# Prakash Amichand Shah vs State Of Gujarat on 24 July, 1981

## Equivalent citations: 1981 AIR 1597, 1982 SCR (1) 81, AIR 1981 SUPREME COURT 1597, 1981 UJ (SC) 932 1981 (3) SCC 508, 1981 (3) SCC 508

## Author: A.C. Gupta

## Bench: A.C. Gupta, A.P. Sen

PETITIONER:
PRAKASH AMICHAND SHAH

Vs.

RESPONDENT:
STATE OF GUJARAT

DATE OF JUDGMENT24/07/1981

BENCH:
GUPTA, A.C.
BENCH:
GUPTA, A.C.
SEN, A.P. (J)

CITATION:
1981 AIR 1597 1982 SCR (1) 81
1981 SCC (3) 508 1981 SCALE (3)1084
CITATOR INFO :
RF 1986 SC 468 (5)

ACT:
Bombay Town Planning Act, 1954-Sections 32, 33, 34, 65 and 69-Scope of. Words and phrases-"injurious affection"-Meaning of.

HEADNOTE:
The Bombay Town Planning Act, 1954 (which was made applicable to the State of Gujarat) provides for the compulsory acquisition of land and payment of compensation for the land so acquired for the development or re-development or improvement of the entire area within the jurisdiction of a local authority such as a municipal corporation or a municipality. The Town Planning Scheme prepared under the Act may make provision for laying out new streets or roads, allotment or reservation of land for roads, open spaces and such other matters not inconsistent

with the objects of the Act. Before proceeding to acquire any land for town planning purposes, a local authority, by resolution, must declare its intention to make a town planning scheme and publish it in the manner prescribed. The draft scheme may contain proposals such as to form a re-constituted plot by the alteration of the boundaries of an original plot, to form a reconstituted plot by the transfer, wholly or partly, of the adjoining land, to allot a plot to any owner dispossessed of a land in furtherance of the scheme. Any person affected by the scheme may communicate to the local authority concerned any objection relating to such scheme. The scheme is then forwarded to the State Government for the requisite sanction.

The scheme of the Act envisages the appointment of a Town Planning Officer and constitution of a Board of Appeal. It is the duty of the Town Planning Officer to draw up a final scheme in accordance with the draft scheme. When the final scheme comes into force all lands required by the local authority shall vest absolutely in that authority free from all encumbrances and all rights in the original plots which have been reconstituted shall determine and the reconstituted plots shall become subject to the rights settled by the Town Planning Officer.

Section 64 (1) enumerates the sums payable or spent and the expenses incurred by the local authority which are to be included in the costs of a town planning scheme.

Under section 65 increment means the amount by which at the date of the declaration of intention to make a scheme the market value of a final plot calculated on the basis as if the improvement contemplated in the scheme had stood completed on that date. Provision is made in section 67 to make adjust-

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ment between the rights to compensation for loss of land suffered by the owner and the liability to make contribution to the finance of the scheme. Compensation payable to any owner for loss of lands has to be determined on the basis of the market value of the land at the date on which the declaration of intention to make a scheme was made. Section 69 contemplates that the owner of any property or right which is injuriously affected by the making of a town planning scheme shall be entitled to obtain compensation from the local authority or from any person bona fide or partly from such person as the Town Planning Officer may in each case determine.

Section 32 enumerates duties of the Town Planning Officer and section 33 provides that except in matters arising out of clauses (v), (vi), (vii), (ix), (x) and (xiii) of section 32 (1) every decision of the Town Planning Officer shall be final and conclusive and binding on all persons. An appeal from the decision of the Town Planning Officer under the six clauses mentioned in section 33 lies to the Board of Appeal.

The Surat Municipal Corporation declared its intention to make a town planning scheme under section 22 of the Bombay Town Planning Act, 1954. The draft scheme published included an area of 1.37 lac square meters of which the appellant was the lessee.

Dissatisfied with the compensation awarded to him by the Town Planning Officer the apportionment of the compensation between the lessor and lessee and the propriety of reserving such a large area of land for the scheme the appellant preferred an appeal under section 34 read with section 32 (1) of the Act to the Board of Appeal. The Board rejected the appeal as being not maintainable on the ground that the Act did not provide an appeal from a decision of the Town Planning Officer on matters dealt with by him in the impugned order.

Agreeing with the Board of Appeal the High Court dismissed the appellant's writ petition.

