(2006) 05 P&H CK 0090

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 15163 of 2002

Mehar Singh Rathi and Others		APPELLANT
	Vs	
Union of India (UOI) and Others		RESPONDENT

Date of Decision: May 26, 2006

Acts Referred:

- Caltex Acquisition of Shares of Caltex Oil Refining (India) Limited and of the Undertakings in India of Caltex (India) Limited Act, 1977 - Section 7(3), 9
- Constitution of India, 1950 - Article 252(1), 300A
- Evidence Act, 1872 - Section 114
- Land Acquisition Act, 1894 - Section 4, 4(1), 5A, 6, 6(1)
- National Capital Region Planning Board Act, 1985 - Section 10, 12, 13, 13(1), 14

Citation: (2006) 144 PLR 349

Hon'ble Judges: S.N. Aggarwal, J; J.S. Khehar, J

Bench: Division Bench

Advocate: U.N. Bachawat and Alka Chatrath, S.K. Kanwar, Arun Jain, M.L. Sharma, R.K. Malik, Shailender Jain and Arun Palli, for the Appellant; Aman Chaudhary, for Respondent Nos. 1 and 2, Jaswant Singh, Addititional A.G. and Harish Rathee, D.A.G. for Respondent Nos. 3, 4 and 6 and A.K. Pathania and Meenakshi Chaudhary, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S.N. Aggarwal, J.

The Government of Haryana needed land in village Sankhol Tehsil Baharduragh District Jhajjar for the development of an industrial area. Accordingly a notification u/s 4 of the Land Acquisition Act 1894 (in short the "1894 Act") was issued on 23.1.2001. After the observance of statutory provisions a declaration u/s 6 of the 1894 Act was also issued on 22.1.2002 (The declaration u/s 6 of the 1894 Act has been placed on the record of this case as Annexure P-5 but the date of notification has not been given. Different dates about this notification have been given in

different writ petitions but a copy of the notification published by the Government of Haryana u/s 6 of the 1894 Act is placed as Annexure P-14 in C.W.P. No. 5006 of 2003 which is dated 22.1.2002). As a result a number of writ petitions came to be filed against the acquisition proceedings initiated by the notification dated 23.1.2001.

2. The State of Haryana had sought to acquire more land for the purpose of developing industrial residential commercial institutional area and other purposes. Therefore more notifications u/s 4 of the 1894 Act were issued by the State of Haryana so also the declarations u/s 6 of the 1894 Act. These notifications again gave rise to a number of writ petitions.

3. Although different objections were pleaded in different writ petitions to challenge the acquisition proceedings but the following points were common in all these writ petitions. Therefore. all these writ petitions numbering more than one hundred were grouped together:

1. That the said acquisition proceedings are against the contents of the Regional Plan 2001 (in short ''RP 2001'') published by National Capital Region Planning Board (in short ''the NCR Planning Board'') under (The) National Capital Regional Planning Board Act 1985 (in short ''the NCR Act 1985'') in as much as the area under acquisition is shown as green belt in the map of RP-2001 while the said land has been acquired by the State of Haryana for industrial purposes. Since it violates RP-2001 therefore it does not survive the scrutiny of law. Reliance was placed on the judgment of the Hon''ble Supreme Court reported as Ghaziabad Development Authority and State of U.P. Vs. Delhi Auto and General Finance Pvt. Ltd. and Maha Maya General Finance Co. Ltd. and another, .

4. The other connected argument on the subject was that the NCR Act 1985 was passed by the Parliament under Article 252(1) of the Constitution of India. Since it was a Central Legislation the State had no authority to act contrary to it nor it could acquire any property in derogation of the provisions of the NCR Act 2005 by issuing notifications under the 1894 Act. Hence it was prayed that the said notifications are hit by the NCR Act 1985 being violative of the provisions of the said Act and therefore are illegal.

2) That the petitioners had filed objections u/s 5-A of the 1894 Act but no decision was taken and communicated to the petitioners before the issuance of the declaration u/s 6 of the Act. Therefore the acquisition proceedings are invalid.

5. Another argument was raised by Sh. Shailender Jain Advocate with reference to C.W.P. No. 18922 of 2003. It was submitted that the notification u/s 4 of the 1894 Act was issued on 23.1.2001 while the declaration u/s 6 of the 1894 Act was notified on 24.1.2003 (Annexure P-22) i.e. after the expiry of two years. It was submitted that declaration u/s 6 of the 1894 Act has to be published within a period of one year from the date of the publication of the notification u/s 4 of the 1894 Act.

6. The related argument was that u/s 4(1) of the 1894 Act every notification has to be published in two daily newspapers circulating in that locality. At least one of such daily newspaper is required to be in the regional language. It was submitted that in the present case the notifications u/s 4(1) of the 1894 Act were published in two Hindi newspapers namely ''Bharat Janani'' and ''Hari Bhoomi''. The newspaper ''Bharat Janani'' has no circulation in the locality. The said newspaper exists only on the papers while the other newspaper has less circulation. Therefore necessary compliance of the provisions of Section 4(1) of the 1894 Act has not been made. For this reasons also the validity and legality of the acquisition proceedings was challenged.

7. Since these points are common in all these writ petitions therefore these points are disposed of by this common order which will apply to all these writ petitions grouped together. However the facts are being taken from C.W.P. No. 15163 of 2002 for the sake of convenience.

8. Our attention was drawn to the provisions of NCR Act 1985 in order to emphasize that RP-2001 prepared by the NCR Planning Board is binding on the participating States and any violation thereof would be hit by law. The Regional Plan has been dealt with in Chapter IV of the NCR Act 1985. Section 10 of the NCR Act 1985 deals with the contents of the Regional Plan while Section 12 lays down the procedure to be followed for the purpose of preparing the Regional Plan. Section 13 of the NCR Act 1985 lays down as to when the Regional Plan prepared by the NCR Planning Board under the Provisions of the NCR Act 1985 comes into operation. It reads as under:

13. Date of coming into operation of the Regional Plan: (1) Immediately after the Regional Plan has been finally prepared the Board shall publish in such manner as may be prescribed a notice stating that the Regional Plan has been finally prepared by it and naming the places where a copy of the Regional Plan may be inspected at all reasonable hours and upon the date of first publication of the aforesaid notice the Regional Plan shall come into operation.

