SUPREME COURT OF INDIA

Jayesh Dhanesh Goragandhi

Vs.

Municipal Corporation of Greater Mumbai

C.A.Nos.8708-8709 of 2012

(K.S.Radhakrishnan and Dipak Misra JJ.)

04.12.2012

JUDGMENT

K. S. RADHAKRISHNAN, J.

1. Leave granted.

2. The question that has come up for consideration before us is whether after framing a Town Planning Scheme and the final scheme brought into force, after reserving plots for public purposes, providing compensation under Chapter V of the Maharashtra Regional and Town Planning Act, 1966 (for short 'the MRTP Act'), can the land owner insist that the land be acquired only by following the provisions of Chapter VII of the MRTP Act, especially under Section 126 of the MRTP Act.

Facts

3. Vallabhadas Goragandhi was the original owner of plot No. 9 which was renumbered as Final plot No.44 in the Town Planning Scheme for Borivali with few structures thereon. After the death of Vallabhadas, his son Hiralal became the owner of the plot. Originally, that plot was under the Borivali Municipal Council in Thane District, Bombay. A Town Planning Scheme was prepared under the Town Planning Act, 1919 for Borivali with effect from 15.07.1919. In the year 1941,

Hiralal expired and the appellant herein and respondent Nos.3 to 6 are the legal heirs of Hiralal.

4. The Bombay Town Planning Act, 1919 was replaced by the Bombay Town Planning Act, 1954 and the Borivali Municipal Council declared its intention to vary the scheme prepared earlier. Then Government of Bombay declared on 31.12.1956 the intention of the Municipal Council to vary the scheme. With effect from 01.07.1957, Borivali Suburban became a part of Greater Mumbai and Municipal Corporation of Greater Mumbai became the Planning Authority for that area. On 30.11.1959 vide Resolution No. 1108, the Municipal Corporation declared its intention to vary the said scheme under the Bombay Town Planning Act, 1954. The Municipal Corporation vide its notification dated 10.12.1959 published its intention to vary the scheme. On 21.01.1961, the scheme was approved and published and original plot No.9 was renumbered as final plot No. 44. The Municipal Corporation on 16.12.1961 informed the 6th respondent Ranjit Hiralal that the above mentioned plot was reserved for public purpose. The Government of Maharashtra on 09.03.1962 sanctioned draft scheme (first variation) wherein the property in question was reserved for a public purpose. Later, an arbitrator was appointed under the Town Planning Act who served notice upon Smt. Jayantibai whose name was mentioned as owner of the property in the Property Register Card. Two of the legal heirs (who were plaintiffs in the suit) sent a representation to the Corporation to release their land from reservation.

5. The MRTP Act came into force with effect from 11.01.1967. The Corporation informed the legal heirs about the reservation of the property in question for public purpose. Ranjit Harilal, the 6th respondent along with his brother appeared before the Arbitrator on 03.01.1968 and filed a detailed statement on 08.02.1968 objecting the reservation of land for Municipal Offices. The Arbitrator by its order dated 10.04.1968 rejected the objections raised by the owner of the property. Later Smt. Jayantibai died on 11.01.1971. The Arbitrator gave the award under Section 72(3)(xviii) of the MRTP Act on 9.6.1973, confirming the proposal under draft scheme for reservation of the plot for the purpose of Municipal Office. The Town Planning Scheme for Borivali (II) (1st Variation) (final) was then published in the Government Gazette on 9.7.1973. Against the award of the Arbitrator dated 9.07.1973, an appeal was preferred by the respondents under Section 74 of the MRTP Act which was dismissed by the Tribunal. However, the rate of compensation was enhanced from Rs.15.60 to Rs.21.53 per sq. mtr. The

Government of Maharashtra later sanctioned the final scheme on 17.07.1976 and the same was notified on 20.07.1976. The Town Planning Scheme as varied came into effect from 28.09.1976. The Corporation later sent a notice to the owners of the plot calling upon them to collect the amount of compensation to the tune of Rs.1,17,918/- and the Ward Officer of the Corporation also issued notice under Section 89 of the MRTP Act calling upon the legal heirs to remove the structure from the property.

6. The legal heirs of Hiralal challenged the above mentioned notice, the award of the Arbitrator and the decision of the Tribunal by filing Writ Petition (C) 1084 of 1978 before High Court of Bombay. Writ Petition was, however, dismissed by a learned Single Judge of the High Court on 14.10.1981. Writ Appeal No. 530 of 1981 was preferred challenging the above mentioned judgment which was also dismissed by the Division Bench on 03.12.1981.

7. The Corporation later issued a notice under Section 89 of the MRTP Act which was challenged by the legal heirs by filing a civil suit before the City Civil Court. The Court rejected the plaint on 28.3.1988 under Order VII Rule 11(d) of CPC on the ground that under Section 149 of the MRTP Act, the City Civil Court has no jurisdiction to entertain and try the suit. The legal heirs then challenged the said order by filing Appeal No. 350 of 1988 before the High Court which was set aside and the suit was restored to the file to be heard and decided on merits. The City Civil Court vide its order dated 16/20.02.1995 decreed the suit in favour of the legal heirs and liberty was granted to the Corporation to take recourse to the proceedings under Chapter VII of the MRTP Act, particularly Section 126 for the purpose of acquisition of land.

8. The Corporation then preferred First Appeal No. 442 of 1995 which was dismissed by the learned Single Judge of the High Court, against which they preferred LPA No. 17 of 2002 which was allowed by the High Court vide its judgment dated 06.05.2005. Aggrieved by the judgment of the High Court dated 06.05.2005, the appellant preferred SLP (C) No. 20750 of 2005. The special leave petition was, however, disposed of by this Court on 24.10.2005 stating as follows:

> "It is stated by learned counsel for the petitioners that certain points which were really germane to the subject matter in dispute before the High Court, had not been placed for its consideration. It is stated that an appropriate

application shall be filed before the High Court for permission to urge those points. If it is done, the High Court shall deal with the matter in its proper perspective and in accordance with law which we express no opinion.

The special leave petition is, accordingly, disposed of."

9. Appellant then filed a review petition No.10143 of 2006 with an application for condonation of delay. Following are the propositions made in the review petition:

"(1) Proposals for Development Plan must provide, inter alia, for:

(a) allocating the use of land for purposes such as; residential, industrial, commercial, agricultural, recreational.

