HIGH COURT OF BOMBAY

Bench: Justices Avinash G. Gharote and M.S. Jawalkar

Date of Decision: 28th May 2024

WRIT PETITION NO. 340 OF 2023

DHIRAJ UTTAM ASHTANKAR & ANR. …PETITIONERS

VERSUS

THE STATE OF MAHARASHTRA, THROUGH ITS SECRETARY, URBAN DEVELOPMENT DEPARTMENT & OTHERS …RESPONDENTS

WRIT PETITION NO. 499 OF 2024

VITTHAL HARIBHAU BARDE …PETITIONER

VERSUS

THE STATE OF MAHARASHTRA, THROUGH ITS SECRETARY, URBAN DEVELOPMENT DEPARTMENT & OTHERS …RESPONDENTS

WITH

WRIT PETITION NO. 8433 OF 2022

SHRI SURYANARAYAN S/O PANDURANGJI CHAKOLE & OTHERS …PETITIONERS

VERSUS

THE STATE OF MAHARASHTRA, THROUGH ITS SECRETARY, URBAN DEVELOPMENT DEPARTMENT & OTHERS …RESPONDENTS

Legislation:

Sections 98 to 100 of the Maharashtra Regional and Town Planning (MRTP) Act, 1966

Sections 125 and 126 of the MRTP Act

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR Act, 2013)

Subject: Petitions challenging the constitutionality of Sections 98 to 100 of the MRTP Act and seeking compensation under the RFCTLARR Act, 2013 for land acquired under the Town Planning Scheme No. 1 of Mouza Pardi, Bharatwada, Punapur, and Bhandewadi, Tah. & Dist. Nagpur.

Headnotes:

Town Planning – Compensation under MRTP Act – Petitioners challenged the constitutionality of Sections 98 to 100 of the MRTP Act, 1966, claiming that these provisions, which pertain to the determination of compensation for land acquisition under town planning schemes, violate Article 14 of the Constitution – Court held that Sections 98 to 100 provide a statutory mechanism for compensation that is distinct but not discriminatory when compared to the RFCTLARR Act, 2013 – Petitioners' argument that the provisions are ultra vires was rejected [Paras 1-20, 55].

Land Acquisition – Applicability of RFCTLARR Act, 2013 – Petitioners sought compensation under the RFCTLARR Act, 2013, contending that the beneficial provisions of this Act should apply to acquisitions under the MRTP Act – Court held that Section 105-A of the RFCTLARR Act, as amended by Maharashtra, explicitly excludes its application to acquisitions under the MRTP Act unless specifically notified by the State Government, which has not occurred – Petition dismissed on this ground [Paras 5.1-5.6].

Decision: Writ petitions dismissed – Challenge to the constitutionality of Sections 98 to 100 of the MRTP Act rejected – Provisions of RFCTLARR Act, 2013 held inapplicable to acquisitions under the MRTP Act in the absence of specific notification by the State Government.

Referred Cases:

- P. Vajravelu Mudaliar v. Special Deputy Collector, Madras AIR 1965 SC 1017
- State of Gujarat v. Shantilal Mangaldas (1969) 1 SCC 509
- Nagpur Improvement Trust v. Vitthal Rao AIR 1973 SC 689
- Hari Krishna Mandir Trust v. State of Maharashtra AIR 2020 SC 3969
- Smt. Sitabati Debi and Another v. State of West Bengal (1967) 2 SCR 949

Representing Advocates:

Mr. Rahul Tajne, counsel for the petitioners.

Ms. Tajwar Khan, AGP for the respondents-State.

Mr. Sunil Manohar, Sr. Adv. a/b Mr. Girish Kunte, counsel for the respondent Nos.2 to 4.

O R D E R :

(PER : AVINASH G. GHAROTE, J.)

1. These petitions raise a challenge to the proceedings by the respondents, which have beencommenced as per the WP 340 of 2023.odt Notification No. TPS-2418/Nag, Camp-9/CR-281/2018/UD-9 for the town planning scheme No.1 of Mouza : Pardi, Bharatwada, Punapur and Bhandewadi, Tah: & Dist: Nagpur, and so also seeks quashing of the notices dated 02/12/2022 and 09/12/2022 issued by the respondent no.2 for handing over of possession. A challenge is also raised to the R & R policy dated 03/02/2021 (Annexure-C) with a direction to award compensation under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('Act of 2013' for short). A further relief is sought to hold and declare that the provisions under Sections 98 to 100 of the Maharashtra Regional and Town Planning Act, 1966 (MRTP Act) are ultra vires to Article 14 of the Constitution.

2. Insofar as the applicability of the Act of 2013 is concerned, Mr. Tajne, learned counsel for thepetitioners relies upon Section 2(1)(e) of the Act of 2013, which provides that the provisions of the Act of 2013, would apply when the appropriate Government acquires land for its own use or for public use, including for the project of planned development or the improvement of village sites or any site in the urban areas or requirement of land for residential purposes for the weaker sections in rural and urban areas. He contends that since under Section 105-A(2) of the Act of 2013 (Maharashtra Amendment), there is an intention, to apply beneficial provisions, for the purpose of acquisition, the Act of 2013, would be attracted to the acquisition of land under the scheme and therefore, the petitioners would be entitled to compensation under the said WP 340 of 2023.odt Act of 2013. It is contended, that Act of 2013 is a beneficial piece of legislation and therefore, the provisions thereto would stand automatically applicable to all acquisitions by the State, including acquisitions under the MRTP Act. He also relies upon the provisions of Section 125 of the MRTP Act to contend, that even for the purpose of calculating the compensation for compulsory acquisition of land under the town planning scheme, the provisions of the Act of 2013 have been made applicable and compensation would be payable in the manner as provided therein.

2.1. Insofar as R & R policy of the respondent no.2 is concerned, it is contended, that it has the effectof depriving the petitioners and persons similarly situated, from 40% of the total land held by them without any compensation on account of which the policy is bad in law. Insofar as provisions of Sections 98 to 100 of the MRTP Act is concerned, it is contended, that since they provide a different method of calculation of the compensation, different than that provided under the Act of 2013, they create a discrimination between persons similarly situated and therefore, would be ultra vires to Article 14 of the Constitution.

2.2. Insofar as calculations made by the Arbitrator of the value of the land and the demand madefrom the petitioners and similarly situated persons of receiving a developed plot, it is contended that the calculations are incorrect, by inviting attention to page 55, where in respect of similarly placed persons, the original value in terms of

Section 97(1-f) of the MRTP Act of Rs.917/- per sq.mtr., was also the same for the semifinal value and relying upon the notes WP 340 of 2023.odt appended thereto, it is contended that the petitioners have been treated differently by the Arbitrator while determining the value of the land on account of which the determination by the Arbitrator is also incorrect.

2.3. In support of the above submission, learned counsel for the petitioners places reliance upon P.Vajravelu Mudaliar Vs. The Special Deputy Collector for Land Acquisition, AIR 1965 SC 1017; Nagpur Improvement Trust Vs Vitthal Rao and others AIR 1973 SC 689 (para 26 onwards) and Hari Krishna Mandir Trust Vs State of Maharashtra & Ors. AIR 2020 SC 3969.

3. Mr. Manohar, learned Senior Counsel for the respondent Nos.2 to 4 contends, that so far as theplea regarding the applicability of the Act of 2013 is concerned, the State of th Maharashtra by enacting Sections 105-A(1) and the 5 Schedule thereto by including the Maharashtra Regional Town Planning Act therein, have specifically excluded the applicability of the Act of 2013 to the MRTP Act. He submits, that since there is no Notification under Sub-section 2 of Section 105-A of the Act of 2013 as applicable to the State of Maharashtra, the contention in that regard regarding its applicability cannot be sustained. Learned Senior Counsel also contends that though Sections 107 and 108 of the Act of 2013 have been relied upon by Mr. Tajne, learned counsel for the petitioners, for that purpose there has to be a specific enactment making the provisions of the Act of 2013 applicable. It is also contended that though certain provisions of the Act of 2013 WP 340 of 2023.odt have been made applicable for the purpose of acquisition under Section 125 of the MRTP Act, they would not ipso facto be applicable to the provisions of Chapter V of the MRTP Act as the same does not contemplate acquisition but an exchange for the purpose of a development scheme, which results in a readjustment of the rights. The learned Senior Counsel for the respondent Nos.2 to 4 submits, that this position is no longer res integra, but is already covered by the judgment of this Court in Zahir Jahangir Vakil & Ors. Vs. Pune Municipal Corporation 2006(4) ALL MR 326 in which considering the provisions of Chapter V of the MRTP Act, it has been held that the

provisions therein constitute a scheme in itself and the provisions of compensation are in built and governed within the said scheme (para 23). It is, therefore, contended, that the provisions of the Act of 2013 would clearly not be attracted to the proceedings under the provision of Chapter V of the MRTP Act.

3.1. Insofar as the challenge to the provisions of Sections 97 to 100 of the MRTP Act are concerned,it is contended, that there is no discrimination as it is a special procedure prescribed by the statute, for implementation of the development scheme. Inviting our attention to provision of Sections 97(1)(d), (f) and (g) of the MRTP Act it is contended, that the various components for calculating the price of the land in its undeveloped and developed stages have been laid down. Section 98 of the Act lays down the method of calculation of increment, Section 99 of the Act lays down the method of calculation towards the cost of the scheme and Section 100 of the Act lays down certain amounts to be added or deducted from the calculation made earlier. It is, therefore, submitted, that it WP 340 of 2023.odt is a scheme in itself, providing the procedure in which the scheme of development of plots in exchange of plot is to be implemented. It is therefore, submitted, that since this is a scheme for exchange of land in the form of reconstituted plots for which entire process of determining compensation is in built, the plea regarding any discrimination cannot be sustained.

3.2. Insofar as the grievance of the petitioner regarding the calculation of the market value isconcerned, he contends, that such a plea is available to be raised before the Tribunal constituted for that purpose under Section 74 of the MRTP Act.

3.3. Shri Manohar, learned Senior Counsel for the respondent Nos. 2 to 4 also relies upon theaffidavit dated 09/02/2024, to contend, that the plea that the petitioner of being deprived of 40% of the value of the land is incorrect as the value of the entire original area is being ascertained for the purpose of calculation. Reliance is also placed upon the table at page Nos. 281 and 282 to indicate that the calculation in this regard have already been made by the Arbitrator which would indicate that the value of the entire original land / plot has been determined. By relying upon Section 64

(g-1)

(ii) it is contended that even otherwise 40% of the land covered under the scheme, is required to be left for roads, parks, play grounds, gardens and open spaces on account of which though these being statutory reservations, no compensation is payable, however, the value of the entire land of 40% as per the original plot area, has also been determined and therefore, the plea that 40% of the entire holding of the person is being taken away without any benefit being WP 340 of 2023.odt given to the petitioner is clearly unwarranted.

3.4. Shri Manohar, learned Senior Counsel for the respondent Nos.2 to 4 relies upon Jayesh Dhanesh Goragandhi Vs. Municipal Corporation of Grater Mumbai 2012(13) SCC 305 (para 47 to 51) and Chandrakant Uttam Kolekar and others Vs The State of Maharashtra and Others in Writ Petition No.10899/2022, decided on 02/08/2023 in support of his contention.

