

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

CWP No. 27532 of 2013 (O&M)

Date of decision : 02.6.2017

M/s Usha Stud and Agricultural Farms Private Limited
and another

.. Petitioners

versus

State of Haryana and others

.. Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present: Ms. Ritika Goyal and Ranjit Saini, Advocates,
for the petitioners in CWP Nos. 27532 and 28516 of 2013,
Mr. Puneet Bali, Senior Advocate with
Ms. Supriya Garg, Advocate, for the petitioner
in CWP Nos. 28591 and 28594 of 2013.

Ms. Palika Monga, Deputy Advocate General, Haryana.

Mr. Rohit Mittal, Advocate for
Mr. Deepak Manchanda, Advocate, for respondent- HUDA.

Rajesh Bindal, J.

1. This order will dispose of four writ petitions bearing CWP Nos. 27532, 28516, 28591 and 28594 of 2013, as common questions of law and facts are involved therein.
2. However, the facts have been extracted from CWP No. 27532 of 2013.
3. Challenge has been made to the notification dated 7.12.1988 (Annexure P-7) issued under Section 4 of the Land Acquisition Act, 1894 (for short, 'the Act'), notification dated 15.10.2013 (Annexure P-24) issued

under Section 6 of the Act, and subsequent proceedings pertaining to the acquisition of land in question.

4. Learned counsel for the petitioners submitted that petitioner No.1 is a private limited company engaged in the business of Stud Farms, breeding, rearing of Horses, import and export of horses (animal husbandry) and incidental activities. In the year 1970-71, the petitioner purchased 40.8125 acres of land situated in the revenue estate of village Daulatpur Nasirabad (Caterpuri), Tehsil and District Gurgaon. After purchase, the land was extensively developed by creating infrastructure for the purpose for which the land is being used now. Construction was raised for the required purposes including residential accommodation for the staff. About 10,000 trees have been planted. On 13.11.1981, notification under Section 4 of the Act was issued proposing to acquire about 1,005 acres of land, including the land owned by the petitioner-company, its directors, their relatives. The acquisition included the land belonging to M/s Rani Shaver Poultry Farm, M/s Jawala Textiles Mills, M/s Indo Swiss Times Limited, Anand Farms, etc. It was proposed to be developed as Sectors 21 to 23-A, Gurgaon (now Gurugram). The aforesaid notification was followed by notifications dated 2.1.1984, 18.1.1984, 24.1.1984, 30.1.1984 and 15.11.1984 issued under Section 6 of the Act. Only about 702.37 acres of land was included. The petitioners' land was notified under Section 6 of the Act vide notification dated 15.11.1984.

5. Aggrieved against the acquisition of land, the petitioners filed CWP No. 5623 of 1984, which was dismissed by this Court vide order dated 24.10.1985. The order was challenged before Hon'ble the Supreme Court. While entertaining the Special Leave to Appeal, Hon'ble the Supreme Court

granted interim stay as well. During the pendency thereof, on 8.6.1987, agreement was signed between the petitioners and the Estate Officer, HUDA, Gurgaon and Admiral S. M. Nanda (Retd.), Mrs. Veena Mehra and Major P. K. Mehra. It was a kind of 'give and take agreement'. Out of the total land owned by the petitioners, the respondents agreed to release 47.74 acres of land subject to payment of some development charges, as noticed in the agreement. There were certain other conditions laid down, to which the parties agreed. The petitioners and the other signatories to the agreement even paid a sum of ₹ 1 lac as first installment of development charges vide receipt no.83 dated 3.5.1988.

6. The petitioners were surprised to receive a communication dated 25.5.1988 from HUDA that the Government has decided to re-notify the land under Section 4 of the Act.

7. Ms. Ritika Goyal, learned counsel appearing for the petitioners submitted that to the utter surprise of the petitioners 55.10 acres of land of the petitioners, its directors and family members was again notified under Section 4 of the Act, on 7.12.1988. The strange part was that the agreements, similar to one which was signed by the petitioners on 8.6.1987 releasing substantial part of land, were also signed by HUDA with M/s Rani Shaver Poultry Farm, M/s Jawala Textiles Mills, M/s Indo Swiss Times Limited, Anand Farms, etc. However, only the petitioners' land was notified and not the land of other land owners, which was released earlier under similar circumstances on 'give and take basis'. Immediately after the issuance of notification under Section 4 of the Act, the petitioners filed objections under Section 5A of the Act on 4.1.1989, inter-alia, raising the

plea of discrimination. The collector while failing to discharge his statutory duty and recording that on the site there are certain structures, opined that the decision of the objections be taken at the Government level itself. Office notings even upto the level of Commissioner, Town and Country Planning clearly suggested that it being a case of discrimination, notification under Section 6 of the Act should not be issued. Still, ignoring the same and without taking any final decision on the objections raised by the petitioners under Section 5A of the Act, notification under Section 6 of the Act was issued on 6.12.1989. However, to take care of the plea of discrimination, one day prior to the issuance of aforesaid notification under Section 6 of the Act in the case of the petitioners, order was passed to issue notification for acquisition of other released land as well, for which notification under Section 4 of the Act was issued on 11.9.1990.

8. The petitioners filed CWP No. 3822 of 1991 titled as M/s Usha Stud and Agricultural Farms Private Limited vs State of Haryana and others challenging the aforesaid acquisition. On 11.3.1991 status quo was granted. During the pendency, award pertaining to the land was passed on 5.12.1991. Supplementary award for super structures and trees was passed on 25.8.1993. CWP No. 1152 of 1994 M/s Usha Stud and Agricultural Farms Private Limited and others vs State of Haryana and others was filed challenging the supplementary awards as well. Even during the pendency of the writ petition, request made by the petitioners for release of the land, was not considered for the reason that the writ petition was pending.