(2) The publication of the Regional Plan after previous publication as required by Section 12 shall be conclusive proof that the Regional Plan has been duly prepared.

9. Section 14 of the NCR Act 1985 deals with the modification of the Regional Plan while Section 15 deals with the review and revision of the Regional Plan. The Regional Plan prepared by the NCR Planning Board under the scheme of the NCR Act 1985 is supreme. The participating States are to prepare the Sub-Regional Plans which are required to be in consonance with the Regional Plan prepared by the NCR Planning Board. Our attention was also drawn to the provisions of Section 29 of the NCR Act 1985 to emphasise that no Sub-Regional Plan which is inconsistent with the Regional Plan shall be enforceable. Section 29 of the NCR Act 1985 reads as under:

Violation of Regional Plan: (1) On and from the coming into operation of the finally published Regional Plan no development shall be made in the region which is inconsistent with the Regional Plan as finally published.

(2) Where the Board is satisfied that any participating State of the Union territory has carried out or is carrying out any activity which amounts to a violation of the Regional Plan it may by a notice in writing direct the concerned participating State or the Union territory as the case may be to stop such violation of the Regional Plan within such time as may be specified in the said notice and in case of any omission or refusal on the part of the concerned participating State or the Union Territory to stop activity withhold such financial assistance to the concerned participating State or the Union territory as the Board may consider necessary.

10. Out attention was also drawn to Section 27 of the NCR Act 1985 which lays down that the provisions of this Act shall have an overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act; or in any decree or order of any Court tribunal or other authority. It was further submitted that the provisions of this Act came for interpretation before the Hon''ble Supreme Court in Gaziabad Development Authority''s case (supra). The Hon''ble Supreme Court discussed the scheme of the NCR Act 1985 in para 16 of the aforesaid judgment and it was observed as under:

Admittedly no change in this Regional Plan to alter the land use of that area of ''residential'' purpose was made any time thereafter in accordance with the provisions of NCR Act. The overriding effect of the NCR Act by virtue of Section 27 therein and the prohibition against violation of Regional Plan contained in Section 29 of the Act totally excludes the land use of that area for any purpose inconsistent with that shown in the published Regional Plan.

11. After referring to these legal provisions on the factual aspect our attention was again invited to the Schedule of the NCR Act 1985 according to which the whole of District of Rohtak comprising the Tehsils of Rohtak Jhajjar Bahadurgarh Mehram and Ksoli were a part of the National Capital Region (in short ''the NCR'') and therefore the development of this area was governed by the NCR Act 1985. (After the passing of the NCR Act 1985 Jhajjar has been carved out as a separate District out of Rohtak District and Bahadurgarh Sub Division falls in District Jhajjar. Therefore in the notifications is sued under Sections 4 and 6 of the 1894 Act Bahadurgarh has been shown in District Jhajjar).

12. It was also submitted that the RP 2001 was approved by the NCR Planning Board in its meeting held on 3.11.1988 after consideration of objections and suggestions received to the draft plan. One copy of the said notification was published u/s 13(1) of the NCR Act 1985 on 23.1.1989 and therefore RP-2001 had come into operation with effect from the date of its publication i.e. 23.1.1989 as per the provisions of

Section 13(1) of the NCR Act 1985. It was also so noticed by the Hon''ble Supreme Court in Gaziabad Development Authority''s case (supra) in paragraph 17 that the Regional Plan was prepared and approved by the NCR Planning Board on 3.11.1988 and was finally published on 23.1.1989. Therefore the said Regional Plan became operational with effect from the said date. This factual position is undisputed between the parties.

13. It was further submitted that according to the Regional Plan the land acquired is shown to be a green belt/green wedge while the acquisition of the said land by the notifications under challenge is for industrial residential commercial or institutional purposes. Therefore the acquisition proceedings are against the scheme of RP-2001 and consequently these acquisition proceedings cannot stand the scrutiny of law.

14. We have given a deep thought to these submissions and have also considered the documents referred to before us.

15. Before we take up the legal preposition advanced before us by it horns it would be necessary to find out the circumstances in which the NCR Act 1985 was brought on the statute book and the circumstances relating to Tehsil Bahadurgarh preceding the issuance of these notifications of acquisition. In order to properly appreciate and understand it we may analyse the contents and scheme of RP 2001 which has been placed on the file as Annexure R-2 by the NCR Planning Board (respondent No. 2). In the concluding para of the foreword it was observed that the purpose was only to have a balanced and harmonial developed region and to make Delhi manageable. In the 2nd Chapter "POLICY ZONES" of RP-2001 it was laid down as under:

With this recognition as back as 1962 the Master Plan for Delhi recommended to divert the potential migrants to Delhi to ring towns around the Delhi UT such as Faridabad Ballabhgarh Gurgaon Bahadurgarh and Ghaziabad and also Nerela in Delhi UT creating adequate employment opportunities there with appropriate infrastructural facilities particularly for establishment of industries and related activities. Backed with the support of the concerned State Governments these (ring towns) grew by leaps and bounds registering much faster growth rate than the National Capital itself.

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The prime objective of the Regional Plan is to contain Delhi''s population size within manageable limits at least by the turn of the Century. As a strategy after evaluating various alternative scenarios for development it has been realised and recognised that in order to save Delhi from population explosion it is necessary to moderate the growth in the areas around it. At the same time it is also recognised that any additional population in the DMA towns excluding Delhi will not to any extent moderate or reduce the problems of Delhi as their inter-dependence is intensive and necessarily mutual.

Admittedly Bahadurgarh falls in the Delhi Metropolitan Area (called DMA).