4. Before considering the challenge, it would be necessary to note the factual position, which is asunder:

4.1. In WP No.8433 of 2022, the petitioners are the owners of the lands situated atMouza Punapur, Tahsil and District Nagpur as indicated below:

NAME	AREA	LOCATION
Dhiraj Uttam Ashtankar (P1)	0.75 Ha	Survey No.33/34/2, Bharatwada (The petitioner no.1 is son of Uttam Sitaramji Ashtankar, who is deceased and the application for mutation is pending)
Manoj Chandan Ashtankar (P2)	0.76 Ha	Survey No.33/34/6, Bharatwada

4.2. In WP No.340 of 2023, the petitioners are the owners of the lands situated atMouza Bharatwada, Tahsil and District Nagpur as indicated below:

NAME	AREA	LOCATION
Suryanarayan S/o Pandurangji Chakole and others (P1)	0.85 Ha	Survey No.3/1, Punapur
	1.04 Ha	WP 340 of 2023.odt
Bhaurao and Tulsidas (P2)	0.66 Ha	Survey No.66/5, Punapur
Chandrakumar Ishwarchandji Lunawat (P3)	0.92 Ha	Survey No.75/3/4, Punapur
	2.01 Ha	Survey No.74/2, Punapur.
Madanlal S/o Anandrao Tadas 2.29 Ha Survey No.6/1/2Kh, (P4)		Punapur.
Deochand Pandurang Chakole (P5)	1.04	Survey No.3/3, Punapur (The petitioner no.1 and 5 is son of Pandurang Chakole, who is deceased and the application for mutation is pending)

4.3. In WP No.499 of 2024, the petitioners are the owners of the lands situated atMouza Bharatwada, Tahsil and District Nagpur as indicated below:

NAME	AREA	LOCATION
Shri Vitthal Haribhau Barde	0.29 Ha	Survey No.90/1, Bharatwada
Shri Vitthal Haribhau Barde	1.29 Ha	Survey No.90/2, Bharatwada

4.4. The declaration of intention to develop a smart city project for the areas of Pardi,Bharatwada, Punapur and Bhandewadi, as required by Section 60(1) of the MRTP Act, was done by the resolution No.1/1169 passed by the NIT on 20.5.2017, which came WP 340 of 2023.odt to be published in the official gazette under Section 60(2) of the MRTP Act on 07.6.2017.

4.5. The declaration of an intention of the revised area, was thereafter also publishedin the Government Gazette Part I-A Sr. No.146 on 01.9.2017. Objections to the scheme were invited under Rule 4(1) by publication of a notice in that regard in Dainik Lokmat (Marathi edition) dated 01.02.2018, calling for the meeting for lodging objections to be held on 08.2.2018. The proposal of the scheme was submitted to the Director of Town Planning on 12.2.2018 and the draft town planning scheme was published on 23.3.2020. By a notice dated 03.04.2018 the time under Section 61(1) and (2) of the MRTP Act was extended. The draft scheme was submitted to the Government by the planning authority under Section 68(1) of the MRTP Act, which came to be approved on 06.10.2018 and was published in the Government gazette on 22.11.2018. The proposal for change of land use under Section 37(2) was also submitted to the State by the planning authority on 09.8.2018 and was published in the gazette on 22.11.2018. The Arbitrator in terms of Section 72(1) came to be appointed on 15.11.2018 which was notified by publishing in the gazette on 16.11.2018. A notice under Form 72(4) of the MRTP Act was given to the land owners on 18.1.2019. Hearing was conducted on 20.12.2019, the drafting of the preliminary scheme u/s 72(7) of the Act was commenced on 15.1.2020, which was completed and published in the official gazette on 16/1/2020 and in the local newspapers Hitavada and Lokmat on 18.1.2020. The preliminary WP 340 of 2023.odt scheme was submitted to the State u/s 72(5) of the Act on 27.2.2020 which was approved u/s 86(1) of the Act by the State on 20.10.2021, the final town planning scheme being published in the official gazette on 28.10.2020.

APPLICABILITY OF THE RTFFLR ACT 2013 TO CHAPTER V OF MRTP ACT

5. Insofar as the applicability of the Act of 2013 to the provisions of Chapter V of the MRTP Act isconcerned, though Section 2 of the Act of 2013 mandates, that it shall apply when the appropriate Government acquires land for its own use, including for the use of public sector undertakings and for public purpose, including for the purpose as enumerated in section 2(1)(e) which contemplates project for planned development or the improvement of village sites or any site in the urban areas or provision of land for residential purpose for the weaker sections in rural and urban areas, what is material to note, is that in it's applicability for the State of Maharashtra, the Act of 2013 stands amended by the State, by inserting Section 105-A which carves out an exception to the general applicability of the Act of 2013. For the sake of ready reference Section 105-A as it stands applicable to the State of Maharashtra and Fifth Schedule, inserted in its terms, are quoted as under :

"105-A. Provisions of this Act not to apply to certain Maharashtra Acts or to apply with certain modifications.- (1) Subject to sub-section (2), the provisions of this Act shall not apply to acquisition of land under the enactments specified in the Fifth Schedule.

WP 340 of 2023.odt (2) The State Government may, by notification, within one year from the date of commencement of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Maharashtra Amendment) Act, 2018 (Mah. Act 27 of 2018), direct that any of the provisions of this Act, relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fifth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to the compensation, rehabilitation and resettlement as may be specified in the notification, as the case may be :

Provided that, no such notification shall be issued except on a resolution passed by both Houses of the State Legislature."

"THE FIFTH SCHEDULE"

(See section 105-A) LIST OF MAHARASHTRA ENACTMENTS REGULATING LAND ACQUISITION IN THE STATE OF MAHARASHTRA

1. The Maharashtra Highways Act (LV of 1955)

2. The Maharashtra Industrial Development Act, 1961 (Mah. III of 1962).

3. The Maharashtra Regional and Town Planning Act, 1966 (Mah. XXXVII of 1966).

4. The Maharashtra Housing and Area Development Act, 1976 (Mah. XXVIII of 1977)".Maharashtra Act 37 of 2018, S.10 (w.e.f.26-4.2018).

5.1. It would therefore be apparent, that in view of the mandate of Section 105-A(1) read with EntryNo.3 in the Fifth Schedule, the WP 340 of 2023.odt applicability of the Act of 2013, has been taken away, to actions/proceedings taken under the MRTP Act.

5.2. Section 105-A(2) of the Act of 2013, empowers the State Government by Notification during thetime frame as indicated therein, to direct that any of the provisions of the Act of 2013 as contained in the First, Second and Third Schedule, being beneficial in nature, would apply to the cases of land acquisition under the enactments specified in the Fifth Schedule, or shall apply with such exceptions or modifications, that do not reduce the compensation or dilute the provisions of the Act of 2013. This however, has to be made by notification in the official gazette. Therefore, it is axiomatic, that for the purpose of applicability of the provisions of the Act of 2013, to the acquisition under the MRTP Act a notification under Section 105-A(2) of the Act of 2013, is a must. Mr. Tajne, learned counsel for the petitioner, fairly states, that to his knowledge there is no such notification. The learned AGP appearing on behalf of the respondent No.1 also asserts, that there is no such notification. This would clearly indicate, that in absence of any such notification, as contemplated by

Section 105-A(2) of the Act of 2013, the plea that the provisions of the Act of 2013 stand applicable to the acquisition under the MRTP Act, specifically in respect of the Town Planning Schemes under Part-V would not be tenable.

5.3. Though it is contended in view of the intent of Section 105-A(2) of the Act of 2013 thatbeneficial provisions would be applicable, they should be made applicable to the matter in hand, WP 340 of 2023.odt what is necessary to consider, is that merely because Section 105- A(2) of the Act of 2013, contemplates a particular situation, that cannot be of universal applicability, especially in view of the fact that Section 105-A(2), itself contemplates that for the applicability of the provisions of the Act of 2013 to the Statutes, which are included in the Fifth Schedule of the Act of 2013 by way of the State Amendment, there has to be a notification in exercise of the power under section 105-A (2), which is absent as indicated above. Section 105-A(2) of the Act of 2013, is therefore of no assistance to Mr. Tajne, learned counsel for the petitioner in contending that the same should be applicable to the Town Planning Scheme, under Chapter-V of the MRTP Act.

5.4 It is further necessary to note, that under Chapter-VII of the MRTP Act, Section 125 contemplates compulsory acquisition of land needed for the purposes of the regional plan, development plan or town planning etc., and the land required, reserved or designated in the regional plan, development plan or town planning scheme, is deemed to be land needed for public purpose within the meaning of the Act of 2013. It is however material to note, that by virtue of the proviso, inserted by Maharashtra Act 42 of 2005, w.e.f. 29/08/2015, the procedure specified in Sections 4 to 15 of the Act of 2013 has been specifically excluded from its applicability in respect of such lands. It is only in respect of an acquisition, as provided under Section 126(1)(c) of the MRTP Act that the provisions of the Act of 2013 have been made applicable in view of Section 6(i)(b) of the Maharashtra Act 42 of 2015. It is thus apparent that there is no WP 340 of 2023.odt universal applicability of the Act of 2013 to proceedings under the MRTP Act.

5.5. A perusal of the Maharashtra Act 42 of 2015 would indicate, that the State Legislature, whileamending the MRTP Act by the MRTP (Third

Amendment) Act, 2015, has specifically provided for the applicability of the provisions of the Act of 2013 to specific provisions, namely Sections 48, 113-A, 116, 126, 128 and 129, as indicated therein and has intentionally, refrained from making it applicable to Chapter-V, which contain Sections 59 to 112 of the MRTP Act which would indicate that the exclusion, is intentional, and not otherwise.

5.6. The plea therefore that Chapter-V of the MRTP Act, would be governed by the provisions of theAct of 2013, is one, which is not spelt out either by the provisions of the Act of 2013 or the MRTP Act and therefore will have to be turned down.

Discrimination vis-à-vis- Article 14 and Sec.97 to 100 of the MRTP Act, being violative thereof.

6. The next challenge, is regarding the validity of Sections 97 to 100 of the MRTP Act, on the groundthat they create a separate class of owners of land and separate set of laws to award compensation to them, as compared to the provisions of the Act of 2013, which amounts to discrimination, both the classes, standing on the same footing, on account of acquisition of land. It is contended that in both the cases, land is being acquired and only the mode of awarding compensation is different, inasmuch as, in the case of a WP 340 of 2023.odt scheme under Chapter-V of the MRTP Act the compensation is to be calculated in the manner as provided in Section 97(1)(f),(g), Sections 98, 99 and 100, as against which, under the provisions of Sec.125 to 128 of the MRTP Act, the compensation is to be calculated in the manner as provided in the Act of 2013. It is contended also to be discriminatory in the sense that Chapter V of the MRTP Act, also contemplates acquisition of land, maybe by a different mode, as against which the Act of 2013, also provides for acquisition, which being beneficial, has to be applied. It is therefore, contended that this results in the creation of two classes as indicated above, wherein though the land is acquired, however, compensation is determined in different manner, which is discriminatory.

6.1. The basic question which requires consideration, is whether in a Town Planning Scheme, as isenvisaged under Chapter V of the MRTP Act, there is acquisition of land, in the sense of the phrase which

it normally indicates. In general parlance when one uses the phrase 'acquisition of land', it connotes that the land being owned by a person, is being taken over by the Land Acquisition officer, for the benefit of the acquiring body, on account of which compensation, as provided for is to be calculated and paid to the owner of the land. This therefore contemplates the owner of such land being divested of his title and possession in the land, which may be in respect of the total land or a part thereof, which thereupon vests in the acquiring body, for which compensation is paid or payable. Thus the divesting of title and possession vis-à-vis the compensation to be received for it, is the sine qua non, for such WP 340 of 2023.odt acquisition. This was the case under the provisions of the erstwhile Land Acquisition Act, 1894 and is also a case under the Act of 2913, with the Act of 2013, contemplating a further position of rehabilitation and resettlement, may be in cases, in addition to the compensation.

6.2. What is necessary to note, which is a peculiar feature in this case is that most of the areas ofMouza : Pardi, Bharatwada, Punapur and Bhandewadi, Tah: & Dist: Nagpur, for which the Town Planning Scheme under Chapter V of the MRTP Act, has been sanctioned/approved, are already constructed/built upon, in substantial parts, having houses, shops etc. The sanctioning /approval of the Town Planning Scheme, has therefore to be viewed in this factual background and so also in light of the provisions of sec.59(1)(a) of the MRTP Act, which contemplates a Town Planning Scheme, even for development of areas, which are also built upon.

6.3. In this regard, it is necessary to note that the scheme of Chapter-V of the MRTP Act, is similarto the scheme as was there under the Bombay Town Planning Act, 1955, which in turn is similar to the scheme under the Bombay Town Planning Act, 1915, the difference between the earlier two Acts being that by Chapter II of the Act of 1955 it was made obligatory upon every local authority to carry out a survey of the area within its jurisdiction and to prepare and publish in the prescribed manner a development plan and submit it to the Government for sanction which development plan was intended to lay down in advance the manner in which the development and improvement of the entire area within the WP 340 of 2023.odt

jurisdiction of the local authority were to be carried out and regulated. The difference between the Bombay Town Planning Act 1955 and the MRTP Act, is the additions of provisions under Chapter VII regarding land acquisition. The provisions of all the three Act, is so far as they contemplate preparation and implementation of a Town Planning Scheme, are almost similar in nature.

