Maneklal Chhotalal & Ors

Vs

M. G. Makwana & Ors

Writ Petition No. 64 of 1966

(CJI K. Subha Rao, C. A. Vaidialingam, J. C. Shah, S. K. Sikri, V. Ramaswami - I JJ)

02.03.1967

JUDGMENT

VAIDIALINGAM J.

In this writ petition under Art 32 of the Constitution the petitioners challenge the constitutional validity of the Bombay Town Planning Act, 1954 (Bombay Act XXVII of 1955) (hereinafter called the Act) as originally framed and also after its amendment by the Bombay Town Planning (Gujarat Amendment and Validating Provision) Act, 1963 (Gujarat Act LII of 1963) (hereinafter called the Amending Act). They also challenge and seek to have quashed all action and proceedings that have been taken by the respondents, under the Act, in relation to the Town Planning Scheme No. 19 (Memnagar), Ahmedabad.

The Circumstances under which the petitioners have come to this Court may be briefly indicated. The Petitioners who are stated to be members of a Hindu Undivided Family owned certain extent of lands in two areas viz. Usmanpur Section and Wadej Section. In the former, they claim to have owned lands bearing survey number 41/1,41/2,42,51/1,51/2 and 43, referred to as plot nos. 22 and 22-A measuring 56,164 sq. yds. In Wadej Section again they owned 14,520 sq. yds. in survey nos. 106, 3/1,106/4, referred to as plot No. 195. Both these Sections are within the jurisdiction of the second respondent herein, the Ahmedabad Municipal Corporation.

The Second respondent by resolution No. 475 dated August 20, 1959, declared its intention to make a Town Planning Scheme No. 19 (Memnagar) under s. 22 (1) of the Act in respect of certain areas of land which included the above mentioned lands of the petitioners. The said declaration was published in the notification was issued on November 16, 1959, stating that the second respondent was preparing a Draft Town Planning Scheme and stating that interest persons may appear before the Town Planning Committee. On December 2, 1959 at 4 p.m., for the purpose of having the proposals contained in the Scheme explained to the public and to elect suggestions from the public with regard to those proposals.

The Petitioners appeared before the said committee on December 2, 1959 and raised certain objections and also offered some suggestions for modifying the Scheme. Written objection were also submitted by the petitioners, on or about January 9, 1960, to the Town Planning Committee. The Petitioners pointed out that in Usmanpur and Wadej Section they owned lands to the extend approximately of 70,180 sq. yds., but in the proposals as contained in the Drafts Scheme, they were expected to get only 19,087 sq. yds. and as such they stood to lose nearly 72% of their lands. They also pointed out that they had been made liable to pay a heavy contribution of Rs. 30,137/-The petitioners suggested that the loss to each land-owner should be equitably distributed under the

Scheme and that they should be allotted lands of equal extent.

On June 13, 1960, a Draft Town Planning Scheme was prepared under s. 23(1) of the Act and it was published in the Gujarat Government Gazette, dated June 23, 1960. The Petitioners, again submitted the same objections and suggestions which they had placed for consideration before the Town planning committee. After considering the objection and suggestion made by the petitioner the second respondent forwarded the Draft Town Planning Scheme to the third respondent the State of Gujarat under s. 28(1) of the Act. The third respondent again sanction the said Draft Scheme under s. 31(1) of the Act and also appointed a Town Planning Officer under s. 31(1) of the Act. Subsequently there was a change in the personnel of the Town Planning Officer, originally appointed. Ultimately the Town Planning Officer issued a Public notice in October 1961, inviting objections and suggestions from owners of lands in respected of the Draft Town Planning Scheme, which was being considered by him.

The Petitioners again filed objections in November 1961 before the said Town Planning Officer and here also they reiterated the same objections and suggestions which they had placed before the Town Planning Committee at the earlier stage, and before the second respondent, later.

In the draft Scheme prepared by the Second respondent and sanction by the State of Gujarat the petitioners lands viz., survey nos. 41/1,41/2,51/1,51/2 (being plot no. 22) and survey no., 43 (being plot no. 22A) were shown as item no. 18 and lands survey nos. 106,3/1 and 106/4 (plot no. 195) were shown as item no. 163. The Town Planning Officer issued notice in April and June 1962, to the petitioners. In the first notice it was mentioned that the petitioners were being allotted new plots nos. 32,34 and 43, measuring 19,087 sq. yds. as against plot nos. 22 and 22-A was Rs. 37,556/-and of the new plots nos. 32,34 and 43 was Rs. 14,315/-the increase under s. 65 of the Act, was Rs. 1,21,275/-. The petitioners were therefore liable to pay a contribution under s. 66 at the rate of 50% on the increment viz. Rs. 60,638/- and after giving credit to the petitioners in the sum of Rs. 23,241/-they were called upon to pay a sum of Rs. 37,397/-.

