

RAJINDER SINGH
v.
STATE OF HARYANA AND ORS.

DECEMBER 2, 2004

[R.C. LAHOTI, CJ., G.P. MATHUR AND
P.K. BALASUBRAMANYAN, JJ.]

Town and Country Planning :

Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963—Sections 3 to 8—Action against purchaser for putting up construction against the terms of the Act in controlled area—Order of removal of unauthorised construction by the Authority—Plea that on account of failure to publish declaration in two newspapers under section 4(2), notification of declaration issued under section 4(1) notifying area as controlled area inchoate and as such construction in the so called controlled area could not be objected to—Held: Requirement of section 4(2) is not mandatory—Failure to publish in two newspapers would not render the notification of declaration inchoate and area does not become controlled area—Delayed publication of the contents of declaration also would not nullify the declaration—Object sought to be achieved by the Act and its Scheme is to be seen—Purpose of declaring an area, a controlled area cannot be defeated by recourse to technical pleas—Further, construction on agricultural land without permission is transgression of section 7(1)—Furthermore, proper notice was given to the owners to demolish unauthorised construction—Thus, direction for removal of unauthorised construction justified and rightly upheld by Tribunal and High Court hence, calls for no interference—Constitution of India, 1950 Article 136.

A declaration was notified in the Official Gazette under Section 4(1) of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 specifying the controlled area on 21.12.1971. Publication of the declaration as contemplated in section 4(2) of the Act in two newspapers printed in a language other than English was made 20 years later. Meanwhile in 1986 appellant purchased an agricultural land and without permission put the land to a different

A use by constructing a Dhabha. District Town Planner issued notice to the appellant on the ground that he had violated the provisions of the Act and as such should stop further construction and restore the land to its original condition. Appellant contended that the provisions of the Act were not violated since the Dhabha was constructed outside 30 meters from the road reserve and that the area had not been declared as controlled area under the Act on account of non publication of the Development Plan of controlled area till that date, in the official Gazette. Original Authority holding that the provisions of the Act had been violated called upon the appellant to remove unauthorized construction and restore the land to its original condition. Both the Tribunal and the High Court upheld the order of the Tribunal and dismissed the appeal and the writ petition along with the connecting appeals and the writ petitions respectively. Hence the present appeals.

D Appellant contended that the declaration notified in an Official Gazette under Section 4(1) of the Act on 21.12.1971 was inchoate and did not come into force in view of the failure of the government to have it published in at least two newspapers printed other than in English, as mandated by section 4(2) of the Act and therefore, the area had not become a 'controlled area' within the meaning of section 4(1) of the Act; that once there was no proper declaration of the area as a controlled area, section 6 or 7 of the Act were not violated and as such the construction put up by the appellant could not be objected to; that the publication in two language newspapers about 20 years after the publication of the declaration in the Official Gazette under section 4(1) of the Act would nullify the declaration; and that there was no proper service of notice to the purchasers.

G Respondent—State contended that on a declaration under section 4(1) of the Act being published in the Official Gazette followed by the issuance of a draft plan in terms of section 5(1), the area becomes a controlled area and any construction therein thereafter could only be in terms of the Act and after obtaining prior permission from the Director and any change in use of the land should also be only after seeking and obtaining permission from the Director; that the delay in making the publication in the newspapers cannot have the effect of nullifying the declaration already issued in the Official Gazette; that section 4(2) of the Act is not mandatory; and that the notices were issued

to some of the appellants under certificate of posting and to some others by registered post and that in all cases the notices were affixed.

Allowing the appeals, the Court

HELD : 1.1. On the Scheme of the Punjab Scheduled Roads and Controlled Areas Restriction of unregulated Development Act, 1963 an area becomes a controlled area by the Government declaring it to be so by a Notification under section 4(1) of the Act. Section 4(2) provides that the Government shall also cause the contents of the declaration made under Section 4(1) to be published in at least two newspapers printed in a language other than English. Also both section 5(1) and 7(1) speak only of the publication of the notification under section 4(1) and not the publication of the contents of the declaration in terms of section 4(2). The requirement of section 4(2) was not made mandatory by the legislature. No doubt the legislature wanted the people within the proposed controlled area to know of the declaration issued by the Government and that was sought to be achieved by directing that the said declaration also be published in two language newspapers other than in English. But from this it cannot be inferred that without such publication of the contents in two newspapers the declaration already issued in terms of section 4(1) in the Official Gazette remains still born or inchoate or of no consequence. The object and the scheme of the Act in defining a controlled area as indicated by section 4(1) itself cannot be ignored. [625-C-D; 626-F-G-H; 627-A-B]

Collector (District Magistrate) Allahabad and Another v. Raja Ram Jaiswal, [1985] 3 SCC 1 and *Bhavnagar University v. Palitana Sugar Mills (P) Ltd. and Ors.*, [2003] 2 SCC 111, distinguished.

