

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 26.02.2010

% Date of decision :26.03.2010

+ WP (C) No.1692/2006

PAWAN SAGAR JAIN... ..PETITIONER

Through : Mr. Sumit Bansal and Mr.Manish
Paliwal, Advocates.

- V E R S U S -

UNION OF INDIA & ORS.

... ..RESPONDENTS

Through : Mr.Ajay Verma, Ms.Renuka Arora and
Ms.Sangeeta Chandra, Advocates for
the DDA.

Mr. Sanjay Kumar Pathak, Advocate
for Land & Building Department,
Govt. of NCT of Delhi and LG of Delhi.

Mr.Sanjay Poddar, Advocate for LAC.

Ms.Rachna Shrivastava, Advocate for
Govt. of NCT of Delhi.

Mr.B.V.Niren, Mr.Atul Nanda,
Ms.Rameeza Hakeem, Mr.Gaurav
Gupta, Mr.Sumeer Sodhi, Ms.Malika
Gahlot, Ms.Sugandha and Mr.Sanjay
Bhardwaj, Advocates for UOI.

And 27 connected matters being

+ WP (C) No.1667-68/2006
+ WP (C) No.1693-94/2006
+ WP (C) No.1696-97/2006
+ WP (C) No.1710/2006
+ WP (C) No.2087/2006
+ WP (C) No.2160/2006
+ WP (C) No.2161/2006
+ WP (C) No.2300/2006
+ WP (C) No.2301/2006
+ WP (C) No.2306/2006
+ WP (C) No.2582/2006
+ WP (C) No.2604-2607/2006

- + WP (C) No.12094-95/2006
- + WP (C) No.12105-06/2006
- + WP (C) No.2140/2007
- + WP (C) No.2143/2007
- + WP (C) No.2449/2007
- + WP (C) No.2450/2007
- + WP (C) No.2457/2007

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MS. JUSTICE VEENA BIRBAL

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

SANJAY KISHAN KAUL, J.

1. The petitioners are recorded owners and bhumidars in possession of land comprised in different khasra numbers situated in Village Bamnauli, Tehsil Mehrauli, New Delhi.
2. The petitioners purchased a land through separate sale deeds and necessary mutations were effected in the land revenue records.
3. It is the case of the petitioners that farm houses have been built on the land after due sanction and even completion certificates have been issued in a number of cases, However, it is the stand of the petitioners in three of these cases that the farm houses were constructed as early as in 1967 when no such sanction was required.
4. A notification dated 04.01.2004 was issued under Section 4 of the Land Acquisition Act, 1894 ('the said Act' for short)

for acquisition of land for public purpose namely Dwarka Phase-II under planned development of Delhi. The land of the petitioners was notified under the said notification. The land owners filed objections under Section 5A of the said Act. The primary grounds taken were:

- a) That there were sanctioned farm houses and the land was being used as per the Master Plan.
- b) The public purpose was stated to be imaginary and non-existent.
- c) The farm owners also claimed that the land had been de-notified under Section 12 of the Delhi Development Act, 1957.
- d) A professed policy of the respondents not to acquire built up construction and sanctioned farm houses was pleaded on the basis of a decision taken by the LG on 30.05.1996 in respect of the some other cases that unless a major policy decision was taken, the sanctioned farm houses and their land should not be acquired.
- e) In terms of the National Housing Policy declared by the Central Government, there was need for privatization of housing activity in Delhi and
- f) The green area is required to be maintained in the vicinity of the airport.

5. On the objections being considered and in pursuance to the decision of the LG a declaration was issued under Section 6 of the said Act at which stage these farm owners approached

this court seeking quashing of the notification under Section 4 and the declaration under Section 6 of the said Act.

6. Learned counsel for the petitioners sought to canvass the following propositions:
 - i) Lack of proper consideration of objections and effective hearing under Section 5A of the said Act.
 - ii) Lack of application of mind prior to the issuance of declaration under Section 6 of the said Act.
 - iii) The stated requirement not being in conformity with the MPD-2021.
 - iv) Discrimination qua the petitioners as land in respect of other farm houses, though not forming subject matter of the same notification, was not even notified under Section 4 of the said Act on account of policy of the Government not to acquire built up farm houses.
7. The petitioners submitted that right to property continues to be a constitutional right under Article 300-A of the Constitution of India though it may not be a fundamental right. It is a valuable right akin to a fundamental right and thus the consideration of the objections filed by the owners of the land as also the acceptance of recommendations must be proceeded by a proper application of mind on the part of the Government. The said Act being expropriatory legislation, the provisions of the said Act ought to be strictly construed as they seek to deprive a person of his land without his consent. It was canvassed before us on the basis of the records produced by the respondents and also

on the basis of the report of the LAC that a note sheet was prepared which also did not reflect the factual position and the LG only appended his signatures. It was thus pleaded to be a case of lack of formation of any proper opinion by the LG and non application of mind. Mere signatures were stated to be not sufficient to show application of mind.

