Supreme Court of India Bhavnagar University vs Palitana Sugar Mill Pvt. Ltd. & Ors on 3 December, 2002 Author: S.B. Sinha Bench: Cji, K. G. Balakrishnan, S.B. Sinha. CASE NO.: Appeal (civil) 8003 of 2002

PETITIONER: Bhavnagar University

RESPONDENT: Palitana Sugar Mill Pvt. Ltd. & Ors.

DATE OF JUDGMENT: 03/12/2002

BENCH: CJI, K. G. Balakrishnan & S.B. Sinha.

JUDGMENT: J U D G M E N T WITH Civil Appeal Nos.1539, 1540, 1541 of 2001 and Civil Appeal Nos. 8004-8012 2002 [Arising out of SLP (C) Nos.1636-1644 of 2001] S.B. SINHA, J : Leave granted in special leave petitions. This batch of appeals arising out of common Judgment and Order of the Gujarat High Court at Ahmedabad in SCA Nos. 10108/94, 4427/92, 4733/92, 4847/92, 3537/95, 8882/99, 8888/99, 6461/96 and 6519/98 involving the question as regard to interpretation of Sections 20 and 21 of the Gujarat Town Planning and Urban Development Act, 1976 (for brevity, hereinafter referred to as the 'Said Act'), were taken up for hearing together and are being disposed of by this common judgment. The basic fact of the matter is not in dispute. The State of Gujarat in exercise of its power conferred upon it under Section 20 of the said Act reserved certain areas of which the respondents herein amongst others are the owners On or about 3.3.1986 a development plan was finally published in terms of the provisions of the said Act, and the period of 10 years therefrom lapsed on 2.3.1996. A revised Development plan however came into being on 20th February, 1996. It is not in dispute that respondents who claim ownership of the lands in question issued notices in terms of sub-section 2 of Section 20 of the said Act, asking the State Government to acquire the properties in terms thereof. The short question which arises for consideration in these matters is as to whether by reason of inaction on the part of the State and its authorities under the Town Planning Act to acquire the lands for a period of more than 10 years, in terms of the provisions of Lan ection 20 of the Act and on their failure to do so the reservation/designation in respect of land in question would lapse. Per contra the contention of the Appellant was that the provisions of Section 20(2) of the Act although enables service of notice by land owners for acquisition within six moths from the expiry of 10 years from the date of final development plan but the same would not come into operation when the final development plan is in the process of revision under Section 21 of the said Act read with sub-section 1 of Section 20 thereof. The High Court upon taking into consideration the provisions of the said Act and upon consideration of the rival contentions raised therein came to the conclusion that issuance of a draft revised plan by itself does not put an embargo on the application of sub-Section (2) of Section 20 of the Said Act. The appellants were represented by Mr. Kirit N. Rawal, Solicitor General and Mr. T.R. Adhyarujina, learned senior counsel appearing for the Gujarat University and Mr. Tanna for the South Gujarat University. The contention of the learned counsel for the appellant was that having regard to the

