

GUJARAT HIGH COURT

Saiyed Mohammed Abdullamiya Uraizee

Vs.

Ahmadabad Municipal Corporation

Spl. Civil Application No. 1203 of 1965

(S. Obul Reddi, C.J., J.B. Mehta, B.K. Mehta, JJ.)

12/ 26.08.1976

JUDGMENT

S. Obul Reddi, C.J.

1. These Special Civil Application which are before us are dismissed with costs. The reasons will follow. Interim relief, if any granted in each of these petitions, is vacated. Rule discharge.

2. The learned counsel appearing for the petitioners in these petitions (except Special C.A. 1236/65) made an oral application for leave to appeal to the Supreme Court under Article 133(1) of the Constitution. We are unable to certify that any substantial question of Law of general importance which, in our opinion, requires to be decided by the Supreme Court arise in this batch of Special Civil Application. Leave refused.

J.B. Mehta, J.

3. These petitions were disposed of by the order dated August 12, 1976 as under :-

"These Special Civil Application which are before us are dismissed with costs. The reasons will follow, Interim relief, if any, granted in each of these petitions, is vacated, Rule discharged.

The learned counsel appearing for the petitioner in these petitions (except Special C.R.1236/65) made an oral application for leave to appeal to the Supreme Court under Article 13(1) of the Constitution, We are unable to certify that any substantial question of law of general importance which in our opinion, requires to be decided by the Supreme Court arises in this batch of Special Civil Application. Leave refused."

We, therefore, now give our reasons for the said decision.

2. In all these petitions, the petitioners have been issued notices of eviction under Section 54 of the Bombay Town Planning Act, 1954 (hereinafter referred to as 'the Act') read with Rule 27 of the Bombay Town Planning Rules, 1955 (hereinafter referred to as 'the Rules') because their right to occupy their-final plots in question had come to an end on the final town planning scheme having been sanctioned and as it became a legally binding enforceable scheme as if enacted in the Act itself under Section 51 (3) of the Act. The petitioners have, however, challenged these notices on various grounds in these petitions, inter alia

(1) That the mandatory safeguard of individual notice having not been complied with under R.21 (3) and R.21 (4) at the time of reconstitution of their plots under Section 32 (1) by the Town Planning Officer, the scheme is ultra vires the Act.

(2) That the eviction scheme under Section 54 and R.27 could not be invoked in cases where a building is to be pulled down in view of the specific demolition notice.

(3) That in any event , the eviction notice is ultra vires without first giving a show cause notice in accordance with the principles of natural justice as contemplated in the design I *Mangalijibhai Roopajihbai v. State*¹ by the Division Bench consisting of Bhagwati C.J., as he then was and T.U.Mehta J., and without first judicially deciding the question of the occupation not being wrongful.

(4) That in any event, time of a few days allowed in such eviction notice was so short and unreasonable in the context of such eviction as to vitiate such eviction notice.

3. As far as the first question was conceded, it is completely concluded by the Full Bench decision in Special Civil Appln. No. 1663 of 1970 decided on Aug. 4, 1976 - (AIR 1977 Cuj 23) where the learned Chief justice spoke for all of us. It has been finally held in that decision that the two decisions in *Kaushikprasad v. Ahmedabad Municipal Corporation*², and *Mohanlal Jesingbhai v. P. J. Patel*³, were wrongly decided to the extent that a right to individual notice under R. 21 (3) and (4) was held to be so mandatory as to have a nullifying consequence. It was in terms held that old sub-rule (3) and sub-rule (4) were merely additional procedural safeguards and were not the essential minimum requirements and the violation of such an additional procedural safeguard which was not in the nature of essential minimum procedural requirement as in the case of R. 21 (1) of a general notice would not render the scheme null and void or as transgressing the jurisdictional limits so as to entitle a party to challenge the same under Art. 226 or in any Court after it became a part of the Act under Section 51 (3). While coming to this conclusion, the learned Chief justice had reconsidered the two earlier decisions on the following vital considerations which had been unfortunately not earlier considered in those decisions :-

