(1997) 09 P&H CK 0035

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 13201 of 1996

Baldev Singh and Another	APPELLANT
Vs	
The State of Punjab and Others	RESPONDENT

Date of Decision: Sept. 29, 1997

Acts Referred:

- Constitution of India, 1950 - Article 226
- Punjab Town Improvement (Utilisation of Lands and Allotment of Plots) Rules, 1983 - Rule 4, 5, 6
- Punjab Town Improvement Act, 1922 - Section 24, 26, 27, 40, 40(1)

Citation: (1998) 118 PLR 579 : (1998) 1 RCR(Civil) 436

Hon'ble Judges: K.S. Kumaran, J; Ashok Bhan, J

Bench: Division Bench

Advocate: A.K. Chopra and Gurpal Singh, for the Appellant; J.R. Mittal, M.L. Sarin, K.K. Garg, Rakesh Garg and Hemant Sarin, for the Respondent

Final Decision: Dismissed

Judgement

K.S. Kumaran J.

The petitioners in these various petitions have approached this Court Under Articles 226/227 of the Constitution of India for quashing the notifications issued Under Sections 36, 40 and 42 of the Punjab Town Improvement Act, 1922 as also the subsequent proceedings initiated by the third respondent-Land Acquisition Collector.

2. By this order we dispose of this and the connected 31 writ petitions also in view of the common questions of law and facts involved in these cases i.e. Civil Writ Petition Nos. 3815, 17668, 18057, 18058, 18059, 18060, 18061, 18062, 18063, 18176, 18688, 18871, 19001 of 1995 and Civil Writ Petition Nos. 1845, 12983, 13049, 13200, 13202, 13203, 13204, 13205, 13613, 13739, 13740, 13741, 13843, 13844, 13845, 13864, 15480 and 16131 of 1996.

3. We have taken the following material facts from Civil Writ Petition No. 13201 of 1996.

4. Second respondent-Bhatinda Improvement Trust issued a notification dated 1st September, 1993 (Annexure P-1) in Civil Writ Petition No. 13201 of 19%) u/s 36 of the Punjab Town-Improvement Act, 1922 (hereinafter referred to as the Act) for developing an area measuring 49.5 acres known as 49.5 acres Development Scheme, whereunder the trust framed a development scheme Under Sections 24 and 25 read with Section 28(2) of the Act in respect of this area situated at the junction of Bibi Wala Road and Barnala Road within the municipal limits of Bhatinda. In response to the objections called for by the said notification, the petitioners who are owners of certain lands (petitioners in Civil Writ Petition No. 13201 of 1996 owned three bighas and 2/3 biswas of lands in Khasra No. 2394/2, at Village Bhatinda and also a plot of 200 square yards in the same khasra number, which are also sought to be acquired under the notification-annexure P-1) objected before the second respondent that it was nothing but a colourable exercise of the powers, on their part. In their objections the petitioners alleged that their lands and plot of 200 square yards are situated near the Guru Nanak Ice Factory add Cold Store, a highly developed and precious tract of land with considerable potential for being used for commercial and industrial purposes. According to the petitioners in Civil Writ Petition No. 13201 of 19% the plot measuring 200 square ''yards had already been earmarked for residential construction and sanction has been obtained from the Municipal Committee, Bhatinda. The plot is also enclosed by a boundary wall and foundations have been laid up to plinth level, apart from getting water connection in the year 1992. The petitioners also objected on the ground that there are palatial residential bungalows, factories and commercial establishments in this locality now sought to be developed and, therefore, there is no need for any further development since the area is already developed.

5. According to these petitioners, the notification u/s 36 of the Act can be issued only after the scheme has been framed whereas it is found from a visit to the office of the second respondent-Trust that no details of lay out plan for the scheme were available except an incomplete map dated 26th July, 1993.

6. Petitioner also filed an application u/s 56 of the Act seeking exemption of their area from acquisition and another application Under Sections 26 and 27 of the Act for framing re-housing scheme before proceeding with the impugned scheme. The petitioners claim that the second respondent-Trust issued a notice dated 29th September, 1993 (Annexure P-5) u/s 38 of the Act for which the petitioners (in Civil Writ Petition No. 13201 of 1996) filed their objections dated 26th November, 1993 (Annexure P-6). The petitioners claim that though they were informed that their objections Under Sections 36 and 38 of the Act would be heard in January, 1994, no hearing was given to them. The petitioners further claim that the second respondent- Trust without giving an opportunity of hearing and without further

notice to them rejected the objections of the petitioners and others u/s 36 and 38 of the Act by a non-speaking order dated 7th July, 1994 (Annexure P-7). According to the petitioners, the Town Planning Department, Punjab, had written a letter dated 16th December, 1993 (Annexure P-8) to the Deputy Commissioner, Bhatinda, that the lands khasra Numbers 2394, 2391 and 2390 are not to be acquired as people have already constructed their houses in those lands. The petitioners claim that the Executive Engineer of the Town Planning Department and the Municipal Committee have also, written letters regarding the impugned scheme and objecting to it. The Municipal Committee objected on the ground that the land had already been handed over to it for framing a town planning scheme and that it had also framed such a scheme.