8. It was submitted that the respondents at no stage examined the aspect of a proper sanction being available in the case of farm houses of the present cases in the context of the policy decision of the LG dated 30.05.1996. The LG while dealing with farm houses in other areas under different notifications opined that such farm houses and their land should not be acquired because they were duly sanctioned. This is apart from the fact that the green areas are lungs of the city. It was pleaded that in terms of MPD-2021, one peripheral village is to be maintained as green and Bamnauli is a peripheral village.
9. In support of their plea, learned counsel for the petitioners referred to the judgment in Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chennai & Ors.; (2005) 7 SCC 627 to canvass the proposition that there has to be application of mind both at the stage of consideration of objections filed by the owners of the land by the LAC as also at a second stage of the acceptance of recommendations made by the LAC by the competent authority. The action required to be taken by the State is distinct and different from the action required to be taken

by the Collector and when the ultimate order is in question, it is for the State to satisfy the Court about the validity thereof and mere satisfaction of the Collector cannot be held to be sufficient compliance with the requirement of law. It is in that context, it was observed as under:

“19. Furthermore, the State is required to apply its mind not only on the objections filed by the owner of the land but also on the Report which is submitted by the Collector upon making other and further enquiries therefore as also the recommendations made by him in that behalf. The State Government may further inquire into the matter, if any case is made out therefore, for arriving at its own satisfaction that it is necessary to deprive a citizen of his right to property. It is in that situation production of records by the State is necessary.”

10. A reference was also made to the Division Bench judgment of this Court in Vasant Kunj Enclave Housing Welfare Society through its President and Ors. v. Union of India and Ors.; 2006 (89) DRJ 406 where it was held that the validity of an order for acquisition of land must be decided on the touchstone of the grounds stated in the order and by reference to the material available on the date when the order was passed. It was observed in para 26 as under:

“26. I find it difficult to read in this note anything concerning the question whether or not an enquiry under Section 5-A of the Act qua the land belonging to the petitioners should be conducted. The note does not even address itself to that question leave alone propose to the Lt. Governor any particular course of action in regard thereto. All that the note proposes is the issue of a notification under Section 6 and 17(4) for Zone I and II, taking over of possession of area not covered

by court order in Zone I and II, issue of a corrigendum in respect of Zone III and affording the owners an opportunity for filing objections under Section 5-A of the Act. The note also seeks approval of instructions to the DDA to ensure that no further construction comes up in Zone III during the time the objections are heard. Significantly, Lt. Governor has approved the note which inter alias implies that those owning farm houses in Zone III may be given an opportunity of filing objections under Section 5-A. The order passed by the Lt. Governor however does not demonstrate application of mind leave alone record any reasons for dispensing with such an enquiry under Section 17(4) of the Act in regard to other area notified for acquisition. Just because the Lt. Governor agreed to afford an opportunity to the farm house owners for filing objections under Section 5-A, it cannot be said that a proper consideration of the question had taken place nor can it demonstrate application of mind by the competent authority. Any inference from these notes which are sketchy and which do not directly address the issue in the manner it ought to be, would be far-fetched and unsustainable. If the law requires, as it does in the instant case, that the authority passing the order should apply its mind properly, such application of mind cannot be readily inferred. That is especially so when the order passed by the authority affects valuable civil rights of the citizens. As a matter of fact, the greater the potential of mischief, the more careful and objective should the authority passing the order be. There is also no gainsaying that while acquisitions made for public purpose are at times inevitable, hardship is more often than not implicit for expropriated owners in any compulsory acquisition. Adherence to the requirements of law and the procedure established for the purpose must, therefore, be scrupulously ensured lest the procedural safeguards that the law provides to the owners against arbitrary acquisitions are reduced to bare rituals. I, therefore, agree with the view expressed by brother Madan Lokur, J that there was no due and proper application of mind on the part of the Lt. Governor to the question of dispensing with the enquiry either before the issue of the notification under Section 17(4) or at any time thereafter."