scope and purport of the said Act, the High Court must be held to have erred in so far as it failed to take into consideration that the objects of an integrated, incorporated and interdependent development plan, cannot be fully achieved within a period of 10 years and in that view of the matter when steps are taken for revision of the final development plan, the period specified in sub-section (2) of Section 20 would get automatically extended. Strong reliance in this behalf has been placed on K.L. Gupta & Ors. v. The Bombay Municipal Corporation and Ors, [(1968) 1 SCR 274], Ahmedabad Urban Development Authority v. Manilal Gordhandas & Ors. [(1996) 11 SCC 482]; Murari & Ors. v. Union of India & Ors. [(1997) 1 SCC 15]. On the other hand, the submissions of learned counsel for the respondents led by Mr. Asok Desai the learned senior counsel is that in the event the interpretation of the provisions of Sections 20 and 21 as suggested by the learned counsel for the appellant is accepted, the same would render sub-section 2 of Section 20 otiose and redundant. According to learned counsel the right of an owner of the land cannot be kept under suspension for a long time and the period of 10 years specified by the legislature must be held to be a reasonable one, and thus by no stretch of imagination only by taking recourse to the provisions of Section 21 of the said Act, the period specified therein can be extended. Strong reliance in support of the said contention has been placed on Municipal Corporation of Greater Bombay v. Dr. Hakimwadi Tenants' Association & Ors. [(1988) Supp. SCC 55]. Mr. Desai would urge that the expression 'so far as may be' occurring in Section 21 of the Act must be given a proper meaning and thus in the event the interpretation of the provisions put-forth by the learned counsel for the appellant is accepted, the same will lead to an anomalous and absurd situation; which was not contemplated by the Legislature. Reliance in this connection has been placed in The Land Acquisition Officer, City Improvement Trust Board v. H. Narayanaiah & Ors. [(1976) 4 SCC 9]. Before we advert to the rival contentions, as noticed hereinbefore, we may look to the relevant provision of the said Act. The preamble suggests that the said Act was enacted to consolidate and amend the law relating to making and execution of development plans and town planning schemes in the State of Gujarat. It is not in dispute that the said Act came into force with effect from 1.2.1978 in terms of an appropriate notification issued in this behalf under sub-section (3) of Section 1 thereof . Section 2 of the said Act contains definition clause. 'Development Plan' has been defined in Section 2(x) to mean a plan for development or redevelopment or improvement of a development area. Section 3, postulates issuance of a notification by the State Government specifying a development area. In term of Section 4 of the said Act, the State Government by issuing a notification is empowered to exclude the whole or part of a development area from the operation thereof. Section 5 provides for constitution of Area Development Authorities consisting of two Nominees of the Government and Local Authorities as specified therein. The State Government in terms of Section 6 of the Act is empowered to designate any Local Authority functioning in the development area as an Area Development Authority in State. The State Government has been conferred with the powers, which amongst others, include preparation of Development Plan, Town Planning Schemes and to control the

development activities in terms of Section 7 of the Act. Section 9 provides that not later than three years after the declaration of such area as a development area or within such time as the State Government, may from time to time, extend, the authority shall prepare and submit to the State Government a draft development plan for the whole or any part of the development area". The State Government on the failure of development authority to prepare such a plan is required to do so within a period of three years thereafter. A draft development plan has to be kept open for public inspection in terms of Section 10. Section 12 provides for the contents of draft development plan, the relevant portions whereof read as under:-"Contents of draft development plan : (1) A draft development plan shall generally indicate the manner in which the use of land in the area covered by it shall be regulated and also indicate the manner in which the development therein shall be carried out. (2) In particular, it shall provide, so far as may be necessary, for all or any of the following matters, namely :- (a) xxxx (b) proposals for the reservation of land for public purposes, such as schools, colleges and other educational institutions, medical and public health institutions, markets, social welfare and cultural institutions, theatres and places for public entertainment, public assembly, museums, art galleries, religious buildings, playgrounds, stadium, open spaces, dairies and for such other purposes as may, from time to time, be specified by the State Government; (c) xxxx (d) transport and communications, such as roads, highways, parkways, railways, waterways, canals and airport, including their extension and development. (e) xxxx (f) reservation of land for community facilities and services; (g) xxxx (h) xxxx (i) xxxx (j) xxxx (k) proposals for the reservation of land for the purpose of Union, any State, local authority or any other authority or body established by or under any law for the time being in force; (l) xxxx (m) xxxx (n) provision for preventing or removing pollution of water or air caused by the discharge of waste or other means as a result of the use of land; (o) such other proposals for public or other purposes as may from time to time be approved by the area development authority or as may be directed by the State Government in this behalf." Section 13 specifies publication of draft development plan for the purpose of inviting suggestions and objections from public and affected parties, which are required to be considered in terms of Section 14 thereof. Necessary modifications may be made therein as provided under Section 15. A modified draft plan prepared in terms of Section 15 is required to be submitted to the State Government for sanction, which in exercise of it power under Section 17 of the Act may grant the same with further notifications as deemed necessary, after publishing the same again inviting suggestions and shall be notified in the official gazette. In terms of sub clause (d) of sub-section (1) of Section 17, the sanction accorded to the draft development plan by the State Government shall be notified in the Official Gazette, and on such sanction, it shall be called "the final development plan" which shall come into force from a date to be notified, but the same shall be not earlier than one month from the date of publication of such sanction. Sub-section (2) of Section 17 requires the State Government to take certain precautions with regard to the reservation of land for specific purposes mentioned in Section 12, but only on the satisfaction that the land,

