Amarjit Singh & Ors vs State Of Punjab & Ors on 29 September, 2010

Equivalent citations: 2011 AIR SCW 3413, 2010 (10) SCC 43, (2010) 10 SCALE 334, AIR 2011 SC (CIVIL) 1587, (2011) 2 WLC(SC)CVL 75

Author: T.S. Thakur

Bench: R.V. Raveendran, R.M. Lodha, T.S. Thakur

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICITION

CIVIL APPEAL NO. 8431 OF 2010
(Arising out of SLP (C) No.9924 of 2007)

Amarjit Singh & Ors. ...Appellants

Versus

State of Punjab & Ors. ...Respondents

WITH

CIVIL APPEAL NO. 8432 OF 2010
(Arising out of SLP (C) No.9926 of 2007)

Mewa Singh & Ors. ...Appellants

Versus

State of Punjab & Ors. ...Respondents

JUDGMENT

T.S. THAKUR, J.

Leave granted.

These two appeals by special leave raise common questions of law and shall stand disposed of by this common judgment. The appeals arise out of two separate orders both dated 26.9.2006 passed by the High Court of Punjab and Haryana whereby C.W.Ps. Nos.9060 of 2005 and 9083 of 2005

filed by the appellants have been dismissed. The petitioners had in those petitions challenged the validity of a Notification dated 23.1.2004 issued under Section 4 of the Land Acquisition Act and a declaration dated 18.1.2005 issued under Section 6 thereof. Constitutional validity of Section 23(1) of the Land Acquisition Act, 1894 and Punjab New Capital (Periphery) Control Act, 1952 was also assailed by them on several grounds which failed to find favour with the High Court who upheld not only the constitutional validity of the impugned enactments but also the notification issued under the Land Acquisition Act. The present appeals assail the correctness of the view taken by the High Court.

The facts giving rise to the controversy have been set out at length by the High Court in the lead judgment under challenge delivered in C.W.P. No. 9060 of 2005. The same need not, therefore, be set out again except to the extent it is absolutely necessary to do so. Suffice it to say that the writ petitioners-appellants before us are expropriated owners of different parcels of land situate in Village Chilla, Tehsil Mohali, District Ropar, in the State of Punjab an upcoming township situate on the outskirts of the city of Chandigarh, which has over the years seen rapid growth as a residential and urban estate. In the first phase of the expansion of the township sectors 53 to 75 were taken up for development under the provisions of Punjab Urban Estate (Development and Regulation) Act, 1964 and Punjab Housing Development Board Act, 1972; and the land needed for these sectors acquired under the Land Acquisition Act, 1894.

In due course the Government started the process of acquisition of land for sectors 76 to 80 also with a view to extending further the urban estate of Mohali. A large extent of 1274 acres of land was notified for acquisition in this phase of extension and development. The respondents assert that while a majority of the land owners did not find fault with the proceedings, some of the owners representing around 10% of the total area notified for acquisition, questioned the same, in writ petitions filed before the Punjab and Haryana High Court. One of the grounds urged in the said petitions was that unless and until a master plan, a regional plan or a town planning scheme was finalized under the Punjab Regional and Town Planning and Development Act, 1995 no acquisition of land could be undertaken by the Government or its agencies. Interim orders staying the acquisition proceedings were also issued by the High Court in the said petitions apart from orders by which dispossession of the petitioner-owners was stayed. These orders created serious hurdles for the implementation of the 2nd phase of the development and extension of Mohali township. The government was of the view that legal impediments in the acquisition of a small percentage of the total area could not be allowed to adversely affect the entire plan which was meant to meet the urgent housing requirements of the people of Punjab. The Government therefore invoked its powers under Section 178(2) of the Punjab Regional and Town Planning and Development Act, 1995 and exempted the areas falling under sectors 76 to 80 from the provisions of Section 14 and those contained in Chapters VIII, IX and XII of the said Act.

The exemption notification referred to above was challenged by the aggrieved owners in CWP No.29 of 2004 Jasmer Singh v. State of Punjab and Anr. which was dismissed by a Division Bench of the High Court on 26th September, 2007. The High Court held that the exercise of powers vested with the Government under Section 178(2) of the Act was neither mala fide nor otherwise vitiated by any illegality. The High Court noted that Mohali was an existing township and its development and

expansion had been planned much before the promulgation of the 1995 Act, which development could be carried out by, if necessary exempting the area required for such development from the provision of the said Act. Exercise of the power of exemption under Section 178 (2) of the 1995 Act was therefore held to be perfectly justified. The correctness of the view taken by the High Court was challenged by the writ petitioners before this Court but unsuccessfully.