(emphasis supplied)

11. On the other hand, learned counsel for LAC submitted that 62 objectors filed their objections who were all given personal hearing and the objections pressed by them were all examined. One of the pleas raised by the objectors was in respect of there being sanctioned farm houses and in that behalf, the LAC observed that the Government may take a decision. Simultaneously, the LAC also recorded that there was no legal impediment to acquire the land as per the said Act. The report of the LAC along with its annexures, original objections filed, hearing proceedings, summary of LAC report and joint survey report were placed before the LG for consideration and necessary orders/approval regarding issuance of declaration under Section 6 of the said Act. A draft notification was also sent under Section 6 of the said Act. In that summary, prepared for the LG insofar as the aspect of farm houses is concerned, it has been stated that the LAC has reported that there is no impediment to acquire such land by citing a number of court cases on which acquisition has been upheld by the Hon'ble Court. The note also stated that the LAC has not recommended release of any land in this category. We may observe at this stage that the note prepared, however, does not specifically refer to the fact of the LAC observing that the aspect of release of farm houses be decided by the Government. The LG after perusing and considering the material placed before him, gave an

approval for issuance of a declaration under Section 6 of the said Act by affixing his signatures. It is submitted that this is sufficient to establish a subjective satisfaction of the LG and implies that the decision on the farm houses to be left out, if any, was negated by the LG as no farm house was left out from the acquisition.

12. Learned counsel submitted that in any case any policy decision to leave out sanctioned farm houses or built up structures could not override the statutory law in view of what has been observed by the Division Bench of this Court in Rajesh Kumar Yadav v. Union of India & Ors.; 141 (2007) DLT 493.
13. Learned counsel submitted that the declaration under Section 6 of the said Act was issued on 31.10.2005 by the competent authority after following the due process of law for the entire land measuring 2100 bighas and 6 biswas and such a declaration is conclusive proof of the existence of a public purpose under Section 6(3) of the said Act. Notices were also issued under Sections 9 & 10 of the said Act to the interested persons and the award no.1/2007-2008 was announced on 06.08.2007 with prior approval of the competent authority for acquisition of the entire land. Learned counsel thus pleaded that this award had been challenged in a batch of writ petitions including writ petitions filed by some of the petitioners herein, but those writ petitions had been dismissed. Thereafter, reference petitions had been filed seeking enhancement of

compensation before the learned Addl.District Judge. Possession of approximately 1087 bighas is stated to have been already taken over.

14. Learned counsel also emphasized that two of the writ petitions bearing no.1715/2006 and 17582/2006 relating to the same acquisition proceedings after some arguments were dismissed as withdrawn with liberty to the petitioner to seek de-notification of the land under Section 48 of the said Act and same was the fate of some of the other objectors.
15. Learned counsel for the LAC pleaded that the satisfaction of the LG has been properly accorded and once the complete material before the LAC along with recommendation of the LAC and the summary report prepared in the office is before the LG, the appending of signatures by LG would suffice. In this behalf, learned counsel relied upon the judgment in P.S.Gill and Ors. v. Union of India & Ors; ILR (1979) 1 Delhi 601 where the plea of the LG laconically disposing of the petitions was rejected since all the material was before the LG and it was observed that a speaking order is not necessary in recording satisfaction under Section 6 of the said Act. What is required is to be seen whether there was substantial compliance with the requirement in the Act and the LG should satisfy himself with the acquisition of the land was necessary. It was observed as under:

“(66) The argument of Sri Dhamija is that the file has been put up to the Lieutenant Governor for two purposes. The first was for the rejection. of the objection that had been put forward under Section 5A. The second purpose was for orders regarding the issue of the declaration under Section 6. Sri Dhamija contends that the record shows that the L.G. approved of the first suggestion, namely, that the objections should be rejected but he did not apply his mind at all to the second suggestion that a declaration under Section 6 should issue. He submits therefore that the satisfaction that the lands were required for a public purpose was not arrived at by the Lt. Governor and that he has not directed the issue of declaration under Section 6.