That Section 51 (3) has not been considered as it gave effect to the finally sanctioned scheme as if it was statutorily enacted in the Act and which thus conferred on it the status of a legislative measure so as to give immunity from challenge on the score of such procedural defects not amounting to transgressing the bounds of authority under the Act to frame such a scheme as per the settled practice in England referred to in the classic

decision in *Minister of Health v. King. (On the Prosecution of Yaffe⁴)*, Even the Supreme Court had in *State of Kerala v. K. M. C. Abdulla and Co⁵*, held that the effect of such a legislative device by giving the Rule effect as if enacted in the Act was to prevent its validity being challenged in Courts so long as the authority had not transgressed its limits

¹(1972) 18 Guj LT 649

³(1970) 11 uj LR 1035

⁵ AIR 1965 SC 1585 at page 1589

²(1970) 11 Guj LR 993

⁴(1931) AC 494

in making such a rule. Even in *Chief Inspector of Mines v. K. C. Thapar⁶*, this English practice had been considered by pointing out that the effect of this legislative device was to prevent the challenge to the validity of such measures sought to be protected by the words "as if enacted in the Act". The settled legal position had not been considered on the earlier occasion because Section 51 (3) was not pointed out.

(ii) While considering the safeguard under R. 21 (3) and (4) to be mandatory, the further question as to when the violation of even a mandatory provision resulted in nullity had not been considered as per the settled distinction pointed out between a mere illegality and a nullity in the decision in *Dhirendra Nath v. Sudhir Chandra⁷*.

(iii) That the distinction had not be unmade between the fact that minimum priceless: of natural justice had been embodied in the general notice provided in R. 21 (1) even at this stage when the Town Planning Officer dealt with this question of reconstitution of plots under Section 32 (1) and, therefore, the minimum principles of natural justice having not been whittled down so far as this additional safeguard was concerned of only a fairer and just treatment to an individual, it would not have nullifying consequences but would result in an irregularity which was cured because of the aforesaid protective, device so as to make the Scheme immune from challenge in writ jurisdiction or in a Court of law.

(iv) That the intrinsic evidence in the second proviso to Section 32 (1) which contemplated hearing of objections raised by the concerned owners only in cases of substantial variations and the elaborate scheme provided in Ss.' 56 and 57 even for the purpose of variation of schemes after they had obtained the status of a legislative measure under Section 51 (3) even on the grounds of errors, irregularities or informalities under Section 56 (1) or on the wider power under Section 57 (1) would show that the aforesaid safeguard was only an additional safeguard which would not have any nullifying consequence in the light of this whole scheme.

(v) That the same intention was now clearly brought out by the rule-making authority in the newly amended Rules in 1974 which also led to the irresistible conclusion that this was only an additional safeguard under Rules 21 (3) and (4) by way of a special notice and the violation thereof could never have any nullifying consequence.

Thus this question having been concluded as per settled legal position, the first ground raised by the petitioners would not survive.

4. As the full impact of this Fall Bench decision had to be considered and in that light the

decision in Mangalji bhai's case (1972-13 Guj LR 649) (supra) had to be examined by us, all these petitions were put up before this Full Bench.

5. In order to appreciate the other contentions raised by the petitioners, we would first set out the relevant scheme of these two relevant provisions, where provision is made for implementation of the final scheme which has now become a legislative measure under

⁶ AIR 1961 SC 838 at p. 845-847

⁷ AIR 1964 SC 1300 at p. 1305

Section 51 (3), After all the statutory procedure had been complied with including the quasi judicial machinery provided in Chap. V by Nay of the decisions of the Town Planning Officer under Section 32 and of the Board of Appeal under Section 34 which have become final and binding on the parties under Section 43 (1), this further procedure is for summary eviction in Section 54 and for enforcement of schemes under Section 55. Section 54 and its corresponding R. 27 run as under:-

"54. On and after the day on which the final scheme comes into force any person continuing to occupy any land which he is not entitled to occupy under the final scheme may, in accordance with the prescribed procedure, be summarily evicted by the local authority."

"27. Procedure for eviction under Section 54:(1) for eviction under Section 54, the local authority shall follow the following procedure, namely:-

(a) The local authority shall in the first instance serve a notice upon the person to be evicted requiring him, within such reasonable time as may be specified in the notice, to vacate the land.

(b) If the person to be evicted fails to comply with the requirement of the notice, the local authority shall depute any Officer or servant to remove him.

(c) If the person to be evicted resists or obstructs the officer or servant, deputed under Clause (b) or if he re-occupies the land after eviction, the local authority shall prosecute him under Section 188 of the Indian Penal Code."