(b) designation of land for public purposes like schools, colleges....,markets...,Government and other buildings....(vide section 22)

(2) Town Planning Schemes prepared for implementing the [proposals in the final Development plan should also make provisions for the matters specified in the Development Plan, including reservation, acquisition, or allotment of land required for all purposes mentioned in Section 59(1)(b). (vide Sections 59 64).

(3) The Arbitrator appointed in accordance with Section 72 is required to define, demarcate and decide the areas allotted to or reserved for the public purpose or purposes of the Planning Authority, and also the final plots.

(4) All lands required, reserved or designated in a Development Plan or town planning scheme for a public purpose, are deemed to be the land needed for a public purpose within the meaning of the Land Acquisition Act, 1894 (vide Section 125) and all such lands, required or reserved for any public purpose specified in any plan or scheme, may be acquired at any time by the Planning Authority or the Development Authority or any other appropriate Authority in accordance with the provisions contained in the Land Acquisition Act, 1894 (vide Section 126).

(5) The cost of the scheme is required to be met wholly or in part by a contribution to be levied by the Planning Authority on each final plot calculated in proportion to the increment which is estimated to accrue in respect of such plot (vide Section 99). The cost of the scheme includes all sums payable by a Planning Authority and all sums payable as compensation for lands reserved or allotted for any public purpose or purpose of a Planning Authority which is solely beneficial to the owners or residents within the area of the scheme.

(6) Such plots of lands as are earmarked or reserved specifically for a public purpose, but which are not solely beneficial to the owners or residents within the area of the scheme, would not fall within the jurisdiction of the Arbitrator since the estimated amount of compensation payable for such lands could not be determined by him following the criterion laid down in Section 72 of the Act.

(7) The lands, which are specifically reserved for a public purpose but not solely beneficial to the owners or the residential within the area of the scheme, would have to be compulsorily acquired in accordance with the Land Acquisition Act following the mandates of Sections 125 and 126. The compensation that would become payable to the land owners for such acquisition would also not form part of such cost of such scheme and no part of the compensation amount could be met form the contribution to be levied by the Planning Authority on each final plot.

(8) The lands specifically reserved and earmarked for a public purpose in the scheme which is not solely beneficial to the owners or the residents within the area of the scheme, are not lands "required by the planning Authority" and hence, the provisions of Section 88(a) have no application in respect of such lands.

(9) The decision dated 23.12.2004 of the Division Bench of this Hon'ble Court in Zahir Jahangir Vakil v. Pune Municipal Corporation, has no application to the present case since the nature of the land which was the subject matter of the scheme therein was completely different. In that case, out of the original plot (revised plot no 77), two plots had been carved out - Final plot nos. 75 and 76. While the Final Plot no. 76 was allotted to the

landlord in substitution of the original plot of land, the other final plot no. 75 was reserved for a school. The purpose of the school is a public purpose, and was reserved solely for the benefit of the owners and residents within the area of the scheme and hence, the cost of the said land became payable as compensation derived from the contribution levied by the Planning Authority and became part of the cost of the scheme.

(10) In Zahir Jahangir Vakil's case, the provisions relating to "Finance of Schemes" contained in Section 97 and in particular clause (c) of Sub-section (1) thereof and sections 98 and 99, among others, had not been considered. Moreover, the interrelationship between the provisions in Sections 125 and 126 on the one hand, and Sections 22(b), 64(b) and 97(1)(c) read with Section 99 regarding lands reserved for specific purpose in the development plan and in the Town Planning Scheme, which are not solely beneficial to the owners or residents within the area of the scheme had not been considered. The said decision, therefore, could not be regarded as a precedent for the questions involved in the present proceedings (vide Union of India v. Dhanwanti Devi, (1996) 6 SCC 44, Para 9 and 10)".

10. The High Court condoned the delay in filing the review petition and examined the propositions and rejected all vide its order dated 16.10.2009. Further, the High Court also expressed the following view:

> "What is important to be noted first is that all the grounds which have been raised by way of the propositions of law which has been advanced, were not part of the pleadings in the main Suit. Since the matter has arisen from the Suit, the said pleadings were very much necessary so that the other side could have had an opportunity to meet out those pleadings and led evidence in that regard. Viewed from any angle, we do not find any substance in the afore-stated propositions advanced on behalf of the petitioner."

11. In our view, once the SLP had been disposed of on 24.10.2005, all the findings recorded in the judgment of the High Court dated 6.5.2005 had attained finality. Liberty was, however, granted on the request of the appellant to raise certain points which they could not raise earlier before the High Court. The High Court was also directed to deal with those points in accordance with law.

12. Shri Dushyant Dave, learned senior counsel appearing for the appellant, took us elaborately through the MRTP Act especially various provisions of Chapter V of the Act dealing with the Town Planning Schemes. Learned senior counsel submitted that when a land is clearly identified under the Development Plan or under the Town Planning Scheme as required for specified public purpose and it is so designated and declared in such a scheme, whether the land owner thereof is a participant in the scheme or a beneficiary of the scheme or not, such land could only be acquired in terms of the provisions contained in the Land Acquisition Act. Learned senior counsel pointed out that Section 59 of the MRTP Act opens with the words "subject to the provisions of this Act" and that has to be read along with Section 126 of the Act which provides that such land which is required or reserved for any of the public purposes specified in any plan or scheme may be acquired under the Land Acquisition Act. Learned senior counsel, therefore, submitted that any land which is required or reserved for any public purposes specified in any plan or scheme would be deemed to be land "needed for a public purpose" within the meaning of the Land Acquisition Act and hence would have to be acquired in accordance with the provisions of the Land Acquisition Act.