The second notice also mentioned that as against the petitioners plot no. 195 measuring 14,520 sq. yds. no other plot was being allotted to them and that the compensation payable to them in respect of the said plot without reference to the improvements in the Scheme was Rs. 7,260/. By virtue of these two notice the petitioner were being allotted fresh plots of an extent 19,087 sq. yds. and they were called upon to pay a sum of Rs. 30,133/-as their shares of contribution and they were also required to furnish their objections or suggestions within the time specified. The petitioners filed their written objections to the proposal contained in the said two notices; and they also appeared on the dates mentioned in the notice and reiterated the matters contained in their written objections.

The first respondent herein the Town Planning Officer issued on January 20, 1965 two communications stated to be his award under s. 32(3) of the Act. In the first of these communications the petitioners were informed that in lieu of their plot no. 22 measuring 37,873 sq. yds. they were allotted Final Plot no. 52 and 54 and 57, measuring 20,183 sq. yds., and the value under s. 67 was fixed at Rs. 8,222/-. The petitioners were also informed that the calculation of increment of the value of 20,183 sq. yds. and allotted under s. 65 was Rs. 1,08,484/-and at the rate of 50% as per s. 66 of the Act they were liable to pay a contribution of Rs. 54,241/-. After adjusting the value of the lands of Rs. 8,424/-the net contribution payable by the petitioners was stated to be Rs. 45,817/-.

Similarly, in the second communication the petitioner were informed of the allotment of final plot

no. 94 measuring 15,375 sq. yds. as against plot nos. 22A and 195 measuring in the aggregate 32,307 sq. yds. The petitioners were further informed that for the loss of 16,932 sq. yds. they would be entitled to compensation under s. 67 in the sum of Rs. 4622/-. The calculation of increment with reference to improvement in respect of the final plot allotted as per s. 65 was stated to be Rs. 65,344/-. In consequence the share of contribution under s. 66 payable by the petitioners at the rate of 50% was fixed in the sum of Rs. 32,672/- Adjusting the sum of Rs. 4622/-being the compensation payable to the petitioners their net liability as contribution was fixed in the sum of Rs. 28,050/-.

The final position under these two notices was that the petitioner were getting land of an extent of 35,558 sq. yds. as against the original extent of land of 70.180 sq. yds. and they have to pay a sum of Rs. 73,867/-as contribution.

The petitioner preferred appeals to the Board of Appeal under s. 34 of the Act. The Board of Appeal included increased value of the final plots by giving a general reduction of 60 paise per square yards. As a result of the appeal the petitioners had still to pay a contribution of a sum of Rs. 63,199/-apart from losing 34,622 sq. yds. of land. The Town Planning Officer made consequential changes in his original award incorporating the decision of the Board and forwarded the final Scheme to the State Government for its sanction. It is at that stage the petitioners have come to this Court, seeking the reliefs mentioned above.

The main contentions raised by Mr. B. Sen learned counsel for the petitioners are (i) The State Legislature was not competent to pass the Act as the subject dealt with under the Act is not covered by any of the entries in List II, or List III of the Seventh Schedule to constitution (ii) Even assuming that the State Legislature could pass the Act in question nevertheless the provisions regarding the levy of contribution towards the cost of the Scheme and all other matters relating to the working of the Scheme are unauthorised and unreasonable and that the powers vested in the Town Planning Officer and the other authorities under the Act, are the Town Planning Officer, and the other authorities under the Act, are unguarded arbitrary and uncontrolled and therefore, the provisions of the Act infringe the fundamental rights of the petitioners under Arts. 14, 19(1) (f) & (g) and 31 of the Constitution.

On behalf of the State, the third respondent Mr. H. D. Banajee learned counsel has pointed out that the State Legislature was competent to pass the Act in question. In particular he supports the competency of the Legislature to enact the measure in question on the basis of Entries 6 and 18 of List II and Entry no. 20 of List III, of the Seventh Schedule. Counsel also points out that a local authority with a view to active a systematic and proper planning providing amenities like water supply drainage roads etc. has been empowered to go in for a town planning scheme. After providing for these amenities and allotting sites for public purposes like schools hospital markets police stations etc. the remaining lands are re-constituted by changing their boundaries in order to make the areas capable of being properly developed. Re-Constituting of the plots is absolutely necessary inasmuch as in working out the Scheme some area from an adjoining land may have to be added and some other area from the original holding may have to be taken away as may be necessary and to achieve the purposes for which a planned development scheme is framed. As far as possible each owner of land is given a new plot though it may not be of the same extent or in the same area. And in exceptional cases when the owner loses a holding altogether he is awarded compensation.