9. The aforesaid writ petitions were dismissed by this Court vide judgment dated 27.1.2012. The judgment was challenged before Hon'ble the Supreme Court. The matter was dealt with in Civil Appeal No 2557 of 2013

- M/s Usha Stud and Agricultural Farms Private Limited and others vs State of Haryana and others (2013 (2) RCR (Civil) 788) which was allowed vide judgment dated 2.4.2013 setting aside the notification issued under Section 6 of the Act, however, not precluding the State Government from taking fresh decision for acquisition of land after objectively considering the objections filed by the petitioners under Section 5A of the Act.

10. Thereafter, the petitioners supplemented the objections already filed under Section 5-A of the Act, on 25.4.2013, inter-alia, raising a specific plea that acquisition was time barred. Written submissions were also filed before the Collector. While submitting his report, the Collector was not specific. He submitted his para-wise comments kind of a report to the objections filed by the petitioners without specifically referring to the plea of discrimination as well as the acquisition being time barred. He further referred that the site has been inspected. Para-wise comments were also not complete.

11. Learned counsel for the petitioners further referred to the recommendations made by the Joint Site Inspection Committee (for short, 'the JSIC') in its meeting held on 13.6.2013, to the effect that entire land should be notified under Section 6 of the Act, as it falls in residential Sectors 21 to 23-A, Gurgaon, where stud farm activity cannot be permitted. After that even the office noting clearly suggested that the issue regarding discrimination has not been dealt with by the Collector while sending his recommendations. Despite this fact, finally notification under Section 6 of the Act was issued on 15.10.2013. It is at this stage that the petitioners had to approach this Court again.

12. In the aforesaid factual matrix, learned counsel for the petitioners raised the legal issue that the notification under Section 6 of the Act was time barred. It could have been issued within one year from the date of issuance of notification under Section 4 of the Act. In the case in hand, the notification under Section 4 of the Act was issued on 7.12.1988, which was followed by notification under Section 6 of the Act dated 6.12.1989. The same was quashed by Hon'ble the Supreme Court vide judgment dated 2.4.2013. During the interregnum, there was interim stay. Notification under Section 6 of the Act could be issued within a period of one year from the date of notification under Section 4 of the Act. That period of one year expired on 7.12.1989. The notification earlier having been issued on 6.12.1989, there was only one day left, which could be utilized by the State for issuance of notification under Section 6 of the Act, but the same having been issued on 15.10.2013, entire acquisition proceedings lapsed even if the period of stay is excluded. Hon'ble the Supreme Court had specifically permitted the petitioners to avail of their appropriate remedy.

13. In support reliance was placed upon a Constitution Bench Judgment of Hon'ble the Supreme Court in Padma Sundara Rao (dead) and others vs State of T.N. And others (2002) 3 SCC 533, SLPs (C) Nos. 11353-55 of 1988 - A.S. Naidu and others vs State of Tamil Nadu and others, decided on 21.8.1990 (reported later on as (2010) 2 SCC 801), Oxford English School vs Government of Tamil Nadu (1995) 5 SCC 206, and State of Haryana and another vs Devander Sagar and others 2015 (9) SCALE 590, wherein a judgment of Division Bench of this Court on the same legal issue was upheld.

14. Another contention raised by learned counsel for the petitioners was regarding non-consideration of the objections filed by them under Section 5-A of the Act. Hon'ble the Supreme Court in its judgment while quashing the acquisition in the earlier round of litigation, specifically observed that it is a case of hostile discrimination, however, still the issue having specifically been raised by the petitioners in the objections filed, the same was not considered by the Collector or any other authority before finally deciding the objections filed by the petitioners. They were on different track altogether. In fact, the Collector had failed to discharge the jurisdiction vested in it, whereby he had not made any recommendation whatsoever, though he was duty bound. Hence, even on that ground, the notification under Section 6 of the Act deserves to be quashed.

15. Another contention raised by learned counsel for the petitioners was that during the pendency of the earlier litigation, the petitioners had filed application for grant of license, though other applicants were granted the licenses under similar circumstances, but the petitioners were discriminated only on the plea that the writ petition was pending. In fact, the Haryana Urban Development Authority is treating the land as released from the acquisition, as on 8.6.2015 it had issued notice to the petitioners for deposit of external development charges.

16. She further submitted that even in the report submitted by the Collector under Section 5-A of the Act, wrong facts have been mentioned, regarding the land being vacant, whereas the jamabandi clearly suggested that there was stud farms, horses/ quarters for staff. Once the facts were wrongly suggested in the report under Section 5-A of the Act by the Collector, the decision cannot possibly be correct.

CWP No. 28591 of 2013.

17. Mr. Puneet Bali, learned Senior Counsel submitted that the petition pertains to the same group. Some part of the land is registered in the name of the company and some is in the name of Directors. The facts are similar.

18. Additionally, he submitted that though the JSIC was constituted but the report was never confronted to the petitioners. In fact, in the process the Collector had delegated its powers to the JSIC, which was wrong. The objections filed by the petitioners under Section 5-A of the Act were not considered in the light of the observations made by Hon'ble the Supreme Court. The land in the case of M/s Rani Shaver Poultry Farm was released during the pendency of the Special Leave to Appeal before Hon'ble the Supreme Court, subject to final decision. It was decided on 2.4.2013, whereas the land was released on 28.4.2010. He further submitted that in the case of M/s Indo Swiss Times Limited, the writ petition was dismissed as withdrawn as the license was granted during the pendency of the writ petition.