13. Learned senior counsel also submitted that the High Court has not properly appreciated the scope and purpose of Section 88 of the MRTP Act which has to be read in the context of Section 126 of the MRTP Act. The expression "vest absolutely" is used in a very limited sense in Section 88, which involves only adjustment of different values between the allottees and the other beneficiaries, limiting that much of lands which are required by Planning Authority, for its own purposes, while the rest of the lands under the Scheme undergoes transformation of exchanging in the rights of the land owners falling within the scheme. Learned senior counsel also submitted that the Act does not lay down any guidelines as to the circumstances that would justify acquisition of the land under Sections 125 and 126 on the one hand and extinguishment of the rights of the owners in the lands in terms of Section 88 with a meager compensation determined by the Arbitrator. Learned senior counsel also referred to the Preamble of the MRTP Act and submitted that the object of the Act was to make compulsory acquisition of land required for the public purposes in respect of the Town Planning Schemes. Learned senior counsel also referred to various judgments of this Court in support of its contention. Reference was made to the judgments of this Court in Municipal Corporation of Greater Bombay and others v. Hindustan Pertoleum Corporation and another (2001) 8 SCC 143, Shri Rangaswami, Textile Commissioner and

Others v. The Sagar Textile (P) Ltd. and Anr. (1977) 2 SCC 578, Sub-Committee on Judicial Accountability v. Union of India and others (1991) 4 SCC 699, Ram Prasad Narayan Sahi and another v. The State of Bihar and others (1953) 4 SCR 1129, The State of West Bengal v. Mrs. Bela Banerjee and others (1954) SCR 558, P. Vajravelu Mudaliar v. Special Deputy Collector, Madras Anr. (1965) 1 SCR 614 etc. Learned senior counsel also submitted what Municipal Corporation required is space for Municipal office of its own approximately 50,000 sq. feet which the appellant is ready and willing to provide while carrying out the construction of the area in question free of cost.

14. Shri U.U. Lalit, learned senior counsel for the Municipal Corporation, took us through the provisions of the MRTP Act, especially Chapter V in respect of framing of the Town Planning Scheme and submitted that the said chapter is a full and comprehensive provision for the preparation of the Town Planning Scheme. Learned senior counsel submitted that once the town planning scheme is framed in accordance with the said chapter and brought into force, the right, title of the original owner of the plot stands extinguished and the land would stand vested in the authority as per Section 88 of the MRTP Act. Learned senior counsel also submitted that Chapter VII of the MRTP Act is not applicable in such a case and the question of resorting to Section 126 does not arise, since an in- built mechanism has already been provided in Chapter V of the Act. Learned senior counsel also submitted that the appellant has already availed all the remedies available in Chapter V and there is no justification for invoking Section 126 of the MRTP Act. Learned senior counsel submitted that as per the Town Planning Scheme which came into force on 20.09.1976 the final plot No. 44 stood reserved for municipal office and has already been allotted to the Municipal Corporation and they are in physical possession of the plot in question. Learned senior counsel also submitted that SLP filed against the original judgment dated 6.5.2005 has already been dismissed by this Court and the points which attained finality cannot be reopened.

15. Learned senior counsel also pointed out that Municipal Corporation has already handed over the plot to M/s Vitrag Construction and they have already started construction of the corporation office and the grounds/foundation work is already over. Learned senior counsel submitted that the Corporation required an area of about 63,161.20 sq. ft. to accommodate all the existing offices and, therefore, the offer made by the appellant is legally unacceptable.

Maintainability of the Appeal

16. We fully endorse the view expressed by the learned senior counsel for the Corporation that, on dismissal of the SLP, the points already dealt with and decided by the High Court had attained finality. This Court, while disposing of the petition on 24.10.2005 permitted the appellants to raise those points which are germane to the "subject matter" for which, suitable pleadings should have been made in the plaint. The High Court in the review order dt. 16.10.2009 has clearly found that the grounds, which were raised in the review petition, were not part of the pleadings. In our view, that itself is sufficient to reject this appeal.

17. We have come across several orders passed by this court making observations while dismissing the SLP at the admission stage, that too without hearing the opposite side, which may apparently seem to be innocuous but may generate more litigations and embarrassment to the respective High Courts. If this Court grants liberty to any party to raise "certain points", those points should be clearly formulated in the order of this Court, so that the High Court would be in a better position to understand the points left to be decided by the High Court. Non formulation of such points by this Court creates confusion in the mind of the litigants giving room for more rounds of litigation. Our humble view is that this calls for serious introspection. Be that it may, we are inclined to examine the legal contentions urged before us.

18. We have already stated that the only question that arises for consideration is whether the landowners can take recourse to Section 126 of the MRTP Act, once the TP Scheme is framed and the final scheme has been brought into force, vesting the land in the Corporation and providing compensation as provided in the Town Planning Scheme.

19. The scope and ambit of MRTP Act came up for consideration before a five Judge Bench of this Court in Girnar Traders (3) v. State of Maharashtra and Others [(2011) 3 SCC 1] and this Court has taken the view that the provisions of the MRTP Act relate to preparation, submission and sanction of approval of different plans by the concerned authorities which are aimed at achieving the object of planned development in contradiction to haphazard development. An owner/person interested in the land and who wishes to object to the plans at the appropriate stage,

a self-contained adjudicatory machinery has been spelt out in the MRTP Act. Even the remedy of appeal is available under the MRTP Act with a complete Chapter being devoted to acquisition of land for the planned development. Providing adjudicatory mechanism is one of the most important facets of deciding whether a particular statute is a 'complete code' in itself or not.

20. Various provisions of the Act comprehensively prescribe what and how the steps are required to be taken by the authorities under the Act, right from the stage of preparation of draft development plan to its finalization as well as preparation and finalization of all regional and town planning schemes. Right of the interested person to raise objections, pre- finalization of the respective plans, is specifically provided. Besides providing right of objection to the owner of the land or property, which fall within the development plan, the State Act also provides machinery for finalization and determination of disputes between the authorities and private parties. Furthermore, a person is entitled to raise all disputes including the dispute of ownership. The Arbitrator nominated under the MRTP Act has the jurisdiction to decide all such matters. The jurisdiction of the Arbitrator is a limited one like estimation and payment of compensation in relation to plots in distinction to lands as defined under the Act within the four corners of the provisions of Sections 72 to 74 of the MRTP Act with reference to Section 97 of the State Act.

21. The MRTP Act is, therefore, a code in itself and has one predominant purpose, i.e., planned development. The principal purpose of the MRTP Act can be achieved without the aid of the Land Acquisition Act which has a very limited and restricted application. Whenever a land is required or reserved for any public purpose specified in any plan or scheme under the MRTP Act, the concerned authority may, with the exception of the provisions of Section 113A of the State Act, i.e. land designated under the Act connected with the development of the new town, acquire the land by different modes i.e. (a) by paying an amount agreed (by agreement); (b) in lieu of any such amount by granting the right specified under Section 126(1)(b); and (c) by making an application to the State Government for acquiring such land under the Land Acquisition Act. Section 126(2) lays down the procedure, primarily, as to how the application made under Section 126(1)(c) is to be dealt with by the State Government and, if it is satisfied, to make a declaration in the Official Gazette to the effect that the land is needed for a public purpose, in the manner provided in Section 6 of the Land Acquisition Act. Section 126(3)

deals with the procedure to be followed after declaration contemplated under Section 126(2) has been published.