1.2. On the scheme of the Act it appears that the notification of a declaration under section 4(1) of the Act in the Official Gazette which is the normal mode of publishing orders of Government for the knowledge of the public in terms of the General Clauses Act, would bring about the consequences contemplated by the Development Act. In this case and in the connected cases, the contents of the declaration notified under section 4(1) of the Act were also subsequently published in two newspapers other than in English and in that situation it is held that the procedural requirement has also been satisfied but only after a lapse of time which

A would not nullify the declaration. Also in view of the conclusion that
section 4(2) was not mandatory, failure to publish in two newspapers
would not render the original notification of the declaration issued
under section 4(1) *nonest*, and it cannot be said that the area had not
been notified or declared as a controlled area within the meaning of the
B Act. [628-A-B-C-D]

1.3. It is clear from the terms of the Act that as regards the
scheduled roads, the Act becomes operative from the date of the Act and
any construction in violation of section 3(1) of the Act after the coming
into force of the Act has to be found to be illegal. On the scheme of the
C Act and in the light of the object sought to be achieved by the Act, the
declaration of a controlled area becomes effective from the date of the
notification of the declaration in terms of Section 4(1) of the Development
Act even though the contents of that declaration are published in two
newspapers other than in English only at a later point of time. In all
D these cases the constructions had been put up in controlled areas and
that to without permission of the Director. Also in almost all the cases,
the construction has also been put up on agricultural land without
permission in terms of the Act. Therefore, there is open transgression
of the relevant provisions of the Act and the authorities were fully
E justified in directing removal of constructions which fell within 30
meters of a scheduled road or 100 meters of a bypass to a scheduled
road. [629-D-E-F-G-H]

1.4. The notices indicate that they were issued when unauthorized
constructions were commenced and they called upon the owners to stop
F further constructions. Having come to know of the notices, the appellants
had filed objections. Further on the basis of a direction issued by the
High Court, various appellants were given notices against which the
appellants filed appeal before the Tribunal. Tribunal had dealt with the
appeals and the contentions raised and the Director dealt with the
G objections raised by the appellants. Therefore, it cannot be said that
there was violation of principle of natural justice or the failure to give
proper notice. [629-A-B-C-D]

1.5. The Act seeks to achieve the object of leaving clear areas adjacent
to scheduled roads intended for swift and safe moving of vehicular traffic.
H Any attempt to defeat that object by putting constructions of dhabas,

residential or industrial buildings against the terms of the Development Act, would tend to affect public safety and endanger lives and property and courts must discourage such attempts. Lethargy or studied indifference of officials to act promptly cannot be made use of to thwart public interest. Therefore, it is not just or proper for courts to entertain pleas of technical nature which would tend to defeat the object of the Act and as such no case is made out for interference and the Tribunal and the High Court were fully justified in not interfering with the action initiated by the authorities concerned for removal of unauthorized constructions in violation of Section 3(1) of the Act. [629-H; 630-A-B-C]

1.6. Position with regard to the constructions in controlled areas is the same. The purpose of declaring an area, a controlled area, cannot be allowed to be defeated by recourse to technical pleas, especially by those who have violated the terms of the statute. Viewed from the angle of public interest, when there is notification of the declaration in the Gazette in terms of Section 4(1) of the Act, the same must be given effect to and any user of land for purposes other than the original purpose for which it was used, should be discouraged and the attempt to put up constructions which would lead to haphazard development of the controlled area should be prevented and these objects should not be lost sight of by courts which are concerned with public interest, which ultimately has to prevail over private interest. Therefore, the decision of the High Court does not call for interference and the appellants are directed to remove the offending constructions. [630-D-E-F-G]

2. With regard to C.A. Nos. 2685, 2687, 2692, 2696, 2686, 2693, 2695, 2670, 2679, 2682, 2694, 2690, 2678, 2683, 2689, 2699, 2680, 2711 and 2712 of 2004, appellants had put up construction in violation of the statute and without the requisite permissions under the Act and therefore, Original Authority, Appellate Tribunal and High Court rightly dismissed their challenge to the action taken under the Act and are directed to remove the offending constructions within two months from the date of the judgment. [631-A-B, D-E-F]

3. With regard to C.A. No. 2671, 2681, 2684, 2688 and 2698 of 2004, appellants obtained leases of pieces of land from Gram Panchayat in the year 1986 in violation of Section 5 of the Punjab Village Common Land (Regulation) Act, 1961 and Rule 3 of the Punjab Village Common Lands

A (Regulation) Rules, 1964 and as such the said leases does not confer any right on the appellants and no right in them to put up any construction that can be recognized. In view of the main judgement, there is no merit in these appeals and as such are dismissed and the appellants are directed to remove the offending constructions within two months from the date of the judgment. [631-G-H; 632-A-B]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2671 of 2004.