In the appeal to this court it was contended on behalf of the appellant that the Town Planning Officer's decision was appealable under clause (viii) or clause (xiii) of section 32(1) because he has a duty to calculate the increment to accrue in respect of each plot included in the final scheme in accordance with the provision of section 65.

Dismissing the appeal,

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HELD: The High Court was right in holding that the decision of the Town Planning Officer determining the amount of compensation in the appellant's case was not appealable. [96 F]

The decision of the Town Planning Officer is final and conclusive in all matters referred to in the various clauses of section 32 (1) except those mentioned in clauses (v), (vii), (viii), (ix), (x) and (xiii). [94 E]

The increment referred to in section 65 is the difference in the market value of the same final plot with the improvements and without the improvements on
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the date of the declaration of intention to make a scheme. The value of the original plot does not arise for consideration under clause (viii). Form B referred to in clause (v) of rule 17 of the Bombay Town Planning Rules, 1955 makes it clear that the increment is the difference in value of the same final plot in its developed and undeveloped condition. This form keeps the valuation of the original plot distinct from that of the final plot. The appellant's case cannot fall under clause (viii) of section 32. [94 G-99 B]

What is contemplated by section 69 is that the property or right which is injuriously affected by the making of a town planning scheme is a property or right other than that acquired for the purposes of the scheme. The property or right affected remains with the owner who is entitled to compensation for such injurious affection. When under the

Act a plot of land is taken for the purposes of a town planning scheme it cannot be said that land itself is injuriously affected. [95 C-E]

There is no compelling reason for restructuring clause (xiii) suggested by the appellant. Taking acquisition of land to mean "injurious affection" of the land acquired would be inconsistent with the entire scheme of the Act. [95 F]

In determining the amount of compensation awarded for land acquired under the Land Acquisition Act , that Act requires the Court to take into consideration the damage sustained by the "person interested" by reason of the acquisition injuriously affecting his other property." A "person interested" means a person claiming an interest in compensation to be made on account of the acquisition of land under the Land Acquisition Act and the damage is for injurious affection of some property other than the land acquired. There is nothing in the Act to suggest that the generally accepted meaning of the expressions "injurious affection" used in the Land Acquisition Act should be construed differently in this Act. [95 G-96 B]

The owner of an original plot who is not provided with a plot in the final scheme gets his right to compensation from section 71 The principle for determining the compensation is the same whether an owner of land is given a reconstituted plot or not. Compensation is payable on the basis of the market value of the plot at the date of declaration of the intention to make a scheme. In the appellant's case it would be the value of the original plot and not the final plot. In determining the difference under section 32 (1) (iii) the Town Planning Officer has to find out the market value of each of the original plots at the date of the declaration of intention to make a scheme. The Act contains necessary provisions for estimating the compensation payable to an owner of land who has not been given a reconstituted plot. [96 C-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1224 of 1977.

Appeal by special leave from the judgment and order dated the 3rd September, 1976 of the Gujarat High Court in Special Civil Appln. No. 1501 of 1974 F.S. Nariman, Dr. Y.S. Chitale, K.S. Nanavati, C.R. Gandhi, P.H. Parekh and Miss Vineeta Caprihan for the Appellant.

Soli J. Sorabjee, G.N. Desai and M.N. Shroff for G.N. Desai, Prashant G. Desai and S.C. Patel for S.K. Dholakia and R.C. Bhatia for Intervener-Surat Municipality.

