

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-11911-2011

Pronounced on : 19th October, 2015

M/s Vishnu Apartments Pvt. Ltd. and others

.... Petitioners

VERSUS

State of Haryana and others

..... Respondents

CORAM: **HON'BLE MR. JUSTICE RAJIVE BHALLA**
 HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: **Mr.Sanjeev Sharma, Senior Advocate, with**
 Mr.Shekhar Verma, Advocate, for the petitioner(s)
 (in CWP-17279-2010, CWP-17260-2010, CWP-17282-2010,
 CWP-17283-2010 and CWP-11911-2011, CWP-11969-2011 and
 CWP-19121-2011).

Mr.Shailendra Jain, Senior Advocate, with
Mr.Bhagender, Advocate; for the petitioner(s)
(in CWP-17278-2010)

Mr.Puneet Bali, Senior Advocate, with
Mr.Vibhav Jain, Advocate, and
Ms.Neha Sonawane, Advocate, for the petitioner(s)
(in CWP-20632-2011).

Mr.Ashok Singla, Addl.A.G., Haryana.

Mr.Arun Walia, Senior Advocate, with
Mr.Servedaman Rathore, Advocate, for HUDA
(in CWP-11911-2011, CWP-11259-2011 and CWP-21567-2011).

Mr.Amar Vivek, Advocate, for HUDA
(in CWP-20632-2011 and CWP-21657-2011).

Mr.Lokesh Sinhal, Advocate, for HUDA
(in CWP-20632-2011 and CWP-11959-2011).

Mr.D.S.Patwalia, Senior Advocate, with
Mr.Salil Sabhlok, Advocate, for respondent No.6
(in CWP-11911-2011 and CWP-11959-2011).

Mr.Amit Parashar, Advocate, for respondent No.6
(in CWP-20632-2011).

Mr.Ashish Chopra, Advocate, in CWP-21657-2011.

RAJIVE BHALLA, J.

Counsel for the parties agree that as common questions of fact and law arise for adjudication, CWP-17278-2010, CWP-17279-2010, CWP-17280-2010, CWP-17282-2010, CWP-17283-2010, CWP-11-2011, CWP-11911-2011, CWP-19121-2011, CWP-11959-2011, CWP-20632-2011 and CWP-21657-2011 and may be decided by a common order. Facts, however, are being taken from CWP-11911-2011 but if and where necessary, facts of the other writ petitions shall also be referred to.

The petitioners while challenging notifications issued under the Land Acquisition Act, 1894 (hereinafter referred to as the “1894 Act”) acquiring their land or land regarding which they have executed, with the owners of the land, collaboration agreements to develop the land, are primarily aggrieved by failure to release their land as a result of rejection of their applications for grant of licence, the latter having been rejected on the ground that 50% of the acquired land is reserved for development by a government entity and 50% has already been released to private entities. Another ground is the failure to afford an adequate opportunity of hearing while deciding objections under Section 5-A of the 1894 Act. The petitioners also pray that acquisition be quashed as most of the land proposed for acquisition under Section 4 of the 1894 Act has been released, the original purpose of acquisition no longer subsists.

Counsel for the petitioners submits that the petitioners are

admittedly owners by purchase, exchange or have collaboration agreements with owners regarding a consolidated parcel of land measuring 9.20 acres, in village Tigra, Gurgaon, for commercial development. The respondents have issued notifications under Sections 4 and 6 of the 1894 Act to acquire this land as well as land in other villages and pronounced an award purportedly acquiring the lands, in dispute, as well as other parcels of land for commercial development. After issuance of the notification under Section 4 of the 1894 Act, the petitioners filed objections which were summarily rejected without affording an opportunity of hearing, as mandatorily required by Section 5-A of the 1894 Act. The notification under Section 6 of the 1984 Act was issued without forwarding a detailed report to the government. Counsel for the petitioners submits that the purpose of acquisition and purpose for which the petitioners have purchased land, i.e. commercial development, is the same. The petitioners also filed applications, dated 24.12.2010, before the Director, Town and Country Planning, Haryana (hereinafter referred to as the "DTCP") for grant of a licence to develop a colony. The applications were rejected on 26.06.2011 primarily on the premise that the land, in dispute, is notified for commercial development and as 50% of this land is reserved for development by government entities and the balance 50% reserved for private entities, has already been exhausted/released, the applications cannot be considered.