16. Under Chapter 13 of the RP-2001 ''REGIONAL LANDUSE'' it was stated that the Regional Plan prepared under this Act was to serve only as a guide and to provide direction. It reads as under:

13.1. Background

The Landuse Plan for the National Capital Region depicts the exposition of various broad landuses designed for a balanced and harmonious development of the Region by 2001. The plan will serve as a guide and provide direction for the use of land in the NCR in both short and long terms towards accomplishment of the goals of the Plan. This broad landuse plan will be supplemented by Sub-regional plans dealing with respective Sub regions in greater depth to provide more specific policy guidance.

17. In chapter 17 of the RP-2001 "STRATEGIES AND PRIORITY AREAS FOR DEVELOPMENT 2001" it was laid down that the plan is a part of a continuous process. It further laid down that the Regional Plan contained broadly policy frame work strategies and guidelines for development of region together with broad land use for the NCR-2001.

18. In Chapter 13 "REGIONAL LANDUSE" it was specifically mentioned on page 103 of RP 2001 that in order to avoid haphazard development and to ensure orderly development of the rapidly developing urban sector in the National Capital Region a legislative tool in the form of zoning regulation is a necessity. Four distinct zones were identified for application of strict land use control and development as under:

a) Urbanisable area

b) Green Belt/Green Wedge

c) Areas along the major transport routes

d) Remaining Rural Land

Urbanisable area was also bifurcated into following sub-categories:

1. Residential

2. Commercial

3. Industrial.

4. Government offices

5. Recreational

6. Public and semi-public

7. Circulation

8. Open spaces parks and playgrounds

9. Grave yards/cemeteries and burning ghats

19. While preparing the Regional Plan numerous factors were taken into consideration. Since the area of National Capital Region was a huge area spread over (a) a part of Union Territory of Delhi (1483 sq. kms) (b) territory of Haryana (13413 sq. kms) (c) Rajasthan (4493 sq. kms) and (d) Uttar Pradesh (10853 sq. kms) therefore RP 2001 was prepared broadly as pleaded in the written statement by the NCR Planning Board (respondent No. 2) that they had prepared the scheme on macro basis while the details could be worked out only by the concerned or participating State. Accordingly when the map of RP 2001 was prepared the site sought to be acquired was shown in different colours representing the urbanisable area and the green belt etc. The words used on the map were only "PROPOSED LANDUSE 2001". Although it was a final and enforceable plan but these words were used only to show that the land was to be used on the pattern proposed in the RP 2001. However appreciating its own limitations the NCR Planning Board while preparing the map annexed certain notes to the map. These notes read as under:

NOTE:

1. This map indicates broad landuses for NCR 2001 AD which would be supplemented by sub-regional plans for the respective sub-regions and Master Plan for priority and DMA Towns for their populations assigned in the Regional Plan for the perspective 2001 AD by the participating States and Delhi U.T.

2. The proposed urbanisable areas as shown on the map for regional centres and other important centres are approximate and the urbanisable limits would be governed by proposals of the Statutory Master Plans/New Master Plans in force.

3. The green areas around urban centres as shown on the map are approximate and would be governed by the proposal of the Statutory Master Plans.

4. The alignment of proposed Expressways and Regional Rail by-pass shown in the map is tentative.

5. The green buffer will be 100 metres on either side on Expressways and National Highways and 60 metres on either side on State Highways.

6. The boundaries of regional parks bird and wild life sanctuaries and ridge shall be in accordance with Master Plans/Notifications thereof

20. This is therefore clear from Note 3 that the green area shown around the urban centers in the map were only approximate. This area was to be exactified governed and regulated by the proposals of the statutory master plans. The words "Master Plan" have not been defined in the NCR Act 1985 but obviously the Sub-Regional Plans and the Master Plans are to be prepared by the participating States (in the present case by the State of Haryana)

21. The Town and Country Planning Department of the Haryana Government had already prepared a final development plan for Bahadurgarh which was notified on 15.1.1978 (Annexure R-5/1) i.e. even before the coming into force of the NCR Act 1985.The introductory portion of this final development plan reads as under:

Bahadurgarh situated on the 18th Mile of Delhi-Hissar Road is one of the 4 towns proposed to be developed as ring towns as per recommendations of the Delhi Master Plan the other towns being Faridabad Gurgaon and Sonepat. The development of these towns has been recommended by the Delhi Master Plan with a view to share the pressure of population which is migrating into Delhi. In fact these towns are situated within the immediate metropolitan influence of Delhi As per recommendations of the draft regional plan which was approved by the High Powered Board in September 1973 the eight priority towns located in the Haryana sub-region were to accommodate 13 lacs population by 1981 - the Bahadurgarh share being 0.75 lacs (75000) whereas the other three ring towns viz. Faridabad Sonepat and Gurgaon the population assigned was to the tune of 3.5 lacs 2.00 lacs and 1.0 lacs by 1981 respectively. This presumption was made keeping in view the then trends of this town and of the difficulty of water-supply. However because of the proximity of Bahadurgarh to Delhi it has experienced steep rise in population. From the 1961 population of 11000 the population rose to 15000 in the year 1961 and 26000 in the year 1971 thus showing an increase of 25 per cent during decade 1951-61 and 72 per cent during decade 1961-71. Out of a total working force of 7000 to 8000 there are 1000 workers travelling to Delhi and back every day. The geographical location of this town vis-a-vis Delhi obviously outweigh its disadvantage of water-supply. Provided this difficulty is tackled there should be no difficulty in developing this town for a higher population and really viable size say of the order of about one lac by the year 1991. Therefore the approach to the preparation of development plan is based on this assumption.
According to the recommendations of the Delhi Master Plan Regional Plan for NCR. apart from other urban activities within a town the special function of such a town will be to accommodate manufacturing industries and Central Government Offices. Though no definite population figures or land requirements have been indicated in a town like Bahadurgarh it is possible that Central Government may require as much as 75 acres of land for Government Offices employing a population of nearly 5000 Government workers and a total population of nearly 15000 to 20000 for this purpose.