The Judgment of the Court was delivered by GUPTA J. On June 26, 1965 the Surat Municipal Corporation, then called Surat Borough Municipality, declared its intention to make a town planning scheme under section 22 of the Bombay Town Planning Act, 1954 (hereinafter referred as the Act). This was Town Planning Scheme Surat No. 8 (Umarwada). On July 4, 1967 a draft scheme was published which included among other lands an area admeasuring 1,37,961 sq. meters of which appellant as Karta of a Hindu undivided family was the lessee. On May 10, 1968 Government of Gujarat granted sanction to the draft scheme. Before the Town Planning Officer the appellant claimed compensation for deprivation of his right in the land at Rs. 50 per sq. yd. By his order made on November 4, 1971 the Town Planning Officer awarded compensation to the appellant at the rate of Rs. 2.40 p. per sq. mt.; the total compensation awarded was Rs. 3,31,455. Not satisfied with the decision of the Town Planning Officer the appellant preferred an appeal. Section 34 read with section 32(1) of the Act provides an appeal from the decision of the Town Planning Officer on certain specified matters to a Board of Appeal. Before the Board of Appeal the appellant reduced his claim to Rs. 9.50 p. per sq. mt. The appellant's grievance was that the compensation awarded was inadequate and further that the apportionment of compensation between the lessor and the lessee was not proper. He also questioned the propriety of reserving such a large area of land for the scheme. The Board of Appeal held that the appeal was not maintainable as the Act did not provide an appeal from a decision of the Town Planning Officer on matters dealt with by him in his order dated November 4, 1971. The appellant then challenged the order of the Board of Appeal before the Gujarat High Court by filing a writ petition in which certain provisions of the Act were also challenged as unconstitutional and it was claimed that the town planning scheme was consequently invalid. The Gujarat High Court dismissed the writ petition agreeing with the Board of Appeal that the appeal was incompetent. The constitutional questions raised in the writ petition could not be decided as Emergency was then in force in the country and rights conferred by Articles 14,19 and 31 of the Constitution on which the appellant's contentions were based remained suspended at the time. The High Court also relied on the decision of this Court in State of Gujarat v. Shri Shantilal Mangaldas which had upheld the validity of the Act.

The appeal before us is by special leave. Mr. Nariman for the appellant submitted that in case we held that the appeal preferred by his client before the Board of Appeal was maintainable he would not press the grounds questioning the constitutional validity of the Act at this stage and the matter should then go back to the Board of Appeal for a decision on the adequacy of the Compensation; if however we found that the Board of Appeal was right in holding that the appeal was not maintainable, he would then urge the grounds challenging the validity of the Act.

The question is whether the order of the Town Planning Officer determining the amount of compensation payable to the appellant falls within any of the appealable clauses of section 32(1). To be able to answer the question it will be necessary to examine the various clauses of section 32(1) and also certain other provisions of the Act. The scheme of the Act has been analysed by this Court in State of Gujarat v. Shantilal Mangaldas (supra) and earlier in Maneklal Chhottalal and others v. M.G. Makwana and others; we will not attempt another comprehensive survey of all the provisions of the Act but refer to those of them which have some bearing on the question that falls to be decided. Mr. Nariman drew our notice to the decision of this Court in State of Karnataka v. Shri Ranganatha Reddy where Untwalia, J, speaking for the court said at page 652 of the report that in

Rustom Cavasjee Cooper v. Union of India, this Court apparently seeking to explain Shantilal's case had "in substance" overruled the decision. Even if Shantilal's case was overruled, that was on another point and the analysis of the scheme of the Act made in Shantilal cannot be questioned.

The long title of the Act states that it is an "Act to consolidate and amend the law for the making and execution of town planning schemes". The Act has been made applicable to the State of Gujarat. It is an Act providing for compulsory acquisition of land and payment of compensation for the land taken. Some of the terms and expressions defined in section 2 of the Act are relevant. Section 2 (2) defines "development Plan" as meaning a plan for the development or redevelopment or improvement of the entire area within the jurisdiction of a local authority prepared under section 3. Section 3 requires every local authority to carry out a survey of the area within its jurisdiction and prepare and publish a development plan and submit it to the State Government for sanction. Sub-section (4) of section 2 defines local authority as a municipal corporation constituted under the Bombay Provincial Municipal Corporation Act, 1949 or a municipality constituted or deemed to be constituted under the Gujarat Municipalities Act, 1973. Section 2 (9) defines "reconstituted plot" as a plot which is in any way altered by the making of a town planning scheme. Chapter III of the Act provides for the making of town planning schemes. Sub-section (2) of section 18 which occurs in this chapter states that a town planning scheme may make provisions for any of the matters specified in clauses (a) to (k) of the sub-section. These matters include laying out of land, reclamation of unhealthy areas, laying out new streets of roads, construction and removal of buildings, bridges and other structures, providing for drainage, lighting and water supply, allotment or reservation of land for roads, open spaces, schools, markets and public purposes of all kinds. Clause (1) says that apart from the matters specified, the town planning scheme may provide for "such other matter not inconsistent with the objects of this Act as may be prescribed".