6.4. The Town Planning Scheme which was framed under the Bombay Town Planning Act, 1915,which was saved upon its repeal by sec.90(2) of the Bombay Town Planning Act, 1955, came up for consideration before a 5 Judges Bench of the Hon'ble Apex Court, in State of Gujrat / Shantilal Mangaldas, (1969) 1 SCC 509. The factual matrix considered was as under :

"3. By Resolution, dated April 18, 1927, the Borough Municipality of Ahmedabad, which was a local authority under the Bombay Town Planning Act, 1 of 1915, declared its intention to make a Town Planning Scheme known as "The City Wall Improvement Town Planning Scheme" in respect of a specified area. A plot of land No. 221, measuring 18,219 square yards, belonging to the first respondent was covered by the scheme. The Provincial Government sanctioned the intention to make the scheme, and a draft scheme was then prepared under which the area of plot No. 221 was reconstituted into two plots -- Plot No. 176, measuring 15,403 square yards reserved for the first respondent and Plot No. 178 measuring 2,816 square yards reserved for the local authority for constructing quarters for municipal employees. The draft scheme was sanctioned by the Government of Bombay on August 7, 1942. On August 13, 1942, the Government of Bombay appointed an arbitrator under Act, 1 of 1915, to decide matters set out in Section 30 of the Act. From time to time several arbitrators were appointed, but apparently little progress was made in the adjudication of matters to be decided by them under the Act.

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4. The Bombay Town Planning Act, 1 of 1915, was repealed by Section 90 of theBombay Town Planning Act, 27 of 1955, with

effect from April 1, 1957. By Section 90(2) making of any scheme commenced under the repealed Act was to be continued and the provisions of the new Act were to have effect in relation to the publication, declaration of intention, draft scheme, final scheme, sanction, variation, restriction, proceedings, suspension and recovery to be made or compensation to be given. The arbitrator appointed under Act, 1 of 1915, was designated "Town Planning Officer" under Act, 27 of 1955, and the proceedings under the City Wall Improvement Town Planning Scheme were continued before him. On August 23, 1957, the Town Planning Officer informed the first respondent that Rs 25,411 were awarded to him as compensation for Plot No. 178.

5. The first respondent then filed a petition in the High Court of Gujarat (which hadjurisdiction after reorganization of the State of Bombay) challenging the validity of Act, 27 of 1955, and acquisition of plot No. 178 on the plea that the Act infringed the fundamental right of the first respondent guaranteed by Article 31 (2) of the Constitution.

6. The scheme was sanctioned by the Government of Gujarat on July 21, 1965, andthe final scheme came into operation on September 1, 1965. The High Court entered upon an elaborate analysis of the provisions of the Act and held:

"Section 53, read with Section 67 insofar as it authorises acquisition of land by the local authority under pending schemes continued under Section 90 of the new Act must, therefore, be held to be violative of Article 31(2) and the acquisition of petitioners' lands in the various petitions under the City Wall Improvement Town Planning Scheme No. 5 must be held to be invalid", and on that view the High Court did not consider the other contentions raised on behalf of the first respondent. With certificate granted by the High Court, this appeal is preferred by the State of Gujarat."

The basic purpose for enactment of the provisions relating to the scheme were explained as under :

WP 340 of 2023.odt "8. The principal objects of the Town planning legislation are to provide for planned and controlled development and use of land in urban areas.

Introduction of the factory system into methods of manufacture, brought about a great exodus of population from the villages into the manufacturing centres leading to congestion and over-crowding, and cheap and insanitary dwellings were hurriedly erected often in the vicinity of the factories. Erection of these dwelling was generally subject to little supervision or control by local authorities, and the new dwellings were built in close and unregulated proximity with little or no regard to the requirements of ventilation and sanitation. Necessity to make a planned development of these new colonies for housing the influx of population in sanitary surroundings were soon felt. The Bombay Legislature enacted Act, 1 of 1915, with a view to remedy the situation."

The concept of how the scheme functions and operates was explained as under:

"11. Under Bombay Act, 27 of 1955, after a development plan is sanctioned, the local authority makes a declaration of its intention to make a scheme and then prepares a draft scheme setting out the size and shape of every reconstituted plot, so far as may be, to render it suitable for building purposes and where the plot is already built upon, to ensure that the building as far as possible complies with the provisions of the scheme as regards open space. The scheme may also make provision for lay out of lands; filling up or reclamation of lands, lay out of new streets, roads, construction, diversion, extension, alteration, improvement and stopping up of streets, roads and communications; construction, alteration and removal of buildings, bridges and other structures; allotment or reservation of lands for roads, open spaces, gardens, recreation grounds, schools, markets, green belts, dairies, transport facilities, and public purposes of all kinds, drainage, lighting, water-supply, preservation of objects of historical or national interest or beauty

and of buildings used for religious purposes, imposition of conditions relating to constructions and other matters not inconsistent with the object of the Act as may be prescribed. The draft scheme is published after it receives the sanction of the WP 340 of 2023.odt State Government. The State Government then appoints Town Planning Officer to perform the duties specified in Section 32 of the Act. An appeal lies to a Board of Appeal against certain decisions which the Town Planning Officer may make. After the Town Planning Officer has dealt with the various matters relating to the draft scheme, and the appeals against his orders have been disposed of, the State Government may sanction the scheme, and on the other the date fixed in the notification sanctioning the scheme, the Town Planning Scheme has effect as if it were enacted in the Act.

12. In making a Town Planning Scheme the lands of all persons covered by thescheme are treated as if they are put in a pool. Town Planning Officer then proceeds to reconstitute the plots for residential buildings and to reserve lands for public purposes. Reconstituted plots are allotted to the landholders. The reconstituted plots having regard to the exigencies of the scheme need not be of the same dimensions as the original land. Their shape and size may be altered and even the site of the reconstituted plot allotted to an owner may be shifted. The Town Planning Officer may lay out new roads, divert or close existing roads, reserve lands for recreation grounds, schools, markets, green belts and similar public purposes, and provide for drainage, lighting, water-supply, filling up or reclamation of low-lying, swamp or unhealthy areas or levelling up of land so that the total area included in the scheme may conduce to the health and well- being of the residents. Since the Town Planning Scheme is intended to improve the sanitary conditions prevailing in a locality, the owners of plots are required to maintain land open around their buildings. The object of the scheme here is to provide amenities for the benefit of the residents generally, the area in the occupation of the individual holders of land is generally reduced, for they have to contribute out of their plots,

areas which are required for maintaining the services beneficial to the community.

13. Under the Act the cost of the scheme is to be met wholly or in part bycontributions to be levied by the local authority on each plot included in the final scheme calculated in proportion to the increment which is estimated to accrue in respect of each plot.

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14. To ensure that no undue hardship is caused and owners of plots have anopportunity of raising objections to the provisions of the scheme including its financial provisions, power is conferred upon the Town Planning Officer to entertain and hear objections against the reconstitution of the plots and relating to matters specified in Section 32 i.e. the physical, legal and financial provisions of the scheme. Only after the objections have been heard and disposed of, the scheme is published and becomes final.

15. The relation between Sections 53 and 67 which have been declared ultra vires bythe High Court and the other related provisions may now be determined. Section 53 of the Act provides:

"On the day on which the final scheme comes into force, --

(a) all lands required by the local authority shall, unless it is otherwise determined insuch scheme, vest absolutely in the local authority free from all encumbrances;

(b) all rights in the original plots which have been re-

constituted shall determine and the re-constituted plots shall become subject to the rights settled by the Town Planning Officer."

The expression "re-constituted plot" is defined in Section 2(9) as meaning a plot which is in any way altered by the making of a Town Planning Scheme, and by the Explanation the word "altered" includes

alteration of ownership. By clause (b) of Section 53 ownership in a plot belonging to a person is substituted by the ownership in the reconstituted plot: his ownership in the original plot is extinguished and simultaneously therewith he becomes the owner of a reconstituted plot subject to the rights settled by the Town Planning Officer. On the coming into force of the scheme all lands which are required by the local authority, unless otherwise determined in the scheme, by the operation of Section 53(a), vest absolutely therein free from all encumbrances. The result is that there is a complete shuffling up of plots of land, roads, means of communication and rearrangement thereof. The original plots are reconstituted, their shapes are altered, portions out of plots are separated, lands belonging to two or more owners are combined into a single plot, WP 340 of 2023.odt new roads are laid out, old roads are diverted or closed up, and lands originally belonging to private owners are used for pubic purposes i.e. for providing open spaces, green belts, dairies etc. In this process the whole or part of a land of one person, may go to make a reconstituted plot, and the plot so reconstituted may be allotted to another person; and the lands needed for public purposes may be earmarked for those purposes.

16. The re-arrangement of titles in the various plots and reservation of lands for public purposes require financial adjustments to be made. The owner who is deprived of his land has to be compensated, and the owner who obtains a re- constituted plot in surroundings which are conducive to better sanitary living conditions has to contribute towards the expenses of the scheme. This is because on the making of a Town Planning Scheme the value of the plot rises and a part of the benefit which arises out of a unearned rise in prices is directed to be contributed towards financing of the scheme which enables the residents in that area to more amenities, better facilities and healthier living conditions. For that purpose provision is made in Section 65 that the increment shall be deemed to be the amount by which at the date of the declaration of intention to make a scheme, the market-value of a plot included in the final scheme, estimated on the assumption that the scheme has been completed, would exceed at that date, the market-value of the same plot estimated without reference to improvements contemplated by the scheme. By Section 66 the cost of the scheme is required to be met wholly or in part by contributions to be levied by the

local authority on each plot included in the final scheme calculated in proportion to the increment which is estimated to accrue in respect of such plot by the Town Planning Officer. Section 67 provides:

"The amount by which the total value of the plots included in the final scheme with all the buildings and works thereon allotted to a person falls short of or exceeds the total value of the original plots with all the buildings and works thereon of such person shall be deducted from or added to, as the case may be, the contributions leviable from such persons, each of such plots being estimated at its market-value at the date of the declaration of intention to make a scheme or the WP 340 of 2023.odt date of a notification under sub-section (1) of Section 24 and without reference to improvements due to the alteration of its boundaries."

Section 67, it will clearly appear, is intended to make adjustments between the right to compensation for loss of land suffered by the owner, and the liability to make contribution to the finances of the scheme; and Section 71 is a corollary to Section 67.

Section 71 provides:

"If the owner of an original plot is not provided with a plot in the final scheme or if the contribution to be levied from him under Section 66 is less than the total amount to be deducted therefrom under any of the provisions of this Act, the net amount of his loss shall be payable to him by the local authority in cash or in such other way as may be agreed upon by the parties."

17. The provisions relating to payment of compensation and recovery of contributions are vital to the successful implementation of the scheme. The owner of the reconstituted plot who gets the benefit of the scheme must make contribution towards the expenses of the scheme; the owner who loses his property must similarly be compensated. For the purpose of determining the compensation, the Legislature had adopted the basis of market-value of land expropriated, but the land is valued not on the date of extinction of the owner's interest, but on the date of the declaration of intention to make the Scheme.

As in the opinion of the High Court this pattern of computation of compensation infringed the fundamental right guaranteed under Article 31(2) of the Constitution, since the Act authorised compulsory transfer of ownership in land to the local authority for public purposes the High Court held, that it clearly falls within the terms of Article 31 (2-A) of the Constitution, and on that WP 340 of 2023.odt account there was acquisition of land within the meaning of Article 31(2) of the Constitution, and the Act is not protected by Article 31(5)(b)(ii). The High Court also held that that compensation based on the market-value may be sufficient specification of principle of compensation within Article 31(2) only if it is a just equivalent of the land expropriated and payment computed on the market-value at a date many years before the date on which the land was acquired was inconsistent with the constitutional guarantee under Article 31(2). P. Vajravelu Mudaliar v. Special Deputy Collector, Madras [(1965) 1 SCR 614 was also relied upon. It was also held that the Town Planning Act insofar as it provides for transfer of private rights of ownership to a local authority under Section 53 (a) was a law relating to acquisition of lands which attracts the protection of Article 31(2), and since the Act by Section 67 provides for compensation which is not a just equivalent in terms of money of the property expropriated it could not be upheld under Article 31(2) of the Constitution. Considering what had been held by the High Court, the Hon'ble Apex Court, then considering the language and mandate of Article 31 of the Constitution, held as under :

"It is settled law that clauses (1) and (2) under the amended Article guarantee different rights to owners of property. Clause (1) operates as a protection against deprivation of property save by authority of law, which, it is beyond question, must be a valid law i.e. it must be within the legislative competence of the State Legislature and must not infringe any other fundamental right.