CWP No. 28516 of 2013

19. It is stated that the petitioner herein is LR of deceased S. M. Nanda, one of his sons. Another son is impleaded as party respondent. The objections were filed by the petitioner only. All other facts are similar to the other writ petitions.

20. On the other hand, learned counsel for the State while producing the official record and referring the same submitted that all the issues raised by the petitioners while filing the objections under Section 5-A of the Act were properly considered after the acquisition was quashed in the

first round of litigation. The plea of discrimination was not tenable. It has specifically been explained in the written statement.

21. M/s Indo Swiss Times Limited was allotted the land for its project in the year 1978 by the Government itself. Finally it was found that the land was required by the company for its expansion and diversification, hence, released from acquisition. Similar was the position in the case of M/s Rani Shaver Poultry Farm. In fact, the land owned by the petitioners and other landowners with whom the petitioners is raising plea of discrimination is not contiguous. Release of land of the petitioners will disturb the planning of entire sector. It is one of the most precious piece of land acquired by the State. She further submitted that out of the acquired land of the petitioners, hundreds of plots will be carved out besides leaving space for other infrastructural facilities. She further submitted that after the objections were considered by the Collector and other authorities, the matter was placed before the then Chief Minister, who desired that notification under Section 6 of the Act be issued. That is the opinion of the Government on the report of the Collector. She further submitted that the Collector had not delegated its powers to the JSIC which was constituted earlier. The report of JSIC was received after the Collector had already submitted its recommendations on the objections filed by the petitioners. The report may have been dated prior to the date of report by the Collector, who had considered the objections independently.

22. As regards the notification under Section 6 of the Act being time barred, learned counsel submitted that Hon'ble the Supreme Court had left it open to the authorities to take fresh decision on the objections filed by the petitioners under Section 5-A of the Act though no time limit as such

was fixed. However, the exercise was to be done as early as possible. The judgment is dated 2.4.2013. The petitioners were offered personal hearing and thereafter notification under Section 6 of the Act was issued on 15.10.2013. There was not much delay. The plea sought to be raised by the petitioners that the notification under Section 6 of the Act is time barred, hence, the entire acquisition has lapsed, cannot be considered at this stage in the light of judgment of Hon'ble the Supreme Court. The petitioners very well knew that the notification under Section 4 of the Act had been issued on 7.12.1988, which was followed by notification under Section 6 of the Act dated 6.12.1989. If according to them, only one day was left for issuance of notification under Section 6 of the Act and exercise of re-consideration of objections under Section 5-A was not possible in the limited time before issuance of fresh notification under Section 6 of the Act, the petitioners should have raised arguments there and then that the acquisition itself has lapsed. There was no time fixed for consideration of objections under Section 5-A of the Act and issuance of fresh notification by Hon'ble the Supreme Court while setting aside notification under Section 6 of the Act. Before carrying out the entire exercise, the State even had taken opinion from the then Advocate General, Haryana and the Legal Remembrancer. While referring to judgment of Hon'ble the Supreme Court in State of Haryana vs M/s Vinod Oil and General Mills and another 2014 (15) SCC 410, it was argued that the public interest should override the private interest.

23. In response, learned counsel for the petitioners submitted that though the land owned by M/s Omega Commercial Private Limited was released from the acquisition, however, the company later on was merged

with M/s Make Wave Sea Resorts Private Limited, after it was granted the license for developing the area as group housing colony.

24. Heard learned counsel for the parties and perused the paper book.

25. The primary issues which arise for consideration before this Court in the present writ petitions are that:

- (i) Whether the notification under Section 6 of the Act is time barred ?
- (ii) Whether the objections filed under Section 5-A of the Act had been considered objectively ?

Issue No.(i)

26. The case has a chequered history. Certain facts are required to be noticed. The petitioners claimed that the land was purchased by them in the year 1970-71. It was developed as Stud Farm. Required construction was raised and open area was also developed for the purpose of training the horses. About 10,000 trees were planted. On 13.11.1981, notification under Section 4 of the Act was issued proposing to acquire about 1,005 acres of land including the land of the petitioners. This included even the land owned by M/s Rani Shaver Poultry Farm, M/s Jawala Textiles Mills, M/s Indo Swiss Times Limited, Anand Farms, etc. It was proposed to be developed as Sectors 21 to 23-A, Gurgaon. For different portions totaling 702.37 acres of land, notifications under Section 6 of the Act were issued on different dates in the year 1984 (Details in para no. 4). However, as claimed in the case of the petitioners, the notification under Section 6 of the Act was dated 15.11.1984.

27. In the first round of litigation, the petitioners filed CWP No.

5623 of 1984 M/s Usha Stud & Agricultural Farms (P) Ltd. vs The State of Haryana and others, challenging the acquisition. It was dismissed vide order dated 24.10.1985. The order was challenged before Hon'ble the Supreme Court. While issuing notice, Hon'ble the Supreme Court granted interim stay as well. During the pendency of the Special Leave to Appeal before Hon'ble the Supreme Court, a 'give and take agreement' was signed between the parties on 8.6.1987, in terms of which the respondent- State agreed to release 47.74 acres of land subject to payment of development charges. Certain other conditions were also agreed upon. In terms of the conditions regarding development charges, as contained in the agreement, the petitioners deposited ₹ 1 lac as first installment on 3.5.1988. However, immediately thereafter the petitioners were sent a communication on 25.5.1988 by the HUDA that the State has decided to re-notify the land under Section 4 of the Act. The action for re-acquisition was sought to be taken only in the case of the petitioners and not in the case of other landowners, whose land was also released from acquisition along with the petitioners on signing of 'give and take agreement'. On the issuance of notification under Section 4 of the Act on 7.12.1988, the petitioners filed objections under Section 5-A of the Act, inter-alia, raising the plea of discrimination. The Collector did not opine on the objections filed. In his report, he left the decision to the Government. The issue regarding discrimination was noticed in detail and commented upon by various officers. In the process of consideration of the report submitted by the Collector, it was recorded that the plea of discrimination is made out and the other released land should also be acquired. Just a day before, notification

under Section 6 of the Act was issued on 6.12.1989, the decision was taken on the file that the other portion of released land be also notified under Section 4 of the Act, for which notification under Section 4 was issued on 11.9.1990.