7. The petitioners claim that the State Government without applying its mind and complying with the provisions of law and in violation of its own directions in this regard granted sanction to the said scheme as per notification dated 1st August, 1994 (Annexure P-10) u/s 42 of the Act. As per instructions of the Government dated 28th December, 1990 (Annexure P-11), no objection certificate from various authorities, which were required to be taken before initiating the proceedings of the scheme, have not been obtained.

8. It published a notice in the Daily Tribune on 1st September, 1994 that the Trust was making application to the State Government for sanctioning of the impugned scheme, whereas the sanction u/s 42 of the Act had been granted by the State Government on 31st August, 1994 itself.

9. The petitioners claim that a development scheme covering the lands of the petitioners was published in the year 1978 but the scheme was dropped as the area had already been developed and as there was paucity of funds with the second respondent-trust. According to the petitioners, with the mala fide intention to peg down the price of the land, the respondent-trust had earlier published the scheme in the year 1984, which was also dropped by the trust in view of the fact that Municipal Committee, Bhatinda would adopt a Town Planning Scheme. The Municipal Committee, Bhatinda, resolved and declared the area as unbuilt area and deposited the expenses for preparing the lay out plan/development scheme with the Town Planner, Bhatinda.

10. According to the petitioners, they have been discriminated since similarly situated properties of the other persons were exempted/adjusted in the scheme, whereas their properties have not been exempted in spite of the fact that, they are fully adjustable in the scheme. According to the petitioners, the Executive Engineer of the Punjab Water Supply and Sewerage Board had also written to the impugned Improvement Trust recommending such adjustments and stating that the petitioners'' plot should not be acquired. The petitioners claim that they are prepared to pay development charges if their plots are adjusted in the scheme. They have raised houses/construction over the land sought to be acquired. The

petitioners have further urged that on completion of the, alleged proceedings under the Act third respondent-Land Acquisition Collector issued notice u/s 9 of the Land Acquisition Act (Annexure P-16) stating that the Government attends to take possession of the land and that claims for compensation be made to him for which the petitioners raised objections dated 11th December, 1995 (Annexure P-17).

11. As per the proposed scheme residential houses are to be built near the military area boundary which is not in accordance with the instructions of the military authorities that no constructions can be allowed within 100 metres from the boundary of the Cantonment area and 2000 metres from the Ammunition Depot. Since the proposed scheme is within 2000 metres range of Ammunition Depot of the Bhatinda Cantonment Area the military authorities also wrote to the Municipal Engineer, that they are intending to notify the area upto area 2000 metres around parameter of the Ammunition Depot as ''restricted area'' under the provisions of the Defence Act, 1983.

12. The petitioners also claim that this Scheme is also not in accordance with the rules of the Punjab Scheduled Roads and Controlled Areas (Restrictions of Unregulated Development) Act, 1963, since the proposed scheme is within 50 metres of the scheduled roads. According to the petitioners, the respondent- trust had left 18.42 acres land wilfully to benefit certain land owners who are close relatives of the authorities. Petitioners claim that the impugned scheme as published and sanctioned and the proceedings initiated thereunder are illegal, unjust and the result of colourable exercise of power on the part of the authorities.

13. Respondent Nos. 2 and 3 filed the following reply raising certain preliminary objections also while the first respondent did n6t file a separate reply.

14. On 21st January, 1994, a personal hearing was given. Angrez Singh (one of the petitioners in Civil Writ petition No, 13201 of 1996) has also signed in the. present sheet. The petition also suffers from unexplained laches, since the objections raised by the petitioners, after hearing, were decided on 7th July, 1994, whereas, this petition has been filed in August, 1996.

15. The land in dispute is a vacant plot as given in the survey got done by these respondents. All persons likely to be affected were served with notice, and objections filed by them were duly considered. Those who had come for personal hearing were heard. The allegation that necessary documents were not available for inspection in the office of the respondent-trust is not correct. There is no mandatory provision for framing a re-housing scheme. The objections filed were duly considered and disposed of by means of the resolution of the respondent-trust dated 7th July, 1994. The communications referred to in paragraph 7 of the petition were recommendatory and were not binding on these respondents. The allegation that the scheme was sanctioned by the Government without application of mind is not correct. All the necessary documents were considered and thereafter the

Government sanctioned the scheme. The Government conveyed the issuance of No Objection Certificate by the State Level Land Acquisition Board. The first publication u/s 40 appeared in the Tribune on 25th August, 1994. The publication on 1st September, 1994 was the second publication. The Government had accorded sanction on 31st August, 1994 i.e. after the first publication.

16. The earlier development scheme was for 93.49 acres and were dropped for want of funds and not on account of any other reason. The impugned scheme was notified in 1993 and already Rs. 7 crores have been deposited with the Land Acquisition Authorities.

17. There is no discrimination qua the petitioners. Only A and B class constructions as could be adjusted as per instructions on the subject, have been adjusted. No vacant plot was exempted.

18. There is no illegality in the framing, publishing and sanctioning the scheme. The representations were duly considered. The respondents did not give any impression that the scheme might be withdrawn by the Government. The military authorities have not objected to the scheme. The entire area under the scheme was in the municipal limits and as such it does not attract any of the provisions of the Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963. The proposed bye-pass does not fall in the category of scheduled road so far.