Clause (2) guarantees that property shall not be acquired or requisitioned [except in cases provided by clause (5)] save by authority of law providing for compulsory acquisition or requisition and further providing for compensation for the property so acquired or requisitioned and either fixes the amount WP 340 of 2023.odt of compensation or specifies the principles on which, and the manner in which, the

compensation is to be determined and given. If the conditions for compulsory acquisition or requisition are fulfilled, the law is not liable to be called in question before the courts on the ground that the compensation provided by the law is not adequate. Clause (2A) is in substance a definition clause: a law which does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State is not to be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property.

22. The following principles emerge from an analysis of clauses (2) and (2-A): compulsoryacquisition or requisition may be made for a public purpose alone, and must be made by authority of law. Law which deprives a person of property but does not transfer ownership of the property or right to possession of the property to the State or a corporation owned or controlled by the State is not a law for compulsory acquisition or requisition. The law, under the authority of which property is compulsorily acquired or requisitioned, must either fix the amount of compensation or specify the principles on which, and the manner in which, the compensation is to be determined and given. If these conditions are fulfilled the validity of the law cannot be questioned on the plea that it does not provide adequate compensation to the owner.

23. It is common ground that a law for compulsory acquisition of property by a local authority forpublic purposes is a law for acquisition of property by the State within the meaning of that expression as defined in Article 12. The Act was reserved for the consideration of the President and received his assent on August 1, 1955, and since it provides expressly by Section 53(a) that on the coming into force of the scheme the ownership in the lands required by the local authority for public purposes shall, unless it is otherwise determined in such scheme, vest absolutely in the local authority free from all encumbrances, the clause contemplates transfer of ownership by law from private owners to the local authority.

WP 340 of 2023.odt It disagreed with the contention advanced on behalf of the State that because the object of the Act intended to

promote public health, it falls within the exception in Article 31(5)(a)(ii) of the Constitution. It then went on to hold that :

> 25. The first contention urged by Mr Bindra cannot, therefore, be accepted. But, inour judgment, the contention urged by Mr Bindra for the State of Gujarat and Mr Gupte for the Municipal Corporation that Sections 53, and 67 of the Act regarded as law for acquisition of land for public purposes do not infringe the fundamental right under Article 31(2) of the Constitution is acceptable, because the Act specifies principles on which compensation is to be determined and given.

Regarding the plea that compensation could only be in terms of money, while repelling the same, it held as under :

> 26. Article 31 guarantees that the law providing for compulsory acquisition mustprovide for determining the giving of compensation for the property acquired. The expression "compensation" is not defined in the Constitution. Under the Land Acquisition Act compensation is always paid in terms of money. But that is no reason for holding that compensation which is guaranteed by Article 31(2) for compulsory acquisition must be paid in terms of money alone. A law which provides for making satisfaction to an expropriated owner by allotment of other property may be deemed to be a law providing for compensation. In ordinary parlance the expression "compensation" means anything given to make things equivalent;

a thing given to or to make amends for loss, recompense, remuneration or pay; it need not therefore necessarily be in terms of money. The phraseology of the Constitutional provision also indicates that compensation need not necessarily be in terms of money, because it expressly provides that the law may specify the principles on which, and the manner in which, compensation is to be determined and "given". If it were to be in terms of money alone, the expression "paid" would have been more appropriate.

WP 340 of 2023.odt Considering the plea that reconstitution of the plot under the Town Planning Scheme, would constitute a transfer and the mode of determination of compensation, this is what has been held :

27. The principal argument which found favour with the High Court in holdingSection 53 ultra vires is that when a plot is reconstituted and out of that plot a smaller area is given to the owner and the remaining area is utilised for public purpose, the area so utilised vests in the local authority for a public purpose, and since the Act does not provide for giving compensation which is a just equivalent of the land expropriated at the date of extinction of interest, the guaranteed right under Article 31(2) is infringed. While adopting that reasoning counsel for the first respondent adopted another line of approach also. Counsel contended that under the scheme of the Act the entire area of the land belonging to the owner vests in the local authority, and when the final scheme is framed, in lieu of the ownership of the original plot, the owner is given a reconstituted plot by the local authority, and compensation in money is determined in respect of the land appropriated to public purposes according to the rules contained in Sections 67 and 71 of the Act. Such a scheme for compensation is, it was urged, inconsistent with the guarantee under Article 31(2) for two reasons -- (1) that compensation for the entire land is not provided; and (2) that payment of compensation in money is not provided even in respect of land appropriated to public use. The second branch of the argument is not sustainable for reasons already set out, and the first branch of the argument is wholly without substance. Section 53 does not provide that the reconstituted plot is transferred or is to be deemed to be transferred from the local authority to the owner of the original plot. In terms Section 53 provides for statutory re-

adjustment of the rights of the owners of the original plots of land. When the scheme comes into force all rights in the original plots are extinguished and simultaneously therewith ownership springs in the reconstituted plots. There is no vesting of the original plots in the local authority nor transfer of the rights of the local authority in the reconstituted plots. A part or even the whole plot belonging to an owner may go to form a reconstituted plot which may be allotted to another person, or may be appropriated to public purposes under the scheme

The source of WP 340 of 2023.odt the power to appropriate the whole or a part of the original plot in forming a reconstituted plot is statutory. It does not predicate ownership of the plot in the local authority, and no process -- actual or notional -- of transfer is contemplated in that appropriation. The lands covered by the scheme are subjected by the Act to the power of the local authority to re-adjust titles, but no reconstituted plot vests at any stage in the local authority unless it is needed for a purpose of the authority. Even under clause (a) of Section 53 the vesting in a local authority of land required by it is on the coming into force of the scheme. The concept that lands vest in the local authority when the intention to make a scheme is notified is against the plain intendment of the Act.

28. The object of Section 67 is to set out the method of adjustment of contribution againstcompensation receivable by an owner of land. By that section the difference between the total value of the plots included in the final scheme with all the buildings and works thereon allotted to a person and the total value of the original plot with all the buildings and works thereon must be estimated on the basis of the market-value at the date of the declaration of intention to make a scheme, and the difference between the two must be adjusted towards contribution payable by the owner of the plot included in the scheme. In other words, Section 67 provides that the difference between the market-value of the plot with all the buildings and works thereon at the date of the declaration of intention to make a scheme and the market- value of the plot as reconstituted on the same date and without reference to the improvements contemplated in the scheme is to be the compensation due to the owner. Section 71, which is a corollary to Section 67, provides, inter alia, that if the owner of the original land is not allotted a plot at all, he shall be paid the value of the original plot at the date of the declaration of intention to make a scheme.

While considering the issue as to whether the scheme of the Act which provides for adjustment of the market-value of land at the date of the declaration of intention of making a scheme against market-value of the land which goes to form the reconstituted plot, WP 340 of 2023.odt if any, specifies a principle for determination of compensation to be given within the meaning of Article 31(2) it was held as under :

29. The question that falls then to be considered is whether the scheme of the Act which provides foradjustment of the market- value of land at the date of the declaration of intention of making a scheme against market-value of the land which goes to form the reconstituted plot, if any, specifies a principle for determination of compensation to be given within the meaning of Article 31(2). Two arguments were urged on behalf of the first respondent -- (1) that the Act specifies no principles on which the compensation is to be determined and given; and (2) that the scheme for recompense for loss is not a scheme providing for compensation. It is true that under the Act the market-value of the land at the date of declaration of intention to make a scheme determines the amount to be adjusted, and that is the guiding rule in respect of all lands covered by the scheme. The High Court was, in our judgment, right in holding that enactment of a rule determining payment or adjustment of price of land of which the owner was deprived by the scheme estimated on the market- value on the date of declaration of the intention to make a scheme amounted to specification of a principle of compensation within the meaning of Article 31(2). Specification of principles means laying down general guiding rules applicable to all persons or transactions governed thereby. Under the Land Acquisition Act compensation is determined on the basis of "market-value" of the land on the date of the notification under Section 4(1) of that Act. That is a specification of principle. Compensation determined on the basis of market-value prevailing on a date anterior to the date of extinction of interest is still determined on a principle specified. Whether an owner of land is given a reconstituted plot or not, the rule for determining what is to be given as recompense remains the same. It is a principle applicable to all cases in which by virtue of the operation of the Town Planning Act a person is deprived of his land whether in whole or in part.

30. On the second branch of the argument it was urged that a provision for giving the value of land,nor on the date of extinction of interest of the owner, but on the footing of the WP 340 of 2023.odt value prevailing at the date of the declaration of the intention to make a scheme, is not a provision for payment of compensation. With special reference to the facts of the present case, it was said, that whereas the declaration of intention to make a scheme was made in 1927, the final

scheme was published in 1957, and a provision for payment of market-value prevailing in the year 1927 is not a provision for compensation. It is perhaps right to say that compensation cases should not be allowed to drag on for a long time, because then the compensation paid has no relevance to the exact point of time when the extinction actually takes place. But the validity of an Act cannot ordinarily be judged in the light of the facts in a given case.

On the plea that inadequacy of compensation could be a justifiable ground to challenge the validity of the legislation, this is what has been said :

> 47. Reverting to the amendment made in clause (2) of Article 31 by the Constitution (Fourth Amendment) Act, 1955, it is clear that adequacy of compensation fixed by the Legislature or awarded according to the principles specified by the Legislature for determination is not justiciable. It clearly follows from the terms of Article 31(2) as amended that the amount of compensation payable, if fixed by the Legislature, is not justiciable, because the challenge in such case, apart from a plea of abuse of legislative power, would be only a challenge to the adequacy of compensation. If compensation fixed by the Legislature -- and by the use of the expression "compensation"

we mean what the Legislature justly regards as proper and fair recompense for compulsory expropriation of property and not something which by abuse of legislative power though called compensation is not a recompense at all or is something illusory

-- is not justiciable, on the plea that it is not a just equivalent of the property compulsorily acquired, is it open to the Courts to enter upon an enquiry whether the principles which are specified by the Legislature for determining compensation do not award to the expropriated owner a just equivalent? In our view, such an enquiry is not open to the Courts under the statutes enacted after the amendments made in the Constitution by the Constitution (Fourth Amendment) Act. If the quantum of compensation fixed WP 340 of 2023.odt by the Legislature is not liable to be canvassed before the Court on the ground that it is not a just equivalent, the principles specified for determination of

compensation will also not be open to challenge on the plea that the compensation determined by the application of those principles is not a just equivalent. The right declared by the Constitution guarantees that compensation shall be given before a person is compulsorily expropriated of his property for a public purpose. What is fixed as compensation by statute, or by the application of principles specified for determination of compensation is guaranteed: it does not mean, however, that something fixed or determined by the applications of specified principles which is illusory or can in no sense be regarded a compensation must be upheld by the Courts, for, to do so, would be to grant a charter of arbitrariness, and permit a device to defeat constitutional guarantee. But compensation fixed or determined on principles specified by the Legislature cannot be permitted to be challenged on the somewhat indefinite plea that it is not a just or fair equivalent. Principles may be challenged on the ground that they are irrelevant to the determination of compensation, but not on the plea that what is awarded as a result of the application of those principles is not just or fair compensation. A challenge to a statute that the principles specified by it do not award a just equivalent will be in clear violation of the constitutional declaration that inadequacy of compensation provided is not justiciable.

49. In our view, Article 31(2) as amended is clear in its purport. If what is fixed or is determined by the application of specified principles is compensation for compulsory acquisition of property, the Courts cannot be invited to determine whether it is a just equivalent of the value of the property expropriated, in P. Vajravelu Mudaliar case the Court held that the principles laid down by the impugned statute were not open to question. That was sufficient for the purpose of the decision of the case, and the other observations were not necessary for deciding that case, and cannot be regarded as a binding decision.

Considering the position under the Bombay Town Planning Act, 1954, it held as under :

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52. Turning to the Bombay Town Planning Act, 1955, it was clear that the Legislaturehas specified principles for

determination of compensation which has to be adjusted in determining the amount of contribution. The principle for determination of compensation cannot be said to be irrelevant, nor can the compensation determined be regarded as illusory. Being a principle relating to compensation, in our judgment, it was not liable to be challenged. If what is specified is a principle for determination of compensation, the challenge to that principle on the ground that a just equivalent of what the owner is deprived is not provided is excluded by the plain words of Article 31(2) of the Constitution.

