CASE NO.:
Appeal (civil) 2558-2559 of 2004

PETITIONER:
Ram Krishan Mahajan

RESPONDENT:
Union Territory of Chandigarh and others

DATE OF JUDGMENT: 03/07/2007

BENCH:
B.P. SINGH & ALTAMAS KABIR

JUDGMENT:
J U D G M E N T

WITH
CIVIL APPEAL NO.2564 OF 2004
Inderjeet Behal (Dead) \005.Appellant
through Lrs.
Versus
Union Territory of Chandigarh and another \005.Respondents
WITH
CIVIL APPEAL NO.2585 OF 2004
Paramjit Singh Bhatti \005.Appellant
Versus
Union Territory of Chandigarh and others \005.Respondents
WITH
CIVIL APPEAL NO.2588 OF 2004
Anu Jagga \005.Appellant
Versus
Union Territory of Chandigarh and another \005Respondents.
WITH
CIVIL APPEAL NO.2567 OF 2004
Rameshwar Dass Kaushal \005.Appellant
Versus
Union Territory of Chandigarh and others ...Respondents.
WITH
CIVIL APPEAL NO.2586 OF 2004
Brij Bhushan and others. \005.Appellants
Versus
Union Territory of Chandigarh and others \005.Respondents
WITH
CIVIL APPEAL NO.2561 OF 2004

Gurdeep Kaur \005.Appellant

Versus

Union Territory of Chandigarh and others \005.Respondents

WITH

CIVIL APPEAL NOS.2562-2563 OF 2004

Amit Singh and another \005.Appellants

Versus

Union Territory of Chandigarh and another \005.Respondents

WITH

CIVIL APPEAL NO.2560 OF 2004

Naurang Singh \005.Appellant

Versus

Union Territory of Chandigarh and others \005.Respondents

WITH

CIVIL APPEAL NO.2565-2566 OF 2004

Vishkarma Furniture and Pahwa Industries
and others \005.Appellants

Versus

Union Territory of Chandigarh and others \005.Respondents

WITH

CIVIL APPEAL NO.2555-2556 OF 2004

Hakam Singh \005.Appellant

Versus

Union Territory of Chandigarh \005.Respondent

WITH

CIVIL APPEAL NO.2569 OF 2004

Shadi Lal Tayal (Dead)
through Lrs. and others \005.Appellants

Versus

Union Territory of Chandigarh and another \005.Respondents

WITH

CIVIL APPEAL NO.2587 OF 2004

Jagir Singh and another \005.Appellants

Versus

Chandigarh Administration and others \005.Respondents

WITH

CIVIL APPEAL NO.2570 OF 2004

Ashwani Kumar \005.Appellant

Versus

Union Territory of Chandigarh ad others \005.Respondents

AND

CIVIL APPEAL NO.4070 OF 2004

Gagandeep Kang and others \005.Appellants

Versus

Union Territory of Chandigarh and another \005.Respondents

B.P.SINGH, J.

1. In this batch of appeals the common judgment and order of the High Court of Punjab and Haryana dated April 28, 2003 disposing of the Writ Petitions has been assailed. In the Writ Petitions before the High Court, the acquisition proceedings under the Land Acquisition Act (for short 'the Act') by issuance of Notifications by the Chandigarh Administration under Section 4 thereof had been challenged which has been rejected by the High Court by its impugned judgment and order. The lands were sought to be acquired for Scheme Nos.2 and 3 and were spread over eleven Pockets within the Notified Area of Mani Majra, which has since vested in the Municipal Corporation of Chandigarh. Pockets 1 to 6 related to Scheme No.2, while Pockets 9 to 11 related to Scheme No.3.

2. It is not disputed that so far as Pocket Nos.1 to 6 are concerned, the Notifications under Section 4 of the Act were issued on different dates between May 25, 1989 and October 12, 1989. It is also not disputed that several awards have been made and many of the land owners have received the compensation awarded, but the appellants herein have challenged the acquisition proceedings, mainly on two grounds, namely that in the absence of a 'building scheme' framed under Section 192 of the Punjab Municipal Act, 1911 no land could be acquired under the provisions of the Act for the purposes of the Scheme. Secondly, the appellants challenged the proceedings on the ground that the Notification under Section 4 of the Act was not published in the manner required, and in particular on the ground that there was no publication of the substance of the Notification under Section 4 of the Act in the locality. A few background facts may be noticed at the threshold:

3. The Mani Majra Gram Panchayat was declared a Notified Area under Section 241 of the Punjab Municipal Act, 1911 on August 19, 1973. By Notification dated June 11, 1976, issued under Section 242 of the Act of 1911 certain provisions of the Act of 1911 such as Sections 3, 53, 58, and 192 were extended to the

Mani Majra Notified Area. Section 243 of the Act of 1911 provides as follows:-

"243. Application of Act to notified area. - For the purposes of any section of this Act which may be extended to a notified area the committee appointed for such area under section 242 shall be deemed to be a municipal committee under this Act and the area to be a municipality".

