

CASE NO.:
Appeal (civil) 5721-5725 of 2001

PETITIONER:
State of Punjab and others

RESPONDENT:
Sanjeet Singh Grewal and others

DATE OF JUDGMENT: 03/07/2007

BENCH:
B.P. SINGH & ALTAMAS KABIR

JUDGMENT:

J U D G M E N T

CIVIL APPEAL NOS. 5721-5725 OF 2001
State of Punjab and others

\005.Appellants

Versus

\005.Respondents

Sanjeet Singh Grewal and others
WITH

CIVIL APPEAL NOS. 5727-5731 OF 2001
New Town Planning and Development
Authority for Anandgarh through
Chief Administrator

\005.Appellant

Versus

The Securities and Exchange
Board of India and others
AND

\005.Respondents

SPECIAL LEAVE PETITION (C) NO.7946 OF 2002
State of Punjab and others

\005.Petitioners

Versus

Jasmer Singh and others

\005.Respondents

B.P.SINGH, J.

1. In this batch of Civil Appeals by Special Leave the common judgment and order of the High Court of Punjab and Haryana at Chandigarh dated March 28, 2001 in Civil Writ Petition Nos. 7291, 8708, 9047, 9143 and 16738 of 2000 has been impugned. Civil Appeal Nos.5721 - 5725 of 2001 have been preferred by the State of Punjab while Civil Appeal Nos.5727- 5731 of 2001 have been preferred by the New Town Planning and Development Authority for Anandgarh. Special Leave Petition No.7946 of 2000 has been preferred against the order of the High Court dated September 10, 2001 in Civil Writ Petition No.7050 of 2001 adjourning the writ petition sine die awaiting the judgment of this Court in the aforesaid Civil Appeals. By this common judgment and order we proceed to dispose of all the appeals before us as also the Special Leave Petition.

2. The facts of the case are not in dispute. The State of Punjab issued Notifications Exhibits P-1 to P-29 dated March 13, 2000 under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') for acquisition of about 9354 acres of land in 29 villages of the district of Ropar. The acquisition was proposed to be made for "a public purpose namely for setting up of new town, Anandgarh". Objections were invited against the proposed acquisition. Several writ petitions were filed before the High Court challenging the aforesaid Notifications alleging that the Notifications had been issued in derogation of the provisions of the Punjab

Regional and Town Planning and Development Act, 1995 (hereinafter referred to as 'the Act of 1995'). It was stated that to set up a new town, the site had first to be selected by the Board constituted under the Act of 1995. The Board was thereafter required to designate a planning agency. This was not done. The provisions of Sections 56, 57, 58 and 59 of the Act of 1995 were completely ignored. Though the New Town Planning and Development Authority for Anandgarh was constituted by the Government on May 20, 1999 under Section 31 of the Act of 1995, in the absence of a decision of the Board under Sections 56 and 57 of the Act of 1995, the aforesaid Special Town Planning Authority for Anandgarh could not take up the planning and development of the new township. It was alleged that a large number of influential persons including senior bureaucrats had bought land in the area with a view to earn profit since the Government had announced compensation at an exorbitant rate. It was also submitted that the provisions of the Punjab New Capital (Periphery) Control Act, 1952 (hereinafter referred to as 'the Periphery Act') and the rules framed thereunder have been violated. Apart from these legal submissions it was also urged that the site was not suitable for a new town.

3. The appellants (respondents in the writ petitions) contested the writ petitions and submitted that the State Government having taken a decision to set up a new township Anandgarh, and having appointed a Special Planning Authority under Section 31 of the Act, the Board had no role to play in the matter and it was not necessary that the Board should have first selected a site and designated a planning agency before the Special Planning Authority could take any action for planning and development of the new township. It was also submitted that the Periphery Act did not inhibit the State of Punjab from acquiring land in the controlled area under the Periphery Act for the purpose of setting up a township.

4. Having regard to the submissions urged before it the High Court formulated the following questions which fell for its consideration:-

"(i) Are the provisions of the Punjab Regional and Town Planning and Development Act, 1995 applicable to and attracted in the facts and circumstances of the present case?

(ii) If yes, have the provisions of the 1995 Act been followed in the present case? Does the selection of the site for setting up the city of Anandgarh conform to the requirements of the statute?

(iii) Have the respondents acted in violation of the provisions of the Punjab New Capital (Periphery) Control Act, 1952 and the Rules framed thereunder?

(iv) Is the action of the respondents based on extraneous considerations and vitiated by malafides?

(v) Have the petitioners made out a case for interference by this court under article 226 of the Constitution of India?

5. The High Court rejected the submission urged on behalf of the State that the Act of 1995, particularly Section 56 thereof, was not applicable when acquisition was made under the Land Acquisition Act, since the two acts operated in two distinct and separate fields, and that the provisions of the Act of 1995 were applicable only when the Master Plan was sought to be implemented without acquisition of land. The High Court held that admittedly the Board under Section 56

of the Act had not selected the site for the new township after considering the objections and suggestions as provided therein, nor did the Government ever consult the Board in the matter. It rejected the argument of the State that the Act of 1995 was applicable only when compensation was not payable. It further held that the Government itself proceeded on the basis that the Act of 1995 was applicable inasmuch as it proceeded to implement its scheme through The New Town Planning and Development Authority for Anandgarh constituted under Section 31 of the Act of 1995 and it was on the recommendation of the aforesaid authority that land was sought to be acquired under Section 42 of the Act of 1995. It therefore held that the Act of 1995 was applicable.