Counsel for the petitioners submits that the 50%

reservation, for development by a government entity was considered by a Division Bench of this Court in CWP-12786-2011, “M/s Conscient Infrastructure Pvt. Ltd. and others Vs. State of Haryana and another” and two other writ petitions including a writ petition filed by the present petitioners. After considering the development plan, notifications issued thereunder, the proposed land uses, the land reserved for commercial areas etc., it has been categorically held that 50% reservation does not apply to commercial belts within a sector but to a commercial zone. The learned Division Bench has also held that clause VII(2) of the the Draft Development Plan of Gurgaon, which prescribes that private developers cannot develop land beyond 50%, must necessarily be applied to sectors reserved exclusively for commercial use and not to commercial belts falling in residential sectors, along the roads. The respondents have admittedly accepted the correctness of the aforesaid judgment as they have not sought a review or a Special Leave Petition. The lands subject matter of the present petitions fall within a commercial belt and not a commercial sector. The respondents are, therefore, not only required to reconsider the applications for grant of licences but also the prayer for release of the land. The rejection of the petitioners' applications for licences and as a consequence, rejection of their objections under Section 5-A of the 1894 Act, are so intrinsically linked as to require a reconsideration of the entire matter particularly with respect to release of the land belonging to the petitioners on the premise that

the impediment of 50% area reserved in a commercial belt is no longer available to the respondents as a ground to reject the applications for licences.

Counsel for the petitioners further submits that as the State of Haryana has a subsisting policy for release of land in relation to applications for grant of licence filed before, during and after notifications under Sections 4 and 6 of the 1894 Act, provided land has been purchased/acquired by the private entity before the notification under Section 4 of the 1894 Act, and the petitioners fulfill the criteria laid down in the policy, the entire matter requires to be re-considered either under Section 5-A or under Section 48 of the 1894 Act.

Counsel for the petitioners also contends that the intention of the government is not to develop land but to merely propose an acquisition and then release land, apparent from the fact that it is not denied that though 207 acres of land were proposed to be acquired, under Section 4 of the 1894 Act, the land was reduced to 110 acres at the stage of Section 6, to 87.51 acres at the time of the award and only 43.5 acres of the land is left for acquisition, of which a large parcel of land is subject matter of the present writ petitions. Thus, the question is not whether the government has the power to acquire land but whether having released almost 80% of the land, there is any justification with the government to refuse to release land belonging to the petitioners particularly when the 50%

reservation in favour of a government entity has been held to be illegal in CWP-12786-2011.

Counsel for the petitioners further submits that a perusal of the public purpose set out in notifications issued under Sections 4 and 6 of the 1894 Act, reveals a purpose to develop and utilise land along the southern periphery roads in Sectors 62, 65 and 66, Gurgaon, for a commercial purpose but as almost 80% of the land has been released, the very purpose no longer survives and, therefore, renders the impugned notifications unimplementable, illegal and void.

CWP-21657-2011

Counsel for the petitioners submits that the petitioners have a collaboration agreement with M/s Viresh Promoters and Developers Pvt. Ltd. for development of 4.90625 acres. The petitioners filed objections on 07.01.2009 and had already applied for a licence on 16.04.2008. The petitioners were issued a letter of intent on 20.09.2010 but eventually licence has been denied for the remaining land on the ground of 50% of its being reserved for the government. It is further submitted that the condition of 50% having been quashed in CWP-12786-2011, the respondents should be directed to release the land which is the subject matter of this writ petition, by reconsidering the entire matter.