Acquisition proceedings for development of sectors 81, 88 and 89 which comprised the third phase of the development were then initiated by the Collector, Land Acquisition, Mohali. While 417.39 acres of land was acquired in sector 81, an area of 688.89 acres of land was acquired in sectors 88 and 89. A declaration under Section 6 in relation to the said extent of land was also issued on 18.1.2005. To ensure that the acquisition process is free from any impediments the Government once again invoked the provisions of Section 178(2) of the Punjab Regional and Town Planning and Development Act, 1995 in regard to the land notified for development of sectors 81, 88 and 89. A notification dated 10th February, 2004 issued in that regard exempted the land falling in the said sectors from the provisions of Section 14 and those contained in Chapters VIII, X and XII of the said Act.

Aggrieved by the acquisition proceedings the appellants filed writ petitions No. 9060 of 2005 and CWP No. 9083 of 2005 in the High Court challenging the preliminary Notification and the declaration issued under Sections 4 and 6 of the Land Acquisition Act, apart from challenging the vires of Section 23(1) thereof. The writ petitions also assailed the constitutional validity of Punjab New Capital (Periphery) Control Act, 1952. By the lead judgment impugned in these appeals the High Court repelled the challenge mounted by the writ petitioners and declared that the notifications under challenge did not suffer from any illegality whatsoever. It also upheld the constitutional validity of the provisions of the Punjab New Capital (Periphery) Control Act, 1952 and Section 23(1) of the Land Acquisition Act. Hence the present appeals.

We may before proceeding any further refer to a few more facts which have a bearing on the controversy in these appeals. The extent of land that remains the subject matter of these appeals after withdrawal by three of the appellants in C.A. No. 9924/2007 is limited to just about 20 acres of land out of a total extent of 417.39 acres notified for acquisition in Sector 81. The respondents have on affidavit stated that owners of nearly 96% of the total area acquired by them have already received the compensation determined in their favour. The affidavit further states that compensation payable to those who continue to pursue their challenge to the acquisition in these appeals has been determined at Rs.5.96 crores + 6.43 crores totaling to Rs.12.39 crores.

The other aspect that is noteworthy is that out of the total extent of 417.39 acres acquired in Sector 81 an extent of 363.89 acres, stands allotted by the respondents to different institutions for them to set up their establishments in what is described as "Knowledge City" in the State of Punjab. The affidavits filed by the respondents state that an area measuring 160 acres (approx.) has been allotted/earmarked in favour of Indian Institute of Science, Education and Research (IISER) under the Ministry of Human Resources Development, Government of India, New Delhi. Similarly an area measuring 35 acres (approx.) has been allotted to Institute of Nano Science and Technology (INST) under the Ministry of Science and Technology, Govt. of India, New Delhi. An area measuring 35

acres has been allotted to National Agro Bio Technology Institute (NABI) under the Department of Science & Technology, Govt. of India, New Delhi. For Bio-Processing Unit under the Department of Science & Technology, Govt. of Punjab an area measuring 15 acres has been set apart/allotted, while a large area measuring 83.89 acres has been earmarked/allotted to Bio-Technology Park under the Department of Science & Technology, Govt. of Punjab. Similarly an area measuring 70 acres has been allotted to Indian School of Business under the Department of Higher Education, Govt. of Punjab.

Appearing for the appellants Mr. Gupta learned senior counsel made a three-fold submission before us. Firstly, he contended that acquisition of land in terms of the impugned notifications was illegal in as much as the provisions of Punjab Regional and Town Planning and Development Act, 1995 had not been complied with before issuing the said notifications. He argued that although a notification under Section 56(5) of the Act is stated to have been issued on 6th March, 2001 the same was not sufficient to validate the acquisition in as much as the notification in question was itself invalid having been issued without following the procedure prescribed under Section 56(5) and without affording any opportunity to the land owners to file their objections.

Secondly, he contended that the notification dated 10th February, 2004 issued under Section 178 (2) of the Act whereby the area falling in Sectors 81, 88 and 89 was exempt from the provisions of Section 14 and Chapters VIII, X and XII was also illegal and unsustainable. He contended that the reasons underlying the said notification were not germane to the exercise of powers reserved in favour of the Govt. by the said provisions. Mr. Gupta urged that the State could not exempt an area from the provisions of the Act on the ground that the `prospective allottees' would face undue hardship or that the procedure prescribed under the 1995 Act was cumbersome and time-consuming.

It was lastly contended by Mr. Gupta that the lands acquired from the ownership of the appellants were their only source of livelihood. Compulsory acquisition thereof without any provision for rehabilitation of the expropriated owners was not only constitutionally impermissible but unfair and unreasonable, argued the learned counsel. He submitted that realizing the hardships which the ousted owners face in case agricultural lands are acquired without an adequate provision for their rehabilitation the Government has formulated what is called `Land Pooling Scheme' and circulated the same under Revenue and Rehabilitation Department's letter dated 5th September, 2008. He urged that though the said scheme was made operative only prospectively, the benefit thereof could be extended to the appellants also to reduce the hardships which they would face without adequate measures for their rehabilitation. It was contended that a large area of nearly 57 acres was available with the respondents even at present and which could be utilized for the rehabilitation of the appellants by allotting commercial sites in their favour to enable them to eke out their livelihood.