19. The allegation that 18.42 acres of land has been left intentionally to benefit certain relatives of the authorities is not correct, and is also not specific.

20. Recommendations of the Town Planning authorities-were of recommendatory nature. The municipal authorities did not object to the impugned scheme.

21. The petitioners (in Civil Writ Petition No. 13201 of 19%) filed a replication reiterating their stand in the petition and replying/controverting suitably the allegations found in the reply of the respondents.

22. We have heard counsel for both the sides and perused the records. Under the notification dated 1st September, 1993 made u/s 36 of the Punjab Town Improvement Act, 1922, the Bhatinda Improvement Trust framed a development scheme Under Sections 24 and 25 read with Section 28(2) of the said Act in respect of an area approximately measuring 49.5 acres situated within the municipal limits of Bhatinda. The scheme was framed in pursuance of the resolution of the above said Trust (hereinafter referred to as the Trust) in the meeting held on 30th Jury, 1993. This notification also called for objections to be filed within 30 days of the first publication of the notice. Section 24 of the Act enables the Trust, for the purpose of development of any locality within the municipal limits, to prepare a development scheme. u/s 25 of the Act, the Trust, it is of the opinion that it is expedient and for the public advantage to provide a housing accommodation for any class of the

inhabitants it may frame "housing accommodation scheme". As to what are the matters which may be provided for in the scheme, is found in Section 28(2) of the Act. Sub-clause (xii) of Sub-section (2) of Section 28 enables the framing of a scheme providing for the demolition of the existing buildings and the erection and re-erection of the buildings by the Trust or by the owners or by the trust in default of the owners. The above said notification u/s 36 gave notice of a scheme framed Under Sections 24 and 25 read with Section 28(2) of the Act.

23. As already pointed out, the notification called for the objections. Accordingly, the petitioners objected to the scheme on the grounds that the area in question is already developed and does not require any development since there are palatial residential bungalows, factories, commercial establishments etc. that previously this locality was covered under a proposed 93.49 acres scheme of the year 1978 (as is seen from Annexure P-13 to Civil Writ Petition No. 13201 of 1996) and another scheme of the year 1984 (as is seen from annexure P-14 to the Civil Writ Petition No. 13201 of 1996) but both the schemes were dropped and not implemented. The petitioners also objected that these successive notifications are only result of the mala fide intention of the respondents to peg down the price and also a colourable exercise of their power. The petitioners also claim that their property should be adjusted u/s 56 of the Act and that a re-housing scheme as contemplated Under Sections 26 and 27 of the Act should have been framed before implementing the impugned scheme.

24. Section 36 of the Act provides that when a scheme under this Act has been framed, the Trust shall prepare a notice stating, (i) the fact that the scheme has been framed, (ii) the boundaries of the locality comprised in the scheme, (iii) the place at which details of the scheme may be inspected. Sub-section (2) of Section 36 of the Act provides that the notice should be published weekly for three consecutive weeks in the official gazette and in a newspaper or newspapers with a statement about the period within which objections will be received. Sub-section (3) of Section 36 provides that the copies of documents referred to in Clause (iii) mentioned above shall be delivered to any applicant on payment of such fees as may be prescribed.

25. We have already pointed out that such a notification as contemplated u/s 36 has been published and that is also not disputed by the petitioners. As pointed out already, they have not only made objections to this notification, but have also filed applications claiming exemption as well as praying for the framing of rehousing scheme.

26. Section 38 of the Act provides that a notice shall be served on every person whom the Trust has reason to believe to be the owner or occupier of the property or premises proposed to be acquired in executing the scheme. It is also conceded by the petitioners that such notice was also given and one of such notices issued to. Angrez Singh (one of the petitioners in Civil Writ Petition No. 13201 of 1996) has also been produced as annexure P-5. The petitioners have also objected to this notice u/s

38 also (one of such objections is annexure P-6 to Civil Writ Petition No. 13201 of 1996). The contention of the petitioners is that without giving a reasonable opportunity of hearing to them on the objections raised by them, by a laconic/cryptic order, their objections have been rejected and, therefore, this notification as also the sanction given by the Government to the Scheme should be quashed. Annexure P-7 (to Civil Writ Petition No. 13201 of 1996) is the copy of the resolution passed by the Trust in its meeting held on 7th July, 1994 wherein the report of the Committee on the objections received Under Sections 36 and 38 of the Act with regard to the scheme was considered and it has been resolved to reject these objections. The resolution No. 39 of 1994 which is relevant for our purpose, reads as follows:-

"The report of such Committee regarding objections Under Sections 36 and 38 of the Development Scheme, 49.50 acres has been considered. After discussion the following decisions are taken:-

(A) It has been decided by the Trust that 49.50 acres scheme is in the interest of the development of the city and public and trust. It is necessary to implement the scheme.

After the discussion on the objections received u/s 36 and 38 it has been decided that the objections are rejected."

27. It is thereafter that the Government sanctioned the scheme in question by the notification dated 31st August, 1994. The petitioners have also raised certain questions with regard to the validity of the sanction by the Government about which we will deal with later. We will now consider whether the contention of the petitioners that the respondents in framing the scheme have acted mala fide and in colourable exercise of the power vested in them.