22. It may be recalled that the NCR Act 1985 was enacted to reinforce and to provide legal sanction to infra-structure which had already started functioning after the passing the Delhi Development Act 1957. It was so stated in the statement of objects and reasons for the passing of the NCR Act 1985. It means, therefore that the final Development Plan 1978 relating to Bahadurgarh was prepared by the State of Haryana in pursuance of the schemes which were being already implemented by

the Development Boards although the NCR Act was passed only in 1985. Even after the passing of the NCR Act 1985 the same plan is being implemented in accordance with the Regional plans prepared by the NCR Planning Board.

23. It was pleaded by the State of Haryana-respondent No. 4 as a preliminary objection in the written statement dated 23.7.2003 as under:

Hon''ble Apex Court of India in the recent past has ordered closure and shifting of the Industries working in the non conforming areas of Delhi. As a result of it some industrial units from Delhi have privately purchased land close to Delhi in Haryana with a net result of developing similar situation of pollution in the neighbouring towns of Delhi.

In order to provide systemic growth of industry the Haryana State Industrial Development Corporation Ltd. is the nodal agency of the State Govt for developing new industrial estates to provide best of infrastructure facilities.

That the land in Bahadurgarh close to Delhi border has been purchased by some of the private parties to set up industry in a haphazard manner. In order to check this mushroom growth of industry and to create congenial atmosphere for systematic growth of industry the HSIDC has proposed the Govt to acquire the land for developing Industrial Estate where all the basic amenities & facilities necessary for the growth of industry are provided. This systematic development provides optimum use of the land and develop industry cluster to provide marketing support as well.

24. In the additional affidavit dated 21.4.2004 the State of Haryana pleaded in 2nd sub-para of paragraph 5 as under:

It will not be out of place to mention here that the Hon''ble Supreme Court of India has directed the Ministry of Urban Development & Poverty Alleviation Government of India to relocate the polluting industries located in non-conforming zone of Delhi. In order to implement the orders of Hon''ble Supreme Court of India National Capital Region Planning Board and Ministry of Urban Development & Poverty Alleviation Government of India had organized an interface between the Ministry of Urban Development and the Development Authorities of the State on 30.9.2000 at Delhi. During the proceedings of the interface it was observed that there is large-scale demand for plots at Bahadurgarh. Accordingly Haryana State Industrial Development Corporation was requested to acquire 70-100 hectares land at Bahadurgarh wherein the industries from Delhi can be shifted. Thus the proposal regarding acquisition of land for industrial purpose at Bahadurgarh is in accordance with the policy of National Capital Region Planning Board and Ministry of Urban Development & Poverty Alleviation Government of India. The apprehension of the complainants that there will be unplanned development and polluting industries would be located in this area is wrong because the land has been acquired for planned development.

25. On the face of it therefore it appears to us that the green belt/green wedge shown in the proposed land use of RP 2001 was only approximate and not exact and therefore it was to be exactified by the State by preparing the development plans. As per the amended written statement filed by the NCR Planning Board (respondent No. 2) it is pleaded that a part of the acquired land falls in urbanisable area while a part of it falls in green belt/green wedge as proposed land use in RP-2001. Therefore strictly speaking the area shown as green belt/green wedge was to be.exactified by the scheme prepared by the participating State i.e. Haryana in this case and the green belt shown in the proposed land use by the NCR Planning Board in RP 2001 prepared under the NCR Act 1985 was only approximate. Therefore the purpose, for which the land has been acquired cannot be called to be violative of RP-2001 as substantial portion of the area acquired is shown as urbanisable in the map of RP-2001. Some area of course falls in the green belt/green wedge but enough scope was left in the map of RP-2001 for adjustment of the green belt/green wedge around that urban centres (as in this case) to be made by the participating State by using the word approximate. (Note 3). For the reasons aforesaid it cannot be said if the notifications of acquisition were violative of the RP-2001.

Secondly now the Regional Plan 2021 has come into force. The said plan is placed on the file as Annexure Rule 11. The draft Regional Plan 2021 was published u/s 12 of the NCR Act on 27.11.2004 for inviting objections/suggestions. The objections suggestions were received scrutinized and considered by the statutory planning committee of the NCR Planning Board in its meeting held on 5.5.2005 and the Regional Plan 2021 was approved by the NCR Planning Board in its meeting held on 9.7.2005. It was also sent to the Controller of Publication Government of India to be published u/s 13 of the NCR Act 1985 in the official Gazette of Government of India on priority basis vide its letter dated 23.82005 We were told at the time of arguments that the said notice was published in the Gazette of India Extra Ordinary on 17.9.2005. Therefore the Regional Plan 2021 has come into force. According to Regional Plan 2021 the entire land acquired has been shown as urbanisable i.e. the purpose, for which the land is sought to be acquired by notifications under challenge.

26. The submission of learned Counsel for the petitioners was that the RP 2001 was in force till the RP 2001 became operational. It means, therefore that RP 2001 was in force on the date when acquisition proceedings were started i.e. till September 2005 when Regional Plan 2021 has become operational. In the RP 2001 the site in dispute was shown partly as urbanisable and partly as green belt/green wedge and therefore the land acquired cannot be examined from the point of view of Regional Plan 2021 in which the area in dispute is totally shown as urbanisable which includes the industry residential recreational or institutional etc. It was also submitted that since a part of the area acquired was violative of the RP-2001 therefore the notifications of acquisition would be bad in law as a whole as it cannot be bifurcated relating to urbanisable and relating to the green belt/green wedge.

27. It has already been discussed that the area shown as green wedge/green belt in the map of RP-2001 was only approximate and it was a proposed land use therefore it was left to the discretion of the participating State of exactify the area of green belt/green wedge by preparing Development Plan of the area. Therefore the notifications of acquisition under challenge were not violative of RP-2001. Had it been so the NCR Planning Board would have issued notice to the State of Haryana u/s 29(2) of the NCR Act 1985. Certainly it is not the case of any of the parties if any such notice was issued by the NCR Planning Board to the State of Haryana.