28. The petitioners filed CWP No. 3822 of 1991 challenging the acquisition. Status quo was granted. As during the pendency of the petition, award pertaining to land was passed on 5.12.1991, and supplementary award for trees and structures having been passed on 25.8.1993, fresh petition bearing CWP No. 1152 of 1994 was filed challenging the awards. The writ petitions were dismissed vide judgment dated 27.1.2012. The judgment was challenged before Hon'ble the Supreme Court, which was allowed vide judgement dated 2.4.2013 passed in Civil Appeal No. 2557 of 2013. Notification under Section 6 of the Act was quashed. While quashing the notification under Section 6 of the Act, Hon'ble the Supreme Court had given liberty to the State to take fresh decision after objectively considering the objections filed by the petitioners under Section 5-A of the Act. Liberty was also granted to the petitioners to avail of their appropriate remedy in case the decision of the Government was adverse to them. Relevant paras from the judgment are extracted below:-

“35. In the result, the appeals are allowed, the impugned order is set aside and the declaration issued by the State Government under Section 6(1) is quashed. However, it is made clear that this judgment shall not preclude the State Government from taking fresh decision after objectively considering the objections filed by the appellants under Section 5-A(1).

36. If the final decision of the State Government is adverse to the appellants, then they shall be free to

challenge the same before an appropriate judicial forum and urge all legally permissible contentions in support of their cause.”

29. It was thereafter that after considering the objections filed by the petitioners under Section 5-A of the Act, notification under Section 6 of the Act was issued on 15.10.2013.

30. The petitioners have challenged the aforesaid notification dated 15.10.2013 on the plea that the same is beyond the period prescribed under Section 6 of the Act, which provides that the notification under Section 6 of the Act can be issued within a period of one year from the date of notification under Section 4 of the Act.

The undisputed dates are as under;

Date of notification u/s 4 of the Act 7.12.1988

Date of notification u/s 6 of the Act 6.12.1989

(this notification was quashed by Hon'ble the Supreme Court in Civil Appeal No. 2557 of 2013 on 2.4.2013).

Fresh notification u/s 6 of the Act 15.10.2013
(impugned in the present writ petition)

31. Relevant provisions of Section 6(1) of the Act, are reproduced hereunder :-

“6. Declaration that land is required for a public purpose. - (1) Subject to the provision of Part VII of this Act, appropriate Government is satisfied, after considering the report, if any, made under section 5A, sub-section (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders and different declarations may be made from

time to time in respect of different parcels of any land covered by the same notification under section 4, sub-section (I) irrespective of whether one report or different reports has or have been made (wherever required) under section 5A, sub-section (2);

Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1)-

- (i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967), but before the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of three years from the date of the publication of the notification; or
- (ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification:

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

Explanation 1. - 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 under section 4, sub-section (1), is stayed by an order of a Court shall be excluded.

Explanation 2. - Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such

compensation shall be deemed to be compensation paid out of public revenues.”

32. A controversy similar to one, involved in the present set of petitions, was considered by a Constitution Bench of Hon'ble the Supreme Court in Padma Sundara Rao's case (supra). In that case Madras High Court while relying upon decision of Hon'ble the Supreme Court in N. Narasimhaiah vs State of Karnataka 1996 (3) SCC 88, had upheld the notification under Section 6 of the Act opining that after the quashing of notification under Section 6 of the Act, fresh period of one year was available to the Government to issue notification under Section 6 of the Act. As against that referring to another decision of Hon'ble the Supreme Court in A.S.Naidu's case (supra) and certain other decisions taking a view that if the notification under Section 6 of the Act is quashed, fresh notification under Section 6 of the Act cannot be issued beyond the period prescribed under the Act, there being divergent views on the same issue, the matter was referred to be heard by a Constitution Bench. Earlier view expressed by Hon'ble the Supreme Court in N. Narasimhaiah's case (supra) was held to be incorrect and overruled, whereas one expressed in A.S. Naidu and Oxford English School cases' (supra) was affirmed.

33. In N. Narasimhaiah's case (supra), Hon'ble the Supreme Court had opined that if the declaration under Section 6 of the Act is published within a period of one year from the date of the receipt of the order passed by the High Court, the notification under Section 6 of the Act is valid since the action was done pursuant to the order of the Court.

34. While considering the pleas raised by the parties regarding rewriting of statute and casus omissus, Hon'ble the Supreme Court in

Padma Sundara Rao's case (supra) opined that the Court is only to interpret the provisions and not to rewrite the language of Section 6(1) of the Act, which is plain and unambiguous. There was no scope of reading something into it, as was done in N. Narasimhaiah's case (supra). The period as provided could not be stretched to run from the date of service of the High Court's order, as such an interpretation could not be construed with the language of Section 6(1) of the Act. Relevant paras from Constitution Bench judgment of Hon'ble the Supreme Court in Padma Sundara Rao's case (supra) are extracted below:-

“12. The rival pleas regarding re-writing of statute and casus omissus need careful consideration. It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the Legislation must be found in the words used by the Legislature itself. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed not as theorems of Euclid". Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See Lenigh Valley Coal Co. v. Yensavage 218 FR 547). The view was re-iterated in Union of India and Ors. v. Filip Tiago De Gama of Vedem Vasco De Gama (AIR 1990 SC 981).