6. Considering the question whether the provisions of the 1995 Act were followed, it noticed the concession made by the State that the matter with regard to the selection of site for the new township was never referred to the Board. The New Town Planning and Development Authority for Anandgarh constituted under Section 31 of the Act had considered three sites and forwarded its recommendation to the Chief Town Planner who after examination of the matter selected the site in question. The matter was placed before the State Cabinet for its approval which was granted on January 12, 2000. On February 24, 2000 the aforesaid development authority requested the State Government to acquire the lands in question and accordingly the impugned Notifications were issued on March 13, 2000 under Section 4 of the Land Acquisition Act. The High Court after considering the Scheme of the Act upheld the contention urged on behalf of the writ petitioners that only the Board constituted under Section 3 of the Act of 1995 could, in exercise of its authority under Sections 14 and 56 of the Act read with Rule 22, take a decision regarding the selection of the site for a new town. Only thereafter further action could be taken by the State for constituting a Special Agency for the planning and development of the new town under Section 31 of the Act and which Agency could take further action for the said purpose as was considered necessary. The High Court recorded its findings as under:-

"On a cumulative consideration of the provisions of the Act, it appears clear to us that the act entrusts the task of selecting the site for a new town to the Board. Thereafter, a Master Plan has to be prepared in accordance with the prescribed procedure. After the Master Plan is ready, the government is competent to constitute a special agency for the planning and development of the new town. At the asking of this authority, the government can proceed to acquire the land. Thus despite the provision for the constitution of a Special Authority, the Board cannot be by-passed. The selection of site is the job assigned to the Board. This is so obviously because it has and can associate experts. It can get assistance from others".

7. Accordingly, the High Court held that the State action did not conform to the requirements of the Act of 1995 and thus could not be sustained.

8. The High Court held that the provisions of the Periphery Act, 1952 had also been violated. It concluded that though Section 10 did not affect the power of the Government or any other authority to acquire land in the controlled area under any other law for the time being in force, yet the bar contained in Section 5 prohibited the erection or buildings or making of roads even under the garb of establishing a new town without permission of the competent authority under the Periphery Act. No such permission had been

taken by the Government and yet the land was sought to be acquired for the purpose of setting up a new town. On the question of mala fide the High Court did not record a categorical finding and gave to the State the benefit of doubt.

9. Lastly, the High Court held that in the facts and circumstances of the case the writ petitioners were entitled to relief under Article 226 of the Constitution of India.

10. In the end the High Court recorded its conclusions in the following words:-

"(i) Nature is beautiful. But it demands obedience to its ordinances. When violated, the earth erupts and we have earthquakes. Man cannot continue to 'pick nature's pocket'. He cannot raise multi-storeyed monsters of steel and cement at every place. All places cannot be suitable for a new city.

(ii) Recognising the need for a multi-disciplinary consideration, the legislature had enacted the "Punjab Regional and Town Planning and Development Act, 1995" and provided for the constitution of the Board and other Authorities. The Board consists of persons who have knowledge or experience in the fields of engineering, housing, town planning and urban development. It can associate others for the efficient performance of its onerous functions.

(iii) While embarking upon the project of the new town 'Anandgarh', the State has not shown even a scant regard for the salutary provisions of the statute. It has acted against the express letter and spirit of the Act. It has not allowed the Board to perform its functions. In particular, it has not let the Board 'select the site' for the new city. It has acted in contravention of the statute.

(iv) In the process, the government has deprived the citizen of the opportunity to put forth the objections/suggestions and denied itself the benefit of good advice.

(v) The mere fact that the government finds the procedure prescribed by the Act and the Rules to be lengthy or cumbersome and such as can result in delay cannot be a ground to avoid obedience to the provisions of law. The courts cannot allow 'time' taken in complying with the provisions to become the graveyard of good laws or peoples' rights.

(vi) The State government has also failed to consider the objections raised and the relevant suggestions made by the Union Ministries of Defence and Urban Development. Its action is likely to finish the farms and farmers who live in the periphery of Chandigarh.

(vii) The State government has proceeded to acquire land without obtaining permission from the competent authority under the provisions of the Punjab New Capital (Periphery) Control Act, 1952 and the Rules. Thus, it has proceeded to acquire land without being entitled to raise any construction or even lay any roads. The entire proceedings can prove to be an exercise in futility.

(viii) The courts do not count heads. The mere fact that the petitioners are few in number or that their holdings are small is no ground to deny them the relief as prayed for in these petitions. Even the poor are the God's children.

(ix) There is a suspicion surrounding the action of the State Government in acquiring the land. There is a smell. But not a stink. Suspicion is not enough to uphold the plea of mala fides. Thus, the respondents are entitled to a benefit of doubt when the entire acquisition is challenged on the ground of extraneous considerations.

(x) The State is undoubtedly trying to keep its head up and the expenses down. However, its ability to gather the resources to pay for the land and to develop it, is extremely suspect and its wisdom doubtful".

11. The High Court therefore struck down the impugned Notifications issued under Section 4 of the Land Acquisition Act and allowed the writ petitions.

12. The learned Advocate General for the State of Punjab assailing the impugned judgment and order of the High Court submitted that the High Court committed a basic error in coming to the conclusion that it was only the Board constituted under Section 3 of the Act of 1995 which could select the site for a new town and take all necessary action in connection therewith, and further that the selection of a site could be challenged by any person not necessarily an owner of land sought to be acquired. He took us to the scheme of the Act of 1995 as also some provisions of the Periphery Act. He described the Act of 1995 as a futuristic legislation providing for modern planning and urban development with multi level institutions. According to him Section 14 of the Act which laid down the functions of the Board did not mandate that the site of a new town must be selected by the Board. In fact there was no other provision in the Act of 1995 to this effect. Sections 56, 57 and 61 of the Act permitted the Government to decide where the new township should be located and the State Government was not compelled to confine its choice to locations selected by any other authority under the Act. The State Government is not required mandatorily to entrust the duty of selection of the site of a new town to the Board. In fact under Section 28 of the Act the State Government or the Board may entrust any of the authorities to do any work for carrying out the purposes of the Act. The powers that could be entrusted to the PUDA under Section 28 of the Act by the State Government and the Board could also be entrusted to the New Town Planning and Development Authority constituted under Section 31 of the Act. Indeed the State Government had constituted the New Town Planning and Development Authority for Anandgarh under Section 31 of the Act and therefore it was for the said Town Planning and Development Authority to select the site and to plan and develop the new township. For this purpose it could request the State Government to acquire lands as provided in Section 42 of the Act. He further emphasized that the power of the Board was only advisory in nature. The State Government could entrust any work to any of the authorities under the Act. Power of the State was not fettered even in the matter of selection of site and planning and development of a new township. The Town Planning and Development Authority for Anandgarh was actually entrusted to do all this and there was, therefore, no need for the Board to be called upon to select the site and take other steps. In fact the New Town Planning and Development Authority for Anandgarh was constituted