28. The contention of the petitioners is that once in 1978 and then in 1984, the respondents framed a scheme with reference to an extent of 93.49 acres of land which included the lands comprised in the present impugned scheme, but, did not implement them, and that the present scheme in 1993 is only the third attempt to peg down the prices. Therefore, the petitioners contend that the action of the respondent is mala fide and is a colourable exercise of their power. In this regard, the learned counsel for the petitioners relied upon a Division Bench judgment of this Court in Om Parkash v. State of Haryana and Ors. (1984) 86 P.L.R. 115. That was a case which arose under the Land Acquisition Act. The petitioners therein contended that since 1972 when the first notification was issued, no concrete steps were taken by the Government and the result of successive notification was that there was no buyer of the lands and thereby the Government succeeded in pegging down the prices. The final notification was made in the year 1981 u/s 4 of the Land Acquisition Act but, the notification u/s 6 of the Act was yet to be issued. This Court, after observing that though a notification u/s 6 of the Land Acquisition Act could be

issued within three years of the issuance of the notification u/s 4 of the said Act, yet it was incumbent on the State to explain as to why full period of 3 years was being taken for issuing a notification u/s 6 of the Land Acquisition Act, and held on the facts of the case, the delay in issuance of the notification u/s 6 had become material in view of the fact that the notifications have been issued on and off since 1972, and that the entire delay which was not properly explained, led to the irresistible conclusion that the impugned notification so far as the land of the petitioners therein was concerned, suffered from the vice of mala fide. Therefore, the notification in so far as it related to the lands of the petitioners therein, was quashed. But the learned counsel for the respondents contends that this decision will not be applicable to (he facts of this case. He contends that the previous two schemes could not be implemented for want of funds. We are also of the view that this must be the reason, because the original scheme was for a larger extent of 93.49 acres and for want of funds the Trust has now restricted the scheme to 49.5 acres. Even petitioners in Civil Writ Petition No. 13201 of 1996 have in para 10 of the petition stated that the Trust had no funds. Further it was found in that case not only that there were successive notifications, but also there was delay in issuing the notification u/s 6 of the Land Acquisition Act after the publication of the Section 4 notification, and that there was no explanation for the same. That was why the last notification made in the year 1981 was quashed in so far as the land of the petitioners before the High Court in that case was concerned. But in this case, as pointed out already, the State has been able to explain as to why the previous schemes were dropped. In these circumstances, we are of the view that the decision of Om Parkash''s case (supra) will not be applicable to the facts of the present case.

29. The learned counsel for the respondents further contends that the abandonment or the non-implementation of the previous schemes is no bar for framing a fresh scheme since there is no prohibition under the Act to frame a new scheme in lieu of the old scheme. He relied upon a decision of this Court in Harbhajan Singh and Others Vs. State of Punjab and Another, . That was also a case which arose under the Punjab Town Improvement Act, 1922, and a contention questioning the right of the Trust to frame a new scheme after the alleged abandonment of the earlier schemes, was raised. This Court held, that a reading of the provisions of the Act, showed that there is no prohibition against framing of a scheme by the Trust after the earlier scheme is given up or is not implemented. This Court also held that in the absence of any allegation of mala fide against any particular functionary of the Trust, it is not possible to hold that the development scheme by the Trust is contrary to law or is mala fide. This decision certainly supports the contention of the learned counsel for the respondents. The learned counsel for the petitioners wanted to distinguish this decision on the ground that in the above said decision this Court had taken note of the fact that the lands covered by the two schemes were different and, therefore, held that it object to favour a particular set of land holders. Of course, in the present case, the lands in respect of

which the development scheme has been framed, were part of the original scheme covering 93.49 acres, but, on this ground alone, it cannot be stated that the action of the respondents is mala fide or is a colourable exercise of power. The petitioners herein have not levelled any allegation of mala fide against any particular-functionary of the Trust or the other respondents. Of course, the petitioners have alleged that they have been discriminated against, since certain other similarly situated lands have been exempted from the scheme, with which we do not agree and will deal with that allegation separately later. Therefore, even if the lands involved in the present scheme were part of the previous scheme covering a larger area, it cannot be said that there is any bar for the new scheme or that the action of the respondents is mala fide or the result of a colourable exercise of their power. Therefore, on this ground, the decision in Harbhajan Singh''s case (supra) cannot be held to be inapplicable to the facts of this case. We are of the view that the principle laid down in the above said decision is applicable to the facts of the present case also. Further, a Full Bench of this Court in Ghansham Dass Goyal and Ors. v. The State of Haryana and Anr. (1986) 89 P.L.R. 513 (F.B.) held that successive notifications per se did not prove colourable exercise of power or that the intention is to peg down the price.

30. Further, Section 40 of the Act enables the Trust either to abandon the scheme . or to apply to the State Government for sanction of the scheme. So, the power to abandon the scheme is statutorily recognised, while, there is no statutory bar that a fresh scheme- should not be framed in respect of the same lands after abandoning the previous scheme. Therefore, taking into consideration all these aspects, we find that the mere fact that the previous two schemes which covered the lands included in the present scheme also and that those schemes were not implemented, will not and cannot mean that the present scheme is the result of the mala fides or the colourable exercise of power of the respondents.

