' shall also be exercised and discharged by the Administrator of every Union Territory whether known as the Administrator, the Chief Commissioner or the Lieutenant Governor. The last notification in the series was issued on 14.8.1989 superseding all previous Notifications. The language of that notification is identical to the language of Notification dated 1.1.1970.

41. There is marked distinction in the language of the notifications issued under Article 239(1) of the Constitution. By notification dated 1.11.1966, the President generally delegated the powers and functions of the State Government under various laws in force immediately before 1.11.1966 to the Administrator. By all other notifications, the power exercisable by 'the appropriate Government' under the Act and the Land Acquisition (Companies) Rules, 1963 were delegated to the Administrator. It is not too difficult to fathom the reasons for this departure from notification dated 1.11.1966. The Council of Ministers whose advice constitutes the foundation of the decision taken by the President was very much conscious of the fact that compulsory acquisition of land, though sanctioned by the provision of the Act not only impacts lives and livelihood of the farmers and other small landholders, but also adversely affect the agricultural and environment and ecology of the area. Therefore, with a view to avoid any possibility of misuse of power by the executive authorities, it has been repeatedly ordained that powers and functions vested in 'the appropriate Government' under the Act and the 1963 Rules shall be exercised only by the Administrator. The use of the expression 'shall also be exercised and discharged' in Notifications dated 8.10.1968, 1.1.1970 and 14.8.1989 is a clear pointer in this direction. The seriousness with which the Central Government has viewed such type of acquisition is also reflected from the decision taken by the Home Minister on 23.9.2010 in the context of the report of the Special Auditor and the One-Man Committee. Thus, the acquisition of land for and on behalf of Union Territories must be sanctioned by the Administrator of the particular Union Territory and no other officer is competent to exercise the power vested in 'the appropriate

Government' under the Act and the Rules framed thereunder.

42. We may now advert to Notification dated 25.2.1988 issued under Section 3(1) of the 1987 Act, vide which the Administrator directed that any power, authority or jurisdiction or any duty which he could exercise or discharge by or under the provisions of any law, rules or regulations as applicable to the Union Territory of Chandigarh shall be exercised or discharged by the Adviser except in cases or class of cases enumerated in the Schedule. There is nothing in the language of Section 3(1) of the 1987 Act from which it can be inferred that the Administrator can delegate the power exercisable by 'the appropriate Government' under the Act which was specifically entrusted to him by the President under Article 239(1) of the Constitution. Therefore, notification dated 25.2.1988 cannot be relied upon for contending that the Administrator had delegated the power of 'the appropriate Government' to the Adviser.

43. The issue deserves to be considered from another angle. While delegating the power, authority or jurisdiction vested in him by or under any law, rules or regulations as applicable to the Union Territory of Chandigarh, the Administrator had used the expression 'on the date of this notification'. This necessarily implies that the power of 'the appropriate Government' conferred upon or entrusted to the Administrator by the President under Article 239(1) after 25.2.1988 were not delegated to the Adviser. It is also apposite to note that Notification dated 14.8.1989 was issued under Article 239(1) in supersession of all previous notifications relating to the exercise of power and functions under the Act by the Administrators of

various Union Territories. Therefore, even if it is assumed that vide Notification dated 25.2.1988 the Administrator had authorised the Adviser to exercise the power of 'the appropriate Government' under the Act, after the issuance of Notification dated 14.8.1989, the said delegation will be deemed to have ceased insofar as the exercise of power of 'the appropriate Government' under the Act and the Rules framed thereunder is concerned and in the absence of fresh delegation by the Administrator, the Adviser could not have exercised the power of the appropriate Government and sanctioned the acquisition of land for the purposes specified in Notifications dated 26.6.2006 and 2.8.2006 nor could he symbolically accept the recommendations of the LAO and record his satisfaction on the issue of need of land for the specified public purposes.