so reserved, is likely to be acquired within ten years from the publication of final development plan. Sub-section (2) of Section 17 reads as under :- "17(2) Where the draft development plan submitted by an area development authority or, as the case may be, the authorized officer contains any proposals for the reservation of any land for a purpose specified in clause (b) or clause (n) or clause (o) of sub-section (2) of Section 12 and such land does not vest in the area development authority, the State Government shall not include the said reservation in the development plan, unless it is satisfied that such authority would acquire the land, whether by agreement or compulsory acquisition, within ten years from the date on which the final development plan comes into force." Under Section 18, the State Government has been empowered even to amend the final development plan, by extending or reducing its area. Under Section 19, the State Government is empowered to vary the final development plan, but, only after inviting suggestions and objections in the manner laid down therein. Section 20 provides for acquisition of land designated or reserved for specified purposes mentioned in Section 12. As the said provision is material for this case, the same is reproduced hereunder :- "Section 20 Acquisition of land : (1) The area development authority or any other authority for whose purpose land is designated in the final development plan for any purpose specified in clause (b), clause (d), clause (f), clause (k), clause (n) or clause (o) of sub-section (2) of Section 12, may acquire the land either by agreement or under the provisions of the Land Acquisition Act, 1894. (2) If the land referred to in sub-section (1) is not acquired by agreement within a period of ten years from the date of the coming into force of the final development plan or if proceedings under the Land Acquisition Act, 1894, are not commenced within such period, the owner or any person interested in the land may serve a notice on the authority concerned requiring it to acquire the land and if within six months from the date of service of such notice the land is not acquired or no steps are commenced for its acquisition, the designation of land as aforesaid shall be deemed to have lapsed." Section 21 of the Act provides for the revision of development plan and reads as under :- "Section 21. Revision of development plan : At least once in ten years from the date on which a final development plan comes into force, the area development authority shall revise the development plan after carrying out, if necessary, a fresh survey and the provisions of Sections 9 to 20, shall, so far as may be, apply to such revision." It is the basic principle of construction of statute that the same should be read as a whole, then chapter by chapter, section by section and words by words. Recourse to construction or interpretation of statute is necessary when there is ambiguity, obscurity, or inconsistency therein and not otherwise. An effort must be made to give effect to all parts of statute and unless absolutely necessary, no part thereof shall be rendered surplusage or redundant. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly

necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute. It is also well settled that a beneficient provision of legislation must be liberally construed so as to fulfill the statutory purpose and not to frustrate it. An owner of a property, subject to reasonable restrictions which may be imposed by the Legislature, is entitled to enjoy the property in any manner he likes. A right to use a property in a particular manner or in other words a restriction imposed on user thereof except in the mode and manner laid down under statute would not be presumed. In Legislation and Interpretation by Jagdish Swarup, at page 479, it is stated : "We ought not to assume without the clearest language that the legislature intends to destroy common law rights. The presumption is that the legislature intends not to interfere with any legal rights or any legitimate expectations of any person whatsoever. Rights, whether private or public, cannot be taken away or hampered by implication from the language employed in a statute, unless the legislature clearly and distinctly authorises the doing of a thing which is physically inconsistent with the continuance of an existing right. In order to take away the right it is not sufficient to show that the thing sanctioned in the Act, it done, will of a sheer physical necessity, put an end to that right; it must also be shown that the legislature has authorised the thing to be done at all events, and irrespective of its possible interference with existing rights. An Act should be so interpreted as in no respect to interfere with or prejudice a clear private right or title unless that, private right or title is taken away per directum" By reason of the provision of the said Act, a reasonable restriction, has been imposed upon the owner on the user of his property. In terms of Section 12 of the said Act, town planning is contemplated through preparation of draft development plan which contains not only proposals for designating certain area for residential, industrial, commercial, agricultural or recreational purposes but also for the purposes for maintaining environment and ecological balance by setting up zoological gardens, green belts, natural reserves and sanctuaries . In terms of such development plan reservation of certain land for public use is also provided. From the relevant provisions of the said Act, as noticed hereinbefore, it is absolutely clear that in terms thereof the State Government is made the ultimate authority to publish a development plan, inter alia, providing for designation or reservation of the land. The State Government while arriving at its conclusion as regards public interest involved in the matter is required to arrive at its satisfaction on objective basis as provided in terms of sub-section (2) of Section 17 to the effect that the lands in respect whereof reservation is proposed to be made can be acquired for the fulfillment of the object therefor either by agreement or compulsory acquisition within the period specified therein. It has not been disputed before us nor is it necessary to consider in the facts and circumstances of this case as to whether establishment of the educational institutions or universities would be covered by the provisions of sub-section (2) of Section 12 thereof? Sections 20 and 21 of the said Act are required to be read conjunctively with Sections 12 and 17. We may notice that clause (k) of sub-section (2) of Section 12 does not find mention in sub-section (2) of Section 17 as regards proposed reservation for the