It was urged before the High Court that without framing building scheme under Section 192 of the Act of 1911, the acquisition of the land for residential-cum-commercial complex (Scheme No.2 of the Notified Area Committee) could not be said to be for a public purpose and was contrary to law. It was argued that though the definition of "public purpose" under the Act included, under Section 3(f)(vii), the provision of land for any other scheme or development sponsored by Government, or with the prior approval of the appropriate government, by a local authority, in the context of the Act of 1911 it must mean a "building plan" contemplated by Section 192 of the Act of 1911. Since such a plan was never prepared by the Notified Area under Section 192, in the absence of a valid "building Scheme", no land could be acquired for that purpose.

4. Section 58 of the Act of 1911 provides for acquisition of land under the Act at the request of the Committee. It reads as under:-

"58. Acquisition of land - When any land, whether within or without the limits of a municipality, is required for the purposes of this Act, the [State] Government may, at the request of the committee, proceed to acquire it under the provisions of the Land Acquisition Act, 1894, and on payment by the committee of the compensation awarded under that Act, and of any other charges incurred in acquiring the land, the land shall vest in the committee.

Explanation. \026 When any land is required for a new street or for the improvement of an existing street, the committee may proceed to acquire, in addition to the land to be occupied by the street, the land necessary for the sites of the buildings to be erected on both sides of the street and such land shall be deemed to be required for the purposes of this Act".

5. It was, therefore, argued before the High Court that the municipal fund could be utilized only for the purposes contemplated by Section 52 of the Municipal Act of 1911. Since the Scheme was not a "building scheme" under Section 192 of the Act of 1911, the Mani Majra Notified Area could not be burdened with the cost of acquisition of land.

6. On the contrary, the respondents submitted that the Scheme in question was not a 'building scheme' under Section 192 of the Act of 1911. It was a development scheme with a view to provide facilities to the general public by providing for residential and commercial accommodation, and multi \026 speciality hospital, and was therefore clearly covered by Section 52(2)(c) of the Act of 1911. It was clearly a public purpose under Section 3(f)(vii) of the Act.

7. The High Court rejected the contention of the petitioners. It noticed that earlier similar Writ Petitions involving

identical questions had been dismissed. It observed:-

"It is further pointed out that identical questions were raised in respect of acquisition of pocket Nos.9, 10 and 11 which was sought to be made by publication of notification under Section 4 of 1894 Act on 24.6.1990. The said acquisition was the subject matter in C.W.P. No.12936 of 1991 whereas acquisition of land in pursuance of notification dated 9/10.8.1990 was the subject matter of challenge in C.W.P. No.14898 of 1991. The writ petitions challenging these acquisition proceedings were dismissed by the learned Single Judge of this Court on 20.1.1992 in Prem Singh and others Vs. Union Territory, Chandigarh 1992(2) PLR 370, and Letters Patent Appeal against the said judgment was also dismissed by the Division Bench on 11.3.1998. Another bunch of 30 writ petitions wherein notifications dated 28.6.1990, 31.1.1992 etc. under section 4 was dismissed by the Division Bench on 22.9.1995. The detailed order was passed in C.W.P. 2126 of 1993, Partap Chand and others Vs. Union Territory, Chandigarh and others. It was thus contended that since identical questions of law and fact have already been adjudicated upon by a Division Bench of this Court in respect of the similar acquisition proceedings, therefore, the present writ petitions are liable to be dismissed".