Chapter IV which contains section 21 to section 30 bears the heading "Declaration of Intention to Make a Scheme and Making of a Draft Scheme". Under section 22 a local authority may by resolution declare its intention to make a town planning scheme and is required to publish the scheme in the prescribed manner and despatch a copy thereof to the State Government. Section 23 (1) provides that following the declaration of intention to make a scheme, the local authority shall make a draft scheme for the area in respect of which the declaration has been made and publish it in the prescribed manner. Section 25 mentions the particulars that a draft scheme shall contain; they include among other things, -the area, ownership and tenure of each original plot; the extent to which it is proposed to alter the boundaries of original plots; and an estimate of the nett cost of the scheme to be borne by the local authority. Sub-section (1) of section 26 says that in the draft scheme the size and shape of every reconstituted plot shall be determined; as far as possible, to render it suitable for building purposes and where the plot is already built upon, to ensure that the building complies with the provisions of the scheme as regards open spaces. For the purpose of sub- section (1) the draft scheme may contain proposals which are enumerated in clauses (a) to (e) of sub-section (2) of the section. We may here refer to clauses (a), (b) and (d):

> "(a) to form a reconstituted plot by the alteration of the boundaries of an original plot;

(b) to form a reconstituted plot by the transfer wholly or partly of the adjoining lands;

(c) ... ... ...

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

(e) ... ... ...

Under section 27, within one month from the date of publication of the draft scheme, any person affected by such scheme may communicate in writing to the local authority any objection relating to such scheme which the local authority has to consider. Section 28 (1) requires the local authority to submit the draft scheme together with the objections to the State Government and at the same time apply for its sanction. Under sub-section (2) the State Government may within six months from the date of the submission of the draft scheme either sanction such scheme with or without modifications and subject to such conditions as it may think fit to impose or refuse to give sanction.

Chapter V which includes section 31 to section 43 provides for the appointment of the Town Planning Officer and constitution of the Board of Appeal. Within one month from the date on which the sanction of the State Government to the draft scheme is published, the State Government is required under section 31 (1) to appoint a Town Planning Officer. The duties of the Town Planning Officer are enumerated in section 32 (1). The provisions of sections 32, 33 and 34 have a direct bearing on the question of appealability of the Town Planning Officer's decision, but we think it would be more helpful for appreciating the contentions raised on behalf of the appellant if we referred to certain other provisions of the Act before turning to the aforesaid section in Chapter V. We need only mention here that drawing up the final scheme in accordance with the draft scheme is one of the duties of the Town Planning Officer who is required to forward the final scheme to the State Government for sanction. In Chapter VI section 53 is the only relevant provision. Section 53 lays down:

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

Chapter VIII deals with "Finance". It contains, inter alia, provisions specifying the principles on which compensation for the land taken is to be determined. This chapter includes section 64 to section 78. Section 64 (1) enumerates in clauses (a) to (f) the sums payable or spent and the expenses incurred by the local authority which are to be included in the costs of a town planning

scheme. Clause (d) mentions the sums payable as compensation for land reserved or designated for any public purpose or purposes of the local authority. Clause (f) of section 64 (1) reads as follows:

> "any amount by which the total of the values of the original plots exceeds the total of the values of the plots included in the final scheme, each of such plots being estimated at its market value at the date of the declaration of intention to make a scheme with all the buildings and works thereon at that date and without references to improvements contemplated in the scheme other than improvements due to the alteration of its boundaries."

Sub-section (2) of section 64 provides:

> "if in any case the total of the values of the plots included in the final scheme exceeds the total of the values of the original plots, each of such plots being estimated in the manner provided in clause (f) of sub-section (1), then the amount of such excess shall be deducted in arriving at the costs of the scheme as defined in sub-section (1)."

Section 65 explains the meaning of increment for the purposes of the Act as follows:

> "For the purposes of this Act the increments shall be deemed to be the amount by which at the date of the declaration of intention to make a scheme the market value of a plot included in the final scheme estimated on the assumption that the scheme has been completed would exceed at the same date the market value of the same plot estimated without reference to improvements contemplated in the scheme:
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> Provided that in estimating such values the value of buildings or other works erected or in the course of erection on such plot shall not be taken into consideration."