C From the Judgment and Order dated 25.4.2003 of the Punjab and Haryana High Court in C.W.P. No. 4653 of 2003.

WITH

D C.A. Nos. 2684, 2682, 2696, 2686, 2681, 2695, 2670, 2688, 2679, 2698, 2697, 2693, 2690, 2678, 2683, 2689, 2694, 2699, 2685, 2680, 2692, 2687, 2711 and 2712 of 2004.

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Kailash Vasdev, Mahabir Singh, Rakesh Dahiya, Ms. Madhusmita Bora, Nikhil Jain, Ms. Abha R. Sharma, Ms. Sunita R. Singh, Sanjeev Saroha, Rohtash Nagar, T. Mahipal Khawairakpam Nobin Singh, Manu Mridul, Neeraj Sharma, Surya Kant, Sanjeev Sachdeva, Shiv Kumar Sinha, Harkesh Manuja, K.G. Bhagat, Vineet Bhagat, Kamal Baid, Manohar Singh Bakshi, Ms. Sangeeta Gaur, Debasis Misra, Neeraj Kumar Jain, Aditya Kumar Chaudhary and Bharat Singh for Ms. Kavita Wadia for the appearing parties.

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The Judgment of the Court was delivered by

P.K. BALASUBRAMANYAN, J. ; CIVIL APPEAL NO.2697 OF 2004.

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The petitioner in Civil Writ Petition No.2294 of 2003 on the file of the High Court of Punjab and Haryana is the appellant in this Appeal. The Appeal challenges the decision of the High Court dismissing the writ petition. Civil Writ Petition No.2294 of 2003 was heard along with a number of other writ petitions filed by persons similarly situated and was treated as the main case. Before the High Court, it was the common case of the parties in the

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various writ petitions that the facts and the position in law in all the cases were typical of the facts and law arising in Civil Writ Petition (CWP) No.2294 of 2003 and that the decision in C.W.P. No.2294 of 2003 will govern all the cases and hence may be treated as the main case. The High Court acceded to this request and answered the main points in CWP No.2294 of 2003. Finding against the case of the writ petitioner, the writ petition was dismissed. Applying the decision, the other writ petitions were also dismissed. Appeals were filed against those decisions also. The appeals were heard together. The present appeal arising from the main judgment was treated as the main appeal. The questions arising for decision being common, the decision in this appeal would govern the various cases heard along with it, in addition to the peculiar facts situation prevailing in some of them.

2. The appellant herein purchased an extent of land comprising Killa No.172/9/1(2-17), 10/1(1-8) in the revenue estate of village Murthal, Tehsil Sonapat adjoining the Grand Trunk Road (G.T. Road) as per sale deed dated 30.10.1986. The land was agricultural land. The appellant claimed that he constructed what he calls a 'Dhaba' in the land in the same year. He has not given the details regarding the construction or the time of construction. He did not seek any permission for putting the land to a use different from agriculture, or for putting up the construction. On 8.7.2002, the District Town Planner, Sonapat, exercising the powers of the Director, Town and Country Planning, Haryana, issued a notice to the appellant under Section 12(2) of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (hereinafter referred to as the 'Development Act') calling upon the appellant to stop further construction and to appear in his office and to show-cause why he should not be ordered to restore the land to its original state, which was in the controlled area of Sonapat in terms of the Development Act. The said notice brought to the notice of the appellant that he was putting up the construction in a controlled area under the Development Act; that he had laid out an access to the Grant Trunk Road (G.T. Road) in contravention of Section 6 of the Development Act; that he had also contravened Sections 8 and 10 of the Development Act; and that he had used the land in contravention of Section 7(1) of the Development Act. The notice called upon the appellant to stop further construction and to remove the unauthorized construction and restore the land to its original condition. The appellant filed a reply dated 16.7.2002, to the show-cause notice claiming that the 'Dhaba' had been constructed outside 30 meters from the road reserve and even if a part of it fell within

A 30 meters, the dispute was pending before the tribunal created under the Development Act. His substantive defence was that there was no notice of publication of the Development plan of controlled area till that date, in the official gazette, and he could not be found guilty of violation of Sections 4 and 5 of the Development Act. The area had not been declared as controlled area under the Development Act. The appellant was ready and willing to pay the conversion charges, if any, under Section 7 of the Development Act. He also raised a contention that he was being treated with discrimination, since there were other constructions belonging to the government and others in the locality, presumably violating the provisions of the Development Act and no steps were taken against those constructions. The authority, by order dated 23.7.2002, rejected the contentions of the appellant and found that the provisions of the Development Act had been violated by the appellant. The Director, Town and Country Planner Department, therefore, called upon the appellant to remove his unauthorized construction and restore the land to its original condition.