22. It is not necessary to further elaborate the scope of the above mentioned provisions since, so far as the present case is concerned, there is no necessity of invoking Chapter VII of the Act since after the publication of the final scheme, the land vested absolutely in the Planning Authority free from all encumbrances as per section 88(a) of the MRTP Act. Now to examine, how the land stands vested under Section 88 of the MRTP Act, it is unnecessary to refer to few of the provisions of the MRTP Act. Section 2(9) defines 'Development Plan' under the MRTP Act which reads as follows:

> "(9) Development plan means a plan for the development or re- development of the area within the jurisdiction of a Planning Authority and includes revision of a development plan and proposal of a Special Planning Authority for development of land within its jurisdictions."

23. Sections 30 and 31 provide for submission of a draft Development Plan and sanction to draft Development Plan respectively. Those provisions are extracted hereunder for easy reference as it stood prior to the Amendment in 2011:

> "Section 30 - Submission of draft Development plan
>
> (1) The Planning Authority or as the case may be, the said Officer shall submit the draft Development Plan to the State Government for sanction within a period of twelve months from the date of publication of the notice in the Official Gazette regarding its preparation under section 26:
>
> Provided that, the State Government may, on an application by a Planning Authority or the said Officer by an order in writing, and for adequate reasons which should be recorded, extend from time to time the said period by such further period as may be specified in the order but not in any case exceeding twenty-four months in the aggregate.
>
> (2) The particulars referred to in sub-section (2) of section 26 shall also be submitted to the State Government.

Section 31 - Sanction to draft Development plan

(1) Subject to the provisions of this section, and not later than one year from the date of receipt of such plan from the Planning Authority, or as the case may be, from the said Officer, the State Government may, after consulting the Director of Town Planning by notification in the Official Gazette sanction the draft Development Plan submitted to it for the whole area, or separately for any part thereof, either without modification, or subject to such modifications as it may consider proper or return the draft Development plan to the Planning Authority or as the case may be, the said Officer for modifying the plan as it may direct or refuse to accord sanction and direct the Planning Authority or the said Officer to prepare a fresh Development plan;

Provided that, the State Government may, if it thinks fit, whether the said period has expired or not, extend from time to time, by a notification in the Official Gazette, the period for sanctioning the draft Development plan or refusing to accord sanction thereto, by such further period as may be specified in the notification :

Provided further that, where the modifications proposed to be made by the State Government are of a substantial nature, the State Government shall publish a notice in the Official Gazette and also in local newspapers inviting objections and suggestions from any person in respect of the proposed modification within a period of sixty days, from the date of such notice.

(2) The State Government may appoint an officer of rank not below that of a Class I Officer and direct him to hear any such person in respect of such objections and suggestions and submit his report thereon to the State Government.

(3) The State Government shall before according sanction to the draft Development plan take into consideration such objections and suggestions and the report of the officer.

(4) The State Government shall fix in the notification under sub- section (1) a date not earlier than one month from its publication on which the final Development plan shall come into operation.

(5) If a Development plan contains any proposal for the designation of any land for a purpose specified in clauses (b) and (c) of section 22, and if such land does not vest in the Planning Authority, the State Government shall not include that in the Development plan, unless it is satisfied that the Planning Authority will be able to acquire such land by private agreement or compulsory acquisition not later than ten years from the date on which the Development plan comes into operation.

(6) A Development plan which has come into operation shall be called the final Development plan and shall, subject to the provisions of this Act, be binding on the Planning Authority."

24. The Provisions of Town Planning Scheme are covered by Chapter V of the MRTP Act. Section 59 deals with preparation and contents of town planning scheme which reads as follows:

"Section 59 - Preparation and contents of town planning scheme

(1) Subject to the provisions of this Act or any other law for the time being in force-.

(a) a Planning Authority may for the purpose of implementing the proposals in the final Development Plan, prepare one or more town planning schemes for the area within its jurisdiction, or any part thereof;

(b) a town planning scheme may make provision for any of the following matters, that is to say-

(i) any of the matters specified in section 22;

(ii) the laying out or re-laying out of land, either vacant or already built upon, including areas of comprehensive development;

(iii) the suspension, as far as may be necessary for the proper carrying out of the scheme, of any rule, by-law, regulation, notification or order made or issued under any law for the time being in force which the Legislature of the State is competent to make;

(iv) such other matter not inconsistent with the object of this Act, as may be directed by the State Government.

(2) In making provisions in a draft town planning scheme for any of the matters referred to in clause (b) of sub-section (1), it shall be lawful for a Planning Authority with the approval of the Director of Town Planning and subject to the provisions of section 68 to provide for suitable amendment of the Development plan."

25. Section 61 of the MRTP Act deals with the making and publication of draft scheme by means of notice which is extracted hereunder for easy reference:

"Section 61 - Making and publication of draft scheme [by means of notice]:-

(1) Not later than twelve months from the date of the declaration, subject, however, to sub-section (3) the Planning Authority shall, in consultation with the Director of Town Planning, make a draft scheme for the area in respect of which the declaration was made, and published a notice in the Official Gazette, and in such other manner as may be prescribed stating that the draft scheme in respect of such area has been made. The notice shall state the name of the place where a copy thereof shall be available for inspection by the public and shall state that copies thereof or any extract therefrom certified to be correct shall be available for sale to the public at a reasonable price.

(2) If the Planning Authority fails to make a draft scheme and publish a notice regarding its making within the period specified in sub- section (1) or within the period extended under sub-section (3), the declaration shall lapse, unless the State Government appoints an Officer to prepare and submit the draft scheme to the State Government on behalf of the Planning Authority not later than twelve months from the date of such appointment or the extended period under sub-section (3); but any such lapse of declaration

shall not debar the Planning Authority from making a fresh declaration any time in respect of the same area.

(3) The State Government may, on application made by the Planning Authority or, as the case may be, the officer, from time to time by notification in the Official Gazette, extend the period specified in sub-section (1) or (2) by such period not exceeding six months as may be specified in the notification."