Section 66 (1) states that the costs of the scheme shall be met wholly or in part by a contribution to be levied by the local authority on each plot in the final scheme calculated in proportion to the increment which is estimated to accrue in respect of such plot by the Town Planning Officer. Under sub-section (2) of section 66 the "owner of each plot included in the final scheme shall be primarily liable for the payment of the contribution leviable in respect of such plot". Under section 67 the amount by which the total value of the plots in the final scheme with all the buildings and works thereon allotted to a person falls short of or exceeds the total value of the original plots with all the buildings and works thereon of such person shall be deducted from or added to, as the case may be, the contributions leviable from such person, each of such plots being estimated at its market value at the date of the declaration of intention to make a scheme without reference to improvements contemplated in the scheme other than improvements due to the alteration of its boundaries. As Shah J., speaking for the Court in State of Gujarat v. Shantilal Mangaldas and others observed:

> "(Section 67) is intended to make adjustments between the right to compensation for loss of land suffered by the owner, and the liability to make contribution to the finances of the scheme". Section 69 deals with the compensation payable in respect of

any property or right which is injuriously affected by the making of a town planning scheme. The section says:

"The owner of any property or right which is injuriously affected by the making of a town planning scheme shall, if he makes a claim before the Town Planning Officer within the prescribed time, be entitled to obtain compensation in respect thereof from the local authority or from any person benefited or partly from the local authority and partly from such person as the Town Planning Officer may in each case determine.

Provided that the value of such property or right shall be held to be its market value at the date of the declaration of intention to make a scheme or the date of a notification under sub-section (1) of section 24 without reference to improvements contemplated in the scheme".

Section 71 deals with the case of an owner of land who is not given a plot in the final scheme and also provides for a case where the amount payable to an owner exceeds the amount due from him. Section 71 is as follows:

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

The appellant in the present case was not provided with a plot in the final scheme. Section 87 in Chapter IX empowers the State Government to make rules consistent with the provisions of the Act to provide for all matters not specifically indicated therein.

The effect of the final scheme coming into force has been summarized by Shah J., in Shantilal's case; we may quote here the following extract from page 349 of the report:

"On the coming into force of the scheme all lands which are required by the local authority, unless otherwise determined in the scheme, by the operation of s. 53 (a) vest absolutely therein free from all encumbrances. The result is that there is a complete shuffling up of plots of land, roads, means of communication, and rearrangement thereof. The original plots are re- constituted, their shapes are altered, portions out of plots are separated, lands belonging to two or more owners are combined into a single plot, new roads are laid out, old roads are diverted or closed up, and lands originally belonging to private owners are used for public purposes i.e. for providing open spaces, green belts dairies etc. In this process the whole or parts of a land of one person, may go to make a reconstituted plot, and the plot so reconstructed may be allotted to another person and the lands needed for public purposes may be earmarked for those purposes. The re-arrangement of titles

> in the various plots and reservation of lands for public purposes require financial adjustments to be made. The owner who is deprived of his land has to be compensated, and the owner who obtains a re-constituted plot in surroundings which are conducive to better sanitary living conditions has to contribute towards the expenses of the scheme. This is because on the making of a town planning scheme the value of the plot rises and a part of the benefit which arises out of the unearned rise in prices is directed to be contributed towards financing of the scheme which enables the residents in that area to more amenities, better facilities and healthier living conditions".

Under the Act the compensation payable to an owner for loss of land has to be determined on the basis of the market value of the land at the date on which the declaration of intention to make a scheme was made. On the question whether the Act specifies a principle of compensation, it is observed in Shantilal's case at page 357 of the report:

> "It is true that under the Act the market value of the land at the date of declaration of intention to make a scheme determines the amount to be adjusted, and that is the guiding rule in respect of all lands covered by the scheme. The High Court was, in our judgment, right in holding that enactment of a rule determining payment or adjustment of price of land of which the owner was deprived by the scheme estimated on the market value on the date of declaration of the intention to make a scheme amounted to specification of a principle of compensation within the meaning of Art, 31 (2). Specification of principles means laying down general guiding rules applicable to all persons or transactions governed thereby. Under the Land Acquisition Act compensation is determined on the basis of "market value" of the land on the date of the notification under s.4 (1) of that Act. That is a specification of principle. Compensation determined on the basis of market value prevailing on a date anterior to the date of extinction of interest is still determined on a principle specified. Whether an owner of land is given a reconstituted plot or not, the rule for determining what is to be given as recompense remains the same. It is a principle applicable to all cases in which by virtue of the operation of the Town Planning Act a person is deprived of his land whether in whole or in part".