By reference to the Act and the rules framed thereunder counsel pointed out that elaborate provisions have been made as to how the local authorities in framing the Scheme had to function as

also how the Town Planning Officer who works the Scheme has to act. Opportunity had been provided at every stage right from the beginning to the end counsel pointed out to owner of property like the petitioners to place their objection and suggestions. The petitioners also had taken advantage of those provisions and had been heard and their objections considered. All the important decisions of the Town Planning officer are made the subject of appeals to a Board of Appeal, of which the President is an experienced judicial officer of the status of a District Judge. Principles had also been laid down by the Act regarding the fixing of valuation of the original plots and the reconstituted plots and for fixing the amount off contribution payable by parties. Payment of contribution was to be in easy instalments. None of the fundamental rights of the petitioners according to Mr. Banajee had been affected.

These contentions of the State have been supported by Mr. Purshottam Tricumdas, learned counsel appearing for the Ahmedabad Municipal Corporation the second respondent herein.

This will be a convenient stage to refer to the scheme of the Act and consider the question as to whether the State Legislature is competent to enact this legislation because if the contentions of the learned counsel for the petitioner that the State Legislature had no competence to enact this measure is accepted no other questions will arise for consideration.

There was originally and Act called the Bombay Town Planning Act 1915 (Bombay Act I of 1915), which has been repealed by s. 90(1) of the Act. The objection of the 1915 Act is planning schemes. The preamble to the said legislation stated that it was found expedient that the development of certain areas should be regulated with the general object of securing proper sanitary conditions amenity and convenience to the person living in such area and in neighbouring areas. We only refer to the 1915 Act for the limited purpose of showing that the said Act was conceived with the intention of regulating the development of certain areas for the purpose of securing proper sanitary conditions etc., to the person living not only in such areas, but also in neighbouring areas.

The Act came into force on April 1, 1957 and there is no controversy, that it has been made applicable to the State of Gujarat. In some respect the Act was amended by the Amending Act of 1963. The Act is legislation to consolidate and amended the law for making and execution of town planning schemes and in order to ensure that town planning schemes are made in a proper manner and their execution is made effective. Sub-sections (2), (4), (6) and (9) of s. 2 define the expressions 'development plan' 'local authority, plot'and 'reconstituted plot. In particular the expression'reconstituted plot'means a plot which is in any way altered by the making of a town planning scheme.

Sections 3 to 17, in Chapter II, deal with development plants section 3 makes it obligatory on a local authority to carry out a survey of the area within its jurisdiction and to prepare and to publish. in the prescribed manner a development plan and submit the same to the State Government for sanction. Sub-Section (4) of s. 3 gives power to the State Government to prepare and publish of s. 3 gives power to the State Government to prepare and publish in the prescribed manner a development plan in the circumstances in the prescribed manner a development plan in the circumstances mentioned therein Section 4 provides for the local authority mentioned therein. Section 4 provides for the local authority making a declaration of its intention to prepare a development plan before carrying out a survey for the purpose of preparing the said plan and a copy of the said declaration is to be sent to the State Government for publication in the Gazette. It also provides for the declaration being published in the prescribed manner and for inviting suggestions from the public within two months of the date of publication. A copy of the development plan is to be sent to the State Government and

another copy is to be made available by the local authority for inspection by the public. Under s. 7 the development plan has to indicate the manner in which the development plan. Section 9 provides for the local authority considering any suggestions that may be made to such development plan by any member of the public if those suggestion are communicated in writing within two months from the date of publication. Section 10 gives power to the State Government after consulting the Consulting Surveyor to sanction the development plan submitted to it by the local authority either without modification or subject to such modification as it consider necessary. The sanction of the State Government has to be notified in the Official Gazette. Section 11 gives power to the local authority to acquire either by agreement or under the Land Acquisition Act of 1894, any land designated in the development plan for a purpose specified in clauses (b) to (e) of s. 7. The remaining section in Chapter II deal with the matter like placing restriction on an owner doing any work on the land after publication of the declaration of intention under s. 4(1) and the local authority granting permission to the owners concerned.