under Section 31 of the Act of 1995 on May 20, 1999 which recommended the acquisition of the lands in question pursuant to which Notifications were issued under Section 4 of the Land Acquisition Act on March 13, 2000.

13. Shri Sanjiv Sharma, learned Additional Advocate General, in his supplementing arguments submitted that since the functions of PUDA under Section 28 of the Act could be entrusted to the Special Urban Planning and Development Authority constituted under Section 29 and the New Town Planning and Development Authority under Section 31 of the Act of 1995, the Board constituted under Section 3 of the Act did not come into the picture at all. He also emphasized the fact that the challenge was to the Notifications issued under Section 4 of the Land Acquisition Act asking not for a writ of mandamus but for quashing the Notifications on the ground that there existed no valid and legal public purpose for which the acquisition was purported to be made. According to him the scheme of the Act left no room for doubt that the powers of the State Government were wide enough to include selection of the site for a new town. Indeed the Board had no mechanism for selecting an appropriate site for a new town and, therefore, the State Government followed the route of Sections 28, 38 and 42 of the Act of 1995 i.e. by conferring on the New Town Planning and Development Authority constituted under Section 31 of the Act the powers and functions of PUDA under section 28 of the Act, and then acquiring the land on the recommendation of the New Town Planning and Development Authority under Section 42 of the Act of 1995. He further submitted that if the High Court was right in its opinion the State would be compelled to first move the Board for the purpose of selection of site. This was wholly unnecessary because in all cases the sanctioning authority being the State, its powers and authority must be interpreted in that larger perspective. He also submitted that there was no requirement in law that a detailed plan complete in all respects must precede the acquisition under the Land Acquisition Act. He also emphasized the provisions of Section 10 of the Periphery Act and submitted that the State was not inhibited from acquiring lands which came within the controlled area under the Periphery Act, and this was made explicit by Section 10 of the Periphery Act.

14. Mr. Vikas Singh, learned Additional Solicitor General, appearing for PUDA in SLP) No. 7946 of 2002 submitted that the High Court adjourned the matter sine die awaiting the judgment of this Court in view of the fact that it found certain common questions arising in the Writ Petition. However, he also made his submission on merit since the principles laid down in this batch of appeals may apply to the matter pending before the High Court. According to him the acquisition is sought to be made under the Land Acquisition Act. Section 56 does not at all contemplate compulsory acquisition. The High Court proceeded on the erroneous basis that the scheme should first be formulated and only thereafter the acquisition of land could be made. This completely ignored the State's power of eminent domain. The State is not denuded of its power to acquire land merely because under the scheme of some other Act a Board is constituted to select the site for setting up a new town. He referred to the Scheme of Chapter XI of the Act of 1995 and submitted that the State may be compelled to acquire land under Section 84 of the Act. In this connection he also referred to Section 71(3)(f) of the Act of 1995 which provides that the Draft Comprehensive Master Plan may designate land subject to acquisition for any public purpose. He, therefore, submitted that the power of eminent domain under the Land Acquisition Act cannot be curtailed by the Act of 1995 or any other Act. According to him after the selection of site for a new town under Section 56 of the Act of 1995 there is no provision for compulsory acquisition of land. The site may be selected by the State as well as by the Board constituted under Section 3 of the Act of 1995. Where

the compulsory acquisition route is followed the only procedure for acquisition is the one under the Land Acquisition Act. He buttressed his submission by emphasizing that in case the Board did not act to select the site, the State will be rendered powerless. The price of land may go up to such an extent that it may become practically impossible to acquire land for the said purpose. He also cited authorities in support of his submissions which we shall consider later in this judgment.

15. Mr. J.S. Grewal, learned Senior Counsel, appearing on behalf of the respondents referred to the background in which the Act of 1995 was enacted. He submitted that under the old Punjab Housing Development Board Act 1952 the Board did not include any Minister or public figure. The Board consisted of officials of the State Government. Under the Act of 1995 the Board is a high power Board presided over by the Chief Minister of the State. He submitted that the planning area as well as the planning agency has to be declared and designated by the Board. The Board has a very vital role to play since it is the apex authority under the Act. He submitted that if any land is to be acquired under the Act of 1995, that must be done in accordance with the procedure laid down for that purpose in the Act. He, therefore, submitted that when any land is acquired for the purpose of any authority under the Act of 1995, the State Government may at the request of the authority concerned proceed to acquire land under the provisions of the Land Acquisition Act. On payment by the authority of compensation awarded under the Land Acquisition Act and of any other charges incurred in acquiring the land, the land shall vest in the authority. He emphasised the overriding effect of the Act of 1995 and referred to Section 179 thereof. He contended that for setting up a new township provisions are made only in the Act of 1995 and, therefore, the provisions of the special Act must be scrupulously followed. He did not dispute the State's power of eminent domain and submitted that in appropriate cases the State may acquire lands for public purposes. However, if the land has to be acquired under Section 42 of the Act of 1995 it must be acquired for the purpose of the authority under the Act. If the land is to be acquired to set up a new town as stated in the impugned notifications the site must be selected in accordance with the provisions of the Act of 1995. He did not dispute that if the Government proposes to acquire any land under the Land Acquisition Act for any purpose not covered by the Act of 1995, the provisions thereof will not be attracted. In the instant case, he submitted that the site was in fact selected by the New Town Planning Development Authority constituted under Section 31 of the Act and not by the Board. This was clearly contrary to the provisions of Section 56 which in terms provided that it was the Board which was authorized to declare its intention by issuance of Notification in the Official Gazette to specify any area in the State to be a regional planning area, a local planning area or the site for a new town. Thereafter it was again the Board which could designate the planning agency for that area for the purpose of performance of the functions assigned to it. Thus, so far as the selection of site for a new town is concerned, the site has to be identified by the Board and after hearing objections the Board could declare the site for a new town. He further drew a distinction between the selection of a site for a new town, and preparation of plans for development of the selected site. The planning may be entrusted by the Board to any of the authorities under the Act who may be called upon by the State Government or the Board to take up the work in connection with the preparation and implementation of regional plans, master plans, new township plans, schemes etc. According to him before any of the authorities could be called upon to do so, in the case of setting up of a new town, the existence of a selected site was a pre-condition because no development could take place unless the site was first selected. He, therefore, fully supported the findings of the High Court and submitted that in the absence of a validly selected site for a