8. The High Court also noticed the finding of the Division Bench in Prem Singh's case which is as follows:-

"The final argument of Mr. Ram Swaroop is purely a legal submission. It has been argued that as no scheme had been framed as envisaged under Section 192 of the Punjab Municipal Act, 1976 (hereinafter called the Punjab Act) the land could not be acquired for the purpose. It has also been contended that the land could be acquired only for the purpose of the NAC and Union Territory, Administration could not notify the same. We have considered these arguments in the light of the averments in the reply. It is the conceded case that no building scheme has been framed as per the provisions of Section 192 of the Punjab Act, but the respondents have categorically stated that the scheme for which the land had been acquired, is not a scheme within the meaning of Section 192 of the Punjab Act and the land is being acquired under the Act for the purpose of a Development Scheme for providing facilities to the residents of 'the area'. We are further of the opinion that Section 58 of the Punjab Act specifically provides that the State Government which in this case would be the Union Territory Administration, is fully competent to acquire land for the public purposes. In the light of these averments, the judgments cited by the learned counsel, in fact, have no bearing in the case in hand".

9. The core issue therefore is whether the acquisition is for a "building scheme" as contemplated under Section 192 of the

Act of 1911, or whether it is only a development plan for providing better facilities to the inhabitants of the area by way of residential, commercial and medical facilities which are within the contemplation of Section 52(2)(c) of the Act of 1911.

10. This takes us to Section 192 of the Act of 1911, the relevant part whereof is reproduced below:-

"192. Building scheme. \026 (1) The committee may, and if so required by the [Deputy Commissioner] shall, within six months of the date of such requisition, draw up a building scheme for built areas, and a town planning scheme for unbuilt areas, which may among other things provide for the following matters, namely :-

(a) the restriction of the erection or re-erection of buildings or any class of buildings in the whole or any part of the municipality, and of the use to which they may be put :

(b) the prescription of a building line on either side or both sides of any street existing or proposed ; and

(c) the amount of land in such unbuilt area which shall be transferred to the committee for public purposes including use as public streets by owners of land either on payment of compensation or otherwise, provided that the total amount so transferred shall not exceed [thirty-five percent] and the amount transferred without payment shall not exceed [seventy-five per cent], of any one owner’s land within [such unbuilt area].

(2) When a scheme has been drawn up under the provisions of sub-section (1) the committee shall given public notice of such scheme and shall at the same time intimate a date not less than thirty days from the date of such notice by which any person may submit to the committee in writing any objection or suggestion with regard to such schemes which he may wish to make.

(3) The committee shall consider every objection or suggestion with regard to the scheme which may be received by the date intimated under the provisions of sub-section (2) and may modify the scheme in consequence of any such objection or suggestion and shall then forward such scheme as originally drawn up or as modified to the [Deputy Commissioner], who may, if he thinks fit, return it to the committee for reconsideration and resubmission by a specified date; and the [Deputy Commissioner], shall submit the plans as forwarded, or as resubmitted, as the case may be, with his opinion to the [State] Government, who may sanction such scheme or may refuse to sanction it, or may return it to the committee for reconsideration and resubmission by a specified date".

11. We have no doubt that if the lands were being acquired for a "building scheme" as contemplated by Section 192, the

acquisition could not be made under the provisions of the Act unless such a scheme was validly framed after following the prescribed procedure, and was duly sanctioned by the State Government. But it appears to us that the High Court was right in coming to the conclusion that this was not a "building scheme" under Section 192, but merely a development plan to provide facilities to the public, such as those within the contemplation of Section 52(2)(c) of the Act of 1911, to which the municipal fund could be applied. It was, therefore, not required to follow the procedure under Section 192 of the Act of 1911.

12. The relevant part of Section 52 reads as follows:-

"52. .\005 \005. \005.
\005. \005. \005.
(1) \005. \005. \005.
\005. \005. \005.
(2) Subject to the charges specified in sub-section (1) and to such rules as the [State] Government may make with respect to the priority to be given to the several duties of the committee, the municipal fund shall be applicable to the payment in whole or in part, of the charges and expenses incidental to the following matters within the municipality, and with the sanction of the [State Government] outside the municipality, namely:-

\005. .... \005.

\005. \005. \005.

(c) the construction, establishment and maintenance of schools, hospitals and dispensaries, and other institutions for the promotion of education or for the benefit of the public health, and of rest-houses, sarais, poor-houses, markets, [stalls], encamping grounds, pounds, and others works of public utility, and the control and administration of public institutions of any of these descriptions :
.\005. \005.. \005..

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(l) all acts and things which are likely to promote the safety, health, welfare or convenience of the inhabitants or expenditure whereon may be declared by the committee, with the sanction of the [State] Government to be an appropriate charge on the municipal fund".