CWP-20632-2011

Counsel for the petitioners submits that the petitioners

filed objections and applied for a licence but their application for licence as well as release of land has been rejected on the ground of 50% reservation.

CWP-11-2011

Counsel for the petitioners submits that the petitioners filed objections under Section 5-A of the 1894 Act, which were dismissed without an opportunity of hearing and in essence states that their case is primarily identical to CWP-11911-2011.

CWP-11911-2011

Counsel for the petitioner submits that as regards the decisions of objections under Section 5-A of the 1894 Act, the Collector opined that the land should be acquired subject to the report by the DTCP. However, without waiting for any report or any further consideration the objections were rejected without affording an opportunity of hearing and apparently on the ground that the licence had been rejected.

Counsel for the State of Haryana submits that the matter, in dispute, has to be considered in two parts, namely the validity of notifications under Sections 4 and 6 of the 1894 Act and the rejection of the licence. The petitioners have no vested right to demand release of their land particularly as some of them did not file objections. Those who filed objections appeared before the Land Acquisition Collector, were afforded an opportunity of hearing but as the land did not contain any structures etc., the objections were

rejected and a report was forwarded to the government for acquisition. The government thereafter issued notification under Section 6 of the 1894 Act, and pronounced an award. The petitioners have no vested right to seek release of their land on the basis of the fact that they have applied for a licence. Even otherwise, the applications for grant of a licence having been rejected, the very foundation of the petitioners' case for release of their land ceases to exist, thereby rendering challenge in the present petitions to notifications under Sections 4 and 6 of the 1894 Act, meaningless.

Counsel for the State of Haryana while accepting that the 50% clause is the foundation of the rejection of the petitioners' applications for grant of a licence and this clause has been set aside in CWP-12786-2011 and the State had accepted the findings, however, states that on a re-examination of the matter the State of Haryana has decided to file a Special Leave Petition. Counsel for the State, is, however, unable to refer to any Special Leave Petition that may have been filed.

Counsel for the State of Haryana further submits that the policies dated 26.10.2007 and 24.01.2011 are no longer valid in view of a pendency of SLP where operation of the policy has been stayed. The petitioners, therefore, cannot invoke any policy or decision by the Government for release of their land. By referring to the comprehensive reply filed by Mr. J.S.Redhu, Chief Town Planner, Town and Country Planning Department, Haryana, he submits that

the petitioners' claim for quashing of acquisition proceedings or release of their land on the ground that they have purchased the land for development and utilisation for commercial purposes or licences have been granted to other land owners followed by release of their land from the present acquisition is not tenable for the obvious reason that some of them have not filed objections under Section 5-A of the 1894 Act, others do not fall within the 50% area reserved for private development and as the entire matter has been considered by the Land Acquisition Collector as well as the DTCP, the mere fact that some land has been released from acquisition, cannot be a ground to grant relief to the petitioners. While conceding that many private builders have been granted licences and their lands have been released from this acquisition, counsel for the State justifies this act by stating that the orders of release were passed in accordance with the prevalent policy, as these persons had filed objections and their applications for licences were already pending. This apart, these builders fall within the 50% area reserved for commercial development in commercial belts falling at the periphery of Sectors 62, 65 and 66, Gurgaon.

As regards individual writ petitions, counsel for the State submits that in CWP-11911-2011 and CWP-17282-2010, the case was examined on merits and in accordance with the policy guidelines but as the petitioners did not fall within 50% of the net planned area of commercial belt in a residential sector, their applications should

not be considered. The petitioners had not purchased land but had exchanged it with M/s Commander Realtors Private Ltd. and regarding another parcel of land, the petitioners did not have clear title on the date of submission of their application as the land was finally partitioned after the submission of the application.

The request of release of land in CWP-17278-2011 cannot be considered as out of 5.86 acres only 4.95 acres has been acquired and the remaining land could not be released but 2.775 acres was released and licence granted.