new township by the Board, no planning and development work could be entrusted to any of the authorities under the Act. The selection of site which amounted to declaration of a planning area was entrusted to the Board under Section 56 of the Act and the authority constituted under Section 31 for the development of the township could not be entrusted with the task of selecting the site and declaring a planning area.

16. To appreciate the submissions urged on behalf of the parties it is necessary to notice some of the salient provisions of the Act of 1996. The Act purports to be:-

"An Act to make provision for better planning and regulating the development and use of land in Planning areas delineated for that purpose, for preparation of Regional Plans and Master Plans and implementation thereof; for the constitution of a State Regional and Town Planning and Development Board, for guiding and directing the planning and development processes in the State; for the constitution of a State Urban Planning and Development Authority. Special Urban Planning and Development Authorities and New Town Planning and Development Authorities, for the effective and planned development of planning areas; and for undertaking urban development and housing programmes and schemes for establishing new towns; and for matters connected therewith or incidental thereto".

"Authority" has been defined as follows :-

2(d) "Authority" means the Punjab Urban Planning and Development Authority constituted under Section 17 or a Special Urban Planning and Development Authority constituted under Section 29 or a New Town Planning and Development Authority constituted under Section 31."

Sections 2(za) and 2(zb) define the "planning agency" and the "planning area":-

"2(za) "Planning Agency" means the Punjab Urban Planning and Development Authority, a Special Urban Planning and Development Authority, a New Town Planning and Development Authority, a local authority or the Town and Country Planning Wing of the Department of Housing and Urban Development, designated as such by the Board under Section 57 of this Act for a planning area.

2(zb) "planning area" means a regional planning area, a local planning area or a site for a new town declared as such under Section 56 of this Act."

17. The Punjab Regional and Town Planning and Development Board is established under Section 3 of the Act of 1995. Section 3 reads as under:-

"3. Establishment of the Board. \026 As soon as may be, after the commencement of this Act, the State Government shall, by notification in the Official Gazette, establish for the purposes of carrying out the functions assigned to it under this Act, a Board to be

called the Punjab Regional and Town Planning and Development Board".

18. Section 4 provides for the constitution of the Board which shall consist of a Chairman, Vice Chairman, a Member Secretary, not more than 12 ex officio members to be nominated by the State Government from amongst the Ministers including the Minister-in-charge of Housing and Urban Development and Local Government and the Secretaries to Government of Punjab etc. and not more than three non-official members to be nominated by the State Government. The Chief Minister of Punjab and the Minister-in-Charge of Housing and Urban Development shall be respectively the Chairman and the Vice-Chairman of the Board. The functions of the Board are contained in Section 14 which provides as under :-

"14. Functions of the Board:- (1) Subject to the provisions of the Act and rules framed thereunder, the functions of the Board shall be to advise the State Government and to guide and direct the planning agencies, with respect to matters relating to the planning, development and use of urban and rural land in the State, and to perform such other functions as the State Government, from time to time, assign to it".

(2) In particular and without prejudice to the generality of the foregoing provisions, the Board may and shall, if required by the State Government :-

(a) determine the regions, cities, towns, or a part of a city or a site for new town or preparation of Regional Plans or Master Plans ;

(b) direct the preparation of Regional Plans or Master Plans or other documents necessary therefor to be prepared by any of the Planning Agencies ;

(c) undertake, direct or advise on all matters pertaining to the coordination in the planning and implementation of physical development programme ;

(d) collect, maintain and publish statistics and monographs on regional and town planning and perform any other functions which are supplemental, incidental or consequential to any of the functions referred to in this sub-section or which may be prescribed."

19. It would thus be seen that the Board constituted under Section 3 of the Act is a high-powered authority with the Chief Minister at its head. It is no doubt true that the Board may be called upon by the State Government to do certain things as are enumerated in sub-section (2) of Section 14, but it is equally true that even without the directions of the State Government the Board may itself perform those functions. Section 14 does say that the functions of the Board shall be to advise the State Government and to guide and direct the planning agencies and to perform such other functions as the State Government, from time to time, assign to it. This, however, should not lead to the conclusion that the Board, a statutory authority, can be ignored by the State Government altogether. It may be that the advice tendered by the Board may not be acceptable to the State Government,

but that is quite different from suggesting that having regard to the overriding powers of the State Government the Board may not be consulted at all even with regard to the matters and functions which it is required to perform under the Act. It is also worth noticing that the matters referred to in Clause (a) include the determination by the Board of a site for new town. While the Board may under Clause (b) direct the other planning agencies to prepare the Regional Plans or Master Plans, determination of a site for new town cannot be delegated by the Board to the planning agencies. The functions to be performed by the Board as enumerated in Section 14 are not exhaustive, and cannot be, by the very nature of the functions to be performed by the Board. Section 14 should not be read in isolation. The other provisions of the Act have also to be read to understand the powers and authority of the Board, and one such provision is Section 56 of the Act. It is useful at this stage to notice the provisions of Sections 56 and 57, which are as under:-

"56. Declaration of Planning Areas. \026 (1) The Board may, from time to time, by notification in the Official Gazette, declare its intention to specify any area in the State to be a regional planning area, a local planning area or the site for a new town (hereinafter referred to as the planning area).