D 3. The appellant filed an appeal before the Tribunal constituted under the Development Act, 1963. The appeal was heard along with various other appeals. The tribunal, on a consideration of the relevant aspects, came to the conclusion that the Director, Town and Country Planning Department was justified in passing the order since there had been a clear violation of the provisions of the Development Act, 1963 by the appellant and others. Thus, the appeal filed by the appellant and the connected appeals were dismissed. The appellant and the others challenged the orders of the Tribunal before the High Court in various writ petitions. The case of the appellant, as indicated earlier, was treated as the main writ petition and the High Court, on a consideration of the relevant provisions of the Development Act, 1963 in the light of the steps taken under the Development Act, 1963 and the facts obtaining in the case, and the arguments raised, dismissed the writ petition affirming the order of the tribunal. It also dismissed the connected writ petitions filed by others. This appeal, challenges the main decision rendered by the High Court of Punjab and Haryana and the connected appeals challenge the decisions in the respective writ petitions filed by the appellants therein.

H 4. The High Court dealt with in detail the contentions raised on behalf of the petitioners. It referred to the relevant provisions of the Act and the objects sought to be achieved by the Act. It also considered the scope of

Sections 3, 4, 7, 8 and 12 of the Act in the light of the other relevant provisions and came to the conclusion that on the coming into force of the Act on 30.11.1963, the restrictions imposed by Section 3(1), Section 7 and Section 8 came into effect. It, therefore, held that the violation of those provisions could be dealt with by the Authority under the Act. It noticed the fact that in the case on hand the final development plan of the controlled area in question in terms of Section 5 of the Act was finalized and published in the Official Gazette on 26.5.1973. On the argument based on the mandatory nature of the requirement under Section 4(2) of the Act, the High Court held that there was compliance with the requirement and there was no time limit as such fixed for compliance with the said requirement. On facts, it also found that the purchases and constructions were after the publications in the newspapers themselves. Finding that there was no answer to the charges of violation of Section 3(1) of the Act, Section 7(1) of the Act and Section 8 of the Act, the High Court held that the petitioners were not entitled to any relief from that Court and the Tribunal and the Original Authority were fully justified in directing removal of unauthorized constructions put up in agricultural lands without permission, without obtaining an approved plan and in violation of Section 3 of the Development Act. The pleas that there was violation of natural justice and that there was procedural defect in the disposal of the appeals by the Tribunal, were also overruled. Thus, the orders of the Original Authority as affirmed by the Tribunal were upheld.

5. Though various contentions were raised in the petition for special leave to appeal in this Court, the main argument that was pressed before us was that the requirement of Section 4(2) was mandatory and so long as that mandate had not been complied with, the notification of the declaration under Section 4(1) of the Act notifying the areas as controlled areas remained inchoate in spite of it being published in the Gazette and that any construction made in a so called controlled area could not be objected to, if the construction was prior to the date of publication of the notification in two newspapers other than in English language. There was no argument based on alleged violation of natural justice put forward before the High Court but argument was raised that there was no proper service of notice on the petitioners and as contemplated by the Act. No argument was made that the final development plan had not been finalized, a contention that was raised before the High Court. It was not disputed that if there was a violation of Section 3 of the Act, action could be taken, whether the area was a controlled area or not. The questions raised are dealt with hereunder.

A 6. The Development Act, 1963 came into force on 30.11.1963. It was
an Act to prevent haphazard, sub-standard development along scheduled
roads and in controlled areas in the State of Punjab. Subsequently, by the
B Haryana Adaptation of Laws Order 1968, the Act was adapted by the State
of Haryana and extended to the whole of that State. Section 2(1) of the
Development Act, 1963 defined 'agriculture'. A Bypass was defined by
Section 2(3) of the Act. Section 2(5) of the Act defined a controlled area
as meaning an area declared under Section 4 of the Act to be a controlled
area. Section 2(9) of the Act defined the expression 'road reservation' in
C relation to a scheduled road and Section 2(10) defined a 'scheduled road'
as meaning a road specified in the schedule to the Act and as including a
bypass. The other definitions are not being referred to for the moment, since
they are not relevant for our purpose. Section 3 enacted a prohibition against
erection or re-erection of a building along side scheduled roads. There was
no dispute before us that the G.T. Road was a scheduled road and that any
violation of Section 3(1) of The Development Act, 1963 could be dealt with
D under the Act and the constructions got removed. Section 3(1) prohibits a
person from erecting or re-erecting any building or laying out any means
of access to a road within 100 meters of either side of the road reservation
of a bypass or within 30 meters on either side of the road reservation or any
scheduled road, not being a bypass. Certain exceptions are provided with
which we are not concerned except to notice that an exemption attempted
E to be provided in respect of public utility buildings and community assets
was declared unconstitutional by the High Court of Punjab and Haryana.
Section 4 of the Act, by sub-section (1), gave power to the government to
declare by a notification, the whole or any part of any area adjacent to and
within a distance of 8 kilometers on the outer side of the boundary of any
F town; or two kilometers on the outer side of the boundary of any industrial
or housing estate, public institution or an ancient and historical monument,
as a controlled area for the purposes of The Development Act, 1963. Sub-
section (2) provided that the government shall also cause the contents of the
declaration made under sub-section (1) to be published in at least two
G newspapers printed in a language other than English. There is no dispute
that in the case on hand, though the declaration was notified in the Official
Gazette on 21.12.1971, the same was published in newspapers only in the
year 1991, on 26.3.1991 in an English daily The Tribune, on 25.3.1991 in
the Hindi daily Jan Sandesh and on 9.4.1991 in the daily Dainik Amar
Rajnitik. Section 5 contemplates the publication of plans in the prescribed
H manner showing the controlled area and therein the nature of restrictions and