(67) The argument is attractive but we do not think it can be accepted. The proceedings of the L.G., it seems to us, cannot be dissected in the manner suggested by Sri Dhamija. A notification under Section 4 had been issued in 1959. A good portion of the land had already been acquired. It was found that the chunk of land now proposed to be acquired was being misused and that it was necessary to acquire it as early as possible. The objections were considered to be not maintainable in view of the report of the Collector and in view of the analysis made of the various objections by the office note. In the light of these facts, a draft declaration was put up and the file was submitted to the L.G. with a proposal that the objections be rejected and draft proposed be approved. In other words, so far as this particular matter was concerned, The rejection of the objections by the L.G. also automatically meant that he was satisfied that the land was required for a public purpose. It is perhaps conceivable that cases may arise where, as pointed by Sri Dhamija, the rejection of objections might not necessarily lead to the issue of a declaration under Sec. 6 e.g. it may be that the objections raised are flimsy, irrelevant and so liable to be rejected ; but, at the same time there may be some facts or reasons set out in the report of the Collector which render the issue of declaration unnecessary or not possible. To give an illustration, it may be that an extent of land is sought to be acquired for purposes of a public school. The land owners may object on the ground that each of them is holding a small piece of land and that deprivation thereof would cause him enormous hardship. This may be found to be no ground for not acquiring the lands. But it is

quite possible that the Collector may report that, after the date of the notification under section 4, another big school had come into existence in the locality, and that, therefore, the acquisition of these lands was no longer necessary. In such cases the rejection of the objections may not be followed by the L.G. with a direction to acquire the land. But such academic illustrations are not helpful in construing the section. What is required is to see whether there is a substantial compliance with the requirement in the Act that L.G. should satisfy himself that the acquisition of the land was necessary. In the present case, having regard to the whole tenor of the note put up to him and having regard to the fact that the L.G. has specifically rejected the objections, it must necessarily follow that he was satisfied that the lands were needed for a public purpose. If inspite of having rejected the objections, the L.G. had not been thus satisfied, he would have specifically directed that, though the objections were rejected, the declaration should not issue.”

16. Learned counsel for LAC emphasized that the plea of the petitioners that the land in question being built-up farm houses should not be acquired is misplaced as there was absence of any such policy notified by the Government not to acquire any built-up property or to exclude built-up farm houses from acquisition of land under the said Act. There could be no impediment for acquiring built-up properties under the said Act and the acquisition proceedings were carried out following due process of law. To support this plea, learned counsel referred to the Division Bench judgment of this Court in Sh.Bhagwan and Anr. v. Union of India & Ors.; 1991 (2) Delhi Lawyer 59 and Roshanara Begum v. Union of India and Ors.; AIR 1996 Delhi 206 (FB). Sh.Bhagwan and Anr. v. Union of India & Ors's case (supra) supports the plea that no policy decision can curb the jurisdiction of LG under Section 11 of the said Act and thus

statutory powers cannot be curtailed by administrative instructions except where principles of promissory estoppels come into play. The petitioners in that case relied upon a policy decision dated 18.08.1996 of the Delhi Administration to the effect that the land will not be acquired which had been built-up and only that vacant land will be acquired if it is 1 hectare or more. This plea was negated on the ground that the decision was an administrative decision and even assuming for the sake of argument that the said decision was with the concurrence of the LG, the administrative decision could also be altered, modified or abrogated by the competent authority. The impugned award had been announced after approval had been obtained from the LG and thus even if there was a policy decision of the LG, which was incorporated in the letter dated 18.08.1996, the same stood varied by the LG himself when soon after the policy decision he gave assent to the promulgation of the awards. The administrative policy decision was thus held not to vary or curb the jurisdiction of the LG under Section 11 of the said Act. This view is also fortified by the Full Bench of this Court in Roshanara Begum v. Union of India and Ors's case (supra).

17. Learned counsel for LAC thus submitted that in the present case there is not even a so-called policy decision unlike in Sh.Bhagwan and Anr. v. Union of India & Ors's case (supra). There was no circular issued and no promise held out to anyone. The note sheet of the LG is an internal document

in the file which could not create any promissory estoppels. The note only proposed that a policy decision be taken in this behalf, but ultimately no such policy was formulated. The approval of the award and of the declaration under Section 6 of the LG thus in any case impliedly superseded any thought process towards the formulation of such a policy. It was pleaded that there was sufficient material on record to support the decision of the LG to approve the acquisition proceedings and the declaration under Section 6 of the said Act was a conclusive proof of its public purpose.