28. On the other hand the NCR Planning Board has approved the action of the State of Haryana by including specifically the entire area covered by the notifications of acquisition in the category of urbanisable area. Ex post facto approval can be granted by the NCR Planning Board to use the land for a purpose other than that which is prescribed in RP-2001. This proposition of law was approved by the Hon''ble Supreme Court in Gaziabad Development Authority''s case (supra) relied upon by the petitioners themselves. Para 18 19 and 20 read as under:

18. The only surviving point is whether change permitted by the NCR Planning Board for the ''Indirapuram'' project in that area by conversion of the land use from ''recreational'' to ''residential'' is of the whole 1626 acres including the respondents'' land as claimed by them or only of 1288 acres which does not include the respondents'' land and its effect?

19. In a letter dated March 10 1992 of Secretary Housing and Urban Planning Department Government of Uttar Pradesh to the Secretary Ministry of Urban Development Government of India there is a denial of violation of NCR plan in the U.P. Sub-Region. To the letter is annexed a note in the form of clarification and justification. Reliance is placed on this document and particularly on the portion at pages 234 to 236 of the paper book. The document says that in Master Plan for the Gaziabad Development Area an area of about 2880 acres was reserved for recreational activities and this was incorporated as such in the NCR plan. Then it says " a land use of a part of this area (1288.0 acres) has been changed to residential use by U.P.Government Gazette notification dated 22.4.1991."..."Out of the total area of 2880 acres proposed in Ghaziabad Master Plan only 1288.0 acres are being now developed as residential. While rest around 1500 acres are still under recreational land-use".... "Of this 1288.0 acres and area of about 328.0 acres is still undeveloped and 125.0 acres is under village abadi. Hence only about 835.0 acres is actually being developed for residential use and 1920.0 acres is available for recreational use." In between these extracts are given the details of planned regional recreational facilities in which at SI. No. 1 is ''Indirapuram'' against which the area shown as 1592 acres. Deducting 1592 from the total area of 2880 acres the remaining area left is only 1288 acres which is Indicated throughout as the area of which the change of land use to ''residential'' was made by the State Government. Reading this document as a whole there is no inconsistency therein and the area

consistently shown as altered to ''residential'' use by the State Government is only 1288 acres and not 1626 acres. Admittedly the lands of Delhi Auto and Maha Maya are not within this area of.1288 acres. This being so it is unnecessary to discuss at length the permission for alteration of land use of the smaller area given by the Board under the NCR Act which does not include the respondents'' lands.

20. However reading all the related documents together it would appear that the NCR Planning Board finally permitted conversion of land-use from ''recreational'' to ''residential'' at ''Indirapuram'' of an area lesser than even 1288 acres confining it only to that part which was shown in Govt of U.P.''s letter dated 10.3.1992 and its enclosure (Pp.231-236 of Paper Book) as already utilised for ''residential'' use. This area was mentioned as 835 acres only by saying (at page 236) ''only about 835 acres is actually being developed for residential use and 1920 acres is available for recreational use''. The NCR Planning Board on 3.6.1992 approved the Sub-Regional Plan for U.P. Sub-Region (P.118 of the Paper Book) clearly stating as under:

2. The land use changes made vide Government of Uttar Pradesh Gazette Notification dated 22.4.1991 in respect of Indirapuram at Ghaziabad from ''recreational'' to ''residential'' use may be confined only to those parts where planning commitments have already been made.

3. Any further major land use change in Ghaziabad may not be effected without consultation (with) NCR Planning Board.

29. Therefore on the facts of the reported case certain area was shown as recreational but the same was used by the State of Uttar Pradesh as residential and thereafter an approval of the NCR Planning Board was sought and the said Board had approved it subsequently and the same was upheld by the Hon''ble Supreme Court in the said judgment.

30. So happened in this case. It may be noticed that the NCR Planning Board in its short reply dated 20.8.2005 has admitted in para 10 as under:

10. That the development plan of Rohtak 2025 as prepared by the Government of Haryana was approved by the answering Board in its 23rd meting held on 18.6.1998 and proposed land uses in the Plan are residential commercial industrial transport and communication public utility public and semi public uses open spaces and green belt and agriculture zone. Likewise the development plan for Bhadurgarh 2021 was also approved by the Board in its 27th meeting held on 20.10.2004 for the proposed land use are residential commercial industrial transport and communication public utility public and semi public uses open spaces and green belt and agriculture zone. The development plan of Jhajjar 2021 was received by the Board and has been referred back to the Government of Haryana on 17.5.2005 with the observations and suggestions on the aforesaid development plan. However the development plan for Gurgaon 2021 has not yet been received by the Board for its approval.

31. It means, therefore that the NCR Planning Board has already approved the use of the acquired land for residential commercial industry etc. purposes, in its meeting held on 20.10.2004.

32. In the present case only a part of green belt/green wedge was acquired for the ur-banisable purposes, for which the approval has already been granted by the NCR Planning Board as pleaded in paragraph 10 of the written statement in its meeting held on 20.10.2004. Therefore the ratio of law laid down by the Hon''ble Supreme Court in Gaziabad Development Authority''s case (supra) empowers the NCR Planning board to approve the change in land use which has been done in the present case. Therefore from that angle also there does not appear to by any illegality in the acquisition proceedings. Therefore the notifications of acquisition have been regularised if at all these were inconsistent with the RP 2001. In the aforesaid judgment the sanction was granted by the NCR Planning Board after the land was put to use. But in the present case it has not even being used so far. Not only the approval has been granted by the NCR Planning Board to use it for the purpose, for which it has been acquired but even the Regional Plan 2021 has come into force according to which the land can be used for the same purpose, for which it has been acquired. Therefore it is clear that there is no fault in the acquisition proceedings and these are not violative of any provisions of the NCR Act 1985.