In CWP-17279-2010 and CWP-17280-2010, the entire land claimed by the petitioners has been acquired as the Land Acquisition Collector recommended inclusion of this land but it cannot be released in view of 50% prohibition.

In CWP-11959-2011, out of total land claimed by the petitioners, only 3.81 acres has been acquired and license has been granted for 2.775 acres. The application for grant of a licence for development of the commercial colony was rejected on 18.03.2010.

In CWP-19121-2011, the petitioners filed objections which were rejected. Even otherwise, the petitioners have not applied for grant of a licence.

In CWP-20632-2011, the petitioners did not file objection under Section 5-A of the 1894 Act and the application for grant of a licence was only submitted on 29.06.2011 much after issuance of notification issued under Section 6 of the 1894 Act. The application

for grant of a licence was rejected on 09.07.2012 and the objections before issuance of the notification under Section 6 of the 1894 Act.

In CWP-21657-2011, the objections were rejected under Section 5-A of the Act and the application for grant of a licence was rejected for want of clear title as title was available only with respect to 4.506 acres out of 4.9 acres and even otherwise was prohibited by the 50% reservation.

Counsel for the HUDA submits that the matter lies squarely between the petitioners and the government and, therefore, the HUDA supports the arguments raised by counsel for the State of Haryana.

We have heard counsel for the parties, perused the pleadings including the rejoinder and counter-affidavits and the voluminous record pertaining to acquisition and consideration by the DTCP, while passing an order refusing to grant licences to the petitioners, compilations relating to the objections filed and decided by the learned Collector.

Before examining the merits, it would be necessary to record that we are rather perturbed at the manner in which this entire controversy has progressed. The State while issuing notifications under Section 4 of the 1894 Act, proposed to acquire land measuring 207 acres, for the ostensible public purpose of commercial development of the land. At the stage of issuance of notification under Section 6 of the 1894 Act, the land was reduced to 110.106

acres. At the time of the award, the land was reduced to 87.51 acres and as on date, the land left for implementation of the so called commercial development is 43.5 acres. The government in all probability, must have initiated the original proposal for commercial development of land measuring 207 acres after at least preparing a rudimentary/conceptual plan but no such plan is forthcoming. The land proposed for acquisition was (1.94 +1.90 +37.95 +31.14 +42.88 +91.19 = 207) acres, reduced to 43.3 acres, in six different villages, in our considered opinion, appears to have nullified whatever plan the government may have had conceptual or otherwise. This is not the first time that the State of Haryana has adopted such a method where it mindlessly acquires land and then in accordance with the policy which is amended time and again releases the land by a selective application of its policy. We are constrained to observe that this arbitrary exercise of the power of eminent domain to acquire private land, pay paltry compensation without there being any tangible plan appears to be an attempt to stampede private owners into sale of their land to builders/enter into collaboration agreements and then release the land to some of the builders who may have the requisite power and pelf to negotiate with the respondents. We, however, do not propose to carry the matter any further as this aspect has neither been urged nor defended but would strike a note of caution for the State of Haryana that it should desist from mindless acquisitions, particularly where it has not prepared any concrete

plans and if land is reserved for private development there appears to be no reason to acquire the land and then release it, for otherwise public purpose would be used to deprive a private individual of his property with the object of enriching another private person, a purpose alien to the exercise of power of eminent domain.