Chapter III comprising ss. 18 to 20 deals with the making of and the contents of a town planning scheme. Section 18 provides for a local authority subject to the provisions of the Act, or any other law for the time being in force making one or more town planning schemes for the purpose of implementing the proposals contained in the final development plan. The town planning scheme can provide for any of the matters mentioned in cls. (a) to (1) referred to in sub-s. (2) of s. 18. Section 19 relating to disputed ownership of the properties comprised in the scheme but it is made clear that any decision given by him though not subject to appeal shall not operate as a bar to a regular suit. It also makes provision for any decision given on this question by the Town Planning Officer being corrected modified or rescinded in the event of a Civil Court making an adjudication. Section 20 is an enabling provision for the purpose of making or executing any town planning scheme.

Sections 21 to 30, which occur in Chapter IV, deal with the declaration of intention to make a scheme and the making of a draft scheme. A Town Planning Scheme, under s. 21, may be made, is accordance with the provisions of the Act, in respect of a land which is in the course of development, or is likely to be used for building purposes, or is already built upon. Section 22 authorises a local authority to declare its intention to make a town planning scheme by resolution. The local authority is to publish its declaration, within the time mentioned therein; and it is also bound to despatch a copy thereof the State Government, along with a plan showing the area which it proposes to include in the scheme. Sub-s. (4) of s. 22 provides for a copy of the plan being made available to the public for inspection. Section 23 provides for a local authority, in consultation with the Consulting Surveyor, to make a draft scheme within twelve months of its declaration of intention and publish the same in the prescribed manner. Section 24 gives power to the State Government, in the circumstances mentioned therein, to require a local authority to make and publish of draft scheme and send it to the Government for approval. Section 25 specifies the various particulars which a draft scheme should contain.

Section 26 provides that in the draft scheme, the size and shape of every reconstituted plot is to be determined in such a manner as to make it suitable for building purposes. If the plot is already built upon, it provides that the reconstitution is to ensure that the building, as far as possible, complies with the provisions of the scheme as regards open spaces. Sub-section (2) of s. 26 specifies the nature of proposals, to be found in the draft scheme. In particular, it provides for a reconstituted plot being formed by alteration of the boundaries of the original plot; formation of reconstituted plot by the transfer, wholly or partly, of the adjoining lands; for allotting a plot to any owner dispossessed of land in furtherance of the scheme and for transfer of the ownership of a plot from one person to another. It may be stated, at this stage, that, as will be seen from sub-cl. (d) of s. 26(2), the intention

of the Act appears to be that the Town Planning Scheme should, as far as possible, make the provisions for allotment of plots, to owners, who are being dispossessed of their property.

Section 27 relates to filing of objections, within one month from the date of publication of the draft scheme, and the local authority being bound to consider those objections and making suitable modifications, as it thinks fit, before submitting the draft scheme to the State Government. Under sub-s. (1) of s. 28, the local authority has to forward, within the time mentioned therein, the draft scheme, together with any modifications made by it, along with the objections that may have been filed by persons affected by such scheme and make an application to the State Government for sanctioning the same. Sub-s. (2) provides for the State Government, after making such enquiry as it thinks fir and, after consulting the Consulting Surveyor, sanctioning the scheme with or without modifications; and the sanction is to be published in the State Gazette. Sub-s. (3) makes it obligatory when the State Government sanctions the scheme, to state in the notification itself, about the place and time the draft scheme will be open to the public for inspection.

Chapter V, in which ss. 31 to 43 are to be found, deals with the Town Planning Officer and the Board of Appeal. Section 31 deals with the appointment of a Town Planning Officer, by the State Government, within one month from the date on which its sanction to the draft scheme is published. It also provides another officer, in circumstances mentioned therein. Section 32 enumerates the duties of the Town Planning Officer. He is to act in accordance with the prescribed procedure, and decide the various matters mentioned in cls. (i) to (xiv) of s. 32(1). Among other matters, the Town Planning Officer has to fix the difference between the total values of the original plots and the total of the values of the plots included in the final scheme; estimate the portion of the sums payable as compensation on each of the local authority which is beneficial to the owners and residents within the area of the scheme and partly to the general public and which are to be included in the cost of the scheme; estimate the increment to accrue in respect of each plot included in the final scheme; calculate the proportion in which the increment of the plots included in the final scheme shall be liable to contribution to the costs of the scheme; calculate the contribution to be levied on each plot included in the final scheme; determine the amount to be deducted from, or added to, as the case may be, in the contribution leviable from a person and provide for the total or partial transfer of any right in an original plot to a reconstituted plot or provide for the extinction of any right in an original plot.