44. In view of the above discussion, we hold that the Adviser to the Administrator was not competent to accord approval to the initiation of the acquisition proceedings or take decision on the reports submitted by the LAO under Section 5-A (2) of the Act and record his satisfaction that the land was needed for the specified public purpose.

45. The next question which requires determination is whether the reports prepared by the LAO under Section 5A(2) were vitiated due to non-consideration of the objections filed by the landowners and the same could not be made basis for deciding whether the land was really needed for the particular public purpose. A cursory reading of the reports of the LAO may give an impression that he had applied mind to the objections filed under Section 5A(1) and assigned reasons for

not entertaining the same, but a careful analysis thereof leaves no doubt that the officer concerned had not at all applied mind to the objections of the landowners and merely created a facade of doing so. In the opening paragraph under the heading “Observations”, the LAO recorded that he had seen the revenue records and conducted spot inspection. He then reproduced the Statement of Objects and Reasons contained in the Bill which led to the enactment of the Punjab New Capital (Periphery) Control Act, 1952 and proceed to extract some portion of reply dated 31.7.2006 sent by the Administrator to Surinder Singh Brar.

46. In the context of the statement contained in the first line of the paragraph titled “Observations”, we repeatedly asked Shri Sudhir Walia, learned counsel assisting Dr. Rajiv Dhawan to show as to when the LAO had summoned the revenue records and when he had conducted spot inspection but the learned counsel could not produce any document to substantiate the statement contained in the two reports of the LAO. This leads to an inference that, in both the reports, the LAO had made a misleading and false statement about his having seen the revenue records and conducted spot inspection. That apart, the reports do not contain any iota of consideration of the objections filed by the landowners. Mere reproduction of the substance of the objections cannot be equated with objective consideration thereof in the light of the submission made by the objectors during the course of hearing. Thus, the violation of the mandate of Section 5A(2) is writ large on the face of the reports prepared by the LAO.

47. The reason why the LAO did not apply his mind to the objections filed by the

appellants and other landowners is obvious. He was a minion in the hierarchy of the administration of the Union Territory of Chandigarh and could not have even thought of making recommendations contrary to what was contained in the letter sent by the Administrator to Surinder Singh Brar. If he had shown the courage of acting independently and made recommendation against the acquisition of land, he would have surely been shifted from that post and his career would have been jeopardized. In the system of governance which we have today, junior officers in the administration cannot even think of, what to say of, acting against the wishes/dictates of their superiors. One who violates this unwritten code of conduct does so at his own peril and is described as a foolhardy. Even those constituting higher strata of services follow the path of least resistance and find it most convenient to tow the line of their superiors. Therefore, the LAO cannot be blamed for having acted as an obedient subordinate of the superior authorities, including the Administrator. However, that cannot be a legitimate ground to approve the reports prepared by him without even a semblance of consideration of the objections filed by the appellants and other landowners and we have no hesitation to hold that the LAO failed to discharge the statutory duty cast upon him to prepare a report after objectively considering the objections filed under Section 5A(1) and submissions made by the objectors during the course of personal hearing.

48. The Special Secretary, Finance and the Adviser to the Administrator also failed to act in consonance with the mandate of Section 5A(2) read with Section 6(1). They could not muster courage of expressing an independent opinion on the issue of compliance of Section 5A and need of the land for the specified public

purposes. The noting recorded by the Special Secretary, Finance, which has been extracted hereinabove shows that the officer had virtually reproduced what the Administrator had mentioned in his letter dated 31.7.2006. The Adviser went a step further. He merely appended his signatures on the note recorded by the Special Secretary, Finance forgetting that in terms of the aforementioned two sections 'the appropriate Government' is required to take decision after considering the report of the LAO. The least which can be said about the manner in which the Adviser approved the note prepared by the Special Secretary, Finance is that there was abject failure on the part of the concerned officer to discharge his duty despite the fact that he was entrusted with the onerous task of taking a decision on behalf of 'the appropriate Government' after considering the reports of the LAO. The casual manner in which the senior officers of the Chandigarh Administration dealt with the serious issue of the acquisition of land of citizens signifies their total lack of respect for the constitutional provision contained in Article 300A, the law enacted by Parliament, that is, the Act and interpretation thereof by the Courts. It seems that the officers were overawed by the view expressed by the Administrator and the instinct of self-preservation prompted them not to go against the wishes of the Administrator who wanted that additional land be acquired in the name of expansion of IT Park despite the fact that a substantial portion of the land acquired for Phase II had been allotted to a private developer.