conditions proposed to be made applicable to the controlled area and providing for submission of plans to the government. Sub-section (2) provides for what the plan should indicate. Under sub-section (3), the government has the power either to approve the plan with or without modification or reject the plan with a direction to the Director to prepare a fresh plan according to its directions. Under sub-section (4), the government was to cause to be published by a notification the plans approved by it under Section 5(3) of the Development Act. Under sub-section (5), the parties had the right to object to the proposals. The Director was to give an opportunity of being heard to such objectors under sub-section (6) and after doing so, under sub-section (7), make recommendations to the government and the government had to decide as to the final plans showing the controlled area. The same had to be published in the Official Gazette and in such other manner as may be prescribed. Sub section (8) enabled a provision to be made by Rules with respect to the form and contents of the plans and with respect to the procedure to be followed and any other matter in connection with the preparation, submission and approval of the plans. The government, under sub-section (9), had also the power to direct the Director to furnish any other information that the government may want for the purpose of approving the plans submitted to it under Section 5 of the Development Act. Section 6 prevented a person from erecting or re-erecting any building or laying out an access to a road save in accordance with the plans and restrictions and conditions referred to in Section 5 of the Development Act and with the previous permission of the Director. The proviso enabled a construction to be made without permission if it was to be used for agricultural purposes. Section 7 prohibits the use of land in controlled areas. No land within the controlled area could be used for purposes other than those for which it was used on the date of publication of the notification under sub-section (1) of Section 4 of the Development Act except with the permission of the Director and on payment of the conversion charges as may be prescribed. Section 7A confers a power on the government to relax in public interest, any of the restrictions or conditions, insofar as they relate to land use prescribed in the controlled area in exceptional circumstances. Section 8 provides for filing of applications for permission and for grant or refusal thereof. Section 9 confers a power of entry on the Director or a person authorized by him in that behalf. Section 10 provides a right of appeal to a person who was aggrieved by an order on an application filed under Section 8 of the Act. Section 10A of the Development Act confers a power of revision by the government and Section 10B confers a power of review on the Director.

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A Section 11 provides that the Director shall carry out such directions as may be issued to him from time to time by the government for the efficient administration of the Development Act. Section 12 provides for offences and penalties and makes contraventions of the provisions of Sections 3, 6, 8 and 10 and the user of land in contravention of Section 7(1) or Section 7 of the Development Act, punishable. Section 14 provides for composition of offences. Section 16 provides for sanction of prosecution. Section 21 of the Development Act bars the jurisdiction of the civil court. Section 23 provides that nothing in the Development Act would affect the operation of the Punjab New Capital (Periphery) Control Act, 1952, and the Punjab Slum Areas (Improvement and Clearance) Act, 1961. Sub-section (2) of Section 23 gives over-riding effect to the provisions of the Development Act and the Rules notwithstanding anything inconsistent therewith contained in any other law. Section 25 of the Act confers the rule making power on the government. For completion, it may be noted that the G.T. Road (from Delhi to Amritsar and on the border with Pakistan) is the first item in the Schedule of Scheduled Roads within the purview of Section 3(1) of the Development Act.

E 7. To recapitulate, though a declaration was notified in the Official Gazette under Section 4(1) of the Development Act specifying the controlled area as early as on 21.12.1971; on 31.10.86 when the appellant purchased the plot of land in question, the publication had not been effected in the newspapers as contemplated by Section 4(2) of the Act. Though there was some controversy in pleadings whether the plan as contemplated by Section 5 of the Act had been published, at the time of hearing, there was no dispute that a plan had been published as contemplated by Section 5 of the Development Act. But the publication of the declaration as contemplated in Section 4(2) of the Development Act in two newspapers printed in a language other than English, was made only in the months of March and April 1991. In that context, it was the contention on behalf of the appellant that the declaration notified under Section 4(1) of the Development Act on 21.12.1971 in the Official Gazette was inchoate and did not come into force in view of the failure of the government to have it published in at least two newspapers printed other than in English, as mandated by Section 4(2) of the Development Act. It was, therefore, contended that the area had not become a 'controlled area' within the meaning of Section 4(1) of the Development Act and consequently, no action could be taken against the appellant for putting up a construction against the terms of the Development

Act in a controlled area. It was further submitted that once there was no proper declaration of the area as a controlled area, there could be no violation of Section 6 or 7 of the Development Act and consequently, the appellant or his construction, could not be visited with any consequence under the Development Act. We may notice that the argument in the High Court was that the delay in publishing the declaration in two newspapers was a colourable exercise of power.