On behalf of the respondents it was contended by Mr. Gopal Subramaniam, that the High Court was justified in dismissing the writ petition filed by the appellants. There was, according to him, no illegality in the notification issued under the Land Acquisition Act nor was any such point raised before the Writ Court or before this Court for that matter. It was submitted that the notification under Section 56(5) of the Act had been issued after following the prescribed procedure which

included consideration of the objections received from different quarters to the declaration of Mohali as a `Local Planning Area'. He urged that the petitioner/appellants had not assailed the validity of the said notification and cannot now be allowed to do so at this belated stage. So also the validity of the notification issued under Section 178(2) of the Act aforementioned was not challenged in the writ petition filed by the appellants. Any attempt to challenge the validity of the said notification at this stage was, therefore, futile.

The absence of a challenge apart from the notification did not, according to Mr. Subramaniam, even otherwise suffer from any legal infirmity. The Government having applied its mind to the question of exemption of the area from the provisions of the 1995 Act was fully justified in issuing the exemption notification for good and valid reasons enumerated therein. A similar notification issued in regard to sectors 76 to 80 was on analogous grounds assailed before the High Court by the landholders in Jasmer Singh v. State of Punjab. The challenge was repelled by the High Court and even this Court in a further appeal. The appellants cannot, therefore, find fault with the notification issued in regard to the adjacent sectors 81, 88 and 89 which gives analogous reasons for exemption to what has already been held to be both relevant and adequate, in Jasmer Singh's case.

As regards the question of rehabilitation of the expropriated land owners, Mr. Subramaniam, submitted that rehabilitation was not a recognized right either under the Constitution or under the provisions of the Land Acquisition Act. Any beneficial measures taken by the Government are, therefore, guided only by humanitarian considerations of fairness and equity towards the land owners. The benefit of such measures is however subject to the satisfaction of all such conditions as may be stipulated by the Government in regard thereto. The policy relied upon by the appellants being only prospective cannot be made retrospective by a judicial order to cover acquisitions that have since long been finalized. Mr. Subramaniam contended that although the appellants/owners have been adequately compensated for the land acquired from their ownership by paying them handsome compensation, yet the State would not oppose any direction for a reference to the Civil Court for determination of reasonable compensation to the appellants, if they are otherwise dissatisfied with the amount determined in their favour.

The following questions fall for our determination:

> (1) Whether the exemption of the land under acquisition from the provisions of Section 14 and Chapters VIII, X and XII of the Punjab Regional and Town Planning and Development Act, 1995 in terms of notification dated 10th February, 2004 issued under Section 178(2) of the said Act suffers from any legal infirmity?
>
> (2) If the answer to question No.1 be in the affirmative whether the acquisition under challenge is rendered bad for non-compliance with the provisions of the Act aforementioned; and (3) Whether the absence of any rehabilitation measures renders the acquisition in question legally bad. If not, whether the `Land Pooling Scheme' can be made applicable to the acquisition of the land acquired from the appellants.

We shall deal with the questions ad seriatim. Re: Question No.1 We may before dealing with this question on its merits, point out that notification dated 10th February, 2004 granting exemption was never challenged in the writ petitions filed by the appellants. There is no foundation laid in the petitions by the appellants for them to contend that the exemption notification was vitiated either because of lack of authority or misdirection by the Government in exercise of its power under Section 178(2) of the Town Planning & Development Act 1995. The High Court has noticed this aspect in the following paragraph of its judgment:

> "Still further, since the factual situation with regard to the issuance of the notification under section 178 of the 1995 Act granting exemption from the application of provisions of the 1995 Act is admitted by the petitioners it is not open to them to challenge the acquisition on the ground that there is violation of the 1995 Act, without at least laying challenge to the notification granting exemption."

In the light of the above we find it difficult to appreciate how the issue regarding the validity of the exemption granted by the Government could be raised by the writ petitioners before the High Court or argued impromptu by the appellants before us. Any attempt to raise the question regarding validity of the exemption notification must therefore fail on that ground alone. Since, however, Mr. Gupta took great pains to make his submissions on the subject we may as well deal with the same.

Section 178 of Punjab Regional and Town Planning and Development Act, 1995 deals with exemptions and may be extracted:

> "Section 178:
>
> EXEMPTION :- (1) Nothing in this Act shall apply to the operational constructions.
>
> (2) Where the State Government is of the opinion that operation of any of the provisions of this Act causes any undue hardship or circumstances exist which render it expedient so to do, it may, subject to such terms and conditions as it may impose, by general or special order, exempt class or persons or areas from all or any of the provisions of the Act."