State and other statutory authorities but clauses (n) and (b) of sub-section (2) of Section 12 are specifically mentioned in Section 20. In Section 20, provisions of clauses (b), (d), (f), (k) and (o) of sub-section (2) of Section 12 have specifically been mentioned. The High Court has proceeded on the basis that the words 'designation' or 'reservation' are interchangeable for the purpose of the Act. The said finding of the High Court is not in question. Whereas in terms of Sections 12 and 17 of the said Act, the reservation and designation have been provided, sub-section (1) of Section 20 thereof only enables the authorities to acquire the land designated or reserved for the purpose specifically mentioned in clauses (b) and (n) of sub-section (2) of Section 12 as also other clauses specified therefor either by acquisition or agreement or in terms of the provisions of the Land Acquisition Act. Sub-section (1) of Section 20 is merely an enabling provision. Sub-section (2) of Section 20, however, carves out an exception to the exercise of powers by the State as regards acquisition of the land for the purpose of carrying out the development of the area in the manner provided for therein; a bare reading whereof leaves no manner of doubt that in the event the land referred to under sub-section (1) of Section 20 thereof is not acquired or proceedings under the Land Acquisition Act are not commenced and further in the event an owner or a person interested in the land serves a notice in the manner specified therein, certain consequences ensue, namely, the designation of the land shall be deemed to have lapsed. A legal fiction, therefore, has been created in the said provision. The purpose and object of creating a legal fiction in the statute is well- known. When a legal fiction is created, it must be given its full effect. In East End Dwelling Co. Ltd. v. Finsbury Borough Council, [(1951) 2 All.E.R 587], Lord Asquith, J. stated the law in the following terms:- "If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs." The said principle has been reiterated by this Court in M. Venugopal v. Divisional Manager, Life Insurance Corporation of India, Machilipatnam, A.P. & Anr. [(1994) 2 SCC 323]. See also Indian Oil Corporation Limited v. Chief Inspector of Factories & Ors.etc., [(1998) 5 SCC 738], Voltas Limited, Bombay v. Union of India & Ors.,[(1995) Supp. 2 SCC 498], Harish Tandon v. Addl. District Magistrate, Allahabad, U.P. & Ors. [(1995) 1 SCC 537] and G. Viswanathan etc. v. Hon'ble Speaker, Tamil Nadu Legislative Assembly, Madras & Anr. [(1996) 2 SCC 353]. The relevant provisions of the Act are absolutely clear, unambiguous and implicit. A plain meaning of the said provisions, in our considered view, would lead to only one conclusion, namely, that in the event a notice is issued by the owner of the land or other person interested therein asking the authority to acquire the land upon expiry of the period specified therein viz. ten years from the date of issuance of final development plan and in the event pursuant to or in furtherance thereof no action for acquisition