33. The other connected submission that the respondents cannot acquire the land in derogation of the provisions of NCR Act 1985 which is the central legislation passed under Article 252(1) of the Constitution of India has also been considered by us. There is no dispute that the NCR Act 1985 has been passed by the Parliament under Article 252(1) of the Constitution of India after the State Legislatures of the participating States had passed necessary resolutions and had requested the Parliament to pass the law on the subject. It is also not disputed that no State has authority to act in derogation of the law passed by the Parliament and the enactment passed by the Parliament is supreme. But as discussed above the notifications of acquisition issued by the respondent-State are not in derogation of the law made by the Parliament in the form of NCR Act 1985. The area shown as green belt/green wedge was not specified exactly in the map of the Regional Plan-2001. It was notified with the word approximate which means that liberty was granted to the States to exactify that area by passing suitable plans. Therefore the notification of acquisition cannot be termed to be in derogation of the provisions of the NCR Act. 1985 passed by the Parliament under Article 252(1) of the Constitution of India.

34. Moreover as discussed above the NCR Planning Board constituted under the NCR Act 1985 has approved the action of the respondents for using that area for ur-banisable purposes. Therefore the scheme of the respondents has been adopted by the NCR Planning Board which is a creature of the NCR Act 1985 and a body created under the said Act for initiating the regional plans etc. Therefore the action

of the respondents is neither in violation of the provisions of NCR Act 1985 nor it is in derogation of the said provisions.

35. The next submission of the learned Counsel for the petitioners was that the petitioners had filed objections u/s 5A of the 1894 Act but no decision was taken or communicated to the petitioners before the issuance of notifications u/s 6 of 1894 Act Therefore the acquisition proceedings are invalid.

36. In support of this preposition reliance was placed on the judgment of the Hon''ble Supreme Court reported as Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, . Before we deal with this submission we may reproduce the provisions of Section 5-A of the 1894 Act:

5A. Hearing of objections.-(1) Any person interested in any land which has been notified u/s 4 Sub-section (1) are being needed or likely to be needed for a public purpose or for a company may [within thirty days from the date of the publication of the notification] object to the acquisition of the land or of any land in the locality as the case may be.

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

37. This provision of course confers a valuable right on the land owners as was observed by the Hon''ble Supreme Court in Hindustan Petroleum Corporation Limited''s case (supra) as under:

6. It is not in dispute that Section 5-A of the Act confers a valuable right in favour of a person whose lands are sought to be acquired. Having regard to the provisions contained in Article 300-A of the Constitution the State in the exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefore must be paid.

It was further observed in para 15 as under:

Section 5-A of the Act is in two parts. Upon receipt of objections the Collector is required to make such further enquiry as he may think necessary whereupon he must submit a report to the appropriate Government in respect of the land which is the subject-matter of notification u/s 4(1) of the Act. The said report would also

contain recommendation on the objections filed by the owner of the land. He is required to forward the records of the proceedings held by him together with the report. On receipt of such a report together with the records of the case the Government is to render a decision thereupon. It is now well settled in view of a catena of decisions that the declaration made u/s 6 of the Act need not contain any reason. (See Kalumiya Karimmiya v. State of Gujarat and Delhi Admn. v. Gurdip Singh Uban.)

The Land Acquisition Collector (respondent No. 6) in his reply pleaded in para 1 on merit as under:

The petitioner filed objections u/s 5A of Land Acquisition Act. The petitioner appeared before the answering respondent and they were given full opportunity of hearing and they also gave their statement and signed on the statement the points raised by the petitioner were duly considered. Therefore the petitioners have no right to invoke the extra-ordinary jurisdiction of this Hon''ble Court by way filing the present writ petition.

38. Respondent No. 5 in the written statement dated 13.2.2003 filed by it in reply to paragraphs 4 and 5 of the writ petition has specifically pleaded that the objections of the petitioners filed u/s 5-A of the 1894 Act were duly considered by the Land Acquisition Collector and were submitted alongwith its recommendations to the State Government as required under the law and the State Government issued declaration vide notification u/s 6 of the 1894 Act.

39. The Respondents have pleaded that notifications under Sections 4 and 6 have been issued in accordance with law. Obviously therefore the objections of the petitioners and the recommendations of the Land Acquisition Collector were duly considered by the State Government and thereafter the declaration u/s 6 of 1894 Act was notified indicating that the land has been acquired. Section 114 of the Indian Evidence Act provides as under:

114. Court may presume existence of certain facts.-

This Court may presume the existence of any fact which it thinks likely to have happened regard being had to the common course of natural events human conduct and public and private business in their relation to the facts of the particular case.

The illustrations underneath this Section provide:

The Court may presume-

(a)to (d)...

(e) That judicial and official acts have been regularly performed.

(f)to-(i).

40. In the present case as has been noticed above the objections of the land owners filed u/s 5-A of the 1894 Act alongwith the recommendations of the Land Acquisition Collector were sent to the Government. Therefore the presumption is that these were duly considered by the Government. Nothing was placed on the file by the petitioners to doubt the aforesaid presumption.

41. It was submitted by the learned Counsel for the petitioners that since it was not communicated to the petitioners a presumption should be raised that no such decision was taken by the State Government. This submission has to fall down because of the fallacy which lies in it. There is no provision requiring the Government to communicate its decision to the land owners therefore these words cannot be read into the provisions of Section 5-A of the 1894 Act. The settled law is that this Court cannot read some words in Section 5-A which are not made a part of this Section by the Parliament. We therefore do not find any merit in the submission raised before us for invaliding the acquisition proceedings. Similarly the reasons for rejecting the objections are not required to be recorded in the notification issued u/s 6 of the 1894 Act. It was so observed by the Hon''ble Supreme Court in'' Hindustan Petroleum Corporation Limited''s case (supra) in para 15 reproduced above. It was also repeated in paragraph 28 of the same judgment that a declaration contained in a notification issued u/s 6 of the Act need not contain any reasons but such a notification must precede the decision of the appropriate Government.