49. At this stage, it will be useful to notice the provisions of Sections 3(ee), 3(f) (as substituted by Act No.68 of 1984), 4(1), 5A and 6(1). The same read as under:

“3(ee) the expression “appropriate Government” means, in relation to acquisition of land for the purposes of the Union, the Central Government, and, in relation to acquisition of land for any other purposes, the State Government;

3 (f) the expression ‘public purpose’ includes-

(i) the provision of village- sites, or the extension, planned development or improvement of existing village- sites;

(ii) the provision of land for town or rural planning;

(iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned;

(iv) the provision of land for a corporation owned or controlled by the State;

(v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State;

(vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a state, or a co- operative society within the meaning of any law relating to co- operative societies for the time being in force in any State;

(vii) the provision of land for any other scheme of development sponsored by Government or with the prior approval of the appropriate Government, by a local authority;

(viii) the provision of any premises or building for locating a public office, but does not include acquisition of land for companies;

4. Publication of preliminary notification and power of officers

thereupon.-

(1) Whenever it appears to the appropriate Government the land in any locality is needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification.

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5A. Hearing of objections.-

(1) Any person interested in any land which has been notified under section 4, sub- section (1), as being needed or likely to be needed for a public purpose or for a Company may, within thirty days from the date of the publication of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub- section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard[in person or by any person authorized by him in this behalf] or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under section 4, sub- section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government. The decision of the appropriate Government on the objections shall be final.

(3) For the purpose of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.

6. Declaration that land is required for a public purpose.-

(1) Subject to the provision of Part VII of this Act, when the

appropriate Government is satisfied, after considering the report, if any, made under section 5A, sub-section (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under section 4, sub-section (I) irrespective of whether one report or different reports has or have been made (wherever required) under section 5A, sub-section (2):

Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1),—

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967), but before the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of three years from the date of the publication of the notification; or

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification:

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

Explanation I.—In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under section 4, sub-section (1), is stayed by an order of a Court shall be excluded.

Explanation 2.—Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues.

(2) Every declaration shall be published in the Official Gazette, and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional

language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the date of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the declaration), and such declaration shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and, after making such declaration, the appropriate Government may acquire the land in manner hereinafter appearing.”

50. Section 4(1) lays down that whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company, then a notification to that effect is required to be published in the Official Gazette and two daily newspapers having circulation in the locality. Of these, one paper has to be in the regional language. A duty is also cast on the Collector, as defined in Section 3(c), to cause public notice of the substance of such notification to be given at convenient places in the locality. The last date of publication and giving of public notice is treated as the date of publication of the notification.

51. Section 5A, 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.

52. Upon receipt of the Collector's report, the appropriate Government is required to take action under Section 6(1) which lays down that 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 5(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).

53. 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.

54. 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. After publication of the declaration under Section 6, the Collector is required to take order from the State Government for the acquisition of land to be carved out and measured and planned (Sections 7 and 8). The next stage as envisaged is 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.