26. The power of State Government to require Planning Authority to make scheme is provided under Section 63 which is extracted hereunder:

"Section 63 - Power of State Government to require Planning Authority to make scheme:-

(1) Notwithstanding anything contained in this Act, the State Government may, in respect of any Planning Authority after making such inquiry as it deems necessary, direct that Authority to make and submit for its sanction, a draft scheme in respect of any land in regard to which a town planning scheme may be made after a notice regarding its making has been duly published in the prescribed manner.

(2) If the Planning Authority fails to make the declaration of intention to make a scheme within three months from the date of direction made under sub-section (1), the State Government may by notification in the Official Gazette, appoint an officer to make and submit the draft scheme for the land to the State Government after a notice regarding its making has been duly published as aforesaid] and thereupon the provisions of sections 60, 61 and 62 shall, as far as may be applicable, apply to the making of such a scheme."

27. Section 64 provides for contents of draft Scheme which are as follows:

"Section 64 - Contents of draft scheme:-

A draft scheme shall contain the following particulars so far as may be necessary, that is to say,--

(a) the ownership, area and tenure of each original plot;

(b) reservation, acquisition or allotment of land required under sub- clause (i) of clause (b) of section 59 with a general indication of the uses to which such land is to be put and the terms and conditions subject to which, such land is to be put to such uses;

(c) the extent to which it is proposed to alter the boundaries of the original plots by reconstitution;

(d) an estimate of the total cost of the scheme and the net cost to be borne by the Planning Authority;

(e) a full description of all the details of the scheme with respect to such matters referred to in clause (b) of section 59 as may be applicable;

(f) the laying out or re-laying out of land either vacant or already built upon including areas of comprehensive development;

(g) the filling up or reclamation of low lying swamp or unhealthy areas or levelling up of land;

(h) any other prescribed particulars."

28. Section 65 deals with the reconstituted plot. The same is also extracted hereunder for easy reference:

"Section 65 - Reconstituted plot:-

(1) In the draft scheme, the size and shape of every reconstituted plot shall be determined, so far as may be, to render it suitable for building purposes, and where a plot is already built upon, to ensure that the buildings as far as possible comply with the provisions of the scheme as regards open spaces.

(2) For the purpose of sub-section (1), a draft scheme may contain proposals--

(a) to form a final plot by reconstitution of an original plot by alteration of the boundaries of the original plot, if necessary;

(b) to form a final plot from an original plot by the transfer wholly or partly of the adjoining lands;

(c) to provide, with the consent of the owners, that two or more original plots each of which is held in ownership in severally or in joint ownership shall hereafter, with or without alteration of boundaries be held in ownership in common as a final plot;

(d) to allot a final plot to any owner dispossessed of land in furtherance of the scheme; and

(e) to transfer the ownership of an original plot from one person to another."

29. Section 67 deals with the objections to draft scheme which reads as follows:

"Section 67 - Objections to draft scheme to be considered:-

If within thirty days from the date of the publication of notice regarding the preparation of the draft scheme, any person affected thereby communicates in writing any objection relating to such scheme, the Planning Authority, or the officer appointed under sub-section (2) of section 61 or Section 63 shall consider such objection and may, at any time before submitting the draft scheme to the State Government as hereinafter provided, modify such scheme as it or he thinks fit."

30. Section 68 deals with the power of State Government to sanction draft scheme, the same is extracted for easy reference:

"Section 68 - Power of State Government to sanction draft scheme:-

(1) The Planning Authority or, as the case may be, the officer aforesaid shall, not later than six months from the date of the publication of the notice in the Official Gazette, regarding the making of the draft scheme, submit the same with any modifications which it or he may have made therein together

with a copy of objections received by it or him to the State Government, and shall at the same time apply for its sanction.

(2) On receiving such application, after making such inquiry as it may think fit and consulting the Director of Town Planning, the State Government may, not later than six months from the date of its submission, notification in the Official Gazette, or not later than such further time as the State Government may extend, either sanction such draft scheme with or without modifications and subject to such conditions as it may think fit to impose or refuse to give sanction.

(3) If the State Government sanctions such scheme, it shall in such notification state at what place and time the draft scheme shall be open to the inspection of the public and the State Government shall also state therein that copies of the scheme or any extract therefrom certified to be correct shall on application be available for sale to public at a reasonable price."

31. Section 72 deals with the powers and duties of the Arbitrator which reads as follows:-

"Section 72 - Arbitrator; his powers and duties:-

(1) Within one month from the date on which the sanction of the State Governments to the draft scheme is published in the Official Gazette, the State Government shall for purposes of one or more planning schemes received by it for sanction appoint any person possessing such qualifications as may be prescribed to be an Arbitrator with sufficient establishment and his duties shall be as hereinafter provided.

(2) The State Government may, if it thinks fit at any time, remove for incompetence or misconduct or replace for any good and sufficient reason an Arbitrator appointed under this section and shall forthwith appoint another person to take his place and any proceeding pending before the Arbitrator immediately before the date of his removal or replacement shall be continued and disposed of by the new Arbitrator appointed in his place.

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

(i) after notice given by him in the prescribed manner define, demarcate and decide the areas allotted to, or reserved, for the public purpose or purposes of the Planning Authority, and also the final plots;

(ii) after notice given by him in the prescribed manner, decide the person or persons to whom a final plot is to be allotted; when such plot is to be allotted; and when such plot is to be allotted to persons in ownership in common, decide the shares of such person;

(iii) estimate the value of and fix the difference between the values of the original plots and the values of the final plots included in the final scheme, in accordance with the provisions contained in clause (f) of sub-section (1) of section 97;

(iv) estimate the compensation payable for the loss of the area of the original plot in accordance with the provisions, contained in clause (f) of sub-section (1) of section 97 in respect of any original plot which is wholly acquired under the scheme;

(v) determine whether the areas allotted or reserved for the public purpose or purposes of the Planning Authority are beneficial wholly or partly to the owners or residents within the area of the scheme;

(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;

(vii) determine the proportion of contribution to be levied on each plot used, allotted or reserved for a 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;

(viii) determine the amount of exemptions, if any, from the payment of the contribution that may be granted in respect of plots or portions thereof exclusively used or occupied for religious or charitable purposes at the date on which the final scheme is drawn up under clause (xviii) of this sub-section;

(ix) estimate the value of final plots included in the final scheme and the increment to accrue in respect of such plots in accordance with the provisions of section 98;

(x) calculate the proportion in which the increment in respect of the final plots included in the final scheme shall be liable to contribution to the cost of the scheme in accordance with the provisions contained in section 97;