The State of Haryana, issued a notification under Section 4 of the 1894 Act on 10.11.2008, proposing to acquire land in six villages, namely, Ghasola, Medawas, Ghata, Nangli Umarpur, Tigra and Badshapur, Tehsil and District Gurgaon, measuring 1.94 acres, 1.90 acres, 37.95 acres, 31.14 acres, 42.88 acres and 91.19 acres, respectively, in total land measuring 207 acres, “for the development and utilization of land for Commercial Belt along southern peripheral road in Sector 62, 65 and 66 at Gurgaon, as shown in the development plan under the Haryana Urban Development Authority Act, 1977 by the Haryana Urban Development Authority” in the area of village Ghata, H.B.No.81, Tehsil Sohna District Gurgaon, village Medawas H.B.No.85, village Badshapur H.B.No.87, village Nagli Amarpur H.B.No.82, village Tigra H.B.No.91, Village Ghasola, H.B.No.88, Tehsil and District Gurgaon. At this stage, it would be appropriate to point out that the land proposed for acquisition is located in a commercial belt within a sector and not in a commercial sector.

The petitioners, who had admittedly purchased/
exchanged or had collaboration agreements with the owners, filed

objections under Section 5A of the 1894 Act. It would be appropriate to point out that some of the petitioners did not file objections. The objections were considered by initially directing that information was to be sought from the DTCP etc. but were eventually dismissed without any reference to the respondents from the DTCP. The government thereafter issued a notification under Section 6 of the 1894 Act, declaring acquisition of land measuring 110.106 acres. Thus, between notifications, under Sections 4 and 6, a large parcel of this land was released. The notification under Section 6 was followed by an award dated 23.11.2011 with respect to land measuring 87.51 acres, thereby reducing the land which is subject matter of the acquisition to 43.51 acres in its entirety. After the award, land measuring 22.596 acres was released and as on date, the acquisition proceedings relate to 43.51 acres of land of which most of the land is owned by the petitioners or has been exchanged by them or is the subject matter of collaboration agreements between the petitioners and the owners.

It would be appropriate at this stage to clarify that at the stage of deciding objections under Section 5-A, the Collector is not required to record a judgment or an order akin to a judgment but as Section 5-A confers a valuable right upon a landowner, the Collector is required to assign reasons, howsoever brief, for rejection of objections to the proposed acquisition of land. The consideration by the Collector, under Section 5-A of the 1894 Act and the survey of

land, under Section 4 of the 1894 Act, are the foundation upon which the government crystalises its opinion to finally acquire land. The notification under Section 4 is a mere proposal to acquire land whereas Section 6 is the final declaration by the government that it has decided to acquire land. Thus, deciding of objections under Section 5-A and the survey to be conducted under Section 4 of the 1894 Act, are not a mere formality but significant parts of the scheme of acquisition, set out in the 1894 Act. The significance of Section 5-A of the 1894 Act and the survey cannot but be emphasised as the government forms its final and supposedly informed opinion of the need to acquire or release land, which is subject matter of the notification under Section 4 of the 1894 Act, on the basis of a report received from the Collector. The government is not bound by any provision of the 1894 Act to acquire the entire land proposed to be acquired under the notification issued under Section 4 and may at any stage whether at the stage of Section 6, the award or even after the award may if it deems appropriate, release any land but before taking actual physical possession, in the exercise of power under Section 48 of the 1894 Act.

The petitioners admittedly had filed applications for grant of a licence to develop the land but these applications were rejected, primarily for the reason that the petitioners do not fall within the 50% area reserved for development by private entities. Admittedly, by invoking its policy for release of land from acquisition and on the

ground that other land owners fall within the 50% reservation and had filed applications for grant of licences to develop a colony under the Haryana Development and Regulation of Urban Areas Act, 1975 (hereinafter referred to as the “1975 Act”), the State of Haryana has released land of other similarly situated land owners, from the present acquisition and these landowners etc. have been granted licences to develop colonies as their lands were released. The relevant clause of the policy framed on 26.10.2007, reads as follows:

- “I. xxx xxx xxx
- II. xxx xxx xxx
- III. xxx xxx xxx
- IV. xxx xxx xxx
- V. Any land in respect of which an application under Section 3 of the Haryana Development and Regulation of Urban Areas Act, 1975 has been made by the owners prior to the award for converting the land into a colony may also be considered for release subject to the condition that the ownership of the land should be prior to the notification under Section 4 of the Act.”