55. In *Nandeshwar Prasad and Anr. v. The State of Uttar Pradesh and Ors.* (1964) 3 SCR 425, this Court observed that the right to file objections under Section 5-A is a substantial right when a person's property is being threatened with acquisition. In *Munshi Singh v. Union of India* (1973) 2 SCC 337, the importance of the rule of hearing embodied in Section 5-A was highlighted in the following words:

“Section 5-A embodies a very just and wholesome principle that a person whose property is being or is intended to be acquired should have a proper and reasonable opportunity of per-

suading the authorities concerned that acquisition of the property belonging to that person should not be made. We may refer to the observation of this court in Nandeshwar Prasad v. State of U.P that the right to file objections under Section 5-A is a substantial right when a person's property is being threatened with acquisition and that right cannot be taken away as if by a side wind. 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."

(emphasis supplied)

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

".....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."

57. In *Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai* (2005) 7 SCC 627, this Court analysed Section 5-A in the following words:

".....Section 5-A of the Act is in two parts. Upon receipt of objections, the Collector is required to make such further enquiry as he may think necessary whereupon he must submit a report to the appropriate Government in respect of the land which is the subject-matter of notification under Section 4(1) of the Act. The said report would also contain recommendations on the objections filed by the owner of the land. He is required to forward the records of the proceedings held by him together with the report. On receipt of such a report together with the records of the case, the Government is to render a decision

thereupon. It is now well settled in view of a catena of decisions that the declaration made under Section 6 of the Act need not contain any reason. However, considerations of the objections by the owner of the land and the acceptance of the recommendations by the Government, it is trite, must precede a proper application of mind on the part of the Government. Furthermore, the State is required to apply its mind not only on the objections filed by the owner of the land but also on the report which is submitted by the Collector upon making other and further enquiries therefor as also the recommendations made by him in that behalf. The State Government may further inquire into the matter, if any case is made out therefor, for arriving at its own satisfaction that it is necessary to deprive a citizen of his right to property.”

58. What needs to be emphasised is that hearing required to be given under Section 5A(2) to a person who is sought to be deprived of his land and who has filed objections under Section 5A(1) must be effective and not an empty formality. The Collector who is enjoined with the task of hearing the objectors has the freedom of making further enquiry as he may think necessary. In either eventuality, he has to make report in respect of the land notified under Section 4(1) or make different reports in respect of different parcels of such land to the appropriate Government containing his recommendations on the objections and submit the same to the appropriate Government along with the record of proceedings held by him for the latter's decision. The appropriate Government is obliged to consider the report, if any, made under Section 5A(2) and then record its satisfaction that the particular land is needed for a public purpose. This exercise culminates into making a declaration that the land is needed for a public purpose and the declaration is to be signed by a Secretary to the Government or some other officer duly authorised to certify its orders. The formation of opinion on the issue of need of land for a public purpose and suitability thereof is

sine qua non for issue of a declaration under Section 6(1). Any violation of the substantive right of the landowners and/or other interested persons to file objections or denial of opportunity of personal hearing to the objector(s) vitiates the recommendations made by the Collector and the decision taken by the appropriate Government on such recommendations. The recommendations made by the Collector without duly considering the objections filed under Section 5A(1) and submissions made at the hearing given under Section 5A(2) or failure of the appropriate Government to take objective decision on such objections in the light of the recommendations made by the Collector will denude the decision of the appropriate Government of statutory finality. To put it differently, the satisfaction recorded by the appropriate Government that the particular land is needed for a public purpose and the declaration made under Section 6(1) will be devoid of legal sanctity if statutorily engrafted procedural safeguards are not adhered to by the concerned authorities or there is violation of the principles of natural justice. The cases before us are illustrative of flagrant violation of the mandate of Sections 5A(2) and 6(1). Therefore, the second question is answered in affirmative.