13. The objection that the municipal fund could not be applied for providing residential, commercial and medical facilities must be rejected. The facilities that a municipality is empowered to provide under the Act may involve acquisition of land as it is required for the purpose of the Act and therefore, it may make a request to the State Government to acquire the lands required for the purpose, and bear the cost of acquisition.

14. In view of our above finding the submission urged before us on the basis of the provisions of the Punjab Periphery Act, 1952 must also be rejected. It was submitted that the Punjab Periphery Act, 1952 was enacted with a view to prevent growth of slums and ramshackle construction on the lands lying on the

periphery of the new city of Chandigarh. This was considered necessary to ensure healthy and planned development of the new city. The Periphery Act, therefore, empowered the State Government to declare the whole or the part of the area to which the Act extended to be a "controlled area" for the purpose of the Act. Once the "controlled area" was declared, no person could erect or re-erect any building or make or extend any excavation etc. in the "controlled area" save in accordance with the plans and restrictions and with the previous permission of the Deputy Commissioner in writing. It is not disputed before us that the necessary permission under the Periphery Act, 1952 has been granted for raising the structures in question. It was, however, argued before us that permission could not be granted to the Notified Area Committee, which is deemed to be a Municipality, for a purpose which cannot be undertaken by the Notified Area Committee. Since the Municipality cannot develop a residential, commercial or institutional area, and spend municipal funds over them, the permission could not have been granted. We find no substance in the argument in view of our finding that the development work undertaken by the Notified Area Committee could be undertaken by it under the provisions of the Punjab Municipal Act and, therefore, the permission granted under the Punjab Periphery Act, 1952 is not tainted with illegality.

15. It was argued in Civil Appeal Nos. 2558-2559 of 2004 arising out of Writ Petition) No. 3125 of 1990 that the permission granted on January 2, 1989 under Section 11 of the Punjab Periphery Act, 1952 referred to only Pockets I to III and there was no reference to Pocket No.5. Therefore, so far as the lands falling in Pocket No.5 are concerned, there was no valid permission to raise the impugned structures. This point does not appear to have been raised before the High Court. However, there is material on record to support the contention of respondents that originally the area was divided into three pockets, namely Pocket numbers I, II and III. It was only later that three Pockets were converted into six Pockets. In this connection we may refer to the affidavit filed before this Court by the Land Acquisition Collector wherein it was stated that Pocket Nos. I, II and III were later on converted into six Pockets vide Memo No.5641-UTFI(I)-88/34 dated January 2, 1989 and Memo No.3/117/88/UTFI(4)-88/245 dated January 6, 1989. Thus, even though six Pockets are not mentioned in the permission, the three Pockets for which the permission was granted included the land of the appellant. The appellant himself in his writ petition has reproduced the proposal made by the Notified Area Committee for acquisition of land wherein it was stated that the land measuring 21 acres, 57 acres and 67 acres respectively in Pocket Nos. I, II, and III should be acquired. The appellant has also referred to the Resolution of the Notified Area Committee wherein it is stated that according to the actual measurement and Akash Shajra, the total area under Pocket No.I was found to be 30-21 acres, Pocket No.II, 54-91 acres and Pocket No.III, 75-67 acres. Thus the total area acquired was 160-87 acres instead of 145 acres and accordingly the Committee unanimously accorded its sanction for acquisition of land measuring 160-67 acres. The contemporaneous documents, therefore, substantiate the plea of the respondents that the grant of permission under Section 11 of the Periphery Act, 1952 related to the lands ultimately acquired and though, originally there were only three Pockets they were subsequently converted into six Pockets, but the lands remained the same, though on actual measurement it was found that there was a difference of about 15 acres. The appellant has not produced any material to satisfy the Court that his land was not included in the original three Pockets in respect of which the permission had been granted by the competent authority under the Punjab Periphery Act, 1952. We, therefore, find no merit in the submission that no permission had been granted under

Section 11 of the Punjab Periphery Act, 1952 relating to the land of the appellant.

16. This takes us to the next question urged by some of the appellants that the Notification under Section 4 of the Land Acquisition Act, 1894 was not published in the manner prescribed by Section 4 of the Act. The grievance of the appellants in particular is that the substance of the Notification had not been given at convenient places in the locality. There is no dispute with regard to the issuance of the Notifications in the official gazette and the publication of the Notifications in two daily newspapers circulating in the area. The case of the respondents is that the Notification was given due publicity in the locality by beat of drums on June 3 and June 4, 1989. The assertion of the respondents was challenged by the appellants and C.M. No. 4235 filed on March 30, 1990 with the prayer that the respondents be directed to produce the entire record, specially the documents evidencing the publicity by beat of drums in the locality. However, the said application was ordered to be heard with the main case which unfortunately came up for hearing many years later in the year 2003.