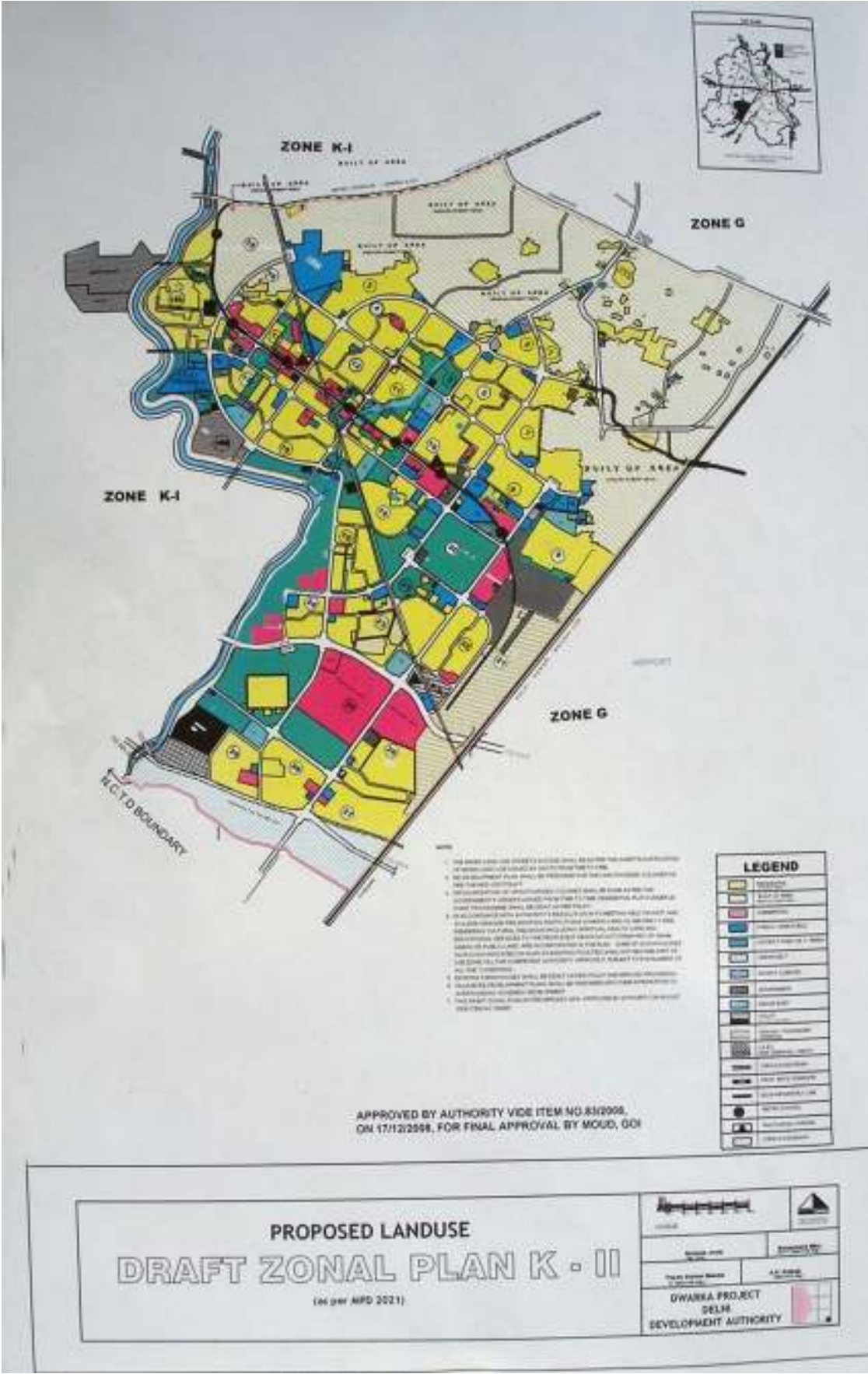
18. Learned counsel emphasized that the land is being acquired for the development of a residential scheme to provide housing to general public and such larger public purpose must weigh as against the personal rights of the petitioners. Learned counsel emphasized that in case of acquisition of large area of land as in the present case, specifications of the purpose can only be with reference to the acquisition of the whole area, which is planned development of Delhi as observed in Aflatoon and Ors. v. Lt. Governor of Delhi and Ors. (1975) 4 SCC 285.
19. Learned counsel sought to emphasize that judicial notice can be taken of acute housing shortage in Delhi and keeping this mind Dwarka Phase II has been planned by the DDA with the object of providing flats/houses to the common man. The land sought to be acquired vide impugned notification is part of the scheme of extension of the urban limits of Delhi and the land was being utilized in