(2) Before making the declaration under sub-section (1) the Board may take into consideration such matters as may be prescribed.

(3) Every notification published under sub-section (1) shall define the limits of the area to which it relates.

(4) Any person including representative of a Department of the State Government or the Central Government or a local authority or any other institution may, within sixty days from the date of the publication of the notification under sub-section (1), submit any objections or suggestions in writing relating to anything contained in that notification, to the Board and the Board shall consider all such objections and suggestions.

(5) After the expiry of two months from the date of publication of the notification under sub-section (1) and after considering objections and suggestions, if any, received under sub-section (4), the Board may, by notification in the Official Gazette,-

(a) declare the area with or without any modification to be a regional planning area, a local planning area or a site for a new town, as the case may be ; and

(b) specify the name of the regional planning area or the local planning area or a site for the new town, as the case may be.

(6) Except in such class or category of cases which the Board may in its regulation exempt and except in the case of operational construction or construction in any area comprised in abadi-deh of any village falling inside its lal lakir or phirni, no person shall, on or after publication of public notice under sub-section (5) and till the date the Regional Plan or the Master Plan comes into operation under Section 64 or under

Section 75, as the case may be, institute or change the use of land for any purpose or carry out any development in respect of any land without the previous permission of the Competent Authority and the provisions of Sections 67 and 68 mutatis mutandis shall apply to the grant of such permission.

(7) The Board may, after following the procedure as laid down in this section, alter the limits of any regional planning area, local planning area or the site for a new town.

57. Designation of Planning Agencies. \026 As soon as may be after declaration of a regional planning area, a local planning area or a site for new town, the Board may for the purpose of the performance of the functions assigned to it, designate planning agency for that area :.

Provided that more than one planning agencies may be designated to perform different functions."

20. A mere perusal of these provisions amply clarifies that the Board has been authorized to declare its intention to specify any area in the State :-

- (i) to be a regional planning area ;
- (ii) a local planning area ; and
- (ii) a site for a new town.

An area so specified is referred to as "the planning area". Thus what applies to a planning area such as a site for a new town, also applies to a regional planning area or a local planning area. The planning area undoubtedly has to be declared by the Board after following the procedure laid down in Section 56. Before making a declaration of its intention to specify a planning area under sub-section (1) the Board has to consider such matters as may be prescribed under the rules. The limits of the specified area have to be clearly defined and a Notification published in the Official Gazette declaring the intention of the Board to specify a planning area. Under sub-section (4) of Section 56 objections and/or suggestions may be made which have to be considered by the Board, whereafter the Board may by Notification in the Official Gazette declare the area with or without any modification to be a regional planning area, a local planning area or a site for a new town, as the case may be. It is further required to specify the name of the planning area so declared. Having done so, the Board is required to designate the planning agency for that area for the purpose of performance of the functions assigned to it.

21. On a perusal of Sections 56 and 57 of the Act of 1995 we entertain no doubt that it is the Board which has to, by Notification in the Official Gazette, specify an area as a regional planning area, a local planning area or a site for a new town clearly defining the limits of the area. After considering the objections and suggestions that may be received by it the Board may with or without modifications declare the area to be a planning area by Notification in the Official Gazette, and thereafter appoint a planning agency for performance of the functions related thereto. No provision of the Act has been shown to us which authorizes any other agency or authority under the Act to declare a planning area which includes the site for a new town. This function has to be performed only by the Board and that too after entertaining objections and suggestions and considering them in accordance with the Act and the Rules. Not only individuals but even representatives of the departments of the State Government or the

Central Government or a local authority or any other institution may submit its objections or suggestions relating to anything contained in the Notification. So construed, in the case of setting up of a new township, the first step to be taken by the Board is to declare a planning area viz. select a site for the new town after entertaining objections and considering the same. Thereafter the Board may designate the planning agency for the purposes of performance of the functions assigned to it. There is nothing in Sections 56 and 57 which can persuade us to hold that the planning agency itself may select the site for a new town. This would become apparent after we consider some of the other provisions of the Act.

22. Section 17 provides for the establishment and constitution of the Authority to be known as the Punjab Urban Planning and Development Authority (PUDA for short). The authority is a body corporate as well as a local authority. The Minister-in-Charge of Housing and Urban Development is its Chairman. The functions of the authority are enumerated in Section 28 which reads as follows :-

"28. Objects and functions of the Authority \026 (1) The objects of the Authority shall be to promote and secure better planning and development of any area of the State and for that purpose the Authority shall have the powers to acquire by way of purchase, transfer, exchange or gift or to hold, manage, plan develop and mortgage or otherwise dispose of land or other property or to carry out itself or in collaboration with any other agency or through any other agency on its behalf, building, engineering, mining and other operations to execute works in connection with supply of water, disposal of sewerage, control of pollution and other services and amenities and generally to do anything with the prior approval or on direction of the State Government, for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing provisions, the Authority itself or in collaboration with any other agency or through any other agency on its behalf. -

(i) if so required by the State Government or the Board, take up the works in connection with the preparation and implementation of Regional Plans, Master Plans and New Township Plans, and town improvement schemes;

(ii) undertake the work relating to the amenities and services to be provided in the urban areas, urban estates, promotion of urban development as well as construction of houses.