8. On the scheme of the Development Act an area becomes a controlled area by the government declaring it to be so by a notification under Section 4(1) of the Development Act. No doubt Section 4(2) of the Development Act provides that the government shall also cause the contents of the declaration made under Section 4(1) to be published in at least two newspapers printed in a language other than English. What is argued on behalf of the appellant is that Section 4(2) of the Development Act is mandatory and so long as a declaration notified in an Official Gazette under Section 4(1) of the Development Act, is not followed by the publication of the contents of that declaration in two language newspapers under Section 4(2) of the Development Act, the declaration of the controlled area does not come into force and consequently the area could not be deemed to be a controlled area. It is also submitted as a corollary that publication in two language newspapers about 20 years after the publication of the declaration in the Official Gazette under Section 4(1) of the Development Act is of no avail since it was unreasonable to allow such long lapse of time between the notification and the publication. This is met by counsel appearing for the State by submitting that on a declaration under Section 4(1) of the Act being published in the Official Gazette followed by the issuance of a draft plan in terms of Section 5(1) of the Development Act, the area becomes a controlled area and any construction therein thereafter could only be in terms of the Development Act and after obtaining prior permission from the Director and any change in use of the land should also be only after seeking and obtaining permission from the Director. It is contended that the delay in making the publication in the newspapers cannot have the effect of nullifying the declaration already issued in the Official Gazette which is normally the mode of publication of governmental orders and notifications and it is also the mode prescribed by Section 4(1) of the Development Act. It is also submitted that Section 4(2) of the Development Act is not mandatory and though the expression 'shall' is used therein, what the sub-section really provides is that the government shall *also cause the contents of the declaration to be*

A *published in two newspapers other than English* and this shows that the requirement was not mandatory (emphasis supplied).

B 9. The High Court, dealing with this contention, after noticing the
 C conspectus of the Development Act, the purpose sought to be achieved by
 D it and the earlier directions issued by that Court to implement the provisions
 E of the Development Act took the view that it was not possible to hold that
 the delayed publication of the contents of the declaration under Section 4(2)
 of the Development Act and the delayed finalization of the final development
 plan under Section 5 of the Development Act would affect the declaration
 under Section 4(1) of the Development Act. In fact, it may be noted that
 what was contended before the High Court was that the declaration under
 Section 4(1) of the Development Act remained inchoate for want of
 publication of its contents in two language newspapers and that the belated
 publication in two language newspapers amounted to a colorable exercise
 of power. Whatever it may be, the question is whether the fact that the
 contents of the declaration notified under Section 4(1) of the Development
 Act was published in two language newspapers only at a subsequent point
 of time would justify our holding that the declaration notified under Section
 4(1) of the Development Act never came into force at all and whether it
 could be held that the area in question did not become a 'controlled area'
 within the meaning of the Development Act. Actually, on the facts of almost
 all of these cases, the purchases, or at least the attempted constructions were
 after the publications in Newspapers and in those cases, this argument may
 not even be available to the appellants.

F 10. In addition to the indication available in Section 4(2) of the
 G Development Act in view of the stipulation that the government shall also
 H cause the contents to be published in two newspapers, we find that both
 Section 5(1) and 7(1) of the Development Act, speak only of the publication
 of the notification under Section 4(1) of the Development Act and not the
 publication of the contents of the declaration in terms of Section 4(2) of the
 Development Act. This, in our view, indicates that the requirement of
 Section 4(2) of the Development Act was not made mandatory by the
 legislature. No doubt the legislature wanted the people within the proposed
 controlled area to know of the declaration issued by the government and that
 was sought to be achieved by directing that the said declaration also be
 published in two language newspapers other than in English. But from this
 it cannot be inferred that without such publication of the contents in two

newspapers the declaration already issued in terms of Section 4(1) of the Development Act in the Official Gazette remains still born or inchoate or of no consequence. In this context we cannot ignore the object sought to be achieved by the Act and the scheme of the Act in defining a controlled area as indicated by Section 4(1) itself.