accordance with the Master Plan. Learned counsel emphasized that possession of large number of land as stated aforesaid has already been taken and it is in such context it was observed in Om Prakash and Anr. V.State of UP and Ors.; (1998) 6 SCC 1 that in such a situation setting aside of a notification would not be appropriate. We may, however, note that in the facts of that case, almost 9/10th of land already stood validly acquired and the dispute centered around only 1/10th of the land while in the present case possession of 1087 bighas of land has been taken out of the total land sought to be acquired of 2100 bighas and 6 biswas.

20. In this behalf, learned counsel also submitted that acquisition contrary to the stated purpose of land use in the Master Plan, could not be struck down on that account in view of the observations in Bhagat Singh v. State of UP; 1999 (2) SCC 384. This is so as the beneficiary of the acquisition can obtain a sanction for change of user from the competent authority.
21. Learned counsel for the DDA also sought to support the stand of the LAC in the capacity of a beneficiary of the acquired land. It was pleaded that the DDA formulated the plan for development of Dwarka as an integrated sub-city including residential, commercial, public and semi-public (institutional), recreational etc. land uses for which necessary amendments in the MPD-2021 were undertaken. The land in the present case is for Dwarka Phase-II. The

land is bounded by oil pipeline in the North East, Rewari Line in the South East, Najafgarh-Bijwasan Road in the South and Najafgarh Drain in the West. The land use stood changed vide notification dated 16.10.2000 from rural use to the aforesaid purposes and the area was declared a development area no.172 under Section 12 of the Delhi Development Act, 1957 vide notification dated 20.07.1988. It was specifically pleaded that there was no policy of the DDA to exempt farm houses in this area from acquisition.

22. The land of the petitioners is stated to be primarily falling in what are proposed sectors 27, 28 and 29 of Dwarka Sub-city Phase-II Scheme, which land constitutes an integral part of the Dwarka Phase-II. The Second Diplomatic Enclave was proposed in the available land of about 222 hectares, but due to non availability of the said land including on account of challenge to the acquisition proceedings, an alternative area for diplomatic missions had to be planned in Sector 24 in a paltry area of only about 34 hectares. The land in question in these writ petitions is also stated to be acquired for essential services of the Scheme like road, water, sewer and electricity works, which would be adversely affected due to non-availability of the land. The implementation of peripheral road network around sectors 27, 28 and 29 is stated to be important to ensure connectivity of Dwarka sub-city with urban extension road network. The Draft Zonal Plan K-II is as under:



23. We have examined the elaborate submissions made by learned counsel for the parties. We have also perused the records of the LAC pertaining to the hearing granted on the petitions filed under Section 5A of the said Act as also the record relating to the satisfaction of the LG before issuance of declaration under Section 6 of the said Act and publication of the award.
24. It clearly emerges that the land in question along with other lands formed subject matter of the same notification under Section 4 of the said Act with the avowed object of public purpose of planned development of Delhi. Dwarka Phase-II was envisaged on the lands in question. The housing shortage in Delhi is epidemic. It can thus hardly be said that the object of having Dwarka Phase-II lacks public purpose. The records of the LAC show that the parties made their submissions by reference to the various points which were duly noted by the LAC. The parties/counsels even signed proceedings before the LAC. The plea of lack of proper consideration and effective hearing under Section 5A of the said Act can thus hardly be sustained.
25. The parties have had full opportunity to make their submissions on which the LAC has submitted his report. We have to note that while filing objections often large number of pleas are taken but when the matter is addressed, the relevant pleas are sought to be advanced. This is what has happened in the present case and the

pleas advanced have been taken note of and the LAC has made itself comments on the same.

26. In our considered view, the LAC rightly came to the conclusion that these petitions really have no merit keeping in mind the large public purpose.
27. The only aspect which the LAC has taken note of and not given a proposal is in respect of the plea of there being sanctioned farm houses and in view of earlier notings of the LG dated 30.05.1996 in some other cases whereby such sanctioned farm houses were excluded and it was observed that a major policy decision in this behalf is required to be taken. This aspect was left by the LAC to be considered by the competent authority. We have thus no hesitation in coming to the conclusion that the petitioners have had full opportunity of effective hearing and considerations in the proceedings before the LAC.
28. The petitioners have also pleaded that the stated requirement was not in conformity with the MPD-2021. We fail to appreciate this plea. This plea is predicated on the requirement of open areas and the peripheral areas to be treated as a buffer of green areas. All that is required to be said in this context is that the planners are best equipped to decide this aspect and the petitioners cannot choose how development of Delhi shall take place. Even otherwise, this plea is not sustainable in view of the observations of the Supreme Court in Bhagat Singh v. State of UP's case (supra).