Section 33 makes the decision of the Town Planning Officer, rendered under s. 32 (1), final conclusive, except in matters arising out of cls. (v), (vi), (viii), (ix), (x) and (xiii) of sub-s. (1) of s. 32. Section 34 provides for decisions given by the Town Planning Officer, under the clauses as shown above, being communicated to the party concerned and it gives a right to any person aggrieved by that decision, to appeal, within one month from the date of communication of the decision, to the Principal Judge of the City Civil Court, Bombay, in Greater Bombay and elsewhere, to the District Judge. The appeal is to be disposed of by a Board of Appeal constituted under s. 35, according to which it should consist of a President and two Assessors, the President being the Principal Judge of the City Civil Court in Greater Bombay, or such other Judge of the said Court as may be appointed by the State Government, and elsewhere, the District Judge. Section 35 provides for the appointment of fit and proper persons as Assessors, who are to sit with the President to constitute the Board of Appeal to decide an appeal against the decision of the Town Planning Officer, under cls. (v), (vi), (viii), (ix), (x) and (xiii) of s. 32(1). Section 40 provides for the Town Planning Officer being required to modify, or vary his decision in accordance with the decision of the Board of Appeal and the decision of the Board of Appeal and the decision of the Board of Appeal being final and conclusive and binding on all persons. Section 43 provides for the Town

Planning Officer forwarding to the State Government, the final scheme as varied by him, in accordance with the decision, if any, of the Board of Appeal, along with his decision, and a copy of the decision of the Board in appeal.

Chapter VI, which comprises ss. 44 to 61, relates to the splitting up of schemes into sections and preliminary schemes. Section 53 lays down the effect of a final scheme, and states that when it has come into force, all lands required by the local authority, unless otherwise provided, should vest in the local authority absolutely free from all encumbrances and all rights in the original plots which have been reconstituted being determined and the reconstituted plots becoming subject to the rights settled by the Town Planning Officer.

Chapter VII consists of ss. 62 and 63 and deals with joint town planning schemes. Chapter VIII, which comprises ss. 64 to 78, deals with finance. Section 64 refers to what all items shall be included in the costs of a town planning scheme. The difference between the total values of the original plots and the total values of the plots included in the final scheme, which is to be fixed under s. 32(1) (iii) by the Town Planning Officer, is to be arrived at in the manner provided in s. 64(1) (f). Broadly, the estimate that is to be made of the value of the original plots and the value at the date of the declaration of intention to make a scheme, without reference to improvements contemplated in the scheme. The estimate of the increment that accrued in respect of each plot included in the final scheme and which is to be fixed by the Town Planning Officer, under s. 32(1) (viii), is again to be done in accordance with the provisions of s. 65. Here again, it will be seen that the estimate that is to be made is the market value of a plot included in the final scheme, as on the date of the declaration of intention to make a scheme, on the assumption that the scheme has been completed and the market value of the said plot on the same date, without reference to the improvements contemplated in the scheme, has been taken into account. Section 66 relates to contribution towards costs of the scheme and the Town Planning Officer must have regard to these provisions when fixing the proportion of contribution of a plot included in the final scheme under s. 32(1) (ix). Again, in determining the amount to be deducted from, or added to, the contribution leviable from a person under s. 32(1) (xi), the provisions of s. 67 will have to be applied. The total or partial transfer of right in an original plot to a reconstituted plot, as well as the extinction of any right in an original plot, which has to be decided by the Town Planning Officer, under s. 32(1) (xii), must be in accordance with the provisions of s. 68.

Section 71 provides for payment 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 s. 66 is less than the total amount to be deducted therefrom under any of the provisions of the Act. Section 73 provides for payment, by the local authority, by adjustment of account, of payments due to be made to any person.

Chapter IX deals with various miscellaneous matters. Section 87 provides for rules being made by the State Government for varrying out the purposes of the Act; and, under sub-section (2) the State Government has got the power to make rules in respect of the various matters mentioned in clauses (a) to (w).

The Act was amended, with retrospective effect, by the Amending Act of 1963.

Section 3 of the Amending Act has deleted the original clause (1) of s. 18 and substituted a new clause in its place. Clause (i) in the proviso to sub-s. (1) of s. 66, has been substituted by a new clause. That relates as to how exactly the cost of the scheme is to be met. Section 7 of the Amending

Act validates certain actions taken and things done and, in particular, cl. (a) of this section provides that the validity of a Town Planning Scheme already sanctioned or continued as sanctioned, cannot be called in question merely on the ground that a development plan, in respect of the area to which the Town Planning Scheme relates, has not been prepared, published or sanctioned before the Town Planning Scheme was sanctioned or continued.