13. In Dr. R Venkatchalam and Ors. etc. vs. Dy. Transport Commissioner and Ors. etc. (AIR 1977 SC 842) it was observed that Courts must avoid the danger of apriori determination of the meaning of a provision based

15. xx xx xx

16. The plea relating to applicability of the stare decisis principles is clearly unacceptable. The decision in K Chinnathambi Gounder (supra) was rendered on 22.6.1979 i.e. much prior to the amendment by the 1984 Act. If the Legislature intended to give a new lease of life in those cases where the declaration under Section 6(1) is quashed, there is no reason why it could not have done so by specifically providing for it. The fact that legislature specifically provided for periods covered by orders of stay or injunction clearly shows that no other period was

intended to be excluded and that there is no scope for providing any other period of limitation. The maxim 'actus curia neminem gravabit' highlighted by the Full Bench of the Madras High Court has no application to the fact situation of this case.

17. The view expressed in Narasimhaiah's case (supra) and Nanjudaiah's case (supra), is not correct and is over-ruled while that expressed in A.S. Naidu's case (supra) and Oxford's case (supra) is affirmed.”
(*emphasis supplied*).

35. The Judgment of the Constitution Bench of Hon'ble the Supreme Court in Padma Sundara Rao's case (supra) was followed by a Division Bench of this Court in CWP No. 1123 of 2006 Devander Sagar etc. vs State of Haryana and others, decided on 12.3.2008. The same was upheld by Hon'ble the Supreme Court in Devander Sagar's case (supra).

The facts as are available from the judgment of the High Court are that:

Notification u/s 4 of the Act	18.1.2001
Notification u/s 6 of the Act (invoking urgency provisions)	19.1.2001
Challenge in the High Court to the notifications	CWP No. 4887/2002
Interim stay granted	7.2.2002
Award by the Collector	8.2.2002
High Court set aside notification u/s 6 of the Act as no opportunity to file objections u/s 5-A of the Act was granted	12.1.2004
Objections u/s 5-A were filed	11.2.2004
Fresh notification u/s 6 of the Act	30.12.2004

36. In a challenge to the aforesaid acquisition proceedings, a Division Bench of this Court opined that even if the period of 23 months during which there was interim stay granted by this Court is excluded, still the declaration under Section 6 of the Act was beyond the period of one year, hence, the notification under Sections 4 and 6 of the Act and other proceedings were quashed. The State challenged the aforesaid judgment of this Court before Hon'ble the Supreme Court. Specific fact noticed in the aforesaid judgment by Hon'ble the Supreme Court is that before interim stay was granted by this Court in the first round of litigation, where the grievance of the landowners was that they were deprived of filing objections under Section 5-A of the Act, on 7.2.2002 one year period prescribed for issuance of notification under Section 6 of the Act from 18.1.2001, when notification under Section 4 of the Act was issued, had already been lapsed. The Division Bench of this Court while setting aside the notification under Section 6 of the Act vide judgment dated 12.1.2004 in CWP No. 4887 of 2002 Neelam Ram and others vs State of Haryana and others, permitted the landowners to file objections under Section 5-A of the Act and subsequently the State to issue notification under Section 6 of the Act. While noticing the fact that the High Court was in error in allowing filing of objections under Section 5-A of the Act and issuance of notification under Section 6 of the Act when on that date after quashing of notification under Section 6 of the Act, even the notification under Section 4 of the Act lapsed, should have left the matter as such. But still finding that no party can be made to suffer any disadvantage due to an act of the Court and finally relying upon Constitution Bench judgment of Hon'ble the Supreme Court in Padma Sundara Rao's case (supra), order of the Division Bench judgment of this

Court was upheld. Relevant para from Devander Sagar's case (supra), is extracted below:-

“11. The Division Bench has predicated its decision to set aside the Notification as well as the Declaration on Padma Sundara Rao, which ironically the previous Division Bench had failed to follow. The decision of the Constitutional Bench in Padma Sundara Rao held that the language in Section 6(1) is clear and unambiguous, and the time period cannot be stretched as this would not be in keeping with the legislative intent. The contention of the Appellant State that the Declaration dated 30.12.2004 is a continuation of the initial Declaration is thus clearly erroneous, as such a finding would be in the face of the strict interpretation of time prescribed by Padma Sundara Rao and the unambiguous language of Section 6. Had the Legislature intended to allow for such a continuation, it would have done so by specifically providing for it, as it has done for periods covered by orders of stay and injunction. Furthermore, the Appellant State cannot place reliance on an erroneous Order which caused grave prejudice to the rights of the Respondents. It would be apt to mention the legal principle that no party should suffer for the mistake of the Court. Since compensation is calculated based on the value of the land on the date of the Section 4 Notification, the Order of the Division Bench dated 12.1.2004 resulted in the landowners getting compensation at 2001 rates even though the Award was finally passed in 2006 and the compensation is yet to be paid to the Respondents. Had the Division Bench

Order struck down only the Declaration, which in turn would have resulted in the entire acquisition lapsing, the Appellant State would have had to reinitiate acquisition proceedings, resulting in the Respondents receiving compensation at the market rates current at the time of the fresh Notification. We therefore find that the Declaration dated 30.12.2004 cannot be upheld merely by virtue of the previous Division Bench's erroneous and prejudicial Order. We are in agreement with the decision of the High Court in the impugned Judgment and consequently dismiss the Appeal."