Considering a challenge that the legislation offended Article 19(1)(f) and 19(5) of the Constitution, it was held as under :

53. It was urged that in any event the statute which permits the property of an ownerto be compulsorily acquired by payment of market-value at a date which is many years before the date on which the title of the owner is extinguished is unreasonable. This Court has, however, held in Smt Sitabati Debi and Another v. State of West Bengal [(1967) 2 SCR 949] that a law made under clause (2) of Article 31 is not liable to be challenged on the ground that it imposes unreasonable restrictions upon the right to hold or dispose of property within the meaning of Article 19(1)(f) of the Constitution.

In Smt Sitabai Debi case [(1967) 2 SCR 949] an owner of land whose property was requisitioned under the West Bengal Land (Requisition and Acquisition) Act, 1948, questioned the validity of the Act by a writ petition filed in the High Court of Calcutta on the plea that it offended Article 19(1)(f) of the Constitution. This Court unanimously held that the validity of the Act relating to acquisition and requisition cannot be questioned on the ground that it offended Article 19(1)(f) and cannot be decided by the criterion under Article 19(5). Again the validity of the statute cannot depend upon whether in a given case it operates harshly. If the scheme came into force within a reasonable distance of time from the date on which the declaration of intention to make a scheme was notified, it could not be contended that fixation of compensation according to the scheme of Section 67 per se made the scheme invalid.

The fact that considerable time has elapsed since the declaration of intention to make a scheme, cannot WP 340 of 2023.odt be a ground for declaring the section ultra vires. It is also contended that in cases where no reconstituted plot is allotted to a person and his land is wholly appropriated for a public purpose in a scheme, the owner would be entitled to the value of the land as prevailing many years before the extinction of interest without the benefit of the steep rise in prices which has taken place all over the country. But if Section 71, read with Section 67 lays down a principle of valuation, it cannot be struck down on the ground that because of the exigencies of the scheme, it is not possible to allot a reconstituted plot to an owner of land covered by the scheme.

In respect of the plea that sec.53 and 67 of the Act of 1955, were violative of Article 14 of the Constitution, and therefore void, based upon P. Vajravelu Mudaliar case , it held as under :

55. One more contention which was apparently not raised on behalf of the first respondent before the High Court may be briefly referred to. Counsel contends that Sections 53 and 67 in any event infringe Article 14 of the Constitution and were on that account void. Counsel relies principally upon that part of the judgment in P. Vajravelu Mudaliar case which deals with the infringement of the equality clause of the Constitution by the impugned Madras Act. Counsel submits that it is always open to the State Government to acquire lands for a public purpose of a local authority and after acquiring the lands to vest them in the local authority. If that be done, compensation will be payable under the Land Acquisition Act, 1894, but says counsel, when land is acquired for a public purpose of a local authority under the provision of the Bombay Town Planning Act the compensation which is payable is determined at a rate prevailing many years before the date on which the notification under Section 4 of the Land Acquisition Act is issued. The argument is based on no solid foundation. The method of determining compensation in respect of lands which are subject to the town-

planning scheme is prescribed in the Town Planning Act. There is no option under that Act to acquire the land either under the Land

Acquisition Act or under the Town Planning Act. Once the draft town-planning scheme is sanctioned, the land becomes subject to the provisions of the Town Planning Act, and on the final town-planning scheme being sanctioned, by statutory WP 340 of 2023.odt operation the title of the various owners is readjusted and the lands needed for a public purpose vest in the local authority. Land required for any of the purposes of a town planning scheme cannot be acquired otherwise than under the Act, for it is a settled rule of interpretation of statutes that when power is given under a statute to do a certain thing in a certain way the thing must be done in that way or not at all: Taylor v. Taylor [(1876) 1 Ch D 426] . Again it cannot be said that because it is possible for the State, if so minded, to acquire lands for a public purpose of a local authority, the statutory effect given to a town planning scheme results in discrimination between persons similarly circumstanced. In P. Vajravelu Mudaliar case the court struck down the acquisition on the ground that when the lands are acquired by the State Government for a housing scheme under the Madras Amending Act, the claimant gets much smaller compensation than the compensation he would get if the land or similar lands were acquired for the same public purpose under the Land Acquisition Act, 1894. It was held that the discrimination between persons whose lands were acquired for housing schemes and those whose lands were acquired for other public purposes could not be sustained on any principle of reasonable classification founded on intelligible differentia which had a rational relation to the object sought to be achieved. One broad ground of distinction between P. Vajravelu Mudaliar case and this case is clear: the acquisition was struck down in P. Vajravelu Mudaliar case because the State Government could resort to one of the two methods of acquisition -- the Land Acquisition Act, 1894, and the Land Acquisition (Madras Amendment) Act, 1961 -- and no guidance was given by the Legislature about the statute which should be resorted to in a given case of acquisition for a housing scheme. Power to choose could, therefore, be exercised arbitrarily. Under the Bombay Town Planning Act, 1956, there is no acquisition by the State Government of land needed for a town planning scheme. When the Town Planning Scheme comes into operation the land needed by a local authority vests by virtue of Section 53(a) and that vesting for purposes of the guarantee under Article 31(2) is deemed

compulsory acquisition for a public purpose. To lands which are subject to the scheme, the provisions of Sections 53 and 67 apply, and the compensation is determined only in the manner prescribed by the Act. There are therefore two separate WP 340 of 2023.odt provisions one for acquisition by the State Government, and the other in which the statutory vesting of land operates as acquisition for the purpose of town planning by the local authority. The State Government can acquire the land under the Land Acquisition Act, and the local authority only under the Bombay Town Planning Act. There is no option to the local authority to resort to one or the other of the alternative methods which result in acquisition. The contention that the provisions of Sections 53 and 67 are invalid on the ground that they deny the equal protection of the laws or equality before the laws must, therefore, stand rejected.

6.5. The Town Planning Scheme under the Bombay Town Planning Act, 1955, again came for consideration before a learned 3 Judges Bench of the Hon'ble Apex Court in The Zandu Pharmaceutical Works / G. J. Desai, Civil Appeal No.1034/1967, decided on 28/8/1969, which came to be dismissed by relying upon Shantilal Mangaldas (supra).

6.6. The nature of the Town Planning Scheme, under the Act of 1955, again came up for consideration before a 5 Judges Constitutional Bench of the Hon'ble Apex Court, in Prakash Amichand Shah Vs. State of Gujarat and others, AIR 1986 SC 468 . The challenge raised to the provisions of the Bombay Town Planing Act, 1954, which provided for constituting a Town Planning Scheme, by providing reconstituted plots, the pleas of the provisions being violative of Article 31 (2) and 14 of the Constitution were again re-examined and the nature of the town planning scheme was reiterated as under :

19. In order to appreciate the contentions of the appellant it is necessary to look atthe object of the legislation in question as a whole. The object of the Act is not just acquiring a bit of land WP 340 of 2023.odt here or a bit of land there for some public purpose. It consists of several activities which have as their ultimate object the orderly development of an urban area. It envisages the preparation of a development plan, allocation of land for various private and public uses, preparation of a Town

Planning Scheme and making provisions for future development of the area in question. The various aspects of a Town Planning Scheme have already been set out. On the final Town Planning Scheme coming into force under Section 53 of the Act there is an automatic vesting of all lands required by the local authority, unless otherwise provided, in the local authority. It is not a case where the provisions of the Land Acquisition Act, 1894 have to be set in motion either by the Collector or by the Government.

20. The divesting of title takes place statutorily. Section 71 of the Act provides forpayment of compensation to the owner of an original plot who is not provided with a plot in the final scheme, or if the contribution to be levied from him under Section 66 of the Act is less than the total amount to be deducted therefrom under any of the provisions of the Act. Section 73 of the Act provides for payment due to be made to any person by the local authority by adjustment of account as provided in the Act.

Section 32 of the Act lays down the various duties and powers of the Town Planning Officer which he has to discharge and exercise for the benefit of the whole community. All his functions are parts of the social and economic planning undertaken and executed for the benefit of the community at large and they cannot be done in isolation. When such functions happen to be integral parts of a single plan which in this case happens to be an urban development plan, they have to be viewed in their totality and not as individual acts directed against a single person or a few persons. It is quite possible that when statutory provisions are made for that purpose, there would be some difference between their impact on rights of individuals at one stage and their impact at another stage. As we have seen in this very Act there are three types of taking over of lands -- first under Section 11, secondly under Section 53 and thirdly under Section 84 of the Act, each being a part of a single scheme but each one having a specific object and public purpose to be achieved. While as regards the determination of compensation it may be possible to apply the provisions of the Land Acquisition Act, 1894 with some WP 340 of 2023.odt modification as provided in the Schedule to the Act in the case of lands acquired either under Section 11 or under Section 84 of the Act, in the case of lands which are needed for the

local authority under the Town Planning Scheme which authorises allotment of reconstituted plots to persons from whom original plots are taken, it is difficult to apply the provisions of the Land Acquisition Act, 1894. The provisions of Section 32 and the other financial provisions of the Act provide for the determination of the cost of the scheme, the development charges to be levied and contribution to be made by the local authority etc. It is only after all that exercise is done the money will be paid to or demanded from the owners of the original plots depending on the circumstances governing each case. If in the above context the Act has made special provisions under Sections 67 to 71 of the Act for determining compensation payable to the owners of original plots who do not get the reconstituted plots it cannot be said that there has been any violation of Article 14 of the Constitution. It is seen that even there the market value of the land taken is not lost sight of. The effect of the provisions in Sections 67 to 71 of the Act has been explained by this Court in Maneklal Chhotalal v. M.G. Makwana [AIR 1967 SC 1373 :

(1967) 3 SCR 65] and in State of Gujarat v. Shantilal Mangaldas [(1969) 1 SCC 509 : AIR 1969 SC 634 : (1969) 3 SCR 341] .

The plea that it was possible to acquire the land either under the Land Acquisition Act, 1894 which is more favourable to the owner of the land from the point of view of procedural safeguards and compensation, which includes payment of solatium and appeals being provided, were turned down in view of what had been held in Zandu Pharmaceutical Works Ltd. (supra).

It also opined that what was held in Shantilal Mangaldas (supra) did not suffer from any constitutional infirmity.

25. Thus it is seen that all the arguments based on Article 14 and Article 31(2) of the Constitution against the Act were repelled by the Constitution Bench in the State of Gujarat v. Shantilal WP 340 of 2023.odt Mangaldas [(1969) 1 SCC 509 : AIR 1969 SC 634 : (1969) 3 SCR 341] . With great respect, we approve of the decision of the court in this case.

In so far as the plea as to the provisions of the scheme being bad in law, on account of non-applicability of the land Acquisition Act, it was held as under :

33. We do not also find any substance in the allied contention that if the LandAcquisition Act, 1894 had been applied, the appellant would have had the benefit of the machinery provided under Sections 18 and 54 of the Land Acquisition Act, 1894 and since it is not available under the procedure prescribed by the Act in the case of lands taken under Section 53 thereof the Act is discriminatory. If the Land Acquisition Act, 1894 had been applicable, then all the procedural and substantive provisions would have no doubt become applicable. We have already held that the Act is not bad for not extending the procedure of the Land Acquisition Act, 1894 to the proceedings under the Town Planning Scheme. For the reasons already given above in this judgment we do not find it possible to strike down the scheme on this ground.

The plea of denial of solatium as being a ground for creating a discrimination was also considered and turned down :

34. It was next contended that the denial of the solatium of 15 per cent (or 30 percent, as the law now is) of the market value of the land in addition to the compensation payable for lands taken by the local authority for purposes of the Scheme makes the Act discriminatory. Reliance is placed on the decision of this Court in Nagpur Improvement Trust v. Vithal Rao [(1973) 1 SCC 500 : AIR 1973 SC 689 : (1973) 3 SCR 39] in which it is held that the different terms of compensation for land acquired under two Acts would be discriminatory. In that case the petitioner was a tenant of some field in a village. He had applied to the Agricultural Land Tribunal under a local Act for fixing the purchase price of the said field. The land in question however was acquired under the Nagpur Improvement Trust Act, 1936.