The State Government, thereafter modified this policy by adding the following clauses: -

- “1. xxx xxx xxx
- a) xxx xxx xxx
- b) xxx xxx xxx
- c) xxx xxx xxx
- 2. xxx xxx xxx
- 3. Any land in respect of which an application under Section 3 of the Haryana Development and Regulation of Urban Areas Act, 1975 has been made by the owner prior to issuance of Section 6 for converting the land into a colony may also be considered for release subject to the condition that ownership of the land is prior to the notification under Section 4 of the Act. In case, individual land owner makes application for grant of license in collaboration with the developer/colonizer, the collaboration agreements should be registered before the Registering Authority before issuance of Section 6 notification. This clause will be made applicable on the applications received after this policy has come into effect. Provided that the Government may release any land on the grounds other than stated above under Section 48(1) of the Act under exceptionally justifiable circumstances for the reasons to be recorded in writing.”

The policy is pending consideration before the Hon'ble Supreme Court but as admitted, the stay order in the SLP pertains to an individual case and the State of Haryana has been allowed to implement the policy in a fit case and even otherwise, the State of Haryana admits that it has released land in this very acquisition under their very policy on the ground that landowners etc. have applied for licences.

The petitioners' cases, admittedly were as already recorded, considered by the DTCP for grant of a licence but were rejected on the ground that they do not fall within the 50% area reserved for development by private entities. The pendency of an application for grant of a licence is intrinsically linked by the policy to release of land. The petitioners' case for release of the land were not considered whether at the stage of Section 5-A of the 1894 Act or any other stage thereafter, on the ostensible ground, that their land does not fall within the 50% area reserved for private developers. The State of Haryana, as already noticed, in order to streamline the procedure of release of the land, has notified a scheme in the year 2007 followed by the various amendments in the year 2011. The scheme is admittedly in force and the State of Haryana admits that it has released land by applying this scheme to the present acquisition on the premise that landowners etc. have applied for a licence to develop a colony.

The respondents do not deny that the petitioners filed

applications for grant of licences which as per the conditions of the policy, if granted, would lead to release of their land but assert that their applications for grant of licences, were rejected as their land do not fall within the 50% area reserved by virtue of clause VII(2) of the Draft Development Plan of Gurgaon, for development by private entities. The State of Haryana, however, admits that clause VII(2), which restricts the area to be developed by private entities to 50% of the commercial area came up for consideration in CWP-12786-2011, wherein after considering whether the impediment contained in clause VII(2) applies to commercial belts or to commercial zones, a Division Bench of this Court has opined that it does not apply to a commercial belt in a sector. A relevant extract from the Division Bench judgment of this Court, recorded in CWP-12786-2011, reads as follows: -

“It is seen that the area covered by the plan has been divided into twelve land uses under the head “Proposed Land Uses”. These are, (1) residential=14930 hectares, (2) commercial=1404 hectares, (3) industrial=5441 hectares, (4) transport & communication=4231 hectares, (5) public utilities=564 hectares, (6) public & semi public use (institutional)=1630 hectares, (7) open spaces=2675 hectares, (8) special zone=106 hectares, (9) defence land=633 hectares, (10) special economic zone=4570 hectares, (11) existing town=406 hectares, and (12) village abadies=428 hectares.

The plan further elaborates that the “new commercial areas proposed in the Development Plan shall be developed in the form of big commercial malls and corporate commercial complexes. In addition, the commercial belts with a width of 200 meters have also been provided along the selected roads to cater to the needs of the surrounding areas”. A plain reading of the above would indicate that the commercial belts along selected roads are in addition to the area of 1404 hectares reserved for commercial use under the head “Proposed Land Uses” because were it the intention of the FDP that the area of 1404 hectares reserved for commercial use was to include commercial belts also, it would not have used the words “in addition” rather the word “including” would have been used.