(iii) promote research, development of new techniques of planning, land development and house construction and manufacture of building material;

(iv) promote companies, associations and other bodies for carrying out the purposes of the Act; and

(v) perform any other functions which are supplemental, incidental or consequential to any of the functions referred to in this sub-section or

which may be prescribed".

23. Clause (1) of sub-section (2) of Section 28 is significant. It provides that the State Government or the Board may require the authority (PUDA) to take up the works in connection with the preparation and implementation of Regional Plans, Master Plans and New Township Plans, and town improvement schemes. It does not empower PUDA to declare the site for a new town as a planning area though it is authorized to prepare and implement new township plans. It can, therefore, be safely concluded that after a site for a new town is selected by the Board and declared as a planning area in exercise of its powers under Section 56 of the Act, the authority designated as the planning agency for that area, can take up the works in connection with the preparation and implementation of new township plans.

24. Section 29 provides for the constitution of Special Urban Planning and Development Authorities. The Special Authority is constituted if the State Government is of the opinion that the object of proper development of any area or group of areas together with such adjacent areas as may be considered necessary will be best served by entrusting the work of development or redevelopment thereto to a Special Authority, instead of PUDA. Where the State Government is so satisfied it may, by Notification, constitute such a Special Authority for that area and thereupon, all the powers and functions of PUDA relating to development and redevelopment of that area under the Act shall be exercised and performed by the Special Authority so constituted. Section 29, therefore, enables the State Government to constitute a Special Urban Planning and Development Authority for the proper development of an area or a group of areas. The Special Authority so constituted has all the powers of PUDA relating to development and redevelopment of that area.

25. Under Section 30 it is also open to the State Government to designate a local authority as Special Urban Planning and Development Authority and confer upon it all the powers and functions of PUDA.

26. Apart from PUDA and Special Urban Planning and Development Authority, Section 31 provides for the constitution of a special authority described as the New Town Planning and Development Authority. Sections 31 reads as follows :-

31. "New Town Planning and Development Authority: (1) Where the State Government is of opinion that object of proper planning and development of a site of a new town will be best served by entrusting the work of development thereof to a Special Authority, instead to the Punjab Urban Planning Authority, it may, by notification, constitute a Special Authority for that site to be called the New Town Planning and Development Authority and thereupon, all the powers and the functions of the Punjab Urban Planning and Development Authority relating to the development of that site of the new town under this Act shall be exercised and performed by such New Town Planning and Development Authority.

(2) A New Town Planning and Development Authority constituted under sub-section (1), shall be a body corporate as well as local authority by the name aforesaid having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable and to contract, and by the said name sue and be sued.

(3) A New Town Planning and Development Authority will consist of the following members, namely :-

(i) a Chairman,

(ii) a Chief Administrator who shall be appointed amongst the officers of the Government of Punjab having such qualifications and experience as may be prescribed; and

(iii) other members not exceeding ten to be appointed by the State Government.

(4) The provisions of this shall mutatis mutandis apply to a New Town Planning and Development authority as they apply in relation to the Punjab Urban Planning and Development Authority, with the modification that references to the Punjab Urban Planning and Development Authority shall be construed as references to a New Town Planning and Development Authority".

27. It is under this provision that the State Government proceeded to constitute the New Town Planning and Development Authority for Anandgarh on May 20, 1999. A reading of the provision clarifies that the New Town Planning and Development Authority is constituted with the object of proper planning and development of a site for new town. It is with this in view that Section 32 entrusts the New Town Planning and Development Authority with the duty to plan and develop the site of a new town. It is for this purpose that all the powers and functions of PUDA relating to the development of the site of a new town are to be exercised and performed by the said New Town Planning and Development Authority. The fact that it is entrusted with the task of proper planning and development of a site of a new town itself pre-supposes the existence of a selected site. Neither the PUDA nor the authority constituted under Section 17 nor the New Town Planning and Development Authority constituted under Section 31 is vested with the power to declare a planning area such as a site of a new town. On the other hand Section 56 clearly vests the power to declare a planning area in the Board, and the site of a new town is one such planning area, apart from regional planning area and local planning area. This has to be done, as we have earlier noticed, after considering the objections to the Notification declaring an intention to specify an area as a site for a new town defining its limits. Sub-section (e) of Section 56 mandates that every Notification declaring the Board's intention to specify an area as the site for a new town must define the limits of the area to which it relates. Obviously, therefore, the Notification issued under sub-section (1) of Section 56 declaring the intention of the Board to specify an area as the site for a new town must define the limits of the area to which it relates meaning thereby that the Board must while declaring its intention to specify an area as a planning area give all the necessary particulars as required under sub-section (1) of Section 56 and consider the objections thereto. From the very scheme of the Act of 1995, and having regard to the clear provisions of Section 56 thereof, there can be no doubt that the planning area has to be declared by the Board with specificity and only after considering the objections and suggestions made. One of the authorities may be entrusted with the task of planning and developing that area which may involve preparation of master plans, zonal plans etc. The role of a planning agency commences only after a planning area is declared by the Board.

28. Having considered some of the important provisions of the Act of 1995 we shall now consider the submission urged on behalf of the appellants that the provisions of the Act of 1995 were not at all applicable to the acquisition in question. This submission must be rejected. It is not disputed that the land was sought to be acquired for setting up a new town. Admittedly, the impugned Notifications were issued at the behest of the Special Planning Agency constituted under Section 31 of the Act of 1995 invoking Section 42 of the Act which provides for acquisition of land for the purposes of the authority under the Act. The State Government exercising its power under Section 31 of the Act of 1995 constituted the New Town Planning and Development Authority, Anandgarh. It was this authority which made its recommendation to the State Government which was approved by the State Government. For the acquisition Section 42 of the Act of 1995 was invoked. In this factual background it is futile to contend that the provisions of Act of 1995 are not applicable to the acquisition in question. We agree with the High Court that the provisions of the Act of 1995 are clearly attracted to the acquisition in question, since the acquisition was for planning and development of a planning area under the Act of 1955.