11. It is argued on behalf of the appellant in the present appeal and by counsel in support of the other appeals that at best the notification could be treated as becoming effective only from the date of publication of the contents of the declaration in two language newspapers and cases in which the construction had been made after the notification of the declaration under Section 4(1) of the Act and before the publication of its contents in two newspapers should be held to be not violative of the provisions of the Development Act. The decision in *Collector (District Magistrate) Allahabad and Another v. Raja Ram Jaiswal*, [1985] 3 SCC 1 was relied on to contend that the requirement for giving public notice of the substance of the notified declaration was mandatory, but it has to be noticed that the said decision related to the giving of public notice of the substance of the notification under Section 4(1) of the Land Acquisition Act, 1894 and the scope of the Land Acquisition Act is obviously different from the Development Act which only seeks to control the user of the land and does not deprive the owner of his rights over the land. Moreover, on the scheme of the Land Acquisition Act, the publication of the contents in the locality has much relevance and it is not merely for conveying information to the members of the public. It appears to us that the decisions based on the Land Acquisition Act in that regard are clearly distinguishable, on the language of Section 4(2) of the Act, the object sought to be achieved and the nature of the prohibition contained in the Development Act and the obligation imposed on the owner of the land by the Development Act. The argument to the effect that a right cannot be taken away without following the procedure laid down, based on the ratio in *Bhavnagar University v. Palitana Sugar Mills (P) Ltd. And Others*, [2003] 2 SCC 111, is also of no avail since that was also a decision under the Land Acquisition Act depriving the owner of his right to property altogether though, of course, subject to payment of compensation as provided in that Act. We should not be understood as saying that the procedure laid down by the Act need not be followed. The procedure laid down has been followed but only after a lapse of time. In such a situation, especially considering the object sought to be achieved by The Development Act and the nature of the restrictions in public interest that are sought to be imposed

A by the Act, it is not possible to uphold a contention that the belated adherence to the procedure would nullify the very declaration duly notified in the Official Gazette in terms of Section 4(1) of The Development Act. On the scheme of The Development Act it appears to us that the notification of a declaration under Section 4(1) of The Development Act in the Official Gazette which is the normal mode of publishing orders of government for the knowledge of the public in terms of the General Clauses Act, would bring about the consequences contemplated by The Development Act. In this case and in the connected cases, the contents of the declaration notified under Section 4(1) of The Development Act were also subsequently published in two newspapers other than in English and in that situation we are inclined to hold that the procedural requirement has also been satisfied. Even apart from that, in view of our conclusion that Section 4(2) of The Development Act was not mandatory in the sense that the failure to publish in two newspapers would render the original notification of the declaration issued under Section 4(1) of The Development Act nonest, the argument that the area has not become a controlled area cannot be accepted. We, therefore, overrule the contention that the area had not been notified or declared as a controlled area within the meaning of The Development Act.

E 12. The appellant has no case that he had sought for permission to convert the land which was agricultural land, into non-agricultural land in terms of Section 7(1) of The Development Act. There is, therefore, a clear transgression of that provision. Similarly, that part of the construction that falls within 30 meters of the G.T. Road or within 100 meters of a bypass road or the laying of an access to the G.T. Road without prior permission have to be held to be illegal in terms of the Development Act.

F 13. In that context it was contended that in some of the cases there was no proper notice to the owners calling upon them to demolish the construction allegedly put up by them unauthorizdly. It is seen from the records that in some cases notices were sent by registered post and in some of the cases notices were sent under certificate of posting. The appellants disputed this and pleaded that they have not received the notices. The respondents have also pleaded that the notices were also affixed contemporaneously in the premises in all the cases. In most of the cases, this fact was not disputed but it was contended that the mode of service by affixture could be resorted to only after the notices were sought to be served in person as prescribed by the Rules. In the context of these cases, we see no reason to disbelieve

the stand of the respondents that notices were issued to some of the appellants under certificate of posting and to some others by registered post and that in all cases the notices were affixed. The notices indicate that they were issued when unauthorized constructions were commenced and they called upon the owners to stop further constructions. We must also notice that having come to know of the notices, the appellants had, in fact, filed objections. In addition, it is seen that on the basis of a direction issued by the High Court, various appellants were given notices informing them of a right of appeal to the tribunal constituted under The Development Act against the orders of the Director and such appeals were filed by all the appellants before the Tribunal. The Tribunal had dealt with those appeals and the contentions they had raised. The Director had also dealt with the objections raised by the appellants. In this situation, nothing turns on the arguments based on natural justice or the failure to give proper notice. The High Court, in our view, has rightly overruled the contentions based on want of notice or inadequacy of notice.