59. Before parting with this aspect of the case, we consider it proper to deal with the two judgments relied upon by Dr. Dhawan in support of his submission that the declaration issued under Section 6(1) is conclusive and the satisfaction recorded by the competent authority cannot be subjected to judicial review. In *Somawanti v. State of Punjab* (supra), after analysing the relevant provisions, the majority of the Constitution Bench observed:

“The scheme of the Act is that normally the provisions of Section 5-A have to be complied with. Where, in pursuance of the provisions, objections are lodged, these objections will have to be decided by the Government. For deciding them the Government will have before it the Collector's proceedings. It would, therefore, be clear that the declaration that a particular land is needed for a public purpose for a company is not to be made by the Government arbitrarily, but on the basis of material placed before it by the Collector. The provision of sub-section (2) of Section 5-A make the decision of the Government on the objections final while those of sub-section (1) of Section 6 enable the Government to arrive at its satisfaction. Sub-section (3) of Section 6 goes further and says that such a declaration shall be conclusive evidence that the land is needed for a public purpose or for a company.

The Government has to be satisfied about both the elements contained in the expression “needed for a public purpose or a company”. Where it is so satisfied, it is entitled to make a declaration. Once such a declaration is made sub-section (3) invests it with conclusiveness. That conclusiveness is not merely regarding the fact that the Government is satisfied but also with regard to the question that the land is needed for a public purpose or is needed for a company, as the case may be. Then again, the conclusiveness must necessarily attach not merely to the need but also to the question whether the purpose is a public purpose or what is said to be a company is a company. There can be no “need” in the abstract. It must be a need for a “public purpose” or for a company.

The Act has empowered the Government to determine the question of the need of land for a public purpose or for a company and the jurisdiction conferred upon it to do so is not made conditional upon the existence of a collateral or extraneous fact. It is the existence of the need for a public purpose which gives jurisdiction to the Government to make a declaration under Section 6(1) and makes it the sole judge whether there is in fact a need and whether the purpose for which there is that need is a public purpose. The provisions of sub-section (3) preclude a court from ascertaining whether either of these ingredients of the declaration exists.”

(emphasis supplied)

60. In *Ganga Bishnu Swaika v. Calcutta Pinjrapole Society* (supra), the two-Judge Bench considered the amendment made in the Act in 1923 and observed:

“As sub-section (1) stood prior to 1923 the words were “subject to the provisions of Part VII of the Act, when it appears to the Local Government that any particular land is needed for a public purpose or for a Com-

pany, a declaration shall be made etc. The amendment of 1923 dropped these words and substituted the words “when the Local Government is satisfied after considering the report, if any, made under Section 5-A, sub-section (2)” etc. It seems that the amendment was considered necessary because the same Amendment Act inserted Section 5-A for the first time in the Act which gave a right to persons interested in the land to be acquired to file objections and of being heard thereon by the Collector. The new section enjoined upon the Collector to consider such objections and make a report to the Government, whose decision on such objections was made final. One reason why the word “satisfaction” was substituted for the word “appears” seems to be that since it was the Government who after considering the objections and the report of the Collector thereon was to arrive at its decision and then make the declaration required by sub-section (2), the appropriate words would be “when the Local Government is satisfied” rather than the words “when it appears to the Local Government”. The other reason which presumably led to the change in the language was to bring the words in sub-section (1) of Section 6 in line with the words used in Section 40 where the Government before granting its consent to the acquisition for a Company has to “be satisfied” on an inquiry held as provided thereafter. Since the Amendment Act 38 of 1923 provided an inquiry into the objections of persons interested in the land under Section 5-A, Section 40 also was amended by adding therein the words “either on the report of the Collector under Section 5-A or”. Section 41 which requires the acquiring Company to enter into an agreement with the Government also required satisfaction of the Government after considering the report on the inquiry held under Section 40. The Amendment Act 38 of 1923 now added in Section 41 the report of the Collector under Section 5-A, if any. These amendments show that even prior to the 1923 Amendment Act, whenever the Government was required by the Act to consider a report, the legislature had used the word satisfaction on the part of the Government. Since the Amendment Act 1923 introduced Section 5-A requiring the Collector to hold an inquiry and to make a report and required the Government to consider that report and the objections dealt with in it, the legislature presumably thought it appropriate to use the same expression which it had used in Sections 40 and 41 where also an inquiry was provided for and the Government had to consider the report of the officer making such inquiry before giving its consent.