29. We may also consider the submissions urged by the learned Additional Solicitor General at this stage. He submitted that the acquisition was sought to be made under the provisions of the Land Acquisition Act. According to him Section 56 of the Act of 1995 does not contemplate compulsory acquisition of land. The submission overlooks the fact that the various schemes contemplated by the Act of 1995 may, for their implementation, involve acquisition of land. It may be that some of the schemes within the contemplation of the Act of 1995 may not involve acquisition of land. This, however, does not justify the very wide submission that no acquisition of land is at all contemplated in connection with schemes declared under Section 56 of the Act. Depending on the nature of scheme framed for implementation, the planning authority may require land for its purposes and may, therefore, request the Government to invoke Section 42 of the Act which provides for acquisition of land for the purposes of the authority under the Act applying the provisions of the Land Acquisition Act. In this case admittedly the Planning Authority constituted under Section 31 of the Act requested the Government to acquire the lands in question by invoking Section 42 of the Act, for the purpose of setting up a new town, Anandgarh. The Scheme with which we are concerned in the instant case, therefore did involve acquisition of land and the Government did in fact issue the impugned Notifications for acquisition of land for the purposes of the aforesaid New Town Scheme.

30. The learned Additional Solicitor General also submitted that the High Court proceeded on the erroneous basis that a Scheme should first be formulated in detail before acquisition of land. We do not find that the High Court has committed such error. The High Court did not hold the acquisition to be bad on the ground that a detailed scheme had not been prepared, but on the ground that there was no valid scheme at all, and consequently no valid public purpose justifying the acquisition.

31. It was then contended that the State in exercise of its power of eminent domain may acquire lands under Section 4 of the Land Acquisition Act and it is not denuded of its power to acquire land merely because under the Scheme of some other Act a certain procedure had been prescribed for acquisition of land. In the facts of this case we are not persuaded to accept this submission. In the instant case, the lands were sought to be acquired for the purpose of implementation of a New Town Scheme and, therefore, the procedure laid down in the Act of 1995 had to be followed. The learned

Additional Solicitor General submitted that if this be the correct legal position the State may be powerless in case the Board under the Act of 1995 did not select a site for a new town. This submission also has no force because under sub-section (2) of Section 14 of the Act of 1995, if required by the State Government the Board is bound to select a site for a new town. In the instant case, the State never called upon the Board to select a site, and instead a New Town Planning and Development Authority was constituted under Section 31 of the Act which arrogated to itself the powers and functions of the Board to select a site and make a recommendation to the State Government.

32. Reliance was placed on the decision of this Court in *Gandhi Grah Nirman Sahkari Samiti Ltd. & Others Vs. State of Rajasthan and Others* : (1993) 2 SCC 662. In that case this Court considered Section 52 of the Rajasthan Urban Improvement Act, 1959 which provided for compulsory acquisition of land. The submission urged before this Court was that the framing of a scheme by the Trust under Chapter V of the Act was a sine qua non for invoking the provisions of Section 52 of the Act. The State Government had no authority to acquire land under Section 52 of the Act unless the same was required for the execution of a scheme framed and sanctioned under Chapter V of the Act. This Court noticed the crux of the argument that the improvement in the urban area could only be carried out by executing the scheme framed under the Act and in no other way. This Court repelled the submission in the following words:-

"Under the scheme of the Act the improvement of the urban area can be undertaken by the Trust and also by any of the departments of the Government. The framing of the scheme becomes mandatory only when the work is undertaken by the Trust. The State Government, in any of its departments, may decide to develop the urban area under the Act and in that case it would not be necessary for the Government to have a scheme framed under Chapter V of the Act. The power of the State Government to acquire land under the Act has been designed to meet the scheme of the Act. Under Section 52 of the Act the land can be acquired by the State Government at the instance of the Trust, or a department of the Government or any prescribed authority. The plain language of Section 52(1) of the Act negates the contention raised by Mr. Shanti Bhushan. Where on a representation from the Trust or otherwise it appears to the State Government that any land is required for the purpose of improvement or for any other purpose under the Act it can acquire such land by issuing a notification under Section 52(1) of the Act. It is, thus, clear that the State Government has the power to acquire land either for the execution of the schemes framed by the Trust under Chapter V of the Act or for any other public purpose under the Act".

It will thus be seen that the decision rests on the interpretation of Section 52 of the Rajasthan Act which provided that the State Government may acquire land on a representation from the Trust, or even otherwise, if it appeared to the State Government that the land was required for the purpose of improvement or for any other purpose under the Act. So far as Section 42 of the Act of 1995 is concerned it provides as under:-

"42. Acquisition of Land.- (1) When any land other than the land owned by the Central Government is required for the purposes of the Authority under this

Act, the State Government may, at the request of the Authority, proceed to acquire it under the provisions of Land Acquisition Act, 1894, and on payment by the Authority of the compensation awarded under that Act and of any other charges incurred in acquiring the land, the land shall vest in the Authority.

(2) For the purposes of the Land Acquisition Act, 1894, and any other law for the time being in force, the Authority shall be deemed to be a local authority"

The acquisition of land by invoking Section 42 is permitted only if a request is made by the authority to do so for purposes of the authority under this Act. The important words "or otherwise" found in the Rajasthan Act are missing in Section 42 of the Act of 1995. On a reading of the Section as a whole it appears that the State Government can proceed to acquire land under the provision of the Land Acquisition Act only at the request of the authority, that too for the purposes of the authority under the Act. There is nothing in the Section which may lead us to hold, as in the Rajasthan Case, that the State on its own satisfaction could acquire land for the purposes of any other scheme under the Act. The powers conferred by Section 52 of the Rajasthan Act are wider than the powers conferred on the State Government under Section 42 of the Act of 1995. The same view was reiterated in Pratap and Another Etc. Etc Vs. State of Rajasthan and Others Etc. Etc. : (1996) 3 SCC 1 and Jaipur Development Authority Vs. Sita Ram and Others : (1997) 3 SCC 522.