thereof is taken, the designation shall lapse. This Court in Municipal Corporation of Greater Bombay's case (supra), in no uncertain terms while construing the provisions of Section 127 of the Maharashtra Regional and Town Planning Act, 1966 held the period of ten years as reasonable in the following words :- "While the contention of learned counsel appearing for the appellant that the words 'six months from the date of service of such notice' in Section 127 of the Act were not susceptible of a literal construction, must be accepted, it must be borne in mind that the period of six months provided by Section 127 upon the expiry of which the reservation of the land under a Development Plan lapses, is a valuable safeguard to the citizen against arbitrary and irrational executive action. Section 127 of the Act is a fetter upon the power of eminent domain. By enacting Section 127 the legislature has struck a balance between the competing claims of the interests of the general public as regards the rights of an individual." It was observed that : "The Act lays down the principles of fixation by providing first, by the proviso to Section 126(2) that no such declaration under sub-section (2) shall be made after the expiry of three years from the date of publication of the draft regional plan, development plan or any other plan, secondly, by enacting sub- section (4) of Section 126 that if a declaration is not made within the period referred to in sub-section (2), the State Government may make a fresh declaration but, in that event, the market value of the land shall be the market value at the date of the declaration under Section 6 and not the market value at the date of the notification under Section 4, and thirdly, by Section 127 that if any land reserved, allotted or designated for any purpose in any development plan is not acquired by agreement within 10 years from the date on which a final regional plan or development plan comes into force or if proceedings for the acquisition of such land under the Land Acquisition Act are not commenced within such period, such land shall be deemed to be released from such reservation, allotment or designation and become available to the owner for the purpose of development on the failure of the Appropriate Authority to initiate any steps for its acquisition within a period of six months from the date of service of a notice by the owner or any person interested in the land. It cannot be doubted that a period of 10 years is long enough., The Development or the Planning Authority must take recourse to acquisition with some amount of promptitude in order that the compensation paid to the expropriated owner bears a just relation to the real value of the land as otherwise, the compensation paid for the acquisition would be wholly illusory. Such fetter on statutory powers is in the interest of the general public and the conditions subject to which they can be exercised must be strictly followed." It is true that Section 21 of the Act imposes a statutory obligation on the part of the State and the appropriate authorities to revise the development plan and for the said purpose Sections 9 to 20 'so far as may be' would be applicable thereto, but thereby the rights of the owners in terms of sub-section (2) of Section 20 are not taken away. The question, however, is as to whether only because the provision of Section 20 has been referred to therein; would it mean that thereby the Legislature contemplated that the time of ten years specified by the Legislature for the purpose of acquisition of the land would get automatically extended? The

answer to the said question must be rendered in the negative. Following the principle of interpretation that all words must be given its full effect, we must also give full effect to the words "so far as may be" applied to such revision. The said words indicate the intention of the Legislature to the effect that by providing revision of final development plan from time to time and at least once in ten years, only the procedure or preparation thereof as provided therein, is required to be followed. Such procedural requirements must be followed so far as it is reasonably possible. Section 21 of the Act, in our opinion, does not and cannot mean that the substantial right conferred upon the owner of the land or the person interested therein shall be taken away. It is not and cannot be the intention of the Legislature that what is given by one hand should be taken away by the other. Section 21 does not envisage that despite the fact that in terms of sub-section (2) of Section 20, the designation of land shall lapse, the same, only because a draft revised plan is made, would automatically give rise to revival thereof. Section 20 does not manifest a legislative intent to curtail or take away the right acquired by a land-owner under Section 22 of getting the land defreezed. In the event the submission of the learned Solicitor General is accepted the same would completely render the provisions of Section 20(2) otiose and redundant. Sub-section (1) of Section 20, as noticed hereinbefore, provides for an enabling provision in terms whereof the State become entitled to acquire the land either by agreement or taking recourse to the provisions of the Land Acquisition Act. If by reason of a revised plan, any other area is sought to be brought within the purview of the development plan, evidently in relation thereto the State will be entitled to exercise its jurisdiction under sub-section (1) of Section 20 but it will bear repetition to state that the same would not confer any other or further power upon the State to get the duration of designation of land, which has been lapsed, extended. What is contemplated under Section 21 is to meet the changed situation and contingencies which might not have been contemplated while preparing the first final development plan. The power of the State enumerated under sub-section (1) of Section 20 does not become ipso facto applicable in the event of issuance of a revised plan as the said provision has been specifically mentioned therein so that the State may use the same power in a changed situation. The statutory interdict of use and enjoyment of the property must be strictly construed. It is well-settled that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authorities while acting under the said Act are only creature of statute. They must act within the four-corners thereof. There is another aspect of the matter which cannot be lost sight of. Despite statutory lapse of designation of the land, the State is not denuded of its power of eminent domain under the general law, namely, Land Acquisition Act in the event an exigency arises therefor. We are not oblivious of the law that when a public functionary is required to do a certain thing within a specified time, the same is ordinarily directory but it is equally well settled that when consequence for inaction on the part of the Statutory authorities within such specified time is expressly provided, it must be held to be imperative. In Sutherland, Statutory Construction, 3rd edition, Vol.3 at p.102 the law is stated