WP 340 of 2023.odt Aggrieved by the said acquisition he filed a writ petition in the High Court of Bombay, Nagpur Bench, challenging the validity of the Nagpur Improvement Trust Act, 1936 on various grounds

one of the grounds being that the said Act empowered the acquisition of the land at prices lower than those payable under the Land Acquisition Act, 1894. He urged that the denial of the solatium at 15 per cent of the market value was discriminatory. The High Court held that as the acquisition was by the State in all cases where the property was required to be acquired for the purposes of a scheme framed by the Trust and such being the position, it was not open to the State to acquire any property under the provisions of the Land Acquisition Act, 1894 as amended by the Improvement Trust Act without paying the solatium also. It was therefore held by the High Court that the paras 10(2) and 10(3) insofar as they added a new clause 3(a) to Section 23 and a proviso to sub-section (2) of Section 23 of the Land Acquisition Act, 1894 were ultra vires as violating the guarantee of Article 14 of the Constitution. On appeal the judgment of the High Court was affirmed by this Court by the above decision. The provision under consideration in the above decision corresponds to Section 11 and to Section 84 of the Act, which we are now considering. Section 59 of the Nagpur Improvement Trust Act, 1936 provided that the Trust might, with the previous sanction of the State Government acquire land under the provisions of the Land Acquisition Act, 1894 as modified by the provisions of the said Act for carrying out any of the purposes of the said Act. But the provisions which are questioned before us are of a different pattern altogether. They deal with the preparation of a scheme for the development of the land. On the final scheme coming into force the lands affected by the scheme which are needed for the local authority for purposes of the scheme automatically vest in the local authority. There is no need to set in motion the provisions of the Land Acquisition Act, 1894 either as it is or as modified in the case of acquisition under Section 11 or Section 84 of the Act. Then the Town Planning Officer is authorised to determine whether any reconstituted plot can be given to a person whose land is affected by the scheme. Under Section 51(3) of the Act the final scheme as sanctioned by the Government has the same effect as if it were enacted in the Act. The scheme has to be read as part of the Act. Under Section 53 of the Act all rights of the private owners in the original plots would WP 340 of 2023.odt determine and certain consequential rights in favour of the owners would arise therefrom. If in the scheme, reconstituted or final

plots are allotted to them they become owners of such final plots subject to the rights settled by the Town Planning Officer in the final scheme. In some cases the original plot of an owner might completely be allotted to the local authority for a public purpose. Such private owner may be paid compensation or a reconstituted plot in some other place. It may be a smaller or a bigger plot. It may be that in some cases it may not be possible to allot a final plot at all. Sections 67 to 71 of the Act provide for certain financial adjustments regarding payment of money to the local authority or to the owners of the original plots. The development and planning carried out under the Act is primarily for the benefit of public. The local authority is under an obligation to function according to the Act. The local authority has to bear a part of the expenses of development. It is in one sense a package deal. The proceedings relating to the scheme are not like acquisition proceedings under the Land Acquisition Act, 1894. Nor are the provisions of the Land Acquisition Act, 1894 made applicable either without or with modifications as in the case of the Nagpur Improvement Trust Act, 1936. We do not understand the decision in Nagpur Improvement Trust case [(1973) 1 SCC 500 : AIR 1973 SC 689 : (1973) 3 SCR 39] as laying down generally that wherever land is taken away by the government under a separate statute compensation should be paid under the Land Acquisition Act, 1894 only and if there is any difference between the compensation payable under the Land Acquisition Act, 1894 and the compensation payable under the statute concerned the acquisition under the statute would be discriminatory. That case is distinguishable from the present case. In State of Kerala v. T.M. Peter [(1980) 3 SCC 554 : AIR 1980 SC 1438 : (1980) 3 SCR 290] also Section 34 of the Cochin Town Planning Act which came up for consideration was of the same pattern as the provision in the Nagpur Improvement Trust Act, 1936 and for that reason the court followed the decision in the Nagpur Improvement Trust case [(1973) 1 SCC 500 : AIR 1973 SC 689 : (1973) 3 SCR 39] . But in that decision itself the court observed at pp. 302 and 303 thus : (SCC p. 564, para 21) "We are not to be understood to mean that the rate of compensation may not vary or must be uniform in all WP 340 of 2023.odt cases. We need not investigate this question further as it does not arise here although we are clear in our mind that under given circumstances differentiation

even in the scale of compensation may comfortably comport with Article 14. No such circumstances are present here nor pressed."

6.7. As indicated above the provisions of the Bombay Town Planning Act, 1954 and those of the MRTP Act, which relate to the Town Planning Scheme as contained in Chapter V, are similar as has been examined and held in the above judgments and therefore what has been held in Shantilal Mangaldas (supra) and Prakash Amichand Shah (supra) would equally be applicable to the Scheme under Chapter V of the MRTP Act, 1966.

6.8. In Laxminarayan R. Bhattad / State of Mah (2003) 5 SCC 413, while considering the claim for entitlement of additional FSI in the form of Transferable Development Rights (TDR) under the Development Control Regulations, in respect of lands falling under a Town Planning Scheme under Chapter V of the MRTP Act, though the scheme, only provided for grant of FSI for the area gone under the road to the extent of 40% of the final plot area, provided the original plot was included in the sanctioned scheme and the final plot allotted also formed part of the original plot, it has been held as under :

51. The said Scheme does not refer to grant of any TDR and it will bear repetition to state that the development permission was required to be strictly scrutinized in accordance with the sanctioned Development Control Regulations. A direction of the State Government in terms of Section 154 of the Act cannot supersede the statutory provisions contained either in the main WP 340 of 2023.odt enactment or the statutory regulations. The State of Maharashtra had absolutely no jurisdiction to issue any directive contrary to the statute or the statutory regulations. Once the draft scheme became final, the provisions thereof shall prevail over the provisions of the Regulations in terms of the proviso appended to sub-regulation (2) of Regulation 1 of the 1991 Regulations. In such event, the doctrine of "relating back" shall apply. As indicated hereinbefore, in terms of the provisions of the said Act the arbitrator's award became final. The directive of the State Government could have been enforced till the Scheme received sanction and was made final but not thereafter.

Furthermore, Regulations 33 and 34 of the 1991 Regulations provide for enabling provisions. No legal right to get additional TDR was created thereby. The appellants merely had a right to be considered. The said Regulations confer wide discretionary power on the part of the authorities. Each case was required to be considered on its own merit.

58. Had the Scheme been not sanctioned, possibly the appellants could have claimed the TDR benefit in lieu of compensation. It is further incorrect to contend that Rule 10(2) of the 1967 Rules and TP Scheme Regulations are applicable by way of reference.

64. By reason of the provisions contained in Section 88 of the Act, Original Plot No. 433 vested in the State whereas Final Plot Nos. 694 and 713 became the property of the appellants. Title on the land having been conferred under a statute, it is idle to contend that there is no automatic vesting.

68. In terms of the provisions of the Act, the statutory vesting took place only upon sanctioning of the Scheme in terms of Section 88 thereof and not prior thereto, wherefor the amount of compensation as determined by the arbitrator would be payable to the appellants.

Laxminarayan R. Bhattad (supra) therefore after considering Shantilal Mangaldas (supra), holds that had the scheme not been sanctioned and the statutory vesting had not taken place upon sanctioning of the Scheme in terms of Section WP 340 of 2023.odt 88 MRTP Act, then the benefit of additional FSI in the form of TDR could have been available to the party, however, once the scheme is sanctioned under sec.88, only those benefit as are provided in the scheme could be availed of and nothing else. The statutory vesting under sec.88 of the MRTP Act, upon sanction of the scheme is therefore of significance.

6.9. The issue thereafter has been considered by the Division Bench of this Court in Pukhrajmal Sagarmal Lunkad / Municipal Council Jalgaon 2004 SCC Online Bom 1161, in which considering the provisions of

Chapter VII of the MRTP Act, which provided for acquisition, the following questions were framed :

" 8. On the aforesaid fact situation, the following points emerge for adjudication:--

(I) Whether Chap. V of the M.R.T.P. Act, is a self contained Code, providing for payment of compensation and vesting the title of the lands in the Planning Authority; (II) Whether s. 126 of the M.R.T.P. Act could be brought into play, in regard to the lands reserved for public purpose in the Town Planning Scheme;

(III) Whether the petitioner is entitled to claim market value of the land and otherbenefits, such as Solatium etc., as is contemplated by the provisions of the Land Acquisition Act, though his land forms part of the Town Planning Scheme;

(IV) Whether s. 127 of the Act, is available to the owner of a land reserved for publicpurpose, under a Town Planning Scheme;

(V) By non-application of ss. 126 and 127 of the Act, whether the petitioners' right toequality under art. 14 of the Constitution of India is abridged and violated.

WP 340 of 2023.odt After considering Shantilal Mangaldas (supra) it was held that:

21. Section 88 of the M.R.T.P. Act is almost the same as s. 53 of the B.T.P. Act. So far as cl. (a) is concerned, it is identical. The vesting of lands, required by the Planning Authority, in the Planning Authority (or Local Authority under the B.T.P. Act) has undergone no change.

23. Comparison of the entire scheme, in regard to Town Planning Scheme under theM.R.T.P. Act and the repealed B.T.P. Act would reveal a striking similarity. What is true of a provision under the B.T.P. Act is equally true in relation to the similar provision in the M.R.T.P. Act. The M.R.T.P. Act is modelled on the same pattern as B.T.P. Act.

24. Under the M.R.T.P. Act, the Town Planning Schemes are prepared and finalisedin the same manner as was done under Bombay Town Planning Act.

25. It is as such evident that the judgments delivered by the Supreme Courtinterpreting the provisions of the B.T.P. Act would hold good while interpreting the similar provisions in the M.R.T.P. Act. Bearing this position in mind, we proceed to deal with the points raised in this petition. As point Nos. (II), (III) and (V) overlap, we will consider the same collectively.

Prakash Amichand Shah v. State of Gujarat (supra) and Zandu Pharmaceuticals Works Ltd. v. G.J. Desai (supra) were considered and the following was said :

32. The correctness of the view in Shantilal's case (supra) came for consideration before the Bench, comprising of 5 Judges of the Supreme Court, in the case of Prakash Amichand Shah v. State of Gujarat, [(1986) 1 SCC 581 : AIR 1986 SC 468 : 1986 (1) S.C.J.

106.] and affirming the view taken in Shantilal's case the Apex Court held that lands which are subject to the scheme, provisions of ss. 53 and 67 of the B.T.P. Act, apply and the compensation is determined only in the manner prescribed by the Act. Placing reliance on a Judgment in Zandu Pharmaceuticals Works Ltd. v.

G.J. Desai, [Civil Appeal No. 1034 of 1967, decided on WP 340 of 2023.odt 28.8.1969.] the Apex Court, quoted the following observations with approval:

"There are two separate provisions, one for acquisition of land by the State Government under the Land Acquisition Act and the other for acquisition for the purpose of town planning by the Local Authority under the Bombay Town Planning Act.

There is no option to the Local Authority to resort to one or the other of the alternative methods which results in acquisition."

The following answers were given :

37. Applying the ratio laid down in the above judgments, it is crystal clear that Chapter V of the M.R.T.P. Act, is a self contained Code providing for payment of compensation and vesting of the title of the lands in the Planning Authority. The petitioners are not entitled to claim that their lands ought to be acquired under the Land Acquisition Act. When the land forms part of the Town Planning Scheme, applicability of the provisions of the Land Acquisition Act, is excluded and the petitioners cannot contend that denial of applicability of the Land Acquisition Act, while acquiring the land, needed for public purpose by the Planning Authority, by virtue of operation of s. 88 of the M.R.T.P. Act, results in violation of the fundamental right contained in art. 14 of the Constitution of India.

40. In our considered view, reference to the scheme in s. 126, providing foracquisition could only be resorted to, in relation to the cases covered by the exclusionary clause used in s. 88(a) of the Act, viz. "unless it is otherwise determined in such scheme" .