37. The issue was further considered by Division Bench of this Court in Anil Gupta and another vs State of Punjab and others 2013 (4) R.C.R. (Civil) 326. In the case notification under Section 4 of the Act was issued on 22.12.2010, which was followed by notification under Section 6 of the Act dated 18.5.2011. CWP No. 19449 of 2011 was filed challenging the acquisition. Interim stay was granted on 18.10.2011. The writ petition was disposed of 15.3.2012, while setting aside the notification under Section 6 of the Act and directing the respondents therein to consider the objections of the petitioners therein after affording opportunity of hearing. After rejection of the objections on 11.6.2012, notification under Section 6 of the Act was issued on 3.10.2012. After excluding the period of stay i.e. from the date of interim stay was granted and the writ petition was disposed of, notification under Section 6 of the Act was found to be beyond the period of one year, hence, quashed. As a consequence, even the notification under Section 4 of the Act was also considered to have lapsed. Relevant para of the judgment is extracted below:-

“9. Admittedly, in the present case, the interim order was granted by this Court on 18.10.2011 in CWP No. 19449 of 2011 filed by the petitioners earlier which remained in operation till 15.3.2012. Thus, after excluding the period between the aforesaid dates, the limitation for issuance of notification under Section 6 of the Act was upto 12.8.2012. The notification having been issued on 3.10.2012 was, thus, clearly beyond limitation. Consequently, the writ petition is allowed and the notification dated 3.10.2012 issued under Section 6 of the Act (Annexure P-12), is quashed. As a consequence, notification under Section 4 of the Act shall also be considered to have lapsed. Any consequential proceedings taken in pursuance to the aforesaid notifications shall also be *nonest*. ”

38. In Padmashree Smt. Anjolie Ela Menon vs The State of Haryana and others 2013 (4) R.C.R. (Civil) 1021, which even finds mention in the official notings, again under similar circumstances notification was quashed being beyond limitation. The judgment attained finality as no appeal was filed. In this case, the date of issuance of notification under Section 4 of the Act was 24.6.2008. Notification under Section 6 of the Act was issued on 14.7.2008 by invoking urgency provisions under Section 17 of the Act. CWP No. 6809 of 2009 was filed challenging the acquisition in which interim stay was granted on 6.8.2009. On 28.1.2011, declaration under Section 6 of the Act was quashed. The petitioners therein were given liberty to file objections, which were to be decided within one month from the date of decision. After decision of the objections under Section 5-A of the Act, notification under Section 6 of the

Act was issued on 3.2.2012. The plea raised by the State therein, that the notification under Section 6 of the Act was within limitation, if considered from the date of receipt of copy of the order passed by this Court quashing notification under Section 6 of the Act, was rejected and while following earlier judgment of this Court in Anil Gupta's case (supra), acquisition proceedings were quashed.

39. Similar was the view taken by a Division Bench of this Court in CWP No. 28430 of 2013 - Bharat Singh and another vs The State of Haryana and others, decided on 5.5.2015.

40. In view of our aforesaid discussions, we are of the view that the notification under Section 6 of the Act having been issued beyond the period prescribed in the Act, the acquisition proceedings lapsed. However, the same will not debar the State from carrying out fresh exercise for acquisition of land in case it is legally permissible, by following due process of law.

Issue No. (ii)

41. Though in view of the findings recorded on issue no. (i), issue no. (ii) practically does not survive, but still we deem it appropriate to notice relevant facts concerning the same.

42. At the cost of repetition, it is added here that in the first round notification under Section 4 was issued on 13.11.1981. It was followed by notification issued under Section 6 of the Act on 15.11.1984. CWP No. 5623 of 1984 filed to challenge the same was dismissed by this Court on 24.10.1985. When the matter was pending before Hon'ble the Supreme Court, the issue was resolved between the parties and 'give and take agreement' was signed on 8.6.1987 in terms of which the State agreed to

release 47.74 acres of land. The petitioners had even deposited ₹ 1 lac as installment towards development charges. Subsequent thereto on 7.12.1988, again notification under Section 4 of the Act was issued. Initially the land owned by M/s Rani Shaver Poultry Farm, M/s Jawala Textiles Mills, M/s Indo Swiss Times Limited, Anand Farms, etc., was also acquired along with the land of the petitioners and in all the cases the same was released from acquisition on signing 'give and take agreement'. However, subsequently only the land owned by the petitioners was notified under Section 4 of the Act. The petitioners filed objections under Section 5A of the Act, inter-alia, raising the plea that the land in question is being used as Stud Farm. It is being used for breeding, rearing of horses, which were being exported as well. There were agricultural, horticultural and dairy farming activities being carried on the acquired land. Open areas are required keeping in view the need as it was a stud farm. More than 10,000 trees which were planted years ago were fully grown up. More than 2,000 persons had been employed. Number of them have been provided residential accommodation in the compound. Plea of discrimination was raised.