17. An affidavit of the Land Acquisition Officer dated March 23, 2003 was filed before the High Court wherein it was admitted that the original record pertaining to the acquisition of land in various pockets of the revenue estate of Mani Majra was not traceable and an inquiry had been initiated in the matter. Some officials of the Administration as well as the Municipal Corporation had been suspended. It was explained that when an application was filed for early hearing of the writ petitions and a search was made for the original record pertaining to the acquisition of lands in various pockets, it was found that the record was not traceable despite concerted efforts. The following records in particular could not be traced out :-

"i) Original record regarding publication in the official gazette and newspapers in respect to Pocket No.2, 9, 10 and 11. The record regarding publication in the locality with regard to Pocket No.1-6 and 9-11 is also not available.

ii) The original Rapat Roznamachas pertaining to the above are not traceable.

iii) The original objections and notices under section 5-A are not available except Pocket No.11.

iv) Original record pertaining to the presence of the objectors at the time of hearing of objections under section 5-A is also missing".

However, one file pertaining to the said acquisition was traced out in the office of the Finance Secretary, UT containing 1 to 518 pages of which pages 1 to 83 contained the notings. Paragraph 6 to 12 of the affidavit of the Land Acquisition Officer are significant and we reproduce them below :-

"6. That the above mentioned file contains two reports dated 22.8.1989 and 11.9.1989 by the Assistant Estate Officer (exercising the powers of the Land Acquisition Officer, Notified Area Committee, Mani Majra), Chandigarh. In these reports pertaining to Pocket Nos.1-6, it is clearly mentioned that opportunity of hearing as envisaged

in the Land Acquisition Act had been given to the interested persons on 10.8.1989 and 23.8.1989, respectively. These reports are available in the file at Page No.71 and 113 and the list of objections filed by 18 objectors and 90 objectors respectively are available from Page 87 to 90 and 123 to 129. Photocopy of these two reports is annexed as Annexure 'I' and 'II'.

7. That report dated 15.1.1990 pertaining to Pocket No.3 to 5 sent by the Assistant Estate Officer, exercising the powers of the Land Acquisition Officer, Notified Area Committee, Mani Majra is available in the file on page No.246-247 and the details of the objections filed are available at page 254-255. As per his report, hearing was given on 9.1.1990. Photocopy of this report alongwith its enclosures is annexed as Annexure 'III'.

8. That the officer who had submitted the report i.e. Shri D.V. Bhatia who has since retired has been contacted and inquiries made from him. An affidavit of Shri D.V. Bhatia, wherein he has stated that opportunity of personal hearing was given by him to the interested persons and proper procedure as envisaged in the Land Acquisition Act was followed is annexed as Annexure 'IV'.

9. That the Patwari, Notified Area, Mani Majra at the relevant time namely Shri Som Nath (since retired) was also contacted. He has revealed that he was posted as Patwari, Notified Area Committee, Mani Majra from July 1989 till November, 1993. During this period, notifications under section 4 and 6 of the Land Acquisition Act pertaining to Pockets No.1-6 and Pocket No.9-11 were issued. The record pertaining to the publication (original information) and entries in the Rapat Roznamchas remains with the revenue Patwari.

10. That as submitted above, the only record pertaining to this acquisition is in the shape of file mentioned above. The report dated 15.1.1990 clearly shows that the objections were heard by the then Land Acquisition Officer and opportunity of personal hearing was given on 9.1.1990. The original objections filed by the Petitioner is also on the record of this file at page No.272-285. The affidavit of Shri D.V. Bhatia also shows that an opportunity of personal hearing had been given to the Petitioners. On the very file at page 286, a notice dated 2.1.1990 is there, wherein the Petitioner Ram Krishan Mahajan has been asked to appear before the Land Acquisition Officer on 9.1.1990 at 11.00 a.m. in the Estate Office Building, Sector 17, Chandigarh for personal hearing. Photocopy of the notice dated 2.1.1990 is annexed as Annexure 'V'.

11. That the award files pertaining to the Pocket No.1-6 and 9-11 which are subject matter of the case and connected cases except the file pertaining to Pocket No.3 are available.