29. The petitioners have pleaded the hostile discrimination on account of release of other farm houses though not forming subject matter of the same notification. It has been pleaded that a notification has not even been issued under Section 4 of the said Act on account of this policy.
30. If this plea is examined closely, we find there has been absence of any policy in this behalf. Undoubtedly, while dealing with particular acquisition, LG in terms of its order dated 30.05.1996 had left out some sanctioned farm houses while granting no such exemption to non sanctioned farm houses. The LG wanted a major policy decision to be taken. However, no such major policy decision has been taken in this behalf and this has been repeatedly emphasized by the respondents before us. Thus, even if the then LG in his opinion sought to leave out the sanctioned farm houses in respect of another acquisition proceedings, it cannot be said that despite the requirement of land for Dwarka Phase-II, all sanctioned farm houses should be left out.
31. We may also notice the authoritative legal pronouncements referred to aforesaid which show that a policy decision cannot in any way restrict or alter the power of the LG under the said Act. In this behalf, the observations in Rajesh Kumar Yadav v. Union of India & Ors.'s (supra), Sh.Bhagwan and Anr. v. Union of India & Ors's case (supra) and of the Roshanara Begum v. Union of India and Ors's

case (supra) which has received the approval of the Supreme Court are apposite.

32. The observations made in Sh.Bhagwan and Anr. v. Union of India & Ors's case (supra) in respect of a policy decision are thus very germane as the plea in that case also predicated on a policy decision. In the present case, there is only a proposal for a policy decision with exclusions of certain areas from acquisition. It is, however, true that even after acquisition proceedings have been completed, the land has been released under Section 48 of the said Act from acquisition in different cases including in the case of Roshanara Begum v. Union of India and Ors's case (supra). It is in this context that while some petitioners sought to confine the relief to release of the land under Section 48 of the said Act and thus withdrew the petitions with liberty, some of the other petitioners sought to canvass their plea before this Court while simultaneously not wanting to give up their right to move under Section 48 of the said Act. Such selective release does give rise to hope in the mind of the owners that they may also become beneficiaries of release of their land. The petitioners who did not have sanction for their farm house thus withdrew their petitions as their case would not have been covered by the so-called policy decision of 30.05.1996.
33. The rare controversy which arises for consideration in the present case and as canvassed by learned counsel for the parties is arising from the observations made by the LAC for

the issue of non acquisition of land of sanctioned farm houses being examined by the Government while observing at the same time that there was no impediment under the said Act. The LAC thus rightly left this aspect to be examined by the competent authority.

34. In the summary report prepared arising from the recommendations of the LAC which was put up to the LG, there is absence of any specific observations in this behalf of the LAC leaving this aspect to be considered by the Government. The second part of the observations of the LAC that there is no impediment in the said Act has been mentioned by reference to the judgments. It is thus the case of the petitioners that the competent authority being the LG could hardly be expected to have applied his mind properly to the facts of the case since this aspect was never brought to the notice of the LG and was deliberately kept away in the summary report. On the other hand, learned counsel for the respondents have pleaded that since the complete material was placed before the LG including the objections filed, their consideration, the comments of the LAC along with the summary report, the LG had the opportunity to consider the material along with draft notification under Section 6 of the said Act. Thus, approval by the LG in the form of appending his signatures (which is all that as per law was required to be done) shows that the LG was fully aware of this plea and thus the approval of the

notification under Section 6 of the said Act amounts to negation of this plea.