as follows :- ".unless the nature of the act to be performed, or the phraseology of the statute is such that the designation of time must be considered a limitation of the power of the Officer." At p.107 it is pointed out that a statutory direction to private individuals should generally be considered as mandatory and that the rule is just the opposite to that which obtains with respect to public officers. Again, at p. 109, it is pointed out that often the question as to whether a mandatory or directory construction should be given to a statutory provision may be determined by an expression in the statute itself of the result that shall follow non-compliance with the provision. At p.111 it is stated as follows : "As a corollary of the rule outlined above, the fact that no consequences of non-compliance are stated in the statute, has been considered as a factor tending towards a directory construction. But this is only an element to be considered, and is by no means conclusive." [See also Crawford on Statutory Construction , Article 269 at p.535]. In Dattatrays v. State of Bombay [AIR 1952 SC 181], it was held as under :- "Generally speaking the provisions of a statute creating public duties are directory and those conferring private rights are imperative. When the provisions of statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the Legislature, it has been the practice of the courts to hold such provisions to be directory only, the neglect of them not affecting the validity of the acts done." In Craies on Statute Law VIII Edn. at page 262, it is stated thus :- "It is the duty of courts of justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construedThat is each case you must look to the subject-matter, consider the importance of the provision and the relation of that provision to the general object intended to be secured by the Act, and upon a review of the case in that aspect decide whether the enactment is what is called imperative or only directory." In the aforementioned backdrop, we may usefully refer to the decision of this Court in The Land Acquisition Officer, City Improvement Trust Board, Bangalore's case (supra) wherein it has been stated :- "There was some argument on the meaning of the words"so far as they are applicable", used in Section 27 of the Bangalore Act. These words cannot be changed into"in so far as they are specifically mentioned" with regard to the procedure in the Acquisition Act. On the other hand, the obvious intention, in using these words, was to exclude only those provisions of the Acquisition Act which become inapplicable because of any special procedure prescribed by the Bangalore Act (e.g. Section 16) corresponding with that found in the Acquisition Act (e.g. Section 4(1)). These words bring in or make applicable, so far as this is reasonably possible, general provisions such as Section 23(1) of the Acquisition Act. They cannot be reasonably construed to exclude the application of any general provisions of the Acquisition Act. They amount to laying down the principle that what is not either expressly, or , by a necessary implication, excluded must be applied. It is surprising to find misconstruction of what did not appear to us to be reasonably open to more than one interpretation." We may at this juncture usefully

quote the words of Oliver Wendell Holmes : "It is sometimes more important to emphasize the obvious than to elucidate the obscure". (See the Interpretation and Application of Statutes by Reed Dickerson at page 7). The decision of this Court in K.L. Gupta's case (supra), whereupon the learned counsel for the Appellant strongly relied upon, may in the aforementioned backdrop, be considered. In that case, the vires of the provisions of Sections 9, 10, 11, 12 and 13 of the Bombay Town Planning Act, 1954 were in question. Although the constitutionality of Section 17 of the Act was also questioned before this Court, at the hearing the same was given up. The Court specifically noticed so stating :- "Towards the end of the hearing counsel for the petitioners submitted that s.17 of the Act might be left out of consideration for the purpose of these petitions and learned counsel for the respondents were agreeable to this course. We, therefore, do not express our views about the validity or otherwise of this section." In that case the rights of the owners accrued to them having regard to the inaction on the part of the State and other authorities despite rights to the owners of land as envisaged under sub-section (2) of Section 20 of the Act were not in question. Section 17 of the Act was in pari materia with Section 21 of the said Act. The scheme of the provisions of the Bombay Act as regards designation or reservation of land for ten years and further right of revision after every ten years was considered having regard to the challenges made therein that thereby the State was conferred with a power which was unreasonable and thus violative of Articles 14 and 19(1) of the Constitution of India. The observations made by this Court should be understood in that context. In that case the rival contention as regards interpretation of the statute was not the subject-matter of the consideration of the Constitution Bench. The scheme of the Act was noticed thus :- "The idea behind this sub-section is that if any land is to be set apart for public purposes such as parks etc. mentioned in cl.(b) of s. 7 or any other public purpose which might be approved by a local authority or directed by the State Government in terms of cl. (e) of s. 7, the State Government must examine whether it would be possible for the local authority to be able to acquire such land by private agreement or compulsory purchase within a period of ten years. This acts as a check on the local authority making too ambitious proposals for designating lands for public purposes which they may never have the means to fulfil. It is obvious that the local authority must be given a reasonable time for the purpose and the legislature thought that a period of ten years was a sufficient one. S.11(1) empowers the local authority to acquire any land designated in the development plan for a purpose specified in cls. (b), (c),(d) or (e) of s. 7 either by agreement or under the Land Acquisition Act. Under sub-s. (2) of s. 11 the provisions of the Land Acquisition Act of 1894 as amended by the Schedule to the Act are to apply to all such acquisitions. The Schedule to the Act shows that s. 23 of the Land Acquisition Act is to stand amended for the acquisition under this Act with regard to the compensation to be awarded. In fact it is for the benefit of the person whose land is acquired, as he can get the market value of the land at the date of the publication of the declaration under s. 6 of the Land Acquisition Act in place of s.4. Sub-s.(3) provides that if the designated land is not acquired by agreement within ten