12. That in respect of Pocket No.1, the available record includes the award file and the report by the then Land Acquisition Officer dated 22.8.1989 in respect to the objections under section 5-A of the Land Acquisition Act, 1894 on Page 75 of the file received from the office of the Finance Secretary, UT, Chandigarh. The record pertaining to the publication in the official gazettee and publication in the newspapers is also available in this file".

18. The High Court has taken notice of the fact that the relevant files were missing when the matter came up for hearing before the Court. The High Court however, found that no case for interference was made out by the appellants. It recorded its conclusion in the following words :-

" However, dispute in the present case is, whether the substance of the notification under Section 4 of the Act was published in the locality and, whether such publication satisfies the requirement of Section 4 of 1894 Act? The counsel for the petitioners have relied upon noting sheet dated 1.6.1989 whereby Secretary, Notified Area Committee, Mani Majra had directed Sanitary Inspector to cause wide publicity of the notification in the locality through beat of drum on 1.6.1989. The Sanitary inspector has endorsed that wide publicity in respect of notification had been given through beat of drum by Banarsi Dass, Catsman on 3.6.1989 & 4.6,1989. The said noting sheet has been seen by the Secretary Notification Area Committee and placed to file. The grievance to such manner of publication is that there is no valid authorisation by the Collector to cause the substance of the notification published through Secretary, Notified Area Committee, Mani Majra or by Sanitary Inspector. Still further, the publication is allegedly made by a Cartsman who is neither a public servant nor shown to be competent to carry out the requirement of the publication by beat of drum.

The reliance of the counsel for the petitioners on the provisions of Section 4 of 1894 Act that "the Collector shall cause public notice of the substance or said notification to be given at the convenient places of the locality" is not tenable. The Collector contemplated under Section 9 of 1894 Act is one defined under Section 3(c) of 1894 Act which means that the Collector of the District and includes the Deputy Commissioner and any officer specially appointed by the Appropriate Government to perform the functions of the Collector under the said Act. The Collector is the agent of the State Government competent to acquire land for the State Government. One or other official can cause the publication of the substance of the notification in the locality. It is not necessary that the Collector has to personally authorise the publication by beat of drum. It is the publication of the substance in the locality which is a material factor so as to invite the attention of the interested persons towards the intention of the Government to acquire the land. No rule, provision or instructions were brought to our notice that the procedure of beat of drum has to be carried out only by a public servant. As a matter of fact, such ministerial functions can be performed by any one authorised by the competent authority. The beat of drum is not a process requiring special skill and, thus, the arguments raised by the counsel for the petitioners are misconceived, in any case, the defects pointed out by the petitioners can at best be

called an irregularity which does not vitiate the publication of the notification.
Thus, we are of the opinion that the substance of the notification was published in the locality in accordance with the provisions of Section 4 of 1894 Act.
In CWP No. 2126 of 1983, Partap Chand's case (supra) an argument was raised on the basis of the affidavit filed by Dayal Singh who, as per the State, carried out the process of beat of drum. Dayal Singh having denied any such process by way of filing affidavit, the Court negatived the contentions of the writ petitioners on the ground that it was the positive stand of the petitioners that notifications under Section 4 & 6 of 1894 Act had not been published in the newspaper."

19. It will thus appear that the finding recorded by the High Court is based on the documents relied upon by the appellants themselves. The note sheet dated June 1, 1989 clearly stated that the Sanitary Inspector had been directed to cause wide publicity of the Notification by beat of drums on June 1, 1989 and had later endorsed that wide publicity had been given by Banarsi Dass, cartsman on June 3, 1989 and June 4, 1989. The High Court rightly rejected the submission that there was no valid authorization since the cartsman was not a public servant. The High Court has rightly observed that the fact that the cartsman was not a public servant was not relevant. What was relevant was that due publicity had been given in the locality by beat of drums on two dates, namely on 3rd June and 4th June, 1989. There is no reason for us to doubt the notings in the file made contemporaneously many years ago. We, therefore, affirm the finding of the High Court that the substance of the Notification issued under Section 4 of the Land Acquisition Act had been duly published in the locality in accordance with the provisions of the Act.