Though s. 88(a) provides for absolute vesting of all lands in the Planning Authority, which are required by the Planning Authority, the said provision carves out an exception when a contrary order is passed by the Arbitrator or the Tribunal, in which case the decision of the Arbitrator/Tribunal would prevail. To us, it appears that when it is otherwise determined in a scheme, that the land shall not vest in the Planning Authority, in such a situation, s. 126 could apply and enable acquisition of the lands by the Planning Authority, even though the scheme WP 340 of 2023.odt provides otherwise. If so read, there is no conflict between ss. 88 and 126 and both the sections stand harmoniously construed. Section 126 is also not rendered redundant even in respect of Town Planning Scheme. In this view of the matter, we hold that s. 126 of the Act does not ordinarily apply to the lands reserved for public purpose in the Town Planning Scheme, except when it is otherwise provided for under the scheme.

41. The next limb of submission canvassed by the learned Counsel for the petitioner is that s. 127, ifapplied to the lands covered by the Town Planning Scheme, the petitioner had issued a

notice as contemplated by the said section to the Planning Authority and despite service, within six months from the date of service of notice, neither the land is acquired, nor any steps are taken for its acquisition and as a result thereof the reservation shall be deemed to have lapsed and thereupon the land shall be deemed to be released from such reservation and shall be available to the owner for the purpose of development, as otherwise permissible in case of adjacent land under the relevant plan. Reading of s. 127 makes it clear that s. 127 provides for lapsing of reservation only in regard to land reserved in final Regional Plan, or final Development Plan. The said section does not deal with reservations made under the Town Planning Scheme. There is no reference to Town Planning Scheme. Plain reading of s. 127 makes it amply clear that lands reserved for public purpose, under the Town Planning Scheme, is not capable of being dereserved by following the course laid down under s.

127. The learned Counsel for petitioners then submitted that by necessary implication, the Court should read 'Town Planning Scheme' in s. 127. As the language of the section is plain, there does not arise any occasion to interpret the section differently, by supplementing the words Town Planning Scheme in the section. In our view, there is no ambiguity in s. 127, requiring any interpretation, whatsoever. In the result, point No. IV is accordingly answered. In the result, writ petition fails and the same is dismissed. Rule is discharged. There shall be no orders as to costs.

In Pukhrajmal Sagarmal Lunkad (HC-supra), the learned Division Bench of this Court, has thus considered all contentions regarding applicability of Chapter VII of the MRTP Act, to a Town WP 340 of 2023.odt Planning Scheme as framed under Chapter V and has categorically held that unless the Town Planning Scheme as framed under Chapter-V, so provided, the provisions of Chapter VII, regarding acquisition would not be applicable. This was carried to the Hon'ble Apex Court by the unsuccessful petitioner. Reiterating the position that the provisions of Chapter -V of the MRTP Act, are a complete code in itself and considering the finality as indicated by sec.88 of the MRTP Act, the SLP came to be dismissed (see Pukhrajmal Sagarmal Lunkad v. Municipal Council, Jalgaon, (2017) 2 SCC 722).

6.10. The same issue came up before another learned Division Bench of this Court in Zahir Jahangir Vakil (supra) in which also a plea of discrimination was raised regarding the land forming part of the town planning scheme and the compensation being claimed to be required to be paid to landowner for the land acquired under the Land Acquisition Act, in which also the similarity of the provisions of the Bombay Town Planning Act, 1954 and those of the MRTP Act, 1966 was noted and after considering Shantilal Mangaldas and Amichand Shah (supra), it has been held as under :

> 24. The argument of the learned counsel for the petitioner that the provisions of section 126 also apply to the Town Planning scheme is based on two premises. Firstly, that in the setting of the Scheme and arrangement of the provisions of section 126 appears subsequent to the provisions of Chapter V being Sections 59 to 112 providing for the town planning scheme including the provisions of section 88 providing for vesting of the land on the said scheme being sanctioned. It is thus argued that obviously therefore the provisions of section 126 must apply even in respect of the properties which are sought to be acquired under the provisions of the Town Planning Scheme.

WP 340 of 2023.odt To consider this submission of the learned counsel it is necessary to consider the setting of the provisions and the scheme thereof. Firstly, Chapter V provides for provisions relating to permission and sanction of the town planning scheme. Section 59 contemplates preparation and contents of the town planning scheme. It provides for various proposals to be specified while drafting a town planning scheme. Under section 61, a Planning authority in consultation with the Director of Town Planning is required to make a draft scheme for the area in respect of which a declaration has to be made. Section 64 of the Act provides for the contents of such a draft scheme. Section 64(b) of the said Act provides for reservation, acquisition or allotment of land required for the purpose of preparation of the town planning scheme under section 59. It also provides for putting a similar land use for various purposes. Section 65 provides for reconstitution of the plot and also further provides for draft of the scheme to contain various proposals in respect of reconstitution of such plots. This provision also

empowers the State Government to provide for transferring ownership of a plot of land under the said scheme. Under section 67, the Government is obliged to invite objections to the draft scheme and under section 68 the parties are required to sanction the draft scheme. The said draft scheme can be sanctioned by the State Government with or without modification pursuant to the objections received under the provisions of section 67. Once under sub- section (3) of S.67 State Government sanctions the draft scheme then it shall be published for inspection to the various parties as a proposed final scheme. However, the same has not yet been brought into effect because the same is not yet finalised and sanctioned. Under section 69 once a town planning scheme is declared then in that event in respect of the land covered under such scheme, the user is required to be confined to the prescribed user under such town planning scheme. The provision further provide for appointment of an arbitrator under section 72 and requires to determine the various rights of the parties under such town planning scheme. While determining the rights under sub- section (3) of section 72 the arbitrator is required to estimate the value of the original plots as well as final plot and fix the difference between the value between the original and final plot and such difference is required to be included in the final scheme in accordance with the provisions WP 340 of 2023.odt contained in clause (f) of sub-section (1) of section 97. The arbitrator is also required to estimate the compensation which will be payable for the loss of the area of the original plot in accordance with the provisions contained in clause (f) of subsection (1) of section 97. Thus, under section 72 the arbitrator exercises and undertakes the valuation of the original plot, the price of the final plot which will be the market value after taking into account the benefits derived by such final plot holder. Thereafter the provisions of appeal are prescribed under section 74 before the Tribunal. In an event if there is a dispute as to the quantum of compensation fixed by the arbitrator a person can prefer such an appeal. Section 75 provides that a Civil Judge, Senior Division or Principal Judge of the Bombay City Civil Court has to be appointed by the State Government constituting such an Arbitral Tribunal. It is thereafter under section 86 a final scheme is required to be sanctioned by the State Government. Section 86 the MRTP Act, 1966 provides that in a period of four months from the date of receipt of the final scheme

under section 82 of the Act from the Arbitrator that the Government is required to issue a notification in the official gazette sanctioning the said final scheme and only on such sanction being granted the said final town planning scheme comes into operation and consequently under section 88 the property vests in the State Government absolutely and free of encumbrances. In our view, the scheme of the Act in so far as pertains to Town Planning Scheme are concerned falls into three parts : (i) draft town planning scheme, (ii) proposed final town planning scheme and

(iii) Sanctioned town planning scheme. In our view, the scheme of the Act further indicates that the provisions of town planning scheme contained in Chapter V of the Act is a self-operative complete scheme by itself. It is like a self contained code. Thus, for the purpose of the compensation in respect of plots of land covered under the scheme and reserved or utilised for the public purpose under the scheme the respondents are liable to resort to the provisions of S.126 of MRTP Act, 1966 and consequently acquire the same under Land Acquisition Act, 1894. The words town planning scheme used under the provisions of sub-section (2) of Section 126 is in respect of the town planning scheme which is yet not become final and sanctioned in exercise of power under section 86 by the State Government though published as final scheme for inviting objections under S.67 of WP 340 of 2023.odt the MRTP Act, 1966. Thus, the provisions of section 126(2) providing for acquisition of the land will apply prior to the said town planning scheme is finally sanctioned under the provisions of Section 86 of the said Act of 1966. The said provisions are provided for as enabling provisions because if the planning authority desires to acquire the land under section 88(c) then such an enabling power is provided for by virtue of sub section (2) of section 126 of the said MRTP Act, 1966. On such exercise under S.126 of power the planning authority can acquire a land even before the final scheme is sanctioned under provision of S.86 of the Act. These enabling provisions are provided for to take into an emergent eventualities where due to exigencies the State Government cannot wait till completion of entire procedure prescribed under Chapter V and land is required for any urgent public purpose. Once such a method is applied then in that event the land will be acquired by applying section 126(2) of the said Act read with section 6

of the Land Acquisition Act. It is so because unless the final town planning scheme is sanctioned the property does not vest in the State Government under section 88(a) of the Act. Once the town planning scheme is finally sanctioned under section 96 and compensation is finally determined by the decision of the Arbitrator and the property vests under the provisions of section 88 in the State Government, the question of resorting thereafter to a further acquisition under section 126(2) in our opinion would not arise. We are of the further opinion that if the provisions of section 126(2) are read as an additional requirement in chapter V providing for town planning scheme then in that event even after the vesting of the land in the State Government under section 88 the State Government will have to resort to acquisition proceedings under section 126(2) of the said MRTP Act 1966. In our opinion, such a construction of the scheme would be an absurd interpretation and make the whole scheme of the town planning meaningless.

We are inclined to hold so for one more reason i.e. the provisions of section 72 provides for computation of compensation. Though the method of computation of compensation is different than what is prescribed and provided for under the Land Acquisition Act. Under Section 72 of the MRTP Act, 1966, a method of compensation which is provided for is that the original plot holder surrenders his plot in the said WP 340 of 2023.odt town planing scheme. The market value of the said plot of land is computed. The said town planning provides for improvement and betterment in respect of the said land. Thus, the betterment charges which are spent on the improvement of the town planning scheme are also required to be computed. Therefore, the reconstituted plots which are allotted to the original plot holders have to be computed on the basis of the potential market value of such developed land. The difference between the two is claimed as and by way of betterment charges by the State Government. In an event where a person in reconstitution of the plot receives a smaller plot of land then in that event his loss is taken care of while computation of compensation under section 72 of the Act. It is because the market value of the original plot which is surrendered is taken into consideration for computation while arriving at the final amount payable or receivable under the scheme. The entire plot of land which he was holding prior to its surrender is considered for computation of

compensation though on the basis of market value of undeveloped land. Simultaneously the market value of the reconstituted plot which is allotted in lieu of original plot of land is taken into consideration while determining the amount of compensation payable to him, if any. Thus, the difference is arrived at which takes into consideration (i) the potential higher value of the land in new scheme and secondly it takes into consideration the loss of area of the owner of the property under the scheme. These two effects are thereafter set off and plus or minus figures are arrived at by the Arbitrator which are either payable by the State Government to the plot holder or it has to be paid by the plot holder to the State Government. Once such computation of a compensation is prescribed under section 72 of the Act itself, we fail to see how once again compensation has to be computed by resorting to section 126(2) read with the provisions of the Land Acquisition Act. Therefore, we are of the view that the provisions of section 126 can only apply when the scheme is still not sanctioned and the compensation of the arbitrator is either yet not arrived at or if arrived at it is not yet accepted by the State Govt. by granting a sanction to the town planning scheme as a final town planning scheme under the Act. We are, therefore, of the view that the contentions raised by both the learned counsel for the petitioners pertaining to the interpretation of section 126 of the said Act of 1966 is incorrect and erroneous. We hold that WP 340 of 2023.odt in cases where town planning scheme is already sanctioned and the property vests in the State Government under section 88(a) of the said Act, the question of resorting to section 126(2) of the said Act of 1966 cannot and does not arise.

The Division Bench in Zahir Jahangir Vakil (supra) thus held that where town planning scheme is already sanctioned and the property vests in the State Government under section 88(a) of the said Act, the question of resorting to section 126 (2) of the said Act of 1966 cannot and does not arise, as on the day when the final scheme came into force, all lands under the town planning scheme vested absolutely in the State, though it held that before such vesting, it was possible to consider a plea of applicability of the provisions of Sec.126 of the MRTP Act, to the lands under the Town Planning Scheme. This has to be construed in light of the language of sec.88 of the MRTP Act, as it stood then, which were as under :

"88. On and after the day on which a final scheme comes into force--

(a) all lands required by the Planning Authority shall, unless it is otherwisedetermined in such scheme, vest absolutely in the Planning Authority free from all encumbrances;

(b) all rights in the original plots which have been reconstituted shall determine andthe reconstituted plots shall become subject to the rights settled by Arbitrator;

(c) the Planning Authority shall hand over possession of the final plots to the ownersto whom they are allotted in the final scheme."