43. In its report, the Collector while noticing the fact and mentioning that on inspection of the site, he found A, B and C class structures and the fact that earlier the land was acquired and released, the decision as to whether the land is required to be acquired or not, was left at the Government level. Thereafter, the matter was put up before the Director, Urban Estates. He noticed the plea of discrimination raised by the petitioners. With the comments of the Director, Urban Estates, the matter was forwarded further for taking appropriate decision before issuance of notification under Section 6 of the Act. The Commissioner, Town &

Country Planning, recommended that notification under Section 6 of the Act may not be issued as there were no change in circumstances. When the matter was put up before the Chief Minister on 5.12.1989, it was noted that C.M. has ordered that notification under Section 6 of the Act be issued in the case of the petitioners as most of the land was lying vacant. He further ordered that vacant land belonging to M/s Rani Shaver Poultry Farm and M/s Jawala Textiles Mills be also notified. Thereafter, the notification under Section 6 of the Act was issued on 6.12.1989, whereas in the case of other landowners, the notification under Section 4 of the Act was issued on 11.9.1990.

44. The petitioners filed CWP No. 3822 of 1991, challenging the aforesaid acquisition. Award was passed during the pendency of the writ petition on 5.12.1991, even though status quo had been granted to the petitioners on 11.3.1991. Supplementary award for trees and structures was passed on 25.8.1993. CWP No. 1152 of 1994 was filed challenging the supplementary awards. It was argued that during the pendency of the writ petition, the petitioners again represented for release of their land and even recommendations were also made on 21.3.1998. But due to pendency of the writ petition, final decision was not taken. A letter dated 28.4.2010 (Annexure P-14 in CWP No. 27532 of 2013) has been placed on record showing that after filing of CWP No. 11679 of 1993 by M/s Rani Shaver Poultry Farm, the land owned by it was released even after the award had been announced and the writ petition filed by him was pending before this Court.

45. Similar was the position in the case of M/s Indo Swiss Times Limited where CWP No. 10456 of 1993 - M/s Indo Swiss Time Limited and

another vs Land Acquisition Collector and another, filed by it was dismissed as withdrawn on 24.9.1999, as the matter had been settled between the parties in the month of July, 1999 (Annexure P-15 in CWP No. 27532 of 2013).

46. CWP No. 3822 of 1991 and other writ petitions bearing CWP Nos. 3820, 3821, 3823 of 1991, 1152 to 1155 of 1994 filed by the petitioners were dismissed by this Court vide judgment dated 27.1.2012. The matter was taken to Hon'ble the Supreme Court. The judgment was delivered on 2.4.2013 in Civil Appeal No. 2557 of 2013. The notification under Section 6 of the Act was quashed as the objections filed by the petitioners under Section 5-A of the Act were not considered objectively. It was observed that the decision taken at the level of Chief Minister was not in consonance with the scheme of Section 5-A(2) of the Act read with Section 6 (1) of the Act and refusal of the Government to release the land of the petitioners resulted in violation of right to equality. Relevant paras thereof are extracted below:-

“33. The ratio of the aforesaid judgments is that Section 5-A(2), which represents statutory embodiment of the rule of audi alteram partem, gives an opportunity to the objector to make an endeavour to convince the Collector that his land is not required for the public purpose specified in the notification issued under Section 4(1) or that there are other valid reasons for not acquiring the same. That section also makes it obligatory for the Collector to submit report(s) to the appropriate Government containing his recommendations on the objections, together with the record of the proceedings held by him so that the Government

may take appropriate decision on the objections. Section 6(1) provides that if the appropriate Government is satisfied, after considering the report, if any, made by the Collector under Section 5-A(2) that particular land is needed for the specified public purpose then a declaration should be made. This necessarily implies that the State Government is required to apply mind to the report of the Collector and take final decision on the objections filed by the landowners and other interested persons. Then and then only, a declaration can be made under Section 6(1).

34. As a sequel to the above discussion, we hold that the decision taken at the level of the Chief Minister was not in consonance with the scheme of Section 5-A(2) read with Section 6(1). We further hold that the State Government's refusal to release the appellants' land resulted in violation of their right to equality granted under Article 14 of the Constitution.

35. In the result, the appeals are allowed, the impugned order is set aside and the declaration issued by the State Government under Section 6(1) is quashed. However, it is made clear that this judgment shall not preclude the State Government from taking fresh decision after objectively considering the objections filed by the appellants under Section 5-A(1).

36. If the final decision of the State Government is adverse to the appellants, then they shall be free to challenge the same before an appropriate judicial forum and urge all legally permissible contentions in support of their cause."

47. Immediately after receipt of copy of order dated 2.4.2013 of Hon'ble the Supreme Court, the petitioners supplemented the objections already filed under Section 5-A of the Act. Judgment of Hon'ble the Supreme Court in Padma Sundara Rao's case (supra) was specifically referred to besides reiterating the plea of discrimination while referring to office notings which supported the case of the petitioners. In addition, it was pleaded that the petitioners were ready and willing to develop the land in conformity with the development plan. Even written submissions were submitted before the Collector. Hearing before the Collector concluded on 20.6.2013. The Collector sent his un-dated report in which some part of the objections raised by the petitioners were dealt with in the form of para-wise reply, whereas certain legal issues, especially the plea of discrimination and the notification under Section 4 of the Act having lapsed in view of judgment of Hon'ble the Supreme Court in Padma Sundara Rao's case (supra), were not even touched.