Sub-section (1) provides that when the Government is satisfied that a particular land is needed for a public purpose or for a Company, a declaration shall be made “to that effect”. Satisfaction of the Government after consideration of the report, if any, made under Section 5-A is undoubtedly a condition precedent to a valid declaration, for, there can be no valid acquisition under the Act unless the Government is satisfied that the land to be acquired is needed for a public purpose or for a Company.

But there is nothing in sub-section (1) which requires that such satisfaction need be stated in the declaration. The only declaration as required by sub-section 1 is that the land to be acquired is needed for a public purpose or for a Company. Sub-section (2) makes this clear, for it clearly provides that the declaration “shall state” where such land is situate, “the purpose for which it is needed”, its approximate area and the place. Where its plan, if made, can be inspected. It is such a declaration made under sub-section (1) and published under sub-section (2) which becomes conclusive evidence that the particular land is needed for a public purpose or for a Company as the case may be. The contention therefore that it is imperative that the satisfaction must be expressed in the declaration or that otherwise the notification would not be in accord with Section 6 is not correct.”

(emphasis supplied)

61. The proposition laid down in the aforementioned two judgments does not support the stance of the Chandigarh Administration that even though there is breach of the mandate of Section 5A read with Section 6(1), the Court cannot, after the issue of declaration under Section 6(1), nullify the acquisition proceedings. As a matter of fact, the ratio of both the judgments is that satisfaction of the appropriate Government envisaged in Section 6(1) must be preceded by consideration of the report prepared by the Collector after considering the objections filed under Section 5A and hearing the objectors. This necessarily implies that the Government must objectively apply its mind to the report of the Collector and the objections filed by the landowners and then take a decision whether or not the land is needed for the specified public purpose. A mechanical endorsement of the report of the Collector cannot be a substitute for the requirement of application of mind by the Government which must be clearly reflected in the record.

62. In addition to what we have observed on the issue of flagrant violation of the two sections, it will be apposite to recapitulate the language of the declarations issued

under Section 6(1), which were published on 28.2.2007. A reading of the declarations makes it clear that the authority issuing the same was totally unmindful of the requirement of the statute. This could be the only reason why instead of recording satisfaction of the appropriate Government that the land is needed for a public purpose, the notification uses the expressions “appears to the Administrator” and “likely to be needed”. This only adds to the casualness with which the entire issue of acquisition has been dealt with by the higher functionaries of the Chandigarh Administration.

63. Adverting to the impugned order, we find that the High Court has not examined the substantive grounds on which the appellants had challenged the acquisition of their land with the required seriousness and failed to notice that the LAO had not at all considered several objections including those relating to adverse impact on the environment and ecology of the area raised by the landowners and mechanically recommended the acquisition of land notified under Section 4(1), that the reports of the LAO were not placed before the competent authority and that even the Advisor had not objectively considered the reports of the LAO in the light of the objections filed under Section 5A(1) and simply appended his signatures on the note prepared by the Secretary (Finance). This omission on the High Court’s part has resulted in miscarriage of justice.

64. In view of the findings recorded on the main questions, we do not consider it necessary to deal with and decide other questions including the one that the purpose specified in the notifications issued under Sections 4(1) and 6(1) was not a *bona fide*

public purpose and that in the garb of acquiring land for IT Park etc., the Chandigarh Administration wanted to favour the private developers.

65. In the result, the appeals are allowed, the impugned order is set aside and Notifications dated 26.6.2006, 2.8.2006 and 28.2.2007 issued by the Chandigarh Administration under Sections 4(1) and 6(1) of the Act are quashed. The parties are left to bear their own costs.

.....J.
[G.S. SINGHVI]

.....J.
[SUDHANSU JYOTI MUKHOPADHAYA]

New Delhi,
October 11, 2012.

JUDGMENT