Section 55 and its R. 28 run as under:-

"55. (1) On and after the day on which the final scheme comes into force the local authority may after giving the prescribed notice and in accordance with the provisions of the scheme

(a) remove, pull down, or alter any building or other work in the area included in the scheme which is such as to contravene the scheme or in the erection or carrying out of which any provision of the scheme has not been complied with. "

(b) execute any work which it is the duty of any person to execute under the scheme in any case where it appears to the local authority that delay in the execution of the work would prejudice the efficient operation of the scheme.

(2) Any expenses incurred by the local authority under this Section may be recovered

from the persons in default or from the owner of the plot in the manner provided for the recovery of sums due to the local authority under the provisions of this Act.

(3) If any question arises as to whether any building or work contravenes a town planning scheme, or whether any provision of a town planning scheme is not complied with in the erection or carrying out of any such building or work, it shall be referred to the State Government or any officer authorized by the State Government in this behalf and the decision of the State Government or of the officer, as the case may be, shall be final and conclusive and binding on all persons."

"28. Notice before enforcement of scheme:- Before removing, pulling down or altering any building or other work or executing any work under sub-s. (1) of Section 55 the local authority shall serve a notice on the owner or occupier of the building or work, as the case may be, calling upon him to remove, pull down or alter such building or work or execute such work within such reasonable time as may be specified in the notice and intimating him the intention of the local authority to do so on failure to comply with the requirement of the notice."

6. A bare perusal of these two relevant provisions would show that the said two provisions deal with two different situations and they occupy entirely different fields. Section 54 deals with the question of eviction after the final scheme has come into force and the persons continue to occupy any land which they are not entitled to occupy under the final scheme as per the procedure prescribed in R. 27. On the other hand, Section 55 (1) (a) deals with the case of removal, pulling down or alteration of any building or other work in the area included in the scheme only on the ground that it is such as to contravene the scheme or in the erection or carrying out of which any provision of the scheme has not been complied with. Even under Section 55 (1) (b) the local authority has the power to, emanate any work which it is the duty of any person to secure under the scheme where it appears to the local authority that delay in the execution of the work would prejudice the efficient operation of the scheme. That is why provision is made in Section 55 (2) for recovery of sums incurred by the local authority under & 55 from the persons in default or from the owner of the plot in the same manner as recovery of other sums due to the local authority under the Act. The whole ambit of Section 55 being of such constructions which are offending constructions being of the nature as to, contravene the scheme or where erection or carrying out of the work has been done in non-compliance of a provision of the scheme, the Legislature has advisedly provided a special machinery under 55 (3) for resolution of the question as to whether any building or work contravenes a town planning scheme, or whether any portion of a town planning scheme has not been complied with in the erection or carrying out of any such work. Such a question has to be referred to the State Government or its authorized Officer and their decision is made final and conclusive and binding on all persons. Therefore, the substance of Section 54 is eviction of a person from land which he, is not entitled to occupy under the final scheme while the purport and substance of Section 55 is to deal with buildings or works which contravene or do not comply with the provisions of the Act. It is only in the second case under Section 55 that the statutory machinery is provided for resolving

the dispute, as to whether any building or work contravenes the scheme, or whether a provision of the scheme has not been unapplied with in its erection or carrying (out of such bridling or work, by such an independent body like the State Government or its authorized Officer. No such provision is advisedly provided in the context of the eviction machinery under Section 54 because that power is in those cases where any person continuing to occupy any land is found not entitled to occupy under the final scheme. In that context Section 53 would be very relevant which provides-

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

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

(b) all rights in the Original plots which have been re-constituted shall determine and the re-constituted plots shall become subject to the rights settled by the Town Planning Officer."

Therefore, where admittedly no rights have been reserved by the Town Planning Officer in the final scheme as in the case of these petitioners, their right to occupy the land has come to an end by the statutory force of the scheme which has now become a legislative measure. In such a case once the property has vested absolutely in the local authority and all rights of these persons occupying the same have come to an end, the eviction power would be merely an administrative power of eviction. Such eviction would be of the same nature as of the persons who are evicted under the provisions of the Land Acquisition Act after the acquired land has vested in the State and the matter is only of taking possession:

7. That is why the procedure prescribed in the two cases is different. Under R. 27 (1) (a) it is enacted that the local authority shall in the first instance serve a notice upon the Person to be evicted requiring 'him. within a reasonable time specified therein, to vacate the land. Under Clause (b), if he fails to comply with the requirement of the notice, any Officer or municipal servant can be deputed to remove him. The person to be evicted. if he resists or obstructs the officer or servant, would be dealt with under R. 27 (1) (c). This prescribed procedure, therefore, does not specifically provide for any * notice of hearing at this stage of eviction and the notice, if any would have to be implied only in cases where the principles of fair play. would so require on account of the development of our administrative law so that the person concerned may not be prejudiced if he has a substantial ground to urge. On the other hand, so far as R. 28 is concerned, it provides a notice before the enforcement of the scheme under Section 55 by enacting that before removing, pulling down or altering any building or other work or executing any work under sub-s. (1) of Section 55, a notice shall be served by the local authority on the owner or occupier of the building or work, calling upon him to remove, pull down or alter such building or work or execute such work within a reasonable time specified therein and also intimating the intention of the local authority to do so on failure to comply with the requirement of that notice. Mat notice under R. 28 would be a prior notice giving an Opportunity to the concerned owner or occupier to avail of that opportunity, to demolish the building or carry Out the work as required.

Once that notice is served the statutory question could be resolved by the quasi judicial decision contemplated in Section 55 (8). Therefore, the two provisions in Section 54 and % 55 will have to be interpreted as dealing with them two different situations In view of the different fields they occupy and we therefore relatable to two different purposes winch speak for the difference in the nature of these two provisions,

8. The dichotomy of these two provisions could not rest, as urged by the petitioner, on the fact that the term "land" is used in Section 54 and "building and other work" are mentioned in Section 55. It is true that the expression "land" in Section 2(3) which is of a wide amplitude to include benefits to arise out of land and things attached to the earth preeminently flattened to anything attached to the earth would include "buildings or works" on the land. The said definition is to apply unless there is anything repugnant in the subject or context. The context of the eviction provision is Section 54 does not show anything compelling to narrow down the wide scope of the definition of "land" which would include "building and work" because, such a view would really frustrate the object of the crystallized in the final scheme vesting the required land in the local authority under Section 53 (a) and when all rights to occupy have been determined, the person sought to be evicted could never contend that any further judicial decision is to be reached as to whether he is entitled to continue the occupation not with standing the fact that the final scheme has not reserved any such right. This narrow construction suggested by the petitioners would require that even in such context, if the person is to be evicted by incidentally pulling down his building which has absolutely vested in the local authority and in which no right of occupation continues, the adjudication machinery under Section 55(3) would have to be invoked. That machinery deals with the only statutory question as to whether the building or work contravenes the town planning scheme or whether any provision has not been complied with in the erection or carrying out of any such building or work which is the only contingency for the application of Section 55 (1) (a). Therefore, in such cases on this narrow construction there would be no eviction in cases of buildings where the right to occupy has connect to an end under the final scheme as no right of occupation is reserved by the Town Planning Officer to such an occupier as the statutory question in Section 55 (1) of the building or construction being in contravention of the scheme or in non-compliance with the provision of the scheme does not arise. That would whittle down this implementations machinery and render it ineffective to deal with cases of such building where the right to occupy has ended and still the building does not come within this mandatory condition envisaged by ssS.55 (1) (a) of being in contraventions of the scheme or in non-compliance thereof. As contravention of the scheme is a penal offence in the context of such schemes which gave becomes legislative measures, primes operation. Therefore, the narrow construction would make the scheme of eviction able for buildings where there is no such contravention or where they have been corrected even long before there was a declaration of the scheme and the statutory restrictions were attracted. Therefore, the very fact that two different situations are dealt with, one of eviction on the person's right to occupy ceasing and the other of the construction being an offending construction, would show that the dichotomy is not between "land" and "building" as contended by the petitioners in the two statutory schemes of Section 54

and 55 but the dichotomy is between the two different situation of eviction and the construction being an offending construction as in contravention or in pliancy of the scheme.