31. We will next consider the other contention raised by the petitioners that they have not been given an opportunity of hearing on the objections raised by them. In this connection, the learned counsel for the petitioners relied upon a Full Bench decision of this Court in Jodh Singh and Ors. v. Jullundur Improvement Trust and Anr. 1984 R.L.R. 492 (F.B.) which held that the provisions of Sections 36, 38 and 40(1) are mandatory. The Full Bench also held that "colourable exercise of power in relation to the provisions pertaining to the framing and sanction of the scheme would arise where, for instance, there had not been even substantial compliance of the provisions that are considered directory, nor there had been requisite compliance of the provisions which are considered mandatory. An example of total non-compliance would be a case where say, there is no publication whatever as required by Section 36, or no notice is issued as required by Section 38 or no consideration of the objections in terms of Sub-section (1) of Section 40 and even no publication of the factum that the scheme was being submitted for sanction to the State Government and the State Government sanctioned the scheme".

32. The learned counsel for the petitioners relied upon Anr. decision of a Single Bench of this Court in Baldev Singh and Ors. v. The State of Haryana and Anr. 1993 (2) R.L.R. 6. The petitioners in that case approached this Court for quashing the notification issued u/s 4 read with Section 17, Sub-clauses (2)(c) and (4) of the Land Acquisition Act as also the follow up declaration issued u/s 6. This Court on facts found that even earlier the State endeavoured to acquire the land by invoking the provisions contained in Section 17 of the Land Acquisition Act on two occasions but on both occasions when the matter came up for adjudication before the Court presumably with regard to the necessity of dispensing with hearing of the objections of the land owners which are otherwise guaranteed by the statute, the Government withdrew the notification and therefore the third notification after a gap of 5 years for the same purpose was enough to demonstrate that so called urgency to acquire land was hollow. Therefore, this Court held that the right of a citizen whose land is compulsorily acquired, to raise objections under the provisions of the Act is very valuable and cannot be thwarted on flimsy grounds and, therefore, quashed the notifications issued u/s 4 and 6 of the Land Acquisition Act. This decision will not apply to the facts of the present case. The present case is not one where the emergency provisions as are found in Section 17 of the Land Acquisition Act, are sought to be invoked to dispense with enquiry as contemplated u/s 5A of the Land Acquisition Act. On the contrary, the contention of the respondents is that notices have been served and opportunity of hearing was also given to the petitioners at the necessary stage. We are also of the view that this decision will have no application to the facts of the present case since the respondents have not attempted to thwart the rights of the land owners to a reasonable opportunity of hearing whenever one asked for such a hearing by invoking any such provisions similar to those contained in Section 17 of the Land Acquisition Act.

33. The learned counsel for the petitioners also relied upon a decision of the Hon''ble Supreme Court in Shyam Nandan Prasad and Ors. v. State of Bihar and Ors. 1993 (2) R.L.R. 217 (S.C.). That again was a matter which arose in connection with the proceedings under the Land Acquisition Act. The Hon''ble Supreme Court held that compliance with the provisions of Section 5-A of the Land Acquisition Act is mandatory unless dispensed with by invoking Section 17 of the said Act In view of what we have stated above, this decision also will not be applicable to the facts of the present case.

34. The learned counsel for the respondents, on the other hand, relied upon a decision of the Hon''ble Supreme Court Improvement Trust, Moga Vs. Manchanda Soap Works and others, , wherein it was held.....Therefore, the Act did not provide for any individual notice of personal hearing u/s 79 of the Act read with Sections 36 and 38 of the Act-...."

35. Apart from this, the learned counsel for the respondents contends that such of those petitioners who have appeared and who wanted to be heard, have been

heard and their objections have been considered.

36. The learned counsel for the respondents contends that the Trust formed a Committee to hear the objections and fixed 21st January, 1994 as the date for hearing the concerned persons and accordingly the Committee heard the objections. He also contends that the persons who appeared have also signed the attendance register. Even the petitioners in Civil Writ Petition No. 13201 of 1996 have stated in their replication, that Angrez Singh may have been made to sign the presence sheet dated 21st January, 1994 but, actually no personal hearing was afforded to the petitioners. Such a contention cannot at all be accepted. The very object of inviting persons to attend the hearing on the objections is to enable them to put forth their ceases. The signatures are obtained to evidence their presence on the said date. When it is admitted that Angrez Singh, one of the petitioners in Civil Writ Petition No. 13201 of 1996 had signed the attendance register, the contention that yet no opportunity of hearing was given, cannot at all be accepted. Section 40(1) of the Act also provides that whoever desired to be heard, must be heard by the Trust. To say that a person who had attended on the date of hearing and also signed the presence register, was not heard, is too far fetched. Therefore, this contention of the petitioners that one of the petitioners-Angrez Singh had appeared and signed in the attendance register, but was not heard, cannot at all be accepted.