A plain reading of sub-section (2) above would show that the State Government is empowered to exempt any class of persons or areas from all or any of the provisions of the Act in cases where in the opinion of the State Government the operation of any such provisions would either cause undue hardship or the grant of exemption is otherwise expedient. According to the respondents the power to exempt was in the present case exercised by the Government not only because it was expedient to do so, but also because it was necessary to avoid hardship to the allottees. The notification sets out the circumstances in which the exercise of power was found necessary by the Government. It states that SAS Nagar (Mohali) was planned to include sectors 53 to 81 long before the coming into force of the Punjab Regional and Town Planning and Development Act, 1995. Sectors 53 to 75 were developed in the first phase after acquiring the land required for the same under the Land Acquisition Act. This was followed by acquisition of land for sectors 76 to 80 which further extended

the township to meet the ever increasing housing needs of the people of Punjab.

The exemption notification then refers to a decision taken in a meeting held on 25th August, 1995 whereunder the existing township was to be further extended by addition of a few more sectors. Sectors 80, 81, 88 and 89 were in pursuance of the said decision taken up for development after obtaining approval of the competent authority. A preliminary Notification under Section 4 of the Land Acquisition Act proposed an area of 417.39 acres in sector 81 and 688.89 acres in sectors 88 and 89 for acquisition.

The exemption notification goes on to state that acquisition of land for sectors 76 to 80 started by the Government was challenged by the landowners mainly on the ground that the provisions of the Town Planning & Development Act, 1995 were not complied with. The High Court of Punjab and Haryana had in these petitions stayed the dispossession of the owners while granting liberty to the respondents to proceed with the matter subject to the final orders of the Court. The notification finally makes a reference to the fact that Mohali has recorded the highest rate of growth of population of Class I cities giving rise to considerable increase in the demand for housing, in turn giving rise to haphazard development in the area if planned development of the sectors in question is not immediately taken up and plots made available to the allottees. The Government was, in the above backdrop, of the opinion that it was expedient to exempt the areas falling in sectors 81, 88 and 89 from the operation of Section 14 and those contained in Chapters VIII, X and XII of Punjab Regional and Town Planning and Development Act, 1995. It was also of the opinion that the prospective allottees would suffer hardship in case the Government does not grant exemption to the areas falling in the above sectors from the provisions referred to above.

The operative portion of the exemption notification reads:

> "In exercise of the powers conferred upon the State Government under Section 178(2) of the Punjab Regional and Town Planning and Development Act, 1995 and keeping in view larger public interest and planned development of the area, the State Government hereby exempts the areas falling under Sector 81, 88 and 89 being developed as expansion of existing township of SAS Nagar (Mohali) from the operation of provisions of Section 14 and consequently of the uncomplied provisions in Chapter VIII, X and XII, i.e. Section 56 to 60, 70 to 78 and 91 to 138 of the Punjab Regional and Town Planning and Development Act, 1995."

None of the circumstances referred to above is, in our opinion, irrelevant or extraneous to the exercise of the power of exemption vested in the Government under Section 178(2) of the Act. What is significant is that Mohali was identified for planned development by addition of sectors 53 to 81 even before the Punjab Regional and Town Planning and Development Act, 1995 came into force. The proposed development was to be carried out under the provisions of Punjab Urban Estate (Development and Regulation) Act, 1964 and Punjab Housing Development Board Act, 1972. It is true that initially the plan was limited to the addition of sectors 53 to 81 but the third phase with which we are concerned comprised not only development of sector 81 which was a part of the original plan but also included sectors 88 and 89.

It is also evident from the notification that compliance with the provisions of the Punjab Regional and Town Planning and Development Act, 1995 was found to be impracticable primarily because of the tremendous pressure on land in and around Mohali for housing purposes especially because the township has witnessed phenomenal growth over the years. The notification in our opinion rightly stated that if immediate steps were not taken to develop the outskirts of the township it would lead to large scale unplanned and haphazard mushrooming of housing colonies and commercial establishments in the area. Delay in the finalization of the outline Master Plan, comprehensive master plan and a town planning scheme thus had the potential of frustrating the very purpose underlying the legislation that is aimed at better planning, regulation, development and use of land in the planning areas. The Government was in that view well within its power to evaluate the options available to it, making a choice and taking appropriate action to prevent any such disorganized and haphazard development. In as much as the Government did so and decided to invoke its powers under Section 178(2) of the Act, it committed no illegality. On the contrary, the Government has by taking timely action prevented a situation where the area around the township of Mohali would have on account of tremendous pressure for conversion of land to non- agricultural use developed into a large slum as is the bane of many other cities in the country where statutory authorities charged with duties of urban development have failed to keep pace with the housing needs of the populace. It is noteworthy that the Government had prevented such haphazard and unplanned development even in sectors 76 to 80 by exempting the land falling in the said sectors from the operation of the provisions of the Punjab Regional and Town Planning and Development Act, 1995. The said exemption was assailed by the land owners but upheld not only by the High Court but even by this Court in appeal. That, the power of exemption could be exercised in situations similar to the one in hand thus stands amply established.