42. However the facts in Hindustan Petroleum Corporation Limited''s case (supra) were different which necessitated the summoning of record of the Government to verify if the judicious decision was taken by the Government after considering the objections filed by the land owners and the recommendations made by the Land Acquisition Collector. It is clear from paragraph 1 of the judgment which reads as under:

Hindustan Petroleum Corporation Limited was a tenant in the premises in question wherefor an agreement of tenancy was entered into by and between the father of the first respondent and Caltex (India) Limited for a period of ten years from 15.12.1965. On or about 24.12.1974 another deed of lease was executed by the mother of Respondent 1 in favour of Caltex (India) Limited for a period of five years expiring on 31.7.1979. On or about 30.12.1976 Caltex [Acquisition of Shares of Caltex Oil Refining (India) Limited and of the Undertakings in India of Caltex (India) Limited] Ordinance 1976 (which was repealed and replaced by the Caltex [Acquisition of Shares of Caltex Oil Refining (India) Limited and of the Undertakings in India of Caltex (India) Limited] Act 1977 was promulgated whereby and whereunder the right title and interest of Caltex (India) Ltd. in relation to its undertakings in India stood transferred to and vested in the Central Government. The Central Government however in exercise of its power conferred upon it u/s 9 of the said Act directed that the said undertakings shall instead of continuing to vest in

the Central Government vest in Caltex Oil Refining (India) Ltd. a Government company with effect from 30.12.1976. Caltex Oil Refining (India) Ltd. was later on amalgamated with the appellant herein in terms of Sub-section 3 of Section 7 of the said Act. The appellant herein thus was at liberty to renew the period of lease for a period of further five years with effect from 1.8.1979 on the same terms and conditions as contained in the deed of lease dated 24.12.1974. The appellant herein exercised its option of renewing the lease with effect from 24.4.1979. On the expiry of the said period an eviction proceeding was initiated by the first respondent against the appellant by filing a suit which was marked as O.S. No. 737 of 1985 the said suit for eviction was decreed. An appeal preferred there against was dismissed. The Regional Manager of the appellant herein thereafter sent a requisition of the Special Deputy Collector for acquisition of the land for the purpose of continuing the business wherefor a notification was published on 15.10.1985. However the said notification lapsed. On or about 3.6.1989 a fresh notification was issued u/s 4(1) of the Land Acquisition Act (for short "the Act"). The first respondent filed a detailed objection on 20.7.1989 contending that there existed no public purpose for acquisition of the said land and in any event other suitable lands are available therefor. Upon giving an opportunity of hearing to the respondents the Collector is said to have conducted an enquiry and submitted his report to the Government on or about 28.8.1989. A declaration thereafter was issued u/s 6 of the Act on 25.9.1989. Questioning the said notification the first respondent herein filed a writ petition in the High Court which was marked as W.P. No. 16012 of 1989. Although the Deputy Collector and the appellant filed their counter affidavits in the said proceedings no counter-affidavit was filed by the State of Andhra Pradesh.

43. The facts of the present case are plain. The land was acquired for public purposes, and the notifications as required under the 1894 Act were published. Therefore no case was made out for summoning the Government record.

44. It is therefore held that the decision was taken by the competent authority on the objections filed by the petitioners u/s 5-A of the 1894 Act and that there is no provision under which it was incumbent upon the Government to communicate its decision to the petitioners. Therefore the acquisition proceedings do not suffer from any illegality on this account also.

45. The next submission of the learned Counsel for the petitioners (C.W.P. No. 18922 of 2003) was that notification u/s 4 of the 1894 Act was published in the Haryana Government Gazette (Extra Ordinary) on 23.1.2001 (Annexure P-15). However the declaration u/s 6 of the 1894 Act was notified only on 24.1.2003. Reference was made to the provisions of Section 6(1) of the 1894 Act and it was submitted that the declaration u/s 6 of 1894 Act was to be made within one year from the date of publication of the notification u/s 4 of the 1894 Act. It was submitted that since the declaration was not issued within the statutory period therefore it was bad in law.

46. On the face of it this submission appears to be attractive but when analyzed minutely it breaks down. Respondent No. 4 and 5 in their written statement did not dispute that the notification u/s 4 of the 1894 Act was issued on 23.1.2001 and the declaration u/s 6 of the 1894 Act was published on 24.1.2003. But they have given reasons for publishing the declaration u/s 6 of the 1894 Act more than one year after the publication of the notification u/s 4 of the 1894 Act on 23.1.2001.

47. Learned Counsel for the respondents drew out attention to the provisions of Section 4(1) of the 1894 which read as under:

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

48. As per this provision the notification u/s 4 is to be published in the Official Gazette. It is also to be published in two newspapers. Notice of the substance of such notification is also to be given at the convenient places in the locality concerned. It is further specified that the last dates of such publications and the giving of such public notice will be considered as the date of publication of the notification. In the present case the notification u/s 4 of the 1894 Act was published in the Official Gazette on 23.1.2001. It was published in Daily ''Hari Bhoomi'' (Hindi) on 13.2.2001 and in another Daily ''Bharat Janani'' (Hindi) on 9.2.201. The publication was also effected in the village concerned for which a report was entered in Roznamcha Wakayati on 8.2.2001. Therefore as per the provisions of Section 4 of the 1894 Act the last of such dates shall be deemed to be date of publication of the notification u/s 4 of the 1894 Act. Admittedly 13.2.2001 was the last date when the notification u/s 4 of the 1894 Act was published in Daily ''Hari Bhoomi'' (Hindi). Therefore 13.2.2001 is the date of publication of the notification u/s 4 of the 1894 Act.

49. It is also explained by respondents No. 4 and 5 in their written statement that the suit was filed by the firm M/s Bahadurgarh Agro Industries (P) Ltd. against this notification of acquisition published u/s 4 of the 1894 Act. The stay order was granted by the Additional District Judge Jhajjar on 3.3.2001 and the said stay order was vacated by the said Court on 20.2.2002. Copies of these orders are filed alongwith the written statement as Annexures R-l and R-2. Reference was also made by learned Counsel for the respondents to explanation 1 of Section 6 of the 1894 Act which lays down that in computing any of the periods referred to in the first proviso the period during which any action or proceeding to be taken in pursuance of the notification issued u/s 4 Sub-section (1) is stayed by an order of a Court shall be

excluded. Therefore under this provision the period from 3.3.2001 to 20.2.2002 is not to be taken into consideration because the notification under reference remained stayed under the orders of the Court. It has now been settled by the Hon''ble Supreme Court in a number of judgments that it is not necessary that the stay order should have been obtained only by the party challenging the action. Even if the stay order was obtained by the third party against the notification under challenge the said stay order shall fall within the meaning of explanation 1 of Section 6 of the 1894 Act.