37. We have already pointed out that annexure P-7 to Civil Writ Petition No. 13201 of 1996 showed that on 7th July, 1994, the Trust, on a consideration of the report of the Committee constituted for hearing the objections, rejected the objections on the ground that the scheme is in the interest of the development of the city and the public and, therefore, it was necessary to implement the scheme. The learned counsel for the petitioners contends that this resolution dated 7th July, 1994 does not specifically say that the objections were heard. It is not necessary that the resolution should say so. It is seen that the Trust had considered the report of the Committee on the objections and passed orders.

38. Another contention raised by the learned counsel for the petitioners is that it is not the Trust which heard the objections, but it is only the Committee that is stated to have heard the objections, which is not in compliance with the provisions of Section 40(1) of the Act. Of course, Section 40(1) of the Act provides that the Trust, after hearing the objections, shall either abandon or submit the scheme to the Government for sanction. But, it is not necessary that the entire body of the Trust should sit and hear the objections. Hearing of the objections by the Committee can-not be and is also not stated to have prejudice[] the rights of the land owners in any manner. Therefore, even if it be considered an irregularity, that by itself cannot prejudice the rights of the land owners.

39. Of course, the learned counsel for the petitioners relied upon the decision of this Court in Lakhwinder Singh Bajwa Vs. State of Punjab and Others, in support of his contention that rejection of the objections without assigning any reasons showed

non-application of mind and, therefore, the proceedings should be quashed. But this decision holds that the Trust is not expected to pass a detailed order, but, some process of reasoning should be available on record to indicate that there was application of mind, and that there was some reason for the Trust to reject the objections. This Court also observed that there was nothing in the records of. the case to show that the Trust had collectively applied its mind to the objections, since it had disposed of the objections, by a Single word "rejected". But that is not the case here. We have already pointed out that the parties were heard by the Committee which submitted its report, and that the Trust considered the report, and rejected the objections giving its reasons. Therefore, this decision will not apply to the facts of the present case.

40. Another objection taken by the petitioners is that when the Trust submitted the scheme to the Government for its sanction, the Trust is bound to cause notice of the fact to be published for the two consecutive weeks in the official gazette and in the newspaper/newspapers in view of the provisions of Sub-section (3) of Section 40, whereas while making such a publication u/s 40(3) (as seen from annexure P-12 to Civil Writ Petition No. 13201 of 1996), the Trust had not called for any objection and had not provided an opportunity of hearing. This contention cannot be accepted. Sub-section (3) of Section 40 does not provide that an opportunity should be given to file objections or to give any hearing. It is merely a publication for the information of the public. The Full Bench of this Court in Jodh Singh and Ors. v. Jullundur Improvement Trust and Ors. (supra) has held that Sub-section (3) of Section 40 does not confer any right upon the general public to submit any objection to the scheme submitted for sanction of the Government by the Improvement Trust. It also held that the provisions of Sub-section (3) of Section 40 of the Act were merely intended to make the general public aware of the fact that the scheme had not been given up and in fact, was being submitted to the Government for sanction. It further held that this provision cannot be considered mandatory since it conferred no right on anybody, but merely placed an obligation upon the Trust. At the same time, this Court held that the objections if filed by the general public before the Government cannot be thrown away and that the Government would enquire into the truth of the objections before giving its sanction. But in the case on hand whatever objections the petitioners had raised earlier have already been considered. It is not as if any member of the public objected and his objection to the sanction of the scheme has been thrown away. Therefore, this contention of the petitioners also cannot be accepted.

41. So far as the sanction of the scheme by the government is concerned, the petitioners contend that the scheme was sanctioned on 31st August, 1994 itself (annexure P-10 to Civil Writ Petition No. 13201 of 199,6), whereas the notice u/s 40(3) (annexure P-12 to Civil Writ Petition No. 13201 of 1996) that the Trust had submitted the scheme to the Government for its approval was published on 1st September, 1994 only which showed that the scheme was not and could not have

been properly considered by the Government before it granted the sanction. This contention again cannot be accepted. According to the respondents, the first publication of the notice u/s 40(3) was made on 25th August, 1994 and the sanction was given on 31st August, 1994 only and, therefore, the, sanction was accepted only after the publication of the notice u/s 40(3) of the Act, and consideration of the scheme. A perusal of annexure P-12 to Civil Writ Petition No. 13201 of 1996 also indicates that the publication made, on 1st September, 1994 was the second publication. Therefore, the validity of the sanction on this ground cannot be questioned successfully.

42. The other contention raised by the petitioners is that as per Sections 26 and 27 of the Act, the Trust had to frame a rehousing scheme for the displaced persons, and that the application submitted to the government for approval of the scheme should be accompanied by a statement with regard to the arrangements made or proposed by the Trust for the rehousing of such persons, whereas no such rehousing scheme has been either framed and no statement about such a scheme either made or proposed has been sent. But this objection again will not enable the Court to quash the notification impugned in this petition. Section 26 of the Act no doubt provides for the framing of the rehousing scheme to accommodate the persons who are displaced by the impugned scheme. Section 27 of the Act provides that any residential house owner who is likely to be displaced by the execution of any scheme under this Act may apply to the Trust to be rehoused and no such scheme shall be put into execution until a rehousing scheme as provided for in Section 26 for the rehousing of such resident house owners has been completed. So we find that the provision or the proposal for rehousing scheme is not a condition precedent for the validity of the scheme itself. Section 27 only provides that development scheme should not be implemented until such a rehousing scheme is completed. Therefore, the impugned notification themselves cannot be quashed on this ground.