The contention of Mr. Gupta that just because the formulation of master plans and town planning schemes takes time cannot be a good ground for the Government to grant exemption from the operation of the statutory provisions may be unexceptionable for the law must be allowed to take its course howsoever cumbersome and time- consuming the process may be. But it is not the cumbersome and time-consuming process alone that has led to the issue of the exemption notification. It was a realistic assessment of the ground realities requiring urgent action that made adherence to the letter of law impracticable. The Government was of the opinion that failure to take immediate action for developing these sectors will lead to unplanned and haphazard construction activities in the area. It was the cumulative effect of all the circumstances referred to in the notification that led to the issue of the exemption notification.

We need to remember that Section 178(2) empowers the Government to grant exemption from the operation of the Act on the twin grounds of hardship and expediency. For the Government to exercise its power of exemption on the ground of expediency two requirements must be satisfied viz. (i) that circumstances exist which render it expedient to grant the exemption & (ii) the Government upon a consideration of those circumstances forms an opinion that it is expedient to do so. The latter requirement is more in the nature of a subjective satisfaction of the Government while the former is dependant on objective consideration of the circumstances that are germane. Once the existence of circumstances that are relevant to the exercise of the power of exemption are found to exist the formation of the opinion by the Government about the expediency of granting an

exemption is a matter on which the Court would be slow to interfere unless the decision is shown to be a colourable exercise or vitiated by any extraneous motive or consideration. The term `expedient' appearing in Section 178 of the Act has not been defined. Black's Law Dictionary, however, assigns the expression `expedient' the following meaning:

> "Appropriate and suitable to the end in view
>
> -Whatever is suitable and appropriate in reasons for the accomplishment of a specified object."

The term `expedient' has fallen for interpretation before this Court in several cases. In the State of Gujarat v. Jamnadas G. Pabri and Ors. (1975) 1 SCC 138 this Court was interpreting the provisions of Section 303A of the Panchayats Act as amended by Gujarat Panchayats (Amendment) Act 8 of 1974. The question was whether satisfaction of the State Government as to the expediency of holding elections for the reconstitution of a Panchayat was amenable to judicial review. Sarkaria J. speaking for the Court observed:

> ".....An analysis of Section 303-A(1) would show that before a declaration referred to in that sub-section can be made, two requirements must be fulfilled: (1) existence of a situation by reason of disturbances in the whole or any part of the State; (2) the satisfaction of the State Government relatable to such a situation, that it is not expedient to hold elections for the reconstitution of a Panchayat on the expiry of its term. The first requirement is an objective fact and the second is an opinion or inference drawn from that fact. The first requirement, if disputed, must be established objectively as a condition precedent to the exercise of the power. The second is a matter of subjective satisfaction of the Government and is not justiciable. Once a reasonable nexus between such satisfaction and the facts constituting the first requirement is shown, the exercise of the power by the Government, not being colourable or motivated by extraneous considerations, is not open to judicial review. Thus the question that could be objectively considered by the Court in this case was: Did a situation arising out of disturbances exist in the State of Gujarat on the date of the impugned notification?"

Dealing with the word `expedient' appearing in Section 303A this Court observed:

> ".....Again, the word "expedient" used in this provision, has several shades of meaning. In one dictionary sense, "expedient" (adj.) means "apt and suitable to the end in view", "practical and efficient"; "politic"; "profitable"; "advisable", "fit, proper and suitable to the circumstances of the case". In another shade, it means a device "characterised by mere utility rather than principle, conducive to special advantage rather than to what is universally right" (see Webster's New International Dictionary)."

The Court declared that Section 303A had been designed to enable the Government to get over a difficult situation surcharged with dangerous potentialities, and that the Court must construe the aforesaid phrases in keeping with the context and object of the provision in their widest amplitude.

In Balbir Singh v. State of Haryana (2000) 5 SCC 82 this Court had another opportunity to interpret the term `expedient' appearing in Section 4 of the Probation of Offenders Act, 1958. The Court held that the word is to be interpreted keeping in view the context and the object of the provisions in widest amplitude, and that while dealing with the question of grant of probation under the Act a duty was cast on the Court to take into account the circumstances of the case including the nature of the offence and form an opinion whether it is suitable and appropriate for accomplishing a specified object that the offender can be released on probation of good conduct.

Power of exemption reserved in favour of Government under Section 178 of the Town Planning and Development Act, 1995 is also intended to relieve hardship arising from the operation of the Act. It is intended to enable the Government to deal with situations in which circumstances independent of the question of hardship render it expedient to do so by granting exemption. A liberal construction has, therefore, to be placed upon the provisions of Section 178(2) so that exercise of power for good and bona fide reasons is not defeated.

In the totality of the above circumstances we answer question No.1 in the negative. We need to remember that nearly 96% of the landowners have already accepted the compensation and either accepted the acquisition proceedings or given up the challenge to the validity thereof. So also the fact that allotments in favour of different institutions have already been made cannot be ignored nor can a prestigious project like the one at hand be scuttled at this stage.