50. If all these dates and provisions are taken into consideration it comes to that the notification u/s 4 of the 1894 Act was published on 13.2.2001 its operation remained stayed from 3.3.2001 to 20.2.2002 and then the declaration u/s 6 of the 1894 Act was got published on 24.1.2003. Therefore if the period is counted the declaration u/s 6 was issued within the period of one year from the date of publication of the notification u/s 4 of the 1894 Act i.e. 13.2.2001 after excluding the period from 3.3.2001 to 20.2.2002. Therefore the declaration published on 24.1.2003 is within the statutory period. Accordingly the submission of learned Counsel for the petitioners has no merit and has to be rejected.

51. The other submission of learned Counsel for the petitioners was that the newspaper ''Bharat Janani'' in which the notification was published u/s 4 of the 1894 Act had no circulation in the locality in which the area of the petitioner-company is located. This newspaper exists on the papers only. It is also submitted that the other paper ''Hari Bhoomi'' has a very less circulation inasmuch as it had only 70 copies in circulation in the entire Tehsil of Bahadurgarh during January/February 2001. To rebut these pleadings made by the learned Counsel for the petitioners respondents No. 4 and 5 in their written statement pleaded as under:

That the notification u/s 4 of the law Act was issued vide No. 2/6/2-IB-II 2001 dated 23rd January 2001 for the public purpose namely for development of industrial area at village Sankhol Tehsil Bahadurgarh Distt. Jhajjar at public expenses the notification u/s 4 of the Land Acquisition Act was published in the Haryana Govt. Gazette on the same date. The notification was also published in two daily newspaper No. 1 Hari Bhoomi (Hindi) dated 13.2.2001 and No. 2 Bharat Janani (Hindi) dated 9.2.2001. The mustri munadi was also conducted in the locality of the land by beat of empty kanstar through the Village Chowkidar and the patwari Halqua entered the report in the Rojnamcha waquati vide report No. 209 dated 8.2.2001. The substance of the notification was also got pasted at the notice board of Patwari Halqua and Tehsil office. Thus the publication and proclamation of the notification Section 4 of Land Acquisition Act was made fully in accordance with Law....

52. The provisions of Section 4 of the 1894 Act mandates not only the publication of the notification in the Government Gazette but also in two newspapers circulating in the locality of which one atleast is required to be in regional language. The purpose

appears to be that the residents of the locality should have the knowledge of the publication of the notification by the Government u/s 4 of the 1894 Act. Not only that it also provides that the Collector shall also cause public notice of the substance of such notification to be given at convenient places in the said locality. So far as the present case is concerned. not only the notification was got published in the Official Gazette but it was also got published in two newspapers. Besides that mustri Munadi was also conducted in the locality by the beat of drum and a report to that effect was made in the roznamcha waquati maintained by the village Patwari at report No. 209 dated 8.2.2001. Therefore large and wide publicity was given for the information of the general public about the issuance of the notification u/s 4 of the 1894 Act. It has not much significance in the facts and circumstances of this case that the newspaper ''Bharat Janani'' had no circulation in the area or if it had tittle circulation but the fact remains that a large and wide publicity was given to this notification. The message had reached the public and the aggrieved persons whose land was sought to be acquired had filed objections u/s 5-A of the 1894 Act. Therefore the petitioners cannot draw any benefit from the submission that ''Bharat Janani'' newspapers had not much circulation in the area particularly when they have not established if any prejudice was caused to them. Even the petitioners had filed objections u/s 5-A of the 1894 Act in pursuance of the issuance of notification u/s 4 of the 1894 Act.

53. Moreover as per the provisions of Section 4 of the 1894 Act the notification is to be published in two daily newspapers circulating in that locality. It does not lay down that the newspaper should have wide circulation in the area. It should merely have a circulation in the area. Therefore merely because the newspaper was having less circulation it cannot be contended that the provisions of Section 4 of the 1894 Act have not been complied with.

54. For all these reasons therefore it is held that neither there was any defect in the publication of the notifications nor the declaration issued u/s 6 of the 1894 Act was barred by limitation. It is also not proved if there was any lack of publicity of the notification issued u/s 4 of the 1894 Act or if the provisions of Section 4 regarding the publication of the notification in the two daily newspapers was not complied with or if the petitioners had suffered any prejudice on account of less circulation of the newspaper in the areas in which the notification was published. It was also not proved if the decision was not taken by the Government on the objections filed u/s 5-A of the 1894 Act and obviously the respondents were not required by law either to communicate the reasons for the rejection of the objections filed by the petitioners nor the respondents were required to give the reasons therefore in the declaration issued u/s 6 of the 1894 Act. There is therefore no legal defect in the notification issued u/s 4 of the 1894 Act or in the declaration issued u/s 6 of the 1894 Act.

55. For the reasons given above we find no merit in these submissions raised before us and accordingly these points are answered against the petitioners.

56. Submissions were also made by the learned Counsel for the petitioners in some of the petitions on other minor issues. These objections vary on the basis of facts of each case which will be decided in individual writ petitions.

57. The stay orders granted to the petitioners were passed primarily on the plea that the acquisition proceedings were inconsistent with the NCR Act 1985. Since it has been held that the acquisition of land was in accordance with the map attached to RP-2001 as discussed above and the acquisition of land for urbanisable purposes, has been approved by the NCR Planning Board and since these points have been decided against the petitioners the stay orders are vacated.

58. These civil writ petitions are therefore admitted for dealing with individual issues agitated separately in each of these cases.

59. The civil writ petitions be re-grouped notification-wise.