years from the date specified under sub-s. (3) of s. 10 or if proceedings under the Land Acquisition Act are not commenced within such period, the owner or any person interested in the land may serve notice to the local authority and if within six months from the date of such notice the land is not acquired or no steps as aforesaid are commenced for its acquisition, the designation shall be deemed to have lapsed. This provision again is for the benefit of the owner of the land for unless the land is acquired or steps taken in that behalf within the fixed limits of time, he ceases to be bound by the designation of his land as given in the development plan." (Emphasis Supplied) What was emphasised in that case is unreasonableness of Section 17 of the Act which, as indicated hereinbefore, was not pressed at a later stage. This Court had no occasion to consider the conflicting rights of the parties under sub-section (3) of Section 10 vis–vis Section 17 of the Bombay Act. What was considered and upheld by the Court was the contention that by taking the recourse to Section 17 more than once acquisition might be held up indefinitely from generation to generation. As the facts of the present case stand absolutely on a different footing and this Court in K.L. Gupta's case (supra) was not called upon to answer the same, the same cannot be said to be an authority for the proposition that by reason of Section 21 of the Act, the designation of the land although lapsed in terms of Section 20, the same would get automatically extended or revised once a revised plan is made. This Court in K.L. Gupta's case merely held that the land which is reserved for ten years can be subjected to further reservation for any period till it is actually required for its town planning activities leading to revision of development plans from time to time. Therein, this Court did not negate the right of owners. Such a right of the land-owners, as noticed hereinbefore, has been specifically acknowledged. Nowhere it was stated that valuable right conferred on a land-owner of getting his land reserved by serving notice would be defeated or taken away merely because a revised development plan was in the offing. The question raised in the said case, thus, was absolutely different. It is interesting to note that the law of the land was considered therein, as it then stood by observing :- "No one can be heard to say that the local authority after making up its mind to acquire land for a public purpose must do so within as short a period of time as possible. It would not be reasonable to place such a restriction on the power of the local authority which is out to create better living conditions for millions of people in a vast area." However, we may notice that the Parliament amended the Land Acquisition Act, 1984 in terms whereof, inter alia, Section 11A was inserted. In the Objects and Reasons of the said Act, it was stated :- "With the enormous expansion of the State's role in promoting public welfare and economic development since independence, acquisition of land for public purposes, industrialization, building of institutions, etc., has become far more numerous than ever before. While this is inevitable, promotion of public purpose has to be balanced with the rights of the individual whose land is acquired, thereby often depriving him of his means of livelihood. Again, acquisition of land for private enterprises ought not to be placed on the same footing as acquisition for the State or for an enterprise under it. The individual and institutions who are unavoidably to be deprived of their property rights in