43. The learned counsel for the respondents once again relied upon the decision of this Court in Harbhajan Singh''s case (supra) in this regard. This decision supports the contention of the learned counsel for the respondents and holds that failure to furnish a statement regarding the rehousing scheme can only be an irregularity, and such irregularity cannot have the effect of vitiating the sanction. This decision also holds that rights and interests of the petitioners could be protected by giving a direction to the Trust to make suitable provisions for rehousing of the persons are likely to be displaced by the execution of the scheme, and accordingly gave a direction that if any of the petitioners made any application for allotment of a plot of land for the purpose of rehousing, then the same shall be considered strictly in accordance with the scheme and the provisions of the 1983 rules.

44. Further, the learned counsel for the respondents also referred to Rule 4(2) of the Punjab Town Improvement (Utilisation of Lands and Allotment of Plots) Rules, 1983,

which provides for the allotment of residential plots on a reserve sale price to a local displaced person, and also to Rules 5 and 6 relating to the fixation of reserve sale price and sale price. Pointing out to these rules, he contended that there is a built-in rehousing scheme for displaced persons which will take care of them and therefore also, the notifications are not liable to be quashed on the ground that the statement regarding the rehousing scheme had not been sent to the Government.

45. Therefore, taking into consideration all these aspects we hold that the contention that the impugned notifications regarding the scheme in question should be quashed on the ground that the respondent-Trust did not provide for a rehousing scheme, or that it did not furnish a statement in this behalf to government while submitting the application for the approval of the scheme, cannot be sustained.

46. The next ground urged by the petitioners is that they have been discriminated against in view of the fact that similarly situated properties of others have been exempted/adjusted. The petitioners have also urged that the respondent-trust has left about 18.42 acres of land adjoining to the previously sanctioned scheme of 25.57 acres wilfully and intentionally to give benefit to certain owners who are close relatives of the authorities. The petitioners have also produced -a. copy of the resolution of the Trust passed in the meeting held on 7th July, 1994 (Annexure P-15 to Civil Writ Petition No. 13201 of 1996) recommending the adjustment of certain building in the scheme. The petitioners have also produced copies of the letters of the Divisional Town Planner, Bhatinda Division, Bhatinda, to the Deputy Commissioner, Bhatinda wherein it was requested that Khasra Nos. 2394, 2391 and 2390 be excluded from the scheme in view of the existence of certain constructions. The petitioners have also produced copy of another letter dated 6th May, 1994 by the Divisional Town Planner to the Chairman of the Improvement Trust requesting that the ''A'' Class construction may be adjusted. The petitioners have also produced a copy of the letter of the Executive Engineer Provincial Division, B&R Branch, Bhatinda to the Chairman of the respondent-trust wherein he had pointed out that certain persons had objected stating that their houses were constructed prior to the notification, and requested him to prepare the survey plan for the purpose of classification of the building as A, B and C categories. The petitioners have also produced a copy of the letter dated 11th January, 1996 by the Land Acquisition Col-lector to the Chairman of the respondent-Trust stating that there are some A class constructions, and that a decision may be taken in respect of them so that the cost of those buildings need not be included in the award. But the respondents, on the other hand, contend that there was no discrimination against the petitioners at all, but certain class of buildings which existed even prior to the notifications were adjusted/exempted, and that the petitioners who have not established satisfactorily, that their buildings were in existence on the date of the notification, and that they fall within the class which could be adjusted and, therefore, it cannot be stated that there has been any discrimination against the petitioners. We agree with the

respondents in this respect. First of all, the petitioners should place on record the evidence to show that their buildings were in existence on the date of the notification. Even then they will have to show that these buildings were A or B class buildings which could be adjusted/exempted. The resolution passed in the meeting held on 7th July, 1994 had exempted only A and B class buildings of certain persons as detailed in Annexure P-15 produced by the petitioners in Civil Writ Petition No. 13201 of 1995. Therefore, simply by alleging that they own buildings and that they have been discriminated against the petitioners cannot succeed in their request to quash the notifications. The learned counsel for the petitioners at the time of the argument even contended that even the classification of the buildings as A and B is also discriminatory and unreasonable since there was no basis for such classification. But there is no such prayer, and so such a contention cannot be countenanced.

47. The learned counsel for the respondents once again placed reliance on the decision of this court in Harbhajan Singh''s case (supra), wherein it was held as follows:-

"Plea of discrimination raised by the learned counsel for the petitioners is also untenable. Allegation made in petition to the effect that land-failing in Khasra Nos. 21, 12, 15 and 6 has been adjusted while land belonging to others has been acquired is too vague to constitute basis for recording a finding that respondent-Trust has arbitrarily singled out few land owners for favourable treatment. Burden to prima facie prove the charge of discrimination lay upon the petitioners and as they have failed to discharge this burden it is not possible for the Court to record a finding that the action of the trust not to acquire some of the built-up areas is discriminatory and, therefore, the trust should release every piece of land upon which there exists some structure. We cannot issue a writ of mandamus so as to frustrate the entire development scheme framed for larger public interest."