The plan, under the head “Major Land Uses/Zones”, further divides the area into nine zones, namely, Residential Zone, Commercial Zone, Industrial Zone, Transport and Communication Zone, Public Utility Zone, Public and Semi Public Zone (Institutional Zone), Special Zone, and Agriculture Zone. Here also the commercial zone is distinct from other zones which is indicative of the intention of the FDP that the norms for development

of each zone have to be distinct from one another, or say norms for development of the commercial zone have to be different from development of other zones. To put it otherwise, the bar of 50% development by private developers is peculiar to the commercial zone only and it cannot be applied to all the sectors universally.

On behalf of the respondents an effort has been made to project that every area bounded by roads has to be taken to be a Sector Area and that being so the bar of 50% development by private developers has to apply to commercial belts/zones in residential areas also as these belts/zones are bounded by roads. The contention, in our considered opinion, is fallacious. 'Sector Area' and 'Colony Area', according to clause 2(q) of the notification, Annexure P3, 'shall mean the area of sector or colony as bounded within the major road system shown on drawing'. The term "Sector" has been further elaborated under the head "Division into Sectors". It says, "Major Land Uses mentioned at Serial Nos. (i) to (viii) in zoning regulation-III above, which are land uses for building purposes, have been divided into sectors as shown bounded by the major road reservations and each sector shall be designated by number as indicated on the drawing". The areas shown in blue colour in the drawing relied upon on behalf of the respondents though are bounded within roads but these roads are subsidiary roads and not major roads and these enclosures are not designated by numbers. Therefore, the contention put forth on behalf of the respondents cannot be accepted. As a necessary fall out, Clause VII(2) of the notification, Annexure P3, cannot be read to mean that bar of 50% development by private developers applies to all sectors, rather, it has to be interpreted to mean that the embargo applies only to the sectors reserved for commercial use and not to the commercial belts falling in residential sectors along roadside. Clause VII(2) of the notification reads as under:

"For the development of sectors reserved for commercial use, private developers shall be permitted to develop to the extent of 50% of the sector area as per the lay out plan approved by competent authority, after obtaining licence under Act No. 8 of 1975. Balance 50% are shall be developed exclusively by the Government or a Government Undertaking or by a public authority approved by the Government."

Were it the intention of the plan that the embargo of 50% was to apply to all the sectors, commercial and residential, there should have been no necessity to make provision as aforesaid and, instead, it would have sufficed to provide that the embargo would apply to all the sectors or to commercial and residential sectors and so on and so forth. A glance across drawing shown on behalf of the respondents clarifies the position beyond doubt. In this drawing the areas reserved for commercial activity have been shown in blue colour. These areas include the areas which are bounded within subsidiary roads but are not designated by numbers, as also the areas bounded within major road system and designated by numbers. Thus, two areas are distinct from each other and the areas which are bounded within subsidiary roads but are not designated by numbers cannot be said to be "Sector Area", but the areas bounded within major road system and designated by numbers fall within the description "Sector Area". Thus, the two areas are distinct from each other.

Further, in the "Sector Area", in addition to commercial sectors and commercial belts at the peripherals of residential sectors there are commercial zones to the extent of 3.5% of the total residential sector, within the residential sectors, and these commercial zones are meant to be developed only by private developers. This also fortifies petitioners' claim that the ratio of 50:50 development by private and public enterprises is meant only for sectors exclusively reserved for commercial use in the FDP and not for commercial zones and commercial belts.

The petitioners in reply dated 05.09.2013 filed to the affidavit dated 21.08.2013 of Chief Town Planner Haryana have demonstrated, with the aid of a table, that in Sector 66 an area measuring 13.437 acres (being 3.5% of the total area of the sector) was reserved for commercial use but licences have

been issued for development of an area measuring 14.6856 acres which evidently is in excess, by 1.2486 acres, of the permissible limit of 3.5% area of the sector. This also runs contrary to respondents' plea that the embargo of 50% development by private developers applies to all the sectors as a universal rule. Interestingly, this assertion of the petitioners has not been controverted by the respondents.