Re: Question No.2 In the light of what we have said while dealing with question no.1 above, we consider it unnecessary to discuss in detail the merits of the contentions urged by the learned counsel for the parties in regard to this question. We say so because once the exemption granted by the Government to the land falling in sectors 81, 88 and 89 is upheld the question of striking down the land acquisition proceedings on the ground that the provisions of the 1995 Act were not complied with does not survive. It is important to note that the validity of the acquisition proceedings have not been challenged on any ground that may have been available to the appellants by reference to the Land Acquisition Act. Neither before the High Court nor before us was it argued that the provisions of the Land Acquisition Act were not followed in letter and spirit, while acquiring the land in question. All that Mr. Gupta argued was that the case at hand was covered by the decision of this Court in Sanjeet Singh's case (supra). We have carefully gone through that decision but find the same to be clearly distinguishable. That was a case where the Government had issued notifications under Section 4 of the Land Acquisition Act for the public purpose of setting up of a new township of Anandgarh. Several writ petitions filed before the High Court challenged the said notifications alleging that the same had been issued in violation of Punjab Regional and Town Planning and Development Act, 1995. One of the arguments that was urged was that the site for setting up of a new town had to be first selected by the Board constituted under the Act aforementioned and since no such selection process had been undertaken by the Board the entire process of acquisition was vitiated. The High Court accepted that contention and quashed the

notifications holding that the selection of the site itself not being in accordance with the 1995 Act, acquisition based on any such selection was not legally permissible. In an appeal filed by the State of Punjab before this Court the question whether the site for a new township could be selected by the Government or by the Town Planning Authority was debated at length. This Court affirmed the view taken by the High Court and observed:

> "In the instant case 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. 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, and later moved the Government for acquisition of land under Section 42 of the Act. All these actions were in complete breach of the mandatory provisions of Section 56 of the Act, and therefore void.
>
> Hence it is held 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."

The facts in the present case are totally different. In the case at hand we are not dealing with the establishment of new city or township. We are also not dealing with a case where a request for acquisition of land is made by the Town Planning Authority under Section 42 of the Act. We are on the contrary dealing with a case where the acquisition is being made on the basis of an expansion plan formulated before the 1995 Act came into force.

That apart, unlike the case of Sanjeet Singh's the land under acquisition in these cases is covered by a notification under Section 56(5) of the 1995 Act, which declares SAS Nagar (Mohali) as a local planning area. The relevant part of the notification is in the following words:

> "Punjab Government Punjab Regional and Town Planning and Development Board NOTIFICATION Dated 06.03.2000 No.12/2/2000-4MU. 1/732 For the organized development of Sahibzada Ajit Singh Nagar (SAS Nagar) by formulation of a Master Plan, the Punjab Regional and Town Planning and Development Board had under Section 56(1) of Punjab Regional and Town Planning and Development Act, 1995 issued notification no. 6/21/95-4mu-1/3030 dated 01.07.1996 alongwith Drawing no. DTP (SAS Nagar) 1148/96 dated 07.04.1996 for the proposed declaration of the dame as a Notified planning area.

> As per the above notice published under Section 56(4) of the Punjab Regional and Town Planning and Development Act, 1995, objections and suggestions from any person, State government or any department of Central Government or local authority, or any other representative of any other organization on the same. Written objectins or suggestions could be raised on any part of the notification for declaring local planning area, within 60 days from the date of publication of the Notification on any aspect of the matter to the Member/Secy. Punjab Regional and Town Planning and Development Board, SCO 63-64, Sector 17- C, Chandigarh.
>
> In the meeting of Committee dated 16th October, 1998 which had been constituted for the scrutiny of objections and suggestions so received to the above Notification, were analyzed and considered. It was felt by the Committee that all the objections and suggestions were frivolous and as such they should be rejected. Accordingly the Committee recommend to Regional Town Planning and Development Board that the Board may reject the suggestions and objections which has been raised and declare the same as a local planning area under Section 56(5) of Act.
>
> The Punjab Regional and Town Planning and Development Board in its Meeting held on 15th November, 1999 at Chandigarh approved the recommendation Committee after considering the same. The Board also rejected the objections and suggestions received relating to the declaration of Local Planning Area, SAS Nagar. The Board under Section 56(5)(a) and (b) of the above Act also granted approval for the declaration of the same as a local planning area as also the name it local planning area SAS Nagar.
>
> The Punjab Regional and Town Planning and Development Board in accordance with the above mentioned decision declares the local planning area SAS Nagar under Section 56(a)&(b) in consonance with Punjab Regional and Town Planning and Development Act 1995. It shall be named as Local Planning Area SAS Nagar. The boundaries of the local planning are as under."

It is manifest that the above gave a sufficient basis for the Government to initiate proceedings for the acquisition of land needed for the proper expansion of the township.