33. Reliance was also placed on the judgment of this Court in Ajay Krishan Shinghal and Others Vs. Union of India & Others : (1996) 10 SCC 721 submitting that the acquisition for planned development is a public purpose. Once a public purpose has been specified by the Government, the Notification under Section 4(1) of the Land Acquisition Act is not vitiated on account of the fact that planned development was not specified with particularization of the land in question needed for the public purpose. In the instant case the issue is quite different. The land has been acquired on the request of the New Town Planning Authority constituted under Section 31 of the Act for development of the new town of Anandgarh. The High Court has quashed the Notification not on the ground that the detailed scheme had not been specified in the Notification, but on the ground that they there did not exist any valid public purpose in the absence of a validly declared planning area, namely a site for a new town, by the competent authority by Notification in the Official Gazette under Section 56 of the Act of 1995.

34. The next important finding recorded by the High Court is that the provisions of the Act of 1995 were not followed in specifying and declaring the site for new town for which the land was sought to be acquired. We have earlier considered the various provisions of the Act of 1995 and we concur with the finding of the High Court that in specifying and declaring the planning area, namely the site for a new town, the various provisions of the Act were not complied with.

35. The power to declare a planning area, site for a new town being one of them, vests in the Board under Section 56 which power cannot be delegated by the Board to the authorities constituted under Sections 17, 29 or 31 of the Act of 1995. While notifying its intention to specify any area as a planning area, the Board must define the limits of the area to which it relates, meaning thereby that the area must be identifiable by reference to the definition of its limits. This is mandatory since objections and suggestions in relation thereto have to be considered by the Board. The submission of objections and suggestions in response to the Notification published under Section 56

(1) is not an empty formality and is mandatory in nature. The legislature advisedly incorporated such a provision since declaration of a planning area is a subject of public interest.

36. The Board, before notifying a planning area under Section 56(5) by Notification in the Official Gazette, must consider the objections and suggestions received by it in response to the Notification issued by it under Section 56(1) declaring its intention to specify any area as a planning area.

37. None of the other authorities constituted under Sections 28, 29 and 31 are vested with power to declare a planning area by Notification in the Official Gazette, but they may be authorized to function as a Planning Agency for the planning and development of the planning area by drawing up Schemes, Master Plans, Regional Plans and other documents.

38. In the instant case admittedly, the provisions of Section 56 were completely ignored and without declaring the planning area by Notification in the Official Gazette, and without following the procedure laid down therein, which included consideration of objections and suggestions from the public apart from Government departments, authorities and institutions, the authority constituted under Section 31 without authority of law selected a site for a new town and made its recommendation to the Government for its approval, and later moved the Government for acquisition of land under Section 42 of the Act of 1995. All these actions were in complete breach of the mandatory provisions of Section 56 of the Act, and therefore void.

39. The argument that the Government is the final authority and was not bound to consult the Board cannot be countenanced since that is in the teeth of the mandatory provisions of Section 56 of the Act. The Legislature having enacted a statute and expressly provided a procedure for declaration of a planning area, which involved consideration of objections and suggestions from the public and publication of the declaration in the Official Gazette, the State could not have adopted a different procedure in breach of express provisions, completely ignoring the existence of the Board, the apex authority under the Act, and obliterating the provision for public participation in the matter of declaring a planning area.

40. We have, therefore, no hesitation in holding that the declaration of the planning area, a site for a new town, was never validly made by the competent authority after following the prescribed procedure and, therefore, there was in law no validly selected site for a new town, nor a validly declared planning area. Consequently, there was no justification for acquisition of land to set up a new town. The public purpose stated in the impugned Notifications was non-existent in view of the fact that there was no planning area validly declared by the competent authority for the development of which any land was required. Section 42 which provided for acquisition of land under the provisions of the Land Acquisition Act could not, therefore, be invoked, since Section 42 came into operation only when land was required for the purposes of the authority under the Act of 1995, and not for any other purpose.

41. The High Court has found that the acquisition was sought to be made in breach of the provisions of the Periphery Act of 1952. In view of the findings recorded by us earlier in this judgment, it is not necessary to go into this question and we, therefore, refrain from expressing any opinion in the matter. May be, in an appropriate case the question may have to be decided.

42. It was brought to our notice that a Notification dated February 21, 2002 was issued by the State Government (after the judgment was pronounced by the High Court), whereby the State Government decided to drop the project and dissolve the New Town Planning and Development Authority for Anandgarh exercising its powers under Section 34 read with Section 40(1) and 49(2) of the Act

of 1995 and transferring the assets and liabilities to PUDA with effect from February 15, 2002. We do not consider it necessary to express any opinion in this regard, since it does not relate to the questions that arise for consideration in these appeals.

43. Special Leave Petition (C) No.7946 of 2002 is dismissed. The High Court shall now proceed to dispose of the writ petition in accordance with law.

44. The High Court has given to the State the benefit of doubt so far as the question of mala-fide is concerned. The High Court has, however, made certain observations. We have considered the material on record and find no justification for those observations. It may be that the State Government in its anxiety to set up the new town of Anandgarh acted with haste and in the process lost sight of some of the mandatory provisions of the Act of 1995. That however, does not justify the conclusion that the State had acted mala fide. The material on record does not justify even the observations made by the High Court in this regard and we, therefore, set aside those observations.

45. In the result, we find no merit in the appeals and they are accordingly dismissed without any order as to costs.