From the above it is crystal clear that the embargo of 50% development by private developers in sectors other than the sectors reserved for commercial use is not there in the notification, Annexure P3 and it is brainchild of the respondents only."

A perusal of the aforesaid opinion reveals that the embargo of 50% development by private developers does not apply to commercial developments of a commercial belt within a sector but to a sector that is entirely commercial and falls within a commercial zone. The State of Haryana has admittedly accepted the aforesaid judgment as it has not filed a Special Leave Petition. We also find no reason to disagree with the opinion recorded in the aforesaid judgment.

The land, in dispute, admittedly, falls within a commercial belt in a residential sector and not within a commercial sector or zone. We, therefore, hold that the applications for grant of a license could not have been rejected on the ground that the petitioners do not fall within 50% area reserved for development by private entities, thereby requiring a reconsideration of the decision to reject their applications for grant of a licence and release of the land, the two being intrinsically linked by the policy. At this stage, it would be necessary to clarify that the policy framed by the respondents, in the year 2007 and in the year 2011 allows a land owner etc. to apply for release of his land from acquisition if his

application for grant of a licence is pending and if he fulfills other parameters of the policy for release. Admittedly, applications for grant of licences were pending in different cases at different stages before Section 4, after Section 4, between Sections 5-A and 6 and even after Section 6 of the 1894 Act but were rejected on an erroneous understanding of clause VII(2). Admittedly, other lands proposed to be acquired have been released from this very acquisition on the premise that application for licence is pending. Thus, not only the order rejecting the applications for grant of licences have to be re-considered but the State would be required to reconsider the matter regarding release of the land from acquisition in accordance with its policy for release and provisions of Sections 48 of 1894 Act.

We would also like to record that with the reduction of the area proposed to be acquired and the area now being acquired from 207 acres to 43.51 acres, it is difficult to comprehend as to what plan the Government had whether in its mind or on paper when it initiated the proposal for acquisition. If there was any tangible proposal, it should have found reference either while deciding the objections under Section 5-A or in the replies filed by the State or the HUDA but proceedings under Section 5-A, the record pertaining to consideration of applications for licences and the replies filed by the State and the HUDA, are bereft of any particulars of any such project that the State had in mind while initiating the proposal to acquire the

land. We are, therefore, of the prima facie opinion, that acquisition proceedings were but an attempt to collect land and then stampede landowners/builders into applying for licences and get their land released from acquisition but as this part of the controversy is neither before us nor has any such plea been raised, we desist from expressing any further opinion in this regard but issue a note of caution to the State that private land holdings should not be appropriated in a mindless exercise of power of eminent domain so as to deprive a private owner and benefit another private owner except where the government has before it a tangible project or the necessity of the situation so warrants.

A due consideration of the above discussion, reveals that though the award had been pronounced but applications for grant of licences and release of land which were pending were wrongly rejected by reference to clause VII(2) of the Draft Development Plan of Gurgaon. The prayer for release of land would have to be reconsidered as the State has already considered and accepted in the case of similarly situated landowners etc.

In view of what has been recorded hereinabove, we dispose of the writ petitions by accepting the prayer of the petitioners that their applications for licences could not have been rejected by invoking clause VII(2) of the Draft Development Plan of Gurgaon and consequently direct the State of Haryana to consider in the light of the aforesaid facts whether the petitioners fall within the policy of

release and if so, in the exercise of power under Section 48 of the 1894 Act, pass appropriate orders in accordance with law. The State of Haryana would be at liberty to consider the rights of the petitioners who have not filed objections under Section 5-A of the 1894 Act.

[RAJIVE BHALLA]
JUDGE

19th October, 2015
shamsher

[AMOL RATTAN SINGH]
JUDGE