14. It is clear from the terms of the Development Act that as regards the scheduled roads, the Development Act becomes operative from the date of the Act and any construction in violation of section 3(1) of the Development Act after the coming into force of the Development Act has to be found to be illegal. Therefore, the authorities were fully justified in directing removal of constructions which fell within 30 meters of a scheduled road or 100 meters of a bypass to a scheduled road. We have already held that on the scheme of the Development Act and in the light of the object sought to be achieved by the Development Act, the declaration of a controlled area becomes effective from the date of the notification of the declaration in terms of Section 4(1) of the Development Act even though the contents of that declaration are published in two newspapers other than in English only at a later point of time. In view of this, in all these cases the constructions had been put up in controlled areas and that too without permission of the Director. In almost all the cases, the construction has also been put up on agricultural land which again could not be done without permission in terms of the Development Act. It is, therefore, clear that there is open transgression of the relevant provisions of the Development Act and the authorities were fully justified in directing the appellant and others to remove their unauthorized constructions.

15. The Act seeks to achieve the object of leaving clear areas adjacent

A to scheduled roads intended for swift and safe moving of vehicular traffic. Any attempt to defeat that object by putting constructions of dhabas, residential or industrial buildings against the terms of the Development Act, would tend to affect public safety and endanger lives and property and courts must discourage such attempts. Lethargy or studied indifference of officials to act promptly cannot be made use of to thwart public interest. This has been indicated by the High Court in its earlier judgments. It is, therefore, not just or proper for courts to entertain pleas of technical nature which would tend to defeat the object of the Development Act. Viewed from that context, we are satisfied that the appellant has not made out any case for interference and the tribunal and the High Court were fully justified in not interfering with the action initiated by the authorities concerned for removal of unauthorized constructions in violation of Section 3(1) of the Development Act.

16. Same is the position regarding constructions in controlled areas. D The purpose of declaring an area, a controlled area, cannot be allowed to be defeated by recourse to technical pleas, especially by those who have violated the terms of the statute. It is seen that except in one or two cases, the lands were purchased and constructions without permission were attempted after the declaration was published in newspapers as envisaged by Section 4(2) of the Act. In those cases, these pleas are not even available. E Viewed from the angle of public interest, when there is notification of the declaration in the Gazette in terms of Section 4(1) of the Development Act, the same must be given effect to and any user of land for purposes other than the original purpose for which it was used, should be discouraged and the attempt to put up constructions which would lead to haphazard F development of the controlled area should be prevented and these objects should not be lost sight of by courts which are concerned with public interest, which ultimately has to prevail over private interest. Thus, viewed from any angle we are satisfied that the decision of the High Court does not call for interference.

G We, therefore, affirm the decision of the High Court and dismiss this appeal. The appellant is given time of two months from this date to remove the offending construction. If the appellant fails to remove the same within that time, Respondent Nos.1 and 2 will get the construction removed and file a compliance report in this regard. The interim order is vacated and the H respondents are directed to implement the Act and the orders passed

thereunder.

C.A. No.2685, 2687, 2692, 2696, 2686, 2693, 2695, 2670, 2679, 2682, 2694 2690, 2678, 2683, 2689, 2699, 2680, 2711 and 2712 of 2004.

In almost all these cases the appellants purchased the lands wherein they put up constructions, found to be unauthorized in terms of the Punjab Scheduled Roads and Controlled Areas Restriction on Unregulated Development Act, 1963, after the declaration under Section 4(1) of the Act was notified in the Gazette and it was also published in two newspapers other than in English language as contemplated by Section 4(2) of the Act. The constructions put up without permission were also thereafter. It is, therefore, not open to the appellants to raise a contention that the declaration under Section 4(1) of the Act was inchoate because it was not followed up by publication of its contents in two newspapers other than in English. We have even otherwise held in our Judgment in C.A. No.2697 of 2004, that the provision for publication under Section 4(2) of the Act in two newspapers other than in English language was not mandatory. We have also held that mere delay in publishing the declaration in two newspapers would not invalidate the declaration of the area as controlled area. In these cases, the appellants put up the constructions in violation of the statute and without the requisite permissions under the Act. Therefore, the authority under the Act, the appellate tribunal and the High Court rightly dismissed their challenge to the action taken under the Act.

We dismiss these appeals. The appellants are given time of two months from this date to remove the offending constructions. If the appellants fail to remove them within that time, Respondent Nos.1 and 2 will get the constructions removed and file a compliance report in this regard.

Civil Appeal Nos. 2671, 2681, 2684, 2688 and 2698 of 2004.

In these appeals the appellants obtained leases of pieces of land from Kambopura Gram Panchayat in the year 1986 in violation of Section 5 of the Punjab Village Common Land (Regulation) Act, 1961 and Rule 3 of the Punjab Village Common Lands (Regulation) Rules, 1964. Since the leases were against the terms of the said Act and the Rules, the said leases do not confer any right on the appellants and no right in them to put up any

A construction that can be recognized.

That apart, in view of our Judgment in C.A. No. 2697 of 2004 there is no merit in these appeals. They are dismissed. The appellants are given time of two months from this date to remove the offending constructions.

B If the appellants fail to remove them within that time, Respondent Nos.1 and 2 will get the constructions removed and file a compliance report in this regard.

N.J.

Appeals allowed.