One of the contentions advanced before us, by learned counsel for the petitioners, was that the Town Planning Scheme which is under attack, has been framed without previously complying with the provisions of Chapters II and III of the Act and, therefore, the entire proceedings are illegal and void. But this contention, in our opinion, has not been, rightly, pursued further, in view of the retrospective nature of the Amending Act. No doubt, according to the petitioners, the Act as well as the Amending Act, are both void because the Legislature had no competency to enact these statutes. That is a different aspect, which will be dealt with by us presently.

Under s. 87 of the Act, the State Government has framed rules on November 15, 1955, called the Bombay Town Planning Rules, 1955, hereinafter called the Rules. It is only necessary to run through some of the material provisions of these rules.

Rule 3 relates to the publication of the declaration under s. 4. Rule 4 deals with the publication of the development plan. Rule 12 relates to publication of the declaration under s. 22. Rule 13 deals with the meeting of owners of land and formulating of tentative proposals. Rule 14 deals with the publication of draft schemes under s. 23. Rule 17 enumerates the various particulars specified in cls. (a) to (g) of s. 25. Rule 21 deals with the procedure to be followed by the Town Planning Officer. Rule 23 deals with the procedure to be adopted by the Board, on appeal. Rule 33 deals with the manner of serving notices; and r. 34 deals with proceedings of local authorities.

We have only broadly referred to some of the rules. A perusal of the rules clearly shows that elaborate provisions have been made for giving as wide a publicity, as possible, at all stages, to the public and to owners of land, who may be affected by the scheme. They provide for objections being filed, and their being heard by the authorities concerned. The rules also deal, elaborately with various other matters relating to the scheme, dealt with by the Act.

The first question that arises for consideration is regarding the competency of the State Legislature to enact the statute question. According to Mr. Sen, learned counsel for the petitioners, the Act provides for transfer of rights, from one person, in a plot originally owned by him, to another person to whom it may be allotted under the Act. The Act also provides for extinguishment of rights of the original owner in the plots concerned. These are, according to learned counsel, not covered by any of the entries either in List II or List III of the Seventh Schedule to the Constitution. Again, it is pointed out, that the Act requires owners of the plots to pay compensation which is really, so to say, a tax levies by the State on capital assets, for which also there is no power to be found in any of the Entries in List II or List III.

The State seeks to justify the competency of the Legislature, relying upon the Entries Nos. 6 and 18 of List II and Entry No. 20 of List III, of the Seventh Schedule.

Having due regard to the scheme of the Act as well as the provisions contained in it, in our opinion, the competence of the State Legislature to enact the same can be rested either on Entry No. 18 of List, or on Entry No. 20 of List III, of the Seventh Schedule. Entry No. 18 of List II is as follows :-

> "Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization."

The legislation, in question, can be broadly stated to be a legislation in regard to land. As pointed out by this Court in Sri Ram Ram Narain Medhi v. The State of Bombay (1).

> "It is well-settled that these heads of legislation should not be construed in a narrow and pedantic sense but should be given a large and liberal interpretation."

Further, in Navinchandra Mafatlal v. The Commissioner of Income-tax, Bombay City (2), this Court expressed the rule of interpretation, as follows :-

> "The cardinal rule of interpretation, however, is that words should be read in their ordinary, natural and grammatical meaning subject to this rider, that in construing words in a constitutional enactment conferring legislative power the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude."

In construing Entry No. 18, of List II, this Court, in Atma Ram v. The State of Punjab (1), adopted the interpretation placed by the Judicial Committee of the Privy Council in Megh Raj v. Allah Rakhia (2) while construing Item 21 of List II (Provincial List) of the Seventh Schedule to the Government of India Act, 1935, which was more or less substantially, in terms of Entry No. 18 of List II of the Seventh Schedule to the Constitution. Their Lordships of the Privy Council concluded that Item 21 relating to land, would include mortgages as an incidental and ancillary subject. This Court, in referring to that decision, observed at p. 755 :

> 'Their Lordships observed that Item 21 aforesaid, forming a part, as it did, of the Constitution, should on ordinary principles, receive the wides construction, unless, for some reasons, it is cut down either by the terms of that item itself, or by other parts of the Constitution, which have, naturally, to be read as a whole; and then proceeded to make the following very significant observations :-
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> "As to item 21, 'land', the governing word, is followed by the rest of the item, which goes on to say, 'that is to say'. These words introduce the most general concept-'rights in or over land'.'Rights in land' must include general rights like full ownership or leasehold or all such rights.'Rights over land' would include easements or other collateral rights, whatever form they might take. Then follow words which are not words of limitation but of explanation or illustration, giving instances which may furnish a clue for particular matters....."