Pukhrajmal Sagarmal Lunkad (supra), was not considered, as it does not appear to have been brought to the notice of the learned Division Bench. The view in Zahir Jahangir Vakil (supra) has been WP 340 of 2023.odt considered and relied by another Division Bench of this Court in Atmaram / Nagpur Municipal Corporation, W. P. No.1986/2010 decided on 19/11/2010.

6.11. The issue thereafter came up for consideration in Jayesh Dhanesh Goragandhi, (2012) 13 SCC 305, in which the what has been held in State of Gujrat / Shantilal Mangaldas ; Prakash Amichand Shah /State of Gujrat and Zandu Pharmaceuticals (supra) has been followed and the following position was pointed out :

35. The town planning scheme envisaged under the MRTP Act is, therefore, a code by itself and the provisions relating to compensation are inbuilt in the scheme itself. The provisions of the town planning scheme provide for computation of compensation by the arbitrator and if a party is aggrieved by the determination of compensation by the arbitrator, a party has a right of appeal before the Tribunal under the provisions of the MRTP Act. On the final scheme being sanctioned by the State Government under Section 88(a), the property vests free from all encumbrances in the State Government and all rights of the original holders in the original plot of land stand extinguished, the rights of the parties are those

governed by the provisions of the said scheme and cannot be dealt with outside the scheme.

47. The judgments referred to above as well as the judgment in Laxminarayan [(2003) 5 SCC 413] would clearly indicate that the scheme of town planning under the MRTP Act is a code by itself, which has a provision for determination of compensation, right of appeal, dispute resolution mechanism, etc. On a detailed survey of the provisions of the MRTP Act and the related judgments interpreting the provisions of the Bombay Town Planning Act and the MRTP Act, it may be noted that the provisions of scheme contained in Chapter V of the Act is a self-operative scheme by itself.

49. Once the town planning scheme is finally sanctioned under Section 86, compensation is finallydetermined by the arbitrator, the property vests under Section 88 in the State Government, then there is no question of resorting to further acquisition under Section 126(2) of the Act. The words "town planning scheme" used in Section 126(2) is in respect of the town planning scheme which is yet to be finalised and sanctioned under Section 86 by the State Government as a final scheme for inviting objections under Section 67 of the Act. The provisions of Section 126(2) providing for acquisition of land, therefore, will apply only prior to the town planning scheme is finally sanctioned under the provision of Section 86 of the Act.

50. We therefore hold that the provisions of Section 126 can apply only when the scheme is notsanctioned and the amount of compensation has not been determined by the arbitrator. Therefore, in cases where the town planning scheme is already sanctioned and the property vests in the State Government under Section 88(a) of the Act, the question of resorting to Section 126(2) of the Act does not arise.

6.12. The date of vesting under sec.88 of the MRTP Act, therefore assumes significance. This is more so, in view of the change in the statutory position in sec.88 of the MRTP Act. Whereas, Sec.88 earlier indicated the effect of the 'final scheme', however, what is necessary to

note that the same stands amended w.e.f. 17/12/2014, by sec.12 of Mah. Act no.35/2014, by deletion of the expression 'final scheme' and replacing it with 'preliminary scheme', and so also by deleting sec.88(c) also. This is indicated as under :

"88. On and after the day on which a [preliminary scheme] comes into force--

(a) all lands required by the Planning Authority shall, unless it is otherwisedetermined in such scheme, vest absolutely in the Planning Authority free from all encumbrances;

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(b) all rights in the original plots which have been reconstituted shall determine and thereconstituted plots shall become subject to the rights settled by Arbitrator; 3 * * *"

A perusal of the amended Sec.88 would indicate, that whereas under the un-amended provision, the vesting of the lands which are the subject of the Town Planning Scheme, in the Planning Authority, was upon the day when the 'final scheme', comes into force, now because of the amended provision, the vesting in the planning authority, is on the date when the 'preliminary scheme', comes into force. The Constitution Benches in Shantilal Mangaldas and Amichand Shah (supra) have held that once the final scheme comes into force, the question of acquiring the lands by any other mode would not arise at all. It has also been held that since the provisions of Chapter-V of the MRTP Act, were a complete Code in itself, providing for implementation of the Town Planning Scheme, including grant of compensation thereunder, the question of the provisions of the Land Acquisition Act being resorted to therefor, would not arise at all.

6.13. It would thus be apparent that the provisions of Chapter V of the MRTP Act, arein the nature of standalone provisions, which cater to a specific position, where once the Town Planning Scheme is sanctioned/approved, contemplates readjustment of plots, which is the position extant in the instant case. In this

sense of the position, the title to the property of a landowner is not taken away, but only that portion of the plot is WP 340 of 2023.odt taken which is required to regularize the holding of the owner and in case any land of the adjacent owner is required for the purpose of such readjustment, to that extent the title to the same is transferred to the owners of the plots inter-se, unless it is needed for the purpose of the authority. Thus in sum and substance there is no divesting of title in the land in question, and the land owner continues to have title to the land, except to the extent of certain portions which are to be adjusted for the purpose of regularization. Thus even in the case of the petitioners, it is apparent that they have not been divested of the title to the lands in question, but what is being taken away is for the purpose of adjustment for things to be in consonance with the town planning scheme, is land to the extent as contemplated, therein and not otherwise.

6.14. That apart, even if we consider, what has been held in Zahir Jahangir Vakil(supra) that the provisions of section 126(2) providing for acquisition of the land will apply prior to the said town planning scheme is finally sanctioned under the provisions of Section 88 of the MRTP Act, however, in view of the subsequent amendment to section 88, providing for vesting in the planning authority on the date of coming of the preliminary scheme in force, instead of the 'final scheme'. As indicated above, it is not in dispute that the preliminary scheme was submitted to the State under Section 72(5) of the MRTP Act on 27.2.2020 which was approved under Section 86(1) of the MRTP Act by the State on 20.10.2021, the final town planning scheme being published in the official gazette on 28.10.2020, there cannot be any dispute that the WP 340 of 2023.odt 'preliminary scheme', has already come into force, in view of which also the question of applicability of the provisions of Chapter-VII of the MRTP Act, would not arise.

6.15. The above position would clearly indicate that after considering P. VajraveluMudaliars case (1965) I SCR 614 = (AIR 1965 SC 1017) as well as Nagpur Improvement Trust Vs.

Vitthalrao and Others AIR 1973 SC 689 relied upon by Mr. Rahul Tajne, learned Counsel for the petitioner, the plea of discrimination and vis-a-vis Article 14 of the Constitution; the legislation under the Land Acquisition Act being beneficial in nature was required to be applied; the provisions of Sections 98 to 100 of the MRTP Act since they provide a different method of calculation of the compensation, were ultra vires, were all pleas raised, considered and repelled as is indicated therefrom.

6.16. The same pleas have now been raised again, and specifically by relying uponwhat has been held in Hari Krishna Mandir Trust (supra). In this context, a careful perusal of Hari Krishna Mandir Trust (supra), would indicate that the private road, was shown to be belonging to the Pune Municipal Corporation, without any compensation being awarded for it, on account of which the hon'ble Apex Court held that no person could be deprived for his right to hold land without adequate compensation, by relying upon the Article 300-A of the Constitution which provides that no person shall be deprived of his property save by authority of law. It also holds that Section 88 of the Regional and Town Planning Act cannot be read in isolation. It has to be read with Sections 125 to WP 340 of 2023.odt 129 relating to compulsory acquisition as also Sections 59, 69 and

65.

113. In our considered opinion, the High Court erred in dismissing the writ petition,misconstruing Section 88 of the Regional and Town Planning Act, by reading the same in isolation from the other provisions of the Regional and Town Planning Act, particularly Sections 65, 66, 125 and 126 thereof.

114. Section 125 read with Section 126 enables the State/Planning Authority toacquire land. On a proper construction of Section 88, when land is acquired for the purposes of a development scheme, the same vests in the State free from encumbrances. No third party can claim any right of easement to the land, or claim any right as an occupier, licensee,

tenant, lessee, mortgagee or under any sale agreement. On the other hand, Section 65 referred to above read with Section 66 protects the interests of the owners.

115. In the absence of any proceedings for acquisition or for purchase, no landbelonging to the appellant Trust could have vested in the State.

Though Pukhrajmal Sagarmal Lunkad (supra) has been noted it has been distinguished on facts. Hari Krishna Mandir Trust (supra), in our considered opinion does not consider the nature of the town planning scheme under Chapter V of the MRTP Act, which does not indicate transfer of ownership but readjustment of the plot, nor the fact that compensation is to be determined by the Arbitrator, under the provisions of Chapter -V, based on the factors as contained in Sec.72(6) (i) to (xiii). So also it appears that the two Constitutional Bench decisions, which consider similar provisions and similar pleas, in Shantilal Mangaldas and Amichand Shah WP 340 of 2023.odt (supra) as well as the decision of the hon'ble Apex Court in Zandu Pharmaceutical Works Ltd. Vs. G. J. Desai, Civil Appeal No.1034 of 1967 decided on 28th August, 1969 (reported in 1969 UJ (SC) 575 and MANU/SC/0520/1969) (supra) have not been brought to the notice of the hon'ble Court in Hari Krishna Mandir Trust (supra), in view of which in light of what has been held by the two Constitutional Bench decisions in Shantilal Mangaldas and Amichand Shah (supra), it will have to be held that Hari Krishna Mandir Trust (supra) would not constitute a good precedent to follow, as we would be bound by what has been held by the two Constitution Benches in Shantilal Mangaldas and Amichand Shah (supra). The pleas of discrimination based upon Article 14 of the Constitution as well as of Sec.97 to 100 of the MRTP Act, being violative thereof, thus cannot be sustained and are turned down.

7. As regards the contention of Mr. Tajne, learned counsel for the petitioner regarding the calculation of the market value calculated by the Arbitrator, as indicated in the table at pages 281 and 282, in

juxtaposition, to the rate and calculations as made in the document at page 55 of the petition, it would be material to note, that the estimated value of the land of the original plot and the final plot included in the Final Scheme, would be something, which would be covered by Section 72(3)(vi) of the MRTP Act, which reads as under:

"72. (3) In accordance with the prescribed procedure, every Arbitrator shall,-

(i).....

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(vi) estimate the proportion of the sums payable as compensation of each plot used, allotted or reserved for the public purpose or purposes of the Planning Authority which is beneficial partly to the owners or residents within the area of the scheme and partly to the general public, which shall be included in the cost of the scheme;"

Section 74 of the MRTP Act, provides an appeal against the decision of the Arbitrator. However, a perusal of section 74 (1) of the MRTP Act, would indicate that the estimation of the value of the original plot and the final plot and the difference between them as contemplated by Section 72(3)(vi) of the MRTP Act, is not something which is appealable under Section 74(1) of the MRTP Act, to the Tribunal as constituted under Section 75 of the MRTP Act and therefore, would be a proposition which could be raised before this Court.

7.1. In this context it is material to note that there appears to be a clear cut discrepancy in the application of the rate by the Arbitrator/ R-4, in as much in the calculations of the final plot in respect of CTS no.137 (pg.55) a different method of calculation appears to have been adopted by showing the original value of the plot and the semi final value of the plot as same, whereas in the calculations at page 281, there is a great difference between the original value and the semi final value. Why that difference has cropped up, is not ascertainable from the table of calculations. We therefore find that for this purpose, and to this

extent, the matter needs to be remanded to the Arbitrator, for recalculating the various values by giving reasons, explaining the discrepancy, as the scheme is the same.

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8. The petitions are therefore partly allowed only to the extent as indicated in para 7.1. above, all other pleas raised, being rejected for the reasons as indicated above. Needless to state that in case the Town Planning Scheme, provides any additional FSI /TDR to be given to the owners of the plots falling in the scheme, then the owners will be entitled to such additional FSI/TDR as that would form part of the scheme. Interim order stands vacated. In the circumstances, there shall be no order as to costs.

(SMT. M.S. JAWALKAR, J.) (AVINASH G. GHAROTE, J.) At this stage, Mr. Tajne, learned counsel for the petitioners makes a request to protect the possession of the petitioners till the Arbitrator recalculated the compensation in terms of paragraph No.7.1 of the judgment.

We are unable to accede to this request for the reason that for the purpose of recalculation of the compensation there is no question of possession involved and the same can be done by the Arbitrator dehors the issue also.