9. Even there is binding authority as the proper construction of these two relevant provisions in the manner we have done on first principles. In *Bombay Municipality v. Advance Builders*⁸, while dealing with this relevant scheme in Ss. 53 to 55 of the Act their Lordships pointed out at pages 797 and 798 that all that the local authority had to see for the purpose of Section 54 was whether any person was occupying any land in of the rights, determined under the final scheme and, if he did so, he was to be evicted by the local authority, while Section 55 provided a self-contained code by which buildings and works situated in the whole of the area under the Scheme were liable to be removed or pulled down the local authority if those buildings or works contravened the town planning schemes. Therefore, the settled interpretation is that the two provisions deal with these two different situations as they occupy two different fields. Further proceedings their Lordships pointed out that the Scheme and the regulations leave no doubt that the local authority was entirely responsible for removing the huts, sheds, stables and other temporary structures which contravened the town planning scheme. It was inherent in the town planning scheme that owners or occupants were liable to be discoursed and even an owner may get a reconstituted plot which belongs to some other owner. Therefore the innocent owner could not be put to undeserved hardship and the object of removing the slum dwellers as expeditiously as possible which is the very object of such a town planning scheme would be frustrated if a provision of eviction which is visualized in Section 54 giving ample powers to the local authority to do the needful had not been enacted. Further proceeding at page 800 it was pointed out that since development and

⁸ AIR 1972 SC 793

planning was primarily for the benefit of the public, the Corporation was under an obligation to perform its duty in accordance with the provisions of the and, therefore, in such cases even by a mandamus, a Municipal Corporation could be directed to perform its statutory duty of evicting the unauthorized occupiers from the finally reconstituted plots.

10. Even in *K. R. Shenoy v. Udipi Muni. Capacity*⁹, where a cinema house had been erected in violation of a town planning scheme even at a huge expense, their Lordships held that if the Municipality had arbitrarily acted to sanction such a plan, the Court must enforce the performance of statutory duty by such public bodies as obligation to rate-payers who had a legal right to demand compliance by a local authority with its duty to observe statutory rights alone. The town planning scheme was for the benefit of the public. There was special interest in the performance of the duty. All the residents in the area had their personal interest in the performance of the duty. The special and substantial interest of the residents in the area was injured by the illegal construction and the town planning scheme could not be allowed to be nullified even by arbitrary unauthorized act of the municipal body and. therefore, the Resolution of the Corporation sanctioning the plan for permitting such a cinema house in a residential area was held to be without any legal foundation and the building had to be pulled down because illegality in such cases was held to be incurable. If this is the statutory guideline of the duty of

eviction which the local authority has to discharge for the benefit of the public, it is obvious that the provision must be widely interpreted to carry out its benevolent purpose so that all occupiers, whether of land or buildings whose right to occupation has ceased under the scheme, could be summarily evicted under this provision of Section 54 read with R. 27 and that benevolent statutory provision should not be frustrated, The same view is taken in Special Civil Applu. No. 1151 of 1965 decided on July 0, 1969 (Guj) by the Division Bench consisting . g of Bhagwati C. J. as he then was and Divan J., and in Special Civil Application No. 265 of 1967 decided on March 16, 1970 (Guj) by the Division Bench consisting of myself and A. D. Desai J. In that view of the matter, even the second contention raised by the petitioners must fail when the present context admittedly is of eviction of the petitioners whose right of occupation of the final plots in question has ceased in absence of any reservation in their favor made in the final scheme.

11. The third contention rests on the doctrine in *Mangalji Bai Roopji Bai v. State*¹⁰, where Bhagwati C. J. as he then was, spoke for the Bench and upheld the vires of Section 54 as being not violative of Art. 14. It was pointed out that so far as the land required by the local authority under the final ' scheme was concerned, the right to own it and to obtain possession of it with the corresponding liability of the occupant of such land to eviction did not exist under the general law prior to the making of the final scheme and it was a right or liability created for the first time by the final scheme which was to be read as a part of the new Act. The new Act while creating these new rights and liabilities gave a special and particular remedy for enforcing them under Section 54 and the remedy of summary eviction provided in Section 54, therefore, must be held to be an exclusive remedy and the liability to eviction under Section 53 clause (a) or Clause (b) could not be enforced by the ordinary course of a suit. Therefore, where a person continued to occupy any land which he was not entitled to occupy under the final scheme there was only one remedy of eviction which could be availed of against him and that was the remedy of summary eviction provided in Section 54 and it was, therefore, held not to violate the

⁹ AIR 1974 SC 2177 at p. 2182

¹⁰(1972) 13 Guj LR 649

equality guarantee under Art. 14.