The various aspects dealt with in the Act, in question, can be considered to deal with 'land', and, accordingly, the competency of the State Legislature to enact the measure, in question, can be found in Entry No. 18.

We are further satisfied that the competency of the State Legislature can also be rested under Entry No. 20, of List III, which is as follows :-

> "20. Economic and social planning".

In Principles of Town & Country Planning by Lewis Keepl, the scope of planning has been stated thus :-

> "Planning has both social and economic aims. Socially, successful Planning tends to make people's lives happier because it results in a physical environment which conduces to health, which allows convenient and safe passage from place to place, which facilitates social intercourse and which has visual attractiveness. The economic results of good Planning also, of course, conduce to increased happiness, but not quite so directly. A proper spatial relationship between the communities in a region and the constituent parts of a town, compactness of development, and an efficient arrangement of communication routes all result in human activities being carried on more efficiently and less wastefully, and thus increase wealth;"

In Corpus Juris Secundum, Vol. 70, the word "planning" is stated to mean :

> "In connection with municipalities, the term connects a systematic development contrived to promote the common interest in, matters embraced within the police power, with particular reference to the location, character, and extent of streets, squares, parks, and to kindred mapping and charting."

In Encyclopaedia Britannica, Vol. 5, p. 815 "City Planning" is stated to mean :

> "the guidance of the growth and change of urban areas. As such, it is aimed at fulfilling social and economic objectives which go beyond the physical form and arrangement of buildings, streets, parks, utilities and other parts of the urban environment. City planning takes effect largely through the operations of government and requires the application of specialized techniques of survey, analysis, forecasting and design. Thus city planning may be described as a social movement, as a governmental function, or as a technical profession. Each aspect has its own concepts, history and theories. Together they fuse into the effort of modern society to shape and improve the environment within which increasing proportions of humanity spend their lives : the city."

We have already very elaborately referred to the various provisions contained in the Act; and we have also pointed out that the original Act of 1915 was passed with a view to regulate the development of certain areas with the general object of framing proper schemes for the healthy, orderly, development of the area in question and it is, with a view to achieve this purpose that a very elaborate procedure and machinery has been prescribed in the Act. Therefore, the contention of learned counsel for the appellant that the State Legislature was not competent to enact the statute, in question, cannot be accepted.

The further contention of the learned counsel for the appellant, we have already pointed out, is that unguided and uncontrolled power has been vested in the authorities concerned in the matter of framing the scheme and that no principles have been laid down in the Act as to how exactly an allotment has to be made of the lands in question to the original owners. According to learned counsel, no principles have been laid down as to how exactly compensation, which is made payable to parties like his clients, is to be calculated. On these grounds, counsel points out, the fundamental rights guaranteed to his clients, under Arts. 14, 19, and 31 of the Constitution, have been infringed.

On behalf of the State, it is pointed out that in view of the Proclamation of Emergency which is in operation, the petitioners are not entitled to claim any fundamental rights under Art. 19 of the Constitution. Alternatively, it is pointed out that, in any event, having due regard to the various provisions of the Act and the object sought to be achieved, the Act in question can be considered to impose reasonable restrictions and therefore the legislation is valid under Art. 19(1) (f) of the Constitution.

We do not think it necessary to go into the question in this case, as to whether the petitioners are at all entitled to invoke Art. 19 of the Constitution. On the assumption that they are entitled to; we shall consider as to whether the Act, in question, can be sustained under Art. 19 (5), as imposing reasonable restrictions on the exercise of the rights conferred on the petitioners under Art. 19 (1) (f). The principles to be borne in mind in applying Arts. 14 and 19, of the Constitution are now well settled. A fundamental right to acquire, hold and dispose of property, can be controlled by the State only by making a law imposing, in the interest of the general public, reasonable restrictions on the exercise of the said right. Such restrictions on the exercise of a fundamental right shall be tested both from substantive and procedural aspects. If an uncontrolled or unguided power is conferred, without any reasonable and proper standards or limits being laid down in the enactment, the statute may be challenged as discriminatory. Bearing these principles in mind, the question is whether the grievance of the petitioners in this regard, is well-founded. No doubt, it is seen that the petitioners, as stated earlier, have been allotted, under the Scheme, a smaller extent of land and they have also been directed to pay certain amounts as their share of contribution. But, having due regard to the scheme of the Act and the object sought to be achieved, such results are inevitable. At every stage, from the beginning to the end, we have already indicated, the Act the Rules, make very elaborate provisions regarding the formalities to be gone through, by the local authority, by the State Government and by the other authorities concerned, in the matter of preparing and finalizing a Town Planning Scheme. At all stages, very wide publicity is given, by the authorities concerned, in the matter of making known its proposals to the public and to the owners of land, who are sought to be affected by the Scheme. Provisions have been made for filing of objections and suggestions and the authorities being bound to take into account those objections and suggestions. The procedure to be adopted by the Town Planning Officer, in the matter of giving his decisions, on the various aspects referred to in s. 32, has been not only indicated in that section, but also provided for, under the Rules.