A feeble attempt was made by learned counsel for the appellants to assail the validity of the notification. It was submitted that the same had been issued without notice to the landowners and others to file their objections. We, however, see no merit in that contention either. It is noteworthy that the notification in question was not assailed before the High Court in the writ petitions filed by the appellants. It is not, therefore, open to the petitioner to argue that the notification suffered from any illegality. No factual foundation having been laid in the writ petition we have no hesitation in rejecting the contention that notification was issued without following the procedure prescribed for the purpose and without considering the objections received from different quarters. We may recall that in Jasmer Singh' case (supra) the High Court had distinguished acquisitions for a new town from those meant for the extension of the existing township of Mohali and held that Sanjeet Singh's

case (supra) had no application to the later case. That view was affirmed by this Court in appeal and the acquisition for extension of Mohali upheld.

Question no.2 is also, in the light of the above, answered in the negative.

Re: Question No 3.

Article 300-A of the Constitution rests on the doctrine of eminent domain and guarantees a constitutional right against deprivation of property save by authority of law. It mandates that to be valid the deprivation of property must be by authority of law. That such deprivation in the present case is by the authority of law was not disputed, for it is common ground that the property owned by the appellants has been acquired in terms of the provisions of the Land Acquisition Act, 1894 which is a validly enacted piece of legislation. It is also not in dispute that the provisions of Land Acquisition Act invoked by the State for the acquisition under challenge provides for payment of compensation equivalent to the market value of the property as on the date of the preliminary notification apart from other benefits like solatium for the compulsory nature of the acquisition, additional compensation and interest etc. The sum total of all these amounts undoubtedly constitutes a reasonable compensation for the land acquired from the expropriated owners. Neither Article 300-A of the Constitution nor the Land Acquisition Act make any measures for rehabilitation of the expropriated owners a condition precedent for compulsory acquisition of land. In the absence of any such obligation arising either under Article 300-A or under any other statutory provision, rehabilitation of the owners cannot be treated as an essential requirement for a valid acquisition of property. We must, in fairness to Mr. Gupta mention that he did not suggest that rehabilitation of the oustees was an essential part of any process of compulsory acquisition so as to render iilegal any acquisition that is not accompanied by such measure. He did not pitch his case that high and in our opinion rightly so. The decisions of this Court in New Reviera Coop Housing Society and Anr. v. Special Land Acquisition Officer and Ors. 1996 (1) SCC 731 and Chameli Singh and Ors. v. State of U.P. and Anr. 1996 (2) SCC 549 have repelled the contention that rehabilitation of the property owners is a part of the right to life guaranteed under Article 21 of the Constitution so as to render any compulsory acquisition for public purpose bad for want of any such measures. In New Reviera's case (supra) this Court held that if the State comes forward with a proposal to provide alternative sites to the owners, the Court can give effect to any such proposal by issuing appropriate directions in that behalf. But a provision for alternative sites cannot be made a condition precedent for every acquisition of land. In Chameli Singh's case (supra) also the Court held that acquisitions are made in exercise of power of eminent domain for public purpose, and that individual right of ownership over land must yield place to the larger public good. That acquisition in accordance with the procedure sanctioned by law is a valid exercise of power vested in the State hence cannot be taken to deprive the right to livelihood especially when compensation is paid for the acquired land at the rates prevailing on the date of publication of the preliminary notification. There is thus no gainsaying that rehabilitation is not an essential requirement of law for any compulsory acquisition nor can acquisition made for a public purpose and in accordance with the procedure established by law upon payment of compensation that is fair and reasonable be assailed on the ground that any such acquisition violates the right to livelihood of the owners who may be dependant on the land being acquired from them.

What Mr. Gupta contended was that the State Government had formulated a Land Pooling Scheme for rehabilitation of the oustees, benefit whereof could be extended to the appellants. He urged that the policy formulated by the State was in consonance with the observations made by this Court in Bondu Ramaswamy v. Bangalore Development Authority and Others where this Court had clearly recognized the need for taking corrective measures to reduce the hardship which the landowners suffer on account of absence of any ameliorative schemes. He urged that while the scheme already framed substantially conforms to what this Court has suggested in the above judgment, the same is prospective in its operation. This Court could, argued the learned counsel, make the scheme applicable to the appellants specially when the respondents are in a position to give redress to the appellants by allotting residential and commercial sites in other sectors developed in and around Mohali.