(xi) calculate the contribution to be levied on each final plot included in the final scheme;

(xii) determine the amount to be deducted from or added to, as the case may be, the contribution leviable from a person in accordance with the provisions contained in section 100;

(xiii) provide for the total or partial transfer of any right in an original plot to a final plot or provide for the extinction of any right in an original plot in accordance with the provisions contained in section 101;

(xiv) estimate the amount of compensation payable under section 66;

(xv) where a plot is subject to a mortgage with possession or a lease, decide the proportion of compensation payable to or contribution payable by the mortgagee or lessee on one hand and the mortgagor or lessor on the other;

(xvi) estimate in reference to claims made before him, after the notice given by him in the prescribed manner, the compensation to be paid to the owner of any property or right injuriously affected by the making of a town planning scheme in accordance with the provisions contained in section 102;

(xvii) determine the period in which the works provided in the scheme shall be completed by the Planning Authority;

(xviii) draw in the prescribed form the final scheme in accordance with the draft scheme:

Provided that--

(a) he may make variations from the draft scheme;

(b) he may with the previous sanction of the State Government after hearing the Planning Authority and any owners who may raise objections make substantial variations in the draft scheme.

Explanation,--For the purpose of sub-clause (b) of this proviso, substantial variation means increase in the total cost of the draft scheme by more than 20 per cent. or two lacs of rupees whichever is higher, on account of the provision of new works or the reservation of additional sites for public purposes included in the final scheme drawn up by the Arbitrator.

(4) The Arbitrator shall decide all matters referred to in sub- section (3) within a period of twelve months from the date of his appointment; and in the case of an Arbitrator appointed under the Bombay Town Planning Act, 1915 (Bom. I of 1915) or a Town Planning Officer appointed under the Bombay Town Planning Act, 1954 (Bom. XXVII of 1955) (whose appointment is continued under section 165), within a period of twelve months from the date of commencement of this Act:

Provided that, the State Government may, if it thinks fit, whether the said period has expired or not, and whether all the matters referred to in sub-section (3) have been decided or not, extend from time to time by a notification in the Official Gazette, the period for deciding all the matters referred to in that sub-section (3) or any extended period therefor."

32. Section 74 deals with the Appeal, as provided against the award of the Arbitrator which reads as follows:

"Section 74 – Appeal:-

(1) Any decision of the Arbitrator under clauses (iv) to (xi), (both inclusive) and clauses (xiv), (xv) and (xvi) of sub-section (3) of section 72 shall be forthwith communicated to the party concerned including the Planning Authority; and any party aggrieved by such decision may, within two months from the date of communication of the decision, apply to the Arbitrator to make a reference to the Tribunal of Appeal for decision of the appeal.

(2) The provisions of sections 5, 12 and 14 of the Indian Limitation Act, 1963 (36 of 1963) shall apply to appeals submitted under this section."

33. Section 86 deals with sanction by State Government to final scheme which reads as follows:

"Section 86 - Sanction by State Government to final scheme:-

(1) The State Government may, within a period of four months from the date of receipt of the final scheme under section 82 from the Arbitrator or within such further period as the State Government may extend, by notification in the Official Gazette, sanction the scheme or refuse to give such sanction provided that, in sanctioning the scheme the State Government may make such modifications as may in its opinion be necessary, for the purposes of correcting an error, irregularity or informality.

(2) If the State Government sanctions such scheme, it shall state in the notification--

(a) the place at which the final scheme is kept open to inspection by the public and also state therein that copies of the scheme or extracts therefrom certified to be correct shall, on application, be available for sale to the public at a reasonable price;

(b) a date (which shall not be earlier than one month after the date of the publication of the notification) on which all the liabilities created by the scheme shall take effect and the final scheme shall come into force:

Provided that, the State Government may, from time to time, postpone such date, by notification in the Official Gazette, by such period, not exceeding three months at a time as it thinks fit.

(3) On and after the date fixed in such notification, a town planning scheme shall have effect as if it were enacted in this Act."

34. Section 88 deals with the effect of final scheme which reads as follows:

"Section 88 - Effect of final scheme:-

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 otherwise determined 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 and the reconstituted plots shall become subject to the rights settled by Arbitrator;

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

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. Provisions of 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 of 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.

36. We have already noticed that, after coming into force the MRTP Act, the Corporation had informed the legal heirs about the reservation of the property in question for public purpose. Legal heirs then appeared before the Arbitrator and objections were filed before the Arbitrator objecting the reservation of property in question for municipal office. The Arbitrator rejected the objections raised by the legal heirs and passed an award on 09.06.1973 in conformity with the draft scheme under Section 72(3)(xviii) of the MRTP Act. The Arbitrator has also awarded the compensation and, aggrieved by the same, we have already indicated, legal heirs preferred an appeal under Section 74 of the MRTP Act which was dismissed by the Tribunal. However, the rate of compensation was enhanced from Rs.15.60 to Rs.21.53 per sq. mtr. Following all those statutory provisions, the Government of Maharashtra finally accorded sanction for the scheme in exercise of powers conferred under Section 86 of the MRTP Act. The effect and consequence of the final scheme has been provided under Section 88 of the MRTP Act. Therefore, once the final Town Planning Scheme has been in force and vesting of the land on the Town Planning authority takes place as provided under Section 88(a) of the Act.

37. We find that all the above-mentioned procedures have already been followed in the instant case resulting in vesting of the plot in question in the Planning Authority under Section 88(a) of the MRTP Act and the amount of compensation was also paid. The appellant contends that in spite of the fact that the plot stood vested in the Government or Town Planning Authority under Section 88(a) of the MRTP Act, even then the procedure prescribed under Chapter VII will have to be followed including Section 126 of the MRTP Act.

38. Appellant submits that even though there can be a provision of reservation and/or compensation under the Town Planning Scheme of any portion of the land vested on the Town Planning Authority, for the purposes of determining compensation, the State Government has to follow the procedure prescribed under Section 126(2) of the Act and proper compensation be paid under provisions of the Land Acquisition Act. It was further submitted that the vesting provided under Section 88(a) on final scheme being sanctioned by State Government, would be subject to computation of compensation as contemplated under Sections 126(2) and (3) of the Act. Even though, in the earlier part of the judgment, we have referred to Sections 125 and 126, it would be appropriate to extract both the sections in its entirety to appreciate the contentions raised by the appellant.