48. From a perusal of noting dated 15.4.2013 at page 24 of the noting portion in the file produced by the State having notings beginning from 28.1.2013 onwards, it has been recorded by the ADA that the Collector had sent his report vide letter dated 10.4.2013 mentioning the dates when notifications under Sections 4 and 6 were issued. He opined that there was no time left for issuance of fresh declaration under Section 6 of the Act. He recommended filing of Review Application before Hon'ble the Supreme Court for grant of further time. Reference was also made to the Constitution Bench judgment of Hon'ble the Supreme Court in Padma Sundara Rao's case (supra), copy of which was available in file. The ADA while dealing with the file opined that the opinion of the counsel, who appeared before

Hon'ble the Supreme Court be obtained. On the noting by the ADA, the Additional Director, Urban Estates, opined that if there was no time available for conclusion of proceedings under Section 5-A of the Act and issuing notification under Section 6 of the Act, the only course available is to issue fresh notification. The matter was referred to Advocate General for its opinion. The then Advocate General without making any reference to Constitution Bench judgment of Hon'ble the Supreme Court in Padma Sundara Rao's case (supra), copy of which was available on file and specifically referred to in the notings, opined that notification under Section 6 of the Act was only quashed. The notification under Section 4 of the Act still survives and the Government had to take final decision objectively while considering the objections filed under Section 5-A of the Act.

49. The report sent by the Collector after hearing objections under Section 5-A of the Act was dealt with in the Urban Estates Department. Initial noting suggested that though the Collector had made recommendations for acquisition of land but he had not given separate recommendations for each objection raised by the petitioners. There were no comments on the plea of discrimination. Hence, the report of the JSIC be obtained. Office noting on 29.7.2013 noticed the receipt of recommendations of the JSIC in its meeting held on 13.6.2013. The noting thereafter suggested that notification under Section 6 of the Act was prepared and placed before the authorities.

50. In the note put up by the Director, Town Planning, dated 6.8.2013, he suggested that the JSIC was directed to send recommendations on the objections filed by the petitioners with the Collector. While recording the history of earlier acquisition and the litigation and the kind of activities

being carried by the petitioners on the acquired land, it was noticed that the land falls in the residential zone where stud farm activity is not permissible. It may endanger health of the residents in the surrounding area. Draft notification under Section 6 of the Act was annexed. While the process for issuing notification under Section 6 of the Act was still continuing, Additional Director, Urban Estates, in his noting dated 2.9.2013 while referring to complete facts of the case noticed the judgment of this Court in Padmashree Smt. Anjolie Ela Menon's case (supra), where notification under Section 6 of the Act was quashed being time barred and as a consequence it was opined that notification under Section 4 of the Act had lapsed. While referring to the aforesaid judgment, the note suggested that though earlier opinion of the Advocate General is on record, the matter may be considered in view of latest order of the High Court. The Director General of Town and Country Planning rejected the suggestion opining that the matter has already been examined.

51. The note by the Principal Secretary, Town and Country Planning suggested that before issuance of notification under Section 6 of the Act, opinion from the LR be taken whether notification under Section 6 of the Act will be legally sustainable. When the file was put up before the Chief Minister, he approved the same. The matter was referred to the LR for opinion. In the note put up to the LR office, reference was made to Constitution Bench of Hon'ble the Supreme Court in Padma Sundara Rao's case (supra), and Division Bench judgment of this Court in Padmashree Smt. Anjolie Ela Menon's case (supra). The Assistant LR (Op.) reiterated what was opined by the Advocate General without referring to either Constitution Bench judgment of Hon'ble the Supreme Court in Padma

Sundara Rao's case (supra) or the subsequent judgment of this Court in Padmashree Smt. Anjolie Ela Menon's case (supra). Thereafter, issuance of notification under Section 6 of the Act was approved and the same was notified on 15.10.2013.

52. From the facts noticed above, it can very well be opined that the objections filed by the petitioners were not considered objectively in terms of the observations made by Hon'ble the Supreme Court while deciding the appeal filed by the petitioners in the earlier round of litigation. Even the noting suggested that the Collector had merely opined that the land be acquired without giving his recommendations on all the issues raised by the petitioners in the objections filed. When the report of the Collector was examined by the State, another report was sought from the JSIC on the issue as to whether the land should be acquired or not. This was made the basis for rejecting the objections. The legal issue raised by some of the officers in the office notings regarding limitation for issuance of notification under Section 6 of the Act with reference to Constitution Bench judgment of Hon'ble the Supreme Court in Padma Sundara Rao's case (supra) and judgment of this Court in Padmashree Smt. Anjolie Ela Menon's case (supra) was brushed aside, while ignoring the judgments altogether. The plea of discrimination raised by the petitioners, which were found to be meritorious in the first round of litigation by Hon'ble the Supreme Court was not even touched. In fact the judgments were neither referred to in the opinion of the then Advocate General nor in the opinion of the Assistant LR (Op.). Opinion of the Assistant LR (Op.) was not even routed through the LR. It was directly sent to the Principal Secretary, Town and Country Planning. System needs to be revamped.

53. Consideration of objections under Section 5-A of the Act would not include only the issue on merits on factual aspects, rather it may include even legal issue as well, as was raised in the present case that the notification under Section 4 of the Act itself had lapsed with the passage of time, hence, notification under Section 6 of the Act could not have been issued. The aforesaid legal issue was just brushed under the carpet. Hence, it can be opined that the objections filed by the petitioners under Section 5-A of the Act were not considered objectively.

54. For the reasons mentioned above, in our opinion, the writ petitions deserve to be allowed. The notification under Section 6 of the Act having been issued more than one year after the issuance of notification under Section 4 of the Act is quashed being time barred. As a necessary consequence the acquisition proceedings have lapsed. Even the notification under Section 4 of the Act has also lapsed.

55. The quashing of the aforesaid notifications in any case will not debar the State for carrying out any fresh exercise for acquisition of the land, if legally permissible.

56. The writ petitions stand disposed of.

(Rajesh Bindal)
Judge

02.6.2017
vs

(Harinder Singh Sidhu)
Judge

Whether speaking/ reasoned	Yes/No
Whether Reportable	Yes/No