20. The next submission urged on behalf of the appellants before the High Court was with regard to their not being given an opportunity to file their objections under Section 5-A of the Land Acquisition Act and/or failure to give an opportunity to the parties who had filed objections to represent their cases before the competent authority. The High Court has considered in detail the facts of each case. We have also heard the parties at length only to satisfy ourselves about the reasonableness of the findings of fact recorded by the High Court on consideration of the evidence on record. We find ourselves in agreement with the High Court that the grounds urged on behalf of the appellants are untenable. The High Court has noticed the fact that the material on record did indicate that in many cases notices were given to the parties concerned, objections were filed and heard and awards declared. The report of the Land Acquisition Collector in some cases is also on record. The objections filed by some of the appellants were also before the High Court. Ms. Kamini Jaiswal appearing on behalf of the Union Territory of Chandigarh and the Notified Area Committee also took us to the evidence on record and we are satisfied that this is not a case which requires interference by this Court on a pure question of fact. The High Court has elaborately dealt with the submissions urged before it, has critically scrutinized the evidence on record and recorded its findings. Having heard counsel for the parties at length, we are satisfied that no interference is called for by this Court.

21. It was urged by the appellant in Civil Appeal No.2567 of 2004 that the High Court failed to consider the question raised by him in the special facts of his case. He submitted that the State had not notified for acquisition lands over which buildings had been erected and, therefore, in accordance with the said policy his land should also have been kept out of acquisition.

21. In the writ petition the petitioners (there were three

petitioners before the High Court) averred that they were the owners in possession of the land in question. They were running their business of lime and limestone on the said land for the last more than 25 years. Sales tax number, telephone connection and house number had been allotted to them. It was also averred that some similar shops which had been constructed on Khasra Nos. 100/29/30/31/32/34 were left out of acquisition, which showed that a pick and choose method had been adopted by the Government. According to the petitioners those shops were like that of the petitioners and similarly situated.

22. In the objections filed under Section 5\026A of the Act the appellant had stated that he had constructed a house and a building in which he was running a business of lime and limestone and that the structure on the land had been given a number by the N.A.C., namely No.1989. It does, therefore, appear from the averments made in the writ petition read with the objections under Section 5-A of the Act that over the land in question the appellant had been carrying on lime and limestone business. His grievance is that some other similar shops located on similar land were not acquired.

23. In the reply filed on behalf of the respondents before the High Court it was denied that any pick and choose method had been adopted. It was asserted that on Khasra Numbers in question construction had been raised prior to the issuance of Notifications under Sections 4 and 6 of the Act. In fact those constructions existed even prior to the formation of the Notified Area Committee, Mani Majra. The constructions were raised after getting building plans sanctioned from the erstwhile Panchayat Committee. It was in these circumstances that those Khasra Numbers were kept out of acquisition.

24. We find that the respondents had good reasons for not acquiring lands over which there stood permanent structures which had been raised after getting building plans sanctioned from the concerned authority. The appellant has no where averred that he had raised the structure after getting a building plan duly sanctioned by the concerned authority. The mere fact that the shop was given a number is not at all relevant in the facts of the case.

25. Learned counsel then argued that some lands which had been earlier notified for acquisition have been released by the Government as late as on 9th January, 2004 exercising its powers under Section 48 of the Act. This fact by itself does not justify the conclusion that there was discrimination in the matter of acquisition of land. It appears from the Notification produced before us that some of the lands in Darshani Bagh had to be released in the peculiar facts of the case. It appears that the Notification for acquisition had been earlier quashed by the High Court on August 11, 1997 but on a review petition being filed by the Chandigarh Administration, the earlier order allowing the writ petition was recalled on January 31, 2003 and thereafter an award was pronounced by the Land Acquisition Officer on March 5, 2003. During the interregnum of about 10 years from the date of issuance of Notification under Section 4 of the Act many constructions had come up on a portion of the acquired land. It was under these circumstances that those lands were exempted from acquisition in exercise of powers conferred by Section 48 of the Act.

26. We have considered the facts of the case and the material placed before us, since the issue raised before us was not argued before the High Court in the manner it was argued before us. That is why we find no categoric finding of the High Court on this issue. However, after considering the material on record we are satisfied that the appellant’s plea that in the facts and circumstances his land should also have been exempted from acquisition has no merit.

27. We, therefore, find no merit in these appeals and they are accordingly dismissed. There shall be no order as to costs.

28. I.A. Nos.2 and 3 in Civil Appeal No.2567 of 2004 are dismissed. I.A. No.4 in Civil Appeal No.2569 of 2004 is rejected but without prejudice to the right of the applicant to seek remedy, if any, in accordance with law before the appropriate forum.