Section 125 - Compulsory acquisition of land, needed for purposes of Regional plan, Development plan or Town planning schemes, etc.:-

Any land required, reserved or designated in a Regional plan, Development plan or Town Planning Scheme for a public purpose or purposes including plans for any area of comprehensive development or for any new town shall be deemed to be land needed for a public purpose within the meaning of the Land Acquisition Act, 1894 (I of 1894).

Section 126 - Acquisition of land required for public purposes specified in plans:-

(1) Where after the publication of a draft Regional Plan, a Development or any other plan or Town Planning Scheme, any land is required or reserved for any of the public purposes specified in any plan or scheme under this Act at any time the planning Authority, Development Authority, or as the case may be, any Appropriate Authority may, expect as otherwise provided in section 113A acquire the land,--

(a) by agreement by paying an amount agreed to, or

(b) in lieu of any such amount, by granting the land-owner or the lessee, subject, however, to the lessee paying the lessor or depositing with the Planning Authority, Development Authority or Appropriate Authority, as the case may be, for payment to the lessor, an amount equivalent to the value of the lessor's interest to be determined by any of the said Authorities concerned on the basis of the principles laid down in the Land Acquisition Act, 1894 (I of 1894), Floor Space Index (FSI) or Transferable Development Rights (TDR) against the area of land surrendered free of cost and free from all encumbrances, and also further additional Floor Space Index or Transferable Development Rights against the development or construction of the amenity on the surrendered land at his cost, as the Final Development Control Regulations prepared in this behalf provide, or

(c) by making an application to the State Government for acquiring such land under the Land Acquisition Act, 1894 (I of 1894), and the land

(together with the amenity, if any so developed or constructed) so acquired by agreement or by grant of Floor Space Index or additional Floor Space Index or Transferable Development Rights under this section or under the Land Acquisition Act, 1894 (I of 1890), as the case may be, shall vest absolutely free from all encumbrances in the Planning Authority, Development Authority, or as the case may be, any Appropriate Authority.

(2) On receipt of such application, if the State Government is satisfied that the land specified in the application is needed for the public purpose therein specified, or if the State Government (except in cases falling under section 49 and except as provided in section 113A) itself is of opinion) that any land included in any such plan is needed for any public purpose, it may make a declaration to that effect in the Official Gazette, in the manner provided in section 6 of the Land Acquisition Act, 1894 (I of 1894), in respect of the said land. The declaration so published shall, notwithstanding anything contained in the said Act, be deemed to be a declaration duly made under the said section:

Provided that, subject to the provisions of sub-section (4), no such declaration shall be made after the expiry of one year from the date of publication of the draft Regional Plan, Development Plan or any other Plan, or Scheme, as the case may be.

(3) On publication of a declaration under the said section 6, the collector shall proceed to take order for the acquisition of the land under the said Act; and the provisions of that Act shall apply to the acquisition of the said land with the modification that the market value of the land shall be,-

(i) where the land is to be acquired for the purposes of a new town, the market value prevailing on the date of publication of the notification constituting or declaring the Development Authority for such town;

(ii) where the land is acquired for the purposes of a Special Planning Authority the market value prevailing on the date of publication of the notification of the area as undeveloped area; and

(iii) in any other case the market value on the date of publication of the interim development plan, the draft development plan or the plan for the area or areas for comprehensive development, whichever is earlier, or as the case may be, the date or publication of the draft Town Planning Scheme:

Provided that, nothing in this sub-section shall affect the date for the purpose of determining the market value of land in respect of which proceedings for acquisition commenced before the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972 (Mah. XI of 1973):

Provided further that, for the purpose of clause (ii) of this sub- section, the market value in respect of land included in any undeveloped area notified under sub-section (1) of section 40 prior to the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972 (Mah. XI of 1973), shall be the market value prevailing on the date of such commencement.

(4) Notwithstanding anything contained in the proviso to sub-section (2) and sub-section (3), if a declaration, is not made, within the period referred to in sub-section (2) (or having been made, the aforesaid period expired on the commencement of the Maharashtra Regional and Town Planning (Amendment) Act, 1993 (Mah. X of 1994))], the State Government may make a fresh declaration for acquiring the land under the Land Acquisition Act, 1894 (I of 1894), in the manner provided by sub-sections (2) and (3) of this section, subject to the modification that the market value of the land shall be the market value at the date of declaration in the Official Gazette, made for acquiring the land afresh.

39. This Court had occasion to consider the scope of provisions of the Bombay Town Planning Act inState of Gujarat v. Shantilal Mangaldas and Others AIR 1969 SC 634. Though there was no provision similar to Section 126 prescribing for payment of compensation following the Land Acquisition Act in the Bombay Town Planning Act, Section 53 of the Bombay Town Planning Act is in pari materia with Section 88 of the MRTP Act. In that case, placing reliance on judgment of this Court in P. Vajravelu Mudaliar v. Special Deputy Collector, Madras and Another [(1965) 1 SCR 614], it was contended that Section 53 (similar

to Section 88 of the MRTP Act) and Section 67, in any event, infringed Article 14 of the Constitution of India and were on that account void. Repealing the contention, the court in Shantilal Mangaldas held as follows:

> "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 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. Taylor Vs. Taylor, (1875) 1 ChD 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's case (1965) 1 SCR 614, 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 a rational relation to the object sought to be achieved. One broad ground of distinction between P. Vajravelu Mudaliar's case (1965) 1 SCR 614 and this case is clear, the acquisition was struck down in P. Vajravelu Mudaliar's case (1965) 1 SCR 614 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, 1955, 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 S.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 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 requisition. 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."

40. It was also urged in that case that 'vesting' under Section 53 (section 88 of the present Act) is not a valid vesting because the Government cannot expropriate property of a citizen without providing compensation in respect thereof. The Court held as follows:

"26. The principal argument which found favour with the High Court in holding Section 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 is utilized 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 Secs. 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 the power to appropriate the whole or 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 readjust 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 a make a scheme is notified is against the plain intendment of the Act."