48. We are also of the view that in order to sustain the contention that the petitioners have been discriminated against, they should show that their buildings and the buildings that were adjusted/exempted belong to the same category so that their buildings could be adjusted/exempted. But mere statement that there are buildings and they should be exempted or adjusted, cannot be accepted. The mere existence of the buildings and failure by the respondent-Trust to adjust Or exempt them cannot indicate discrimination against the petitioners. In the absence of necessary data to enable the Court to come to such a conclusion, the contention of the petitioners that they have been discriminated against others cannot be accepted.

49. The letters written by certain authorities pointed out by the petitioners will not be of any help to them unless it could be shown that the petitioners'' buildings were in existence from prior to the notification and such buildings fall under the A or B

class categories, so that they could be exempted/adjusted by the respondent-Trust.

50. The petitioners have taken another plea that the scheme is not in accordance with the instructions of the military authorities since the proposed scheme is within the 2000 meters range of the ammunition depot of the Bhatinda Cantonment area. But respondents contend that the military authorities have not objected to the scheme. Even the allegations found in paragraph 13 of Civil Writ Petition No. 13201 of 1996 it has only been stated that the military authorities have written to the Municipal Council, Bhatinda that they are intending to notify the area upto 2000 meters around the parametres of the depot as restricted area, which means that they have not so far raised any objection. Therefore, this contention of the petitioners cannot be accepted.

51. Another objection taken by the petitioners is that the respondents have violated the instructions of the Government that no objection certificate from the State Land Acquisition Board/Competent authority is necessary before the publication of the notification Under Sections 36 and 42 of the Act. The respondents, on the other hand, have stated in their reply that the Government have conveyed the issuance of no objection certificate by the State Level Land Acquisition Board, by their letter dated 25th January, 1994. Though the petitioners have filed the replication, they have not specifically denied this allegation. Therefore, this contention of the petitioners cannot he accepted.

52. The respondents have also taken the preliminary objection that these petitions suffer from delay and laches. We find that the notification u/s 36 of the Act is dated 1st September, 1993 for which the petitioners filed objections which were rejected by the resolution dated 7th July, 1994. The Government had granted the sanction for the scheme on 31 st August, 1994 and published the same in the Gazette on 1st September, 1994. The learned counsel for the respondents contends that all the petitioners (except the petitioners in Civil Writ Petition No. 3815 of 1995 who have approached the Court with the said petition in Much, 1995) have not questioned the notifications in time. The learned counsel for the respondents contends that there is also no explanation by them for the delay in approaching this Court and, therefore, the delay is fatal. In this connection, the learned counsel for the respondents relied upon a decision of Hon''ble Supreme Court in The Ramjas Foundation and Others Vs. Union of India and Others, . Section 4 notification in that case was issued on 31st November, 1959, whereas they were challenged in Court only in 1973. The Hon''ble Supreme Court found that there was no justification at all for the delay in not challenging the said notification till 1973. Therefore, the Supreme Court held that the writ petition was liable to be dismissed on the ground of laches and delay on the part of the appellants before the Hon''ble Supreme Court apart from other grounds. This decision also supports the contention of the respondents in the present case. Petitioners in these writ petitions (other than the petitioners in Civil Writ Petition No. 3815 of 1995) have approached the Court only in the later part of 1995 and 1996.

This coupled with the other aspects will disentitle the petitioners to the relief prayed for by them. The learned counsel for the respondents also contends that about 18 acres out of the 49.5 acres covered by the scheme have been taken possession of and Rs. 7 crores have been deposited also and, therefore, contends that in these circumstances, the notification should not be quashed. This is also an additional point which goes in favour of the respondents.

53. The learned counsel for the respondents also relied upon the judgment of the Hon''ble Supreme Court in Ramniklal N. Bhutta and another Vs. State of Maharashtra and others, , wherein it was held as follows:-

"The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. The Courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226 indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lumpsum at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the Courts while dealing with challenge to acquisition proceedings."

54. Relying upon these observations of the Hon''ble Supreme Court, the learned counsel for the respondents contended that on the facts and in the circumstances of this case, there is absolutely no ground for quashing the notifications although it would be in the province of the Court to mould the relief appropriately wherever the need arises. We agree with the learned counsel for the respondents in this respect. We find that this development scheme has been framed for the benefit of the public still the rights and the interests of the private individuals can be safeguarded in such a manner that it does not affect the public interest. On an analysis of the entire matter, we are of the view that while there are no grounds for quashing the notifications impugned in these petitions, we should protect the interests of law and the Rules governing the rehousing of displaced persons. Therefore, we direct that if and when any of the petitioners make an application (or if they have already made such an application) for rehousing them, then the application should be disposed of in accordance with the provisions of the Act, the Rules of 1983 and the scheme.

55. Taking into consideration all these aspects, we are of the view that these petitions deserve to be and are accordingly dismissed with the observations as made above that the application of the petitioners, if any, for rehousing them

should be considered and disposed of in accordance with the provisions of the Act, rules of 1983 and the scheme.