In Bondu Ramaswamy's case relied upon by Mr. Gupta this Court noted the frequent complaints and grievances made in regard to the prevailing system of acquisition governed by the Land Acquisition Act, 1894. One of the areas in which this Court noticed dissatisfaction among the landowners is the absence of any rehabilitatory measures. This Court noted that several avenues for providing rehabilitation and economic security to landowners were available such as provision for employment, allotment of alternative lands, housing and safe opportunities for investment of compensation amount to generate stable income. The acquisitions were for that purpose classified by this Court into the following three categories:

> (i) Acquisitions for the benefit of the general public or in national interest. This will include acquisitions for roads, bridges, water supply projects, power projects, defence establishments, residential colonies for rehabilitation of victims of natural calamities.
>
> (ii) Acquisitions for economic development and industrial growth. This will include acquisitions for Industrial Layouts/Zones, corporations owned or controlled by the State, expansion of existing industries, and setting up Special Economic Zones.
>
> (iii) Acquisitions for planned development of urban areas. This will include acquisitions for formation of residential layouts and construction of apartment blocks, for allotment to urban middle class and urban poor, rural poor etc. The Court observed that in order to ensure a smooth and litigation-free acquisition, beneficial to all concerned it was necessary to evolve tailor-made schemes to make acquisitions more acceptable to the landowners. This Court observed:
>
> "In the preceding para, we have touched upon matters that may be considered to be in the realm of government policy. We have referred to them as acquisition of lands affect the vital rights of farmers and give rise to considerable litigations and agitations. Our suggestions and observations are intended to draw attention of the government and development authorities to some probable solutions to the vexed problems associated with land acquisition, existence of which can neither be denied nor disputed, and to alleviate the hardships of the land owners. It may be possible for the government and development authorities to come up with better solutions. There

> is also a need for the Law Commission and the Parliament to revisit the Land Acquisition Act, 1894 which is more than a century old. There is also a need to remind Development Authorities that they exist to serve the people and not vice versa.
>
> We have come across development authorities which resort to `developmental activities' by acquiring lands and forming layouts, not with the goal of achieving planned development or provide plots at reasonable costs in well formed layouts, but to provide work to their employees and generate funds for payment of salaries. Any development scheme should be to benefit the society and improve the city, and not to benefit the development authority. Be that as it may."

To the credit of the State of Punjab we must say that it has formulated a Land Pooling Scheme which is owner- friendly and provides greater incentives for the owners to readily give up their lands whenever the same are needed for a public purpose. Difficulty, however, arises on account of the fact that the scheme formulated and circulated by the Government in terms of its letter dated 5th September, 2008 is only prospective in its operation. The scheme envisages a kind of public-private partnership in the development of areas involving acquisition of large extents of land. Not only that in order that the scheme works effectively the authorities for whom acquisition is being made will have to take a broader initiative at the appropriate stage to make provision for allocation to the owners of what is due to them under the scheme. This can be done only when an acquisition is tailored according to the scheme. The scheme cannot be introduced after the acquisition and even allotment process is over. A mechanical extension of the scheme to acquisitions that have since become final cannot help. Any such attempt would be a potential recipe for considerable confusion and resultant litigation. In the completed acquisitions no provision regarding allocation to be made to the owners has been made. It is also not, in our opinion, feasible at this point of time to super impose the Land Pooling Scheme on the acquisition under challenge and make a provision for allocation to the owners in the sectors that are under development or those that have already been developed. The extent of area available in other sectors for such allotment and allocation is itself a matter regarding which there is no material before us. That apart even when the number of appellants before us is limited, any direction for rehabilitation based on a retrospective operation of the scheme would deprive owners of the benefit of such scheme only on account of their acceptance of the acquisition proceedings. Last but not the least is the fact that the observations made in Bondu Ramaswamy's case regarding the desirability of providing for rehabilitatory measures, may not strict sense apply in the present case where the acquisition in question has been made for setting up a knowledge city in sector 81 of SAS Nagar (Mohali) in public and indeed national interest. The argument that this Court could confine the benefit of retrospective application of the scheme to the appellants only has not for all these reasons appealed to us.

Mr. Gopal Subramaniam, however, fairly submitted that the State Government would have no objection to the appellants before us being relegated to a reference to the Civil Court for determination of the compensation due to them since others who have not challenged the acquisition have secured such references. He urged that although no applications have been made by the appellants seeking reference to the Civil Court for determination of this just compensation

due to them, and although the time period within which such applications could be made has expired the respondent would have no objection to the petitioners being permitted to make such applications and direct that on such applications being made the Collector shall make a reference to the Civil Court for determination of the compensation payable to the owners. That is, in our opinion, a reasonable offer which would ensure that the applicants do not suffer on account of the pending litigation, or their failure to make applications within the time available to them.

In the result while we answer question No.3 in the negative and consequently dismiss these appeals, we direct that if the appellants make applications under Section 18 of the Land Acquisition Act for reference of their claims for higher compensation before the concerned Collector Land Acquisition within a period of six weeks from today the Collector shall make a reference to the competent Civil Court for determination of the compensation payable to the appellants. The Reference Court shall on receipt of the reference expedite the disposal of the same. No costs.

.....

.....J. (R.V. RAVEENDRAN) .....J. (R.M. LODHA) .....J. (T.S. THAKUR) New Delhi September 29, 2010