35. The moot point which thus arises for consideration is whether in these facts, could it be said that the LG has had an opportunity to consider the plea of the petitioners?
36. We have no doubt that the summary report prepared for the perusal of LG ought to have incorporated the aspect of LAC noticing that though under the said Act there was no impediment to acquisition of the land, the question of not requiring land of sanctioned farm houses be examined by the Government. However, the consequence of the absence of this detail in the summary report would have to be examined.
37. It cannot be lost sight of that the original note of the LG dated 30.05.1996 strongly relied upon by the petitioners themselves stated that a major policy decision ought to be taken. It is not in issue that no such policy decision has been taken. Thus, though the then LG expressed his views, while exempting the sanctioned farm houses from that notification, that it would be advisable to have a major policy decision, the concerned authorities in their wisdom have not made a policy in that behalf. In the absence of such a policy decision, a general exemption could not have been claimed in respect of the sanctioned farm houses. Thus, though there is force in the contention of learned counsel for petitioners relying upon the judgment in Hindustan Petroleum Corporation Ltd. v. Darius Shapur

Chennai & Ors.'s case (supra) that the State is required not only to apply its mind to the objections filed by the owners of the land but also to the report of the LAC prior to the declaration under Section 6 of the said Act, but in facts of the present case in the absence of any policy decision there could not have been any general exemption in respect of the sanctioned farm houses. The judgment in Vasant Kunj Enclave Housing Welfare Society through its President and Ors. v. Union of India and Ors.'s case (supra) does not give much assistance to the petitioners as the summary report in the present case could not have suggested a course of action to the LG as there was no professed policy of the Government which had been brought into place in respect of such sanctioned farm houses. It is of course trite to say that there is no impediment in law for acquisition of even constructed land.

38. Learned counsel for LAC has rightly pointed out that insofar as the impediment in law is concerned, there was absence of such impediment and even if a policy existed it could not override a statutory law in view of the observations in Rajesh Kumar Yadav v. Union of India & Ors.'s (supra). Not only that the complete material was placed before the LG including the report of the LAC with the summary report though we again emphasize that such summary report ought to have incorporated the aspect referred to aforesaid. The LG is not required to record detailed reasons

for its approval in view of the observations in P.S.Gill and Ors. v. Union of India & Ors.'s case (supra).

39. We cannot lose sight of the fact that the land is being acquired for development of a residential scheme to provide housing to general public and the larger public interest must weigh against personal rights. This aspect is of course to be balanced with the right to property being a constitutional right under Article 300A of the Constitution of India and thus there has to be strict enforcement of the provisions of the said Act which in this case are not in doubt. The beneficiaries can even utilize the land for the purposes other than originally envisaged after obtaining sanction for change of user from the competent authority.
40. The plan of the area which we have incorporated in the present judgment shows that the land of the petitioners is primarily falling in what are proposed as Sectors 27, 28 and 29 of Dwarka Sub-city Phase-II Scheme. It has been explained that the requirement of land for the Second Diplomatic Enclave has not been satisfied.
41. We are thus of the considered view that the absence in the summary report preventing the examination of the question whether the competent authority wants to not acquire sanctioned farm houses in the absence of any policy, there being no impediment under the said Act, cannot be said to be fatal to the acquisition proceedings. We, however, find, as observed aforesaid, that ideally this aspect of exempting sanctioned farm houses ought to have been mentioned in

the summary report. We are of the view that though this aspect cannot defeat the provisions of the said Act, yet the respondents have selectively released farm houses from acquisition under earlier acquisitions even after acquisition proceedings are complete. In fact, a number of cases have come to light where the power has been exercised under Section 48 of the said Act to release the land after acquisitions have been upheld right till the Supreme Court and the classic example of the same is Roshanara Begum v. Union of India and Ors.'s case (supra).

42. We are thus of the view that acquisition proceedings are not required to be quashed on account of the plea of the petitioners and as to whether the sanctioned farm houses are liable to be released from acquisition proceedings is an aspect which needs to be examined by the competent authority under Section 48 of the said Act.
43. We thus permit the petitioners to file a representation to the competent authority under Section 48 of the said Act raising all pleas as are germane within thirty days of pronouncement of this judgment and the said applications, if so filed, would be decided in accordance with law by the competent authority. Till such time as the applications are decided, no coercive steps will be taken against the petitioners and the parties will maintain status quo as to nature, title and possession of the land in question. In case of an adverse decision, this benefit would continue for a period of fifteen days after the date of the receipt of the

decision by the petitioners in order to enable the petitioners to take recourse to the legal remedy, if any. We, however, make it clear that if no such application is filed within a period of thirty days of pronouncement of this judgment, the respondents would be free to proceed against the land in question.

44. The writ petitions are accordingly dismissed with the aforesaid directions.

SANJAY KISHAN KAUL, J.

MARCH 26, 2010
dm

VEENA BIRBAL, J.