12. After upholding the vires of this provision the further question was considered as to whether this was a quasi-judicial power or an administrative power and as to what extent the principles of natural justice could be read into this provision in the face of R. 27 because it had been contended that R. 27 was ultra vires Section 54 to the extent it provided a procedure which did not conform with the principles of natural justice. At page 659 it was pointed out that the final scheme was by a legal fiction made a part of the new Act as if it was enacted in it and, therefore, while exercising the power of summary eviction, the local authority would have to interpret the legislative provision for the purpose of determining whether the occupant was entitled to occupy the land or not. Such a process requiring interpretation of a statutory provision, where the effect of the decision reached by the local authority would be to determine the rights of the occupant of

the land leading to the consequence of summary eviction in case of an adverse determination would show that it was a quasi judicial power which must be exercised in accordance with the principles of natural justice and if there was any violation of principles of natural justice, the exercise of that power would have to be struck down as invalid. In that context R. 27 was considered as to whether it dispensed with the observance of the principles of natural justice. It was pointed out that there was nothing in Rule 27 which would create any inconsistency or contradiction with Section 54 which impliedly required the local authority to observe the principles of natural justice in exercising the power of summary eviction. The basic minimum requirement of natural justice was that the occupant of land who was sought to be summarily evicted must be told what were the grounds on which he was sought to be summarily evicted and he must be afforded an opportunity of showing cause against the action proposed to be taken against him. The local authority might, therefore, adopt either of two procedures :-

"..... the local authority may, before issuing a notice of summary eviction, under R. 27 Clause (a), give a notice to the occupant of land setting out the grounds why, according to the local authority, he is not entitled to occupy the land and calling upon him to show cause why he should not be summarily evicted. The local authority may in such a case determine, after hearing the occupant of the land, whether he is entitled to occupy the land or not and if it comes to the conclusion that he is not entitled to occupy the land, it may then issue a notice of summary eviction under R. 27 Clause (a). The local authority may also, if it so thinks fit, afford an opportunity to the occupant of the land to show cause against the proposed action by stating in the notice of summary eviction issued under R. 27 Clause (a) that he should vacate the land unless, within such reasonable time as may be specified in the notice, he shows cause why he should not be summarily evicted. The occupant of the land would in such a case have an opportunity of making his defense or explanation showing that he is entitled to occupy the land under the final scheme and he should not, therefore, be summarily evicted. If the local authority is satisfied with the defense or explanation of the occupant of the land, it may discharge the notice. But if it is not so satisfied, it may confirm the notice and after fixing a reasonable time for vacating in the order of adjudication, proceed to summarily evict the occupant of the land if he fails to vacate within the time so fixed. Either of these two procedures would satisfy the basic minimum requirements of natural justice. It is, therefore, clear that there is nothing in R. 27 which excludes the principles of natural justice and R. 27 cannot be said to be ultra vires Section 54."

This decision upholds the validity of R. 27 because it satisfies the minimum basic requirement of natural justice which has to be read as per the developed administrative law, after the classic decision in *A. K. Kraipak v. Union of India*¹¹, The two alternative procedures which were open to the local authority under R. 27 were held to satisfy this minimum requirement. The two alternative procedures would be either giving a show cause notice or issuing a demand notice of eviction which would merely be confirmed by implementation of it if no cause is shown within

the reasonable time. Both these alternative procedures were held to satisfy the minimum basic requirement of natural justice and, therefore, the vires of R. 27 was upheld.

13. It is true that in this decision at the outset it has been mentioned that this eviction power in Section 54 was a quasi judicial power because the statutory scheme would have to be interpreted to find out whether the occupier's right to occupy it had come to an end so that he should be summarily evicted from the land. That contingency would arise only in those cases where the final scheme had not extinguished the rights but had made some reservation which would require a process of statutory interpretation. The final scheme may have not vested the plot in the local authority for a public purpose envisaged under the scheme and the question may have to be decided in the context of an individual who was allotted that plot after making certain reservations. In all such cases or when easement rights are reserved, the controversy even in the eviction context might be such as would involve a process of statutory interpretation and, therefore, the power would assimilate the nature of a quasijudk power where the decision would have to be reached in accordance with the principles of natural justice. There would equally be other cases as in the case of all these petitioners where the rights have been finally settled and no reservation whatever has been admittedly made in favor of the petitioners in the final scheme allowing them to occupy these plots because all these plots have vested in the Corporation for thee purpose mentioned in the Scheme. In such cases, the quasi-judic stage in already finished under Chapter V by the decision of the Town Planning Officer and of the Board oil Appeal if any. The scheme has become a legislative measure under which the Petitioners' rights have totally ceased to Occupy these predates and the power of eviction in such a context would be in the nature of an administrative power. In such a context under the developed administrative law after Kraipales case (AIR 1970 SC 150) the minimum requirement of natural jute would be by way of fair-play and justice. Therefore, the said requirement of principle of only fairplay would be complied with when the eviction notice is given and the petitioners have failed to show any substantial ground by any substantial question. In such cases the notice would have to be implemented when no ground whatever has been made Out by giving any explanation raising a substantial question or even suggesting the same sit the hearing before us, Therefore, in such cases there is no question Of any Preludal decision and the impugned notices could not be attacked on a mere academic ground. The principles of natural justice would be violated if the petitioners are said to be substantially or prejudicially affected by the notices. The principles of natural justice when they are read impliedly for making the administrative decision a fair one in such a context are not by way of mere