It is also seen, from the affidavit of the petitioners themselves, that at all relevant stages, they have filed objections or suggestions before the appropriate authorities. Nor are we impressed with the contention advanced on behalf of the petitioners that there has been unfettered and arbitrary power vested in the Town Planning Officer in the matter of deciding the various points covered by s. 32 of the Act. We have already indicated that the procedure to be adopted by the Town Planning Officer has been dealt with elaborately, by the relevant rules. As to how exactly he has to decide the particular matters, referred to in cls. (iii), (viii), (ix), (xi), and (xii) of s. 32 of the Act, have been indicated in the reference made by those sub-clauses to ss. 64, 65, 66, 67 and 68, respectively. Those sections have also been referred to by us earlier, and they give very clear indication as to what matters are to be adverted to by him, when a matter has to be decided in accordance with those sections.

It is also seen from cl. (e) of s. 26 (2) of the Act, that the primary intention in a draft Town Planning Scheme is to allot a plot to any owner dispossessed of land. With reference to very few people, to whom it may not be possible to allot any land, s. 71 comes into operation. Therefore, it will be seen that it is not as if the Town Planning Officer is left with any unguided discretion and arbitrary power

in dealing with matters under s. 32 (1).

No doubt, every decision given by the Town Planning Officer, under s. 32, is not appeallable; but the important decisions that are to be given by him, for instance, under cls. (v), (vi), (viii), (ix), (x) and (xiii), are appealable under s. 34 to a Board of Appeal, which is presided over by a Judicial Officer of the Standing of a District Judge. The procedure to be adopted by that Board is also clearly indicated in the rules. It is, after all these matters are gone through, that ultimately, the State Government sanctions the final Scheme.

Therefore, having due regard to the substantive and procedural aspects, we are satisfied that the Act imposes only reasonable restrictions, in which case, it is saved under Art, 19(5) of the Constitution. The considerations referred to above will also show that the grievance of the petitioners that Art. 14 is violated is also not acceptable.

The petitioners, no doubt, urge that a very exhorbitant price is being fixed by the Town Planning Officer regarding the value of the reconstituted plots allotted to them. Those are matters of detail, and they are covered by the provisions of the Act referred to above.

The petitioners, no doubt, make a grievance of their having lost a fairly large extent of land, which, according to them, amounts to deprivation. We are not not satisfied that the petitioners' grievance is well-founded in this regard. Though the petitioners may have originally owned larger extends of land, in different areas, which may or may not be fit for building purposes, there can be no controversy, that the reconstituted plots, though of a lesser area, have a higher value, as building sites, in view of the various improvements and amenities provided under the Town Planning Scheme. What parties, like the petitioners, may have lost in actual area of lands, can certainly be considered to have been more than sufficiently compensated by the increased value of the reconstituted plots. There is no question of any deprivation of property, therefore, so as to attract Art. 31.

The petitioners make a grievance that they have to pay fairly large amounts by way of contribution to the Scheme. No doubt, the petitioners' stand appears to be that the amount collected or demanded is really a tax, or fee, at any rate, which also the local authority has no right to ask for. Here again, the matter will have to be approached in an entirely different way. The amount that the petitioners have been asked to contribute is only towards the cost of the Scheme, which has to be incurred by the local authority. As to how exactly that contribution is to be worked out and the proportion in which the plots are to bear that burden, have all been indicated in the Act. Therefore, the liability of the petitioners to pay contribution has to be upheld, once we come to the conclusion that the Act, as a whole, will have to be sustained.

Both the contentions of the petitioners fail. The writ petition, is, accordingly, dismissed with costs of the respondents, one set.

V. P. S. Petition dismissed.

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