41. The provisions of Bombay Town Planning Act again came up for consideration before this Court in Prakash Amichand Shah v. State of Gujarat and Others; 1986 (1) SCC 581 wherein this Court again examined the provisions of the Bombay Town Planning Act, particularly the provisions of Sections 53 and 67 to 71, which deal with the Scheme and consequential acquisition. The Court held that the acquisition of land under the Town Planning Scheme by the local authority under Section 53 cannot be said to be discriminatory or offending the equality clause on the ground that the local authority has an option to acquire the land under the Land Acquisition Act, 1894 which is a more favourable method of acquisition as regards the land owner. In Zandu Pharmaceutical Works Ltd. v. G.J. Desai [1969 UJ (SC)

575] the Court, while dealing with the provisions of the above-mentioned Act, observed as follows:

> "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 Art. 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 provisions one for the acquisition by 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. Hence the provisions of Sections 53 and 67 are not invalid on the ground that they deny equal protection of the loss or equality before laws."
>
> 19. In order to appreciate the contentions of the appellant it is necessary to look at the object of the legislation in question as a whole. The object of the Act is not just acquiring a bit of land 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."

42. In this connection, we may also refer to the judgment of this Court in Nagpur Improvement Trust and Another v. Vithal Rao and Others [AIR 1973 SC 689]. In that case this Court held that the Government can acquire the land for a housing

accommodation scheme either under the Land Acquisition Act or under the Improvement Act. The Court held that it enables the State Government to discriminate between one owner equally situated from another owner.

43. The scope of various provisions in Chapter VII of the MRTP Act itself came up for consideration before this Court in Laxminarayan R. Bhattad and Others v. State of Maharashtra and Another[(2003) 5 SCC 413]. In that case, the petitioner claimed an entitlement of TDR in lieu of compensation which he was claiming under the provision of Section 126 of the MRTP Act. Rejecting the contention, this Court held as follows:

> "61. The State while granting sanction could have modified the Scheme prepared by the Arbitrator. While doing so it was permissible for the State to make any modification with the Arbitrator's Scheme stating that TDR in lieu of compensation would be granted. Having not said so it is not for the appellant to contend that the State would be bound by its purported directives despite statutory interdicts contained in Section 86 and 88 of the Act.
>
> 62. In view of our findings aforementioned the third reason assigned by the Corporation must also be upheld. We may notice that the appellant herein has given up the question of applicability of Rule 10(2) before the High Court. The High Court in its impugned judgment recorded we may add that under Rule 10(2) of the D.C. Rules of 1967, additional FSI in lieu of the compensation was provided in certain cases. There, is however, no dispute that petitioners were not eligible for grant of additional FSI under the said Rule 10(2) inasmuch as the original plot belonging to the petitioners or any part thereof did not form part of the final plots which were allotted to them nor were the plots allotted to the petitioners affected by the road.
>
> 63. A legal right to have an additional FSI or TDR can be claimed only in terms of a statute or statutory regulations and not otherwise.
>
> 64. By reason of the provisions contained in Section 88 of the Act, original plot No. 433 vested in the State whereas the final plots 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.

65. Reliance placed by Mr. Devarajan on State of Gujarat (supra) is misplaced. In that case the question which arose for consideration related to a draft Scheme sanctioned by the Government on 17th August, 1942 under the Bombay Town Planning Act, 1915. The Scheme which had commenced under the 1915 Act continued under the Bombay Town Planning Act, 27 of 1955. The Respondents' land was acquired under the Scheme where after the plot was reconstituted into two, one each reserved for the respondent and the local authority respectively. A compensation was awarded for reservation of the said land in the local authority on the basis of market value as on 18th April, 1927. The said order having been questioned, construction of Section 53 of the Bombay Town Planning Act came up for consideration. This Court held: 27. The principal argument which found favour with the High Court in holding Section 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 pubic 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 he 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 of even the whole plot belonging to an owner may go to from a reconstituted plot which may be allotted to another person, or may be appropriated to public purposes under the scheme. The source of 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 plots 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 than lands vest in the local authority when the intention to make a scheme is notified is against the plain intendment of the Act.

66. The observations of this Court to the effect that there was no vesting of the original plots in the local authority nor was there any question of transfer of the rights in the reconstituted plots, were made having regard to the arguments made therein that the entire original plot as such vested in the local authority. This Court held that right in the original plot extinguished and the ownership in the reconstituted plot stood transferred only with the coming into force the Scheme and not prior thereto. In that case, the Scheme was held to be intra vires Article 31 of the Constitution.

67. Furthermore in this case the original plot and the reconstituted plot is not the same as was the case in the State of Gujarat v. Shantilal Mangaldas (1969) 1 SCC 509.

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". (Emphasis supplied)

44. Judgments referred to above as well as the judgment in Laxminarayan (supra) 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.

45. The Town Planning Scheme, as per the Act, is meant for planned developments of certain local areas depending on various factors in order to make available utilities and facilities to the general public in the said area. For the purpose of said Town Planning Schemes, various facilities, utilities and services are required to be provided for which certain lands are required. These Town Planning Schemes are for immediate need of the community and not for acquisition on deferred basis and therefore these sections under Chapter V provide a machinery to prepare and develop the area and implement such schemes in presenti. These schemes are not for future projections but for making available resources at the immediate time. In view of these circumstances, the lands required for implementation of various utilities and facilities, services of any public need and requirement would be for a public purpose and therefore the same have to be made available the Government immediately so as to implement the scheme.

46. Once the town planning scheme is finally sanctioned under Section 86, compensation is finally determined 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 finalized and sanctioned under Section 86 by the State Government as a final scheme for inviting objections under Section 67 of the Act. 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.

47. We therefore hold that the provisions of Section 126 can apply only when the scheme is not sanctioned and the amount of compensation has not been determined by the Arbitrator. Therefore, in cases where 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.

48. We also reject the contention that under the scheme, if any property is acquired by the Planning Authority and if it is required for the beneficial use of the persons, it is only then that the Arbitrator can fix the compensation and pass the award. If the property is taken over by the Planning Authority for the construction of its office and all civic amenities can be provided by the Planning Authority and if the office of the authority is located in an area where the scheme has been framed then it would be beneficial to the public as well. Since, it is also for a public purpose covered by the scheme, the contention that the area earmarked for the Town Planning Authority can be acquired only by following Section 126 of the Act, has no basis.

49. We find from the facts of the case that after completing the procedure under Chapter V, compensation was offered and paid to the appellant and the appeal preferred by the appellant was also dismissed by the Tribunal and therefore further acquisition of land under Section 126 does not arise. The High Court in our view has correctly interpreted the provisions of the Act which calls for no interference. The appeal is, therefore, dismissed without any order as to costs.