¹¹ AIR 1970 SC 150

technicalities. These objections are of substance and not of mere form and. therefore, when the petitioners admittedly have 'no right under the final scheme to continue their occupation, they could never invoke any Prejustice or desideration of the principle at fair-play and, justice so as to have these impugned notices invalidated.

14. In the aforesaid Full Bench decision we have pointed out that the scheme having become a

legislative measure, the first objection of an additional special notice could no longer be urged so as to have invalidator consequence. Therefore, that ground could not be raised in the replies to these eviction notices and no other ground is suggested. Therefore, the decision in Mangallililai's case (19172-18 Guj LR 649) (supra) could not help the petitioners because there is no question of any quasi-Judicial decision being now reached where any provision of the scheme has to be interpreted as no reservation whatever has been admittedly made of the petitioners' right to occupy these plots. No substantial ground whatever having been made out by giving any explanation or by suggesting any explanation even at the bearing, there would be no prejudice and it would be a mere technicality if the impugned notices in the present cases are to be invalidated on any such ground. Therefore, there is no substance even in the third contention raised by the petitioners.

15. As regards the Last ground it is true that in cases of eviction from immovable Properties, a fairly long period should be provided by the local authority. A reasonable period would, however, depend upon the facts and circumstances of each case. In the present cases, even on that score no Prejudice has resulted because the petitioners had ample knowledge, of the finally published schemes which had become legislative measure. They knew that their right to occupy had ceased and at any time they were liable to be evicted. Even after the impugned notices the petitioners have remained without any right after the finally sanctioned scheme under which all their rights were extinguished, remained in occupation all these years only because of our stay order. Therefore, on this ground also the impugned notices could never be invalidated and in all these cases also for the same reasons as in special Civil Application No. 1668 of 1970 . (AIR 1977 Guj 28 (FB)) disposed of by us, we cannot further continue the interim relief any longer when these petitions now obviously fail.

16. Some additional ground has been urged by Mr. Amin in Special Civil Application No. 1560 of 1970 & Mr. Amin argued that staff quarters of a fire brigade could not be said to be for a public Purpose of the scheme. The reliance on *State of West Bengal v. P. N. Talukdar*¹². In a different context of works directly useful to the public within the meaning of Section 40(1)(b) of the Land Acquisition Act could hardly be pressed in aid when these lands were required for the salutary purpose of the town planning scheme for housing the fire brigade personnel. Mr. Amin ignores Section 81 which provides that land needed for the public purpose of a town planning scheme or development plan shall be deemed to be land needed for purpose within the meaning of the Land Acquisition Act 1894. Equally misconceived is his objection that the scheme is mala fide because land had been under a compromise acquired for a Co-operative Housing Society at a higher price. These are not allegations of mala fide whatever of the State Government. The urgent Co-operative Housing Societies schemes might have justified acquisition for that public purpose being given a priority but the present lands from these

¹² AIR 1965 SC 646

Petitioners are required for the purpose of the town planning scheme and, therefore the whole contention of mala fides is thoroughly misconceived. The same is true of the grievance of

non publication of the draft scheme which has; belie completely met with by showing how the draft scheme had been properly Pub shed. Therefore. no additional ground exists even in Mr. Amin's petition.

17. In the result all these petitions fail and, therefore, they have to be dismissed. These petitions are, therefore, dismissed with costs. For the aforesaid reasons the interim relief granted in each case is vacated and the rule is discharged in each case.

Petitions dismissed.