land need to be adequately compensated for the loss keeping in view the sacrifice they have to make for the larger interests of the community. The pendency of acquisition proceedings for long period often causes hardship to the affected parties and renders unrealistic the scale of compensation offered to them." The decision in Ahmedabad Urban Development Authority's case (supra), in our opinion, has again no application to the fact of the present case. The fact of the matter therein was completely different. The Gujarat Planning and Urban Development Act, 1976, which is now in operation in the State of Gujarat, came into force from 30th November, 1978, prior to which the Bombay Town Planning Act, 1954 was applicable to the State of Gujarat. Prior to coming into force of the Gujarat Act, the Ahmedabad Municipal Corporation submitted the development plan on 15th January, 1976 which came to be sanctioned by the State Government on 12th August, 1983. It was held by this Court that the draft development plan submitted by the Corporation on 15th January, 1976, could not have been sanctioned under the provisions of the Gujarat Act on 12th August, 1983 ignoring the fact that meanwhile a comprehensive draft development plan had been prepared and submitted by the Corporation on 23rd July, 1981 which also came to be sanctioned on 2nd November, 1986 and which included the areas covered by the earlier illegally sanctioned plan on 12th August, 1983. In the aforementioned peculiar facts, the question arose as to from which date the period of ten years had to be reckoned for application of Section 20(2) of the Act. This Court answered the aforementioned question in the following terms :- "As in the present case the only question which is to be answered is as to with effect from which date 10 years period shall be counted, it has to be decided as to which date shall be deemed to be the date of coming into force of the final development plan, so far the area within the Corporation is concerned. The notification dated 2.11.1987, had been issued by the State Government covering the area notified on 12.8.1983, several years before, the issuance of notices by the writ petitioners. The notification dated 2.11.1987, was neither questioned by the writ petitioners-respondents nor could have been questioned, according to us. When power has been vested in the appellant to prepare a draft development plan and there being no bar to include in the said draft development plan even area, for which an earlier draft development plan had already been sanctioned, then the draft development plan which was sanctioned and notified on 2.11.1987, shall be deemed to be the final development plan within the meaning of Section 20 of the Gujarat Town Planning Act. As such the period of 10 years has to be calculated and counted with reference to 3.12.1987, the date when such final development was to come into force." Yet again the decision of this Court in Murari's case (supra) has no application to the fact of this matter. The question which arose for consideration therein was as to whether in terms of the provisions of the Land Acquisition Act any actual physical possession is required to be obtained or merely taking the possession specified therein would serve the purpose. Having regard to the provision of the said Act, we are of the opinion that the decisions cited by the learned Solicitor General have no application in the instant case. A decision, as is well-known, is an authority for which it is decided and not what can logically be deduced

therefrom. It is also well-settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. [See Smt. Ram Rakhi v. Union of India & Ors. [AIR 2002 Delhi 458], Delhi Administration (NCT of Delhi) v. Manoharlal [AIR 2002 SC 3088], Haryana Financial Corporation and Anr. v. M/s Jagdamba Oil Mills & Anr. [JT 2002 (1) SC 482] and Dr. Nalini Mahajan etc. v. Director of Income Tax (Investigation) & Ors. [(2002) 257 ITR 123]. For the aforementioned reasons, we are in agreement with the findings of the High Court. Before parting with the case, we may notice that Mr. Tanna appearing on behalf of the South Gujarat University in C.A. No.1540 of 2002 submitted that various other contentions had also been raised before the High Court. We are not prepared to go into the said contentions inasmuch assuming the same to be correct, the remedy of the appellants would lie in filing appropriate application for review before the High Court. Incidentally, we may notice that even in the special leave petition no substantial question of law in this behalf has been raised nor any affidavit has been affirmed by the learned advocate who had appeared before the High Court or by any officer of the appellant who was present in court that certain other submissions were made before the High Court which were not taken into consideration. In State of Maharashtra v. Ramdas Shrinivas Nayak & Anr. [AIR 1982 SC 1249], this Court observed :- "When we drew the attention of the learned Attorney General to the concession made before the High Court, Shri A.K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submission made by him in the High Court. We are afraid that we cannot launch into an inquiry as to what transpired in the High Court. It is simply not done. Public Policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena."Judgments cannot be treated as mere counters in the game of litigation". (Per Lord Atkinson in Somasundaran v. Subramanian, AIR 1926 PC 136). We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well-settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges, who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error (Per Lord Buckmaster in Madhusudan v. Chandrabati, AIR 1917 PC 30). That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an Appellate Court may permit him in rare and

appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment." For the aforementioned reasons , there is no merit in these appeals which are dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.