We may now turn to sections 32, 33 and 34 occurring in chapter V. It may be recalled that the appellant's land was taken for purposes of the scheme but he was not given a reconstituted plot. Section 32 (1) which enumerates the duties of the Town Planning Officer is set out below:

> "32 (1) In accordance with the prescribed procedure the Town Planning Officer shall
>
> (i) after notice given by him in the prescribed manner, define and demarcate the areas allotted to, or reserved, for a public purpose or purpose of the local authority and the reconstituted plots;

(ii) after notice given by him in the prescribed manner, determine, in the case in which a reconstituted plot is to be allotted to persons in ownership in common, the shares of such persons;

(iii)fix the difference between the total of values of the original plots and the total of the values of the plots included in the final scheme, in accordance with the provisions contained in clause

(f) of sub section (1) of section 64;

(iv) determine whether the areas used, allotted or reserved for a public purpose of the local authority are beneficial wholly or partly to the owners or residents within the area of the scheme;

(v) estimate the portion of the sums payable as compensation on each plot used, allotted or reserved for a public purpose or purpose of the local 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 costs of the scheme;

(vi) calculate the contribution to be levied on each plot used, allotted or reserved for a public purpose or purpose of the local authority which is beneficial partly to the owners or residents within the area of the scheme and partly to the general public;

(vii)determine the amount of exemption, if any, from the payment of the contribution that may be granted in respect of plots exclusively occupied for the religious or charitable purposes;

(viii)estimate the increment to accrue in respect of each plot included in the final scheme in accordance with the provisions contained in section 65;

(ix) calculate the proportion in which the increment of the plots included in the final scheme shall be liable to contribution to the costs of the scheme in accordance with the provisions contained in section 66;

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

(xi) 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 67;

(xii)provide for the total or partial transfer of any right in an original plot to a reconstituted plot or provide for the extinction of any right in an original plot in accordance with the provisions contained in section 68;

(xiii)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 69;

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

There is a proviso to section 32 (1) which is not relevant for the purpose of this appeal.

Section 33 says:

"Except in matters arising out of clauses (v),

(vi), (vii), (ix), (x) and (xiii) of sub-section (1) of section 32, every decision of the Town Planning Officer shall be final and conclusive and binding on all persons."

Section 34 provides an appeal to a Board of Appeal from any decision of the Town Planning Officer under clauses (v),

(vi) (viii), (ix), (x) and (xiii). Thus the decision of the Town Planning Officer is final and conclusive in all matters referred to in the various clauses of section 32 (1) except those mentioned in (v), (vi), (viii), (ix), (x) and (xiii). It was claimed on behalf of the appellant that the Town Planning Officer's decision in the appellant's case was appealable either under clause (viii) or clause (xiii) of section 32 (1). The Town Planning Officer has a duty under clause (viii) to calculate the increment to accrue in respect of each plot included in the final scheme (which we will refer to hereinafter as the final plot for brevity's sake) in accordance with the provisions of section 65. Under section 65 increment means the amount by which at the date of the declaration of the intention to make a scheme, the market value of a final plot calculated on the basis as if the improvements contemplated in the scheme had stood completed on that date exceeds the market value of the same plot when taken into account without the improvements. The increment is thus the difference in the market value of the same final plot with the improvements and without the improvements on the aforesaid date. The value of the original plot does not arise for consideration under clause

(viii). Rule 17 of the Bombay Town Planning Rules, 1955 sets out the particulars that a draft scheme shall contain in addition to the particulars specified in section 25 of the Act. Clause (v) of rule 17 mentions a "redistribution and valuation statement in Form 'B' showing the estimated amounts to be paid to, or by, each of the owners included in the scheme". Form B makes it clear that the increment is the difference in value of the same final plot in its developed and undeveloped conditions; Form B keeps the valuation of the original plot distinct from that of the final plot. The appellant's case therefore cannot fall under clause (viii).

Does the case fall under clause (xiii)? Under clause

(xiii) the Town Planning Officer is required to estimate 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 of section 69. Section 69 states that the owner of any property or right which is injuriously affected by the making of a town planning scheme shall be entitled to obtain compensation from the local authority or from any person benefited or partly from the local authority and partly from such person as the Town Planning Officer may in each case determine. It seems obvious that the property or right which is injuriously affected by the making of a town planning scheme is a property or right other than that acquired for the purposes of the scheme. The property or right affected remains with the owner who is entitled to compensation for such injurious affection. When under the Act a plot of land is taken for the purposes of a town planning scheme, it cannot be suggested that land itself is injuriously affected; such a view is unsupportable both as a matter of language and having regard to the scheme of the Act. On behalf of the appellant it was urged that clause (xiii) would cover the case of the appellant if only we read a few words in that clause and that we should do so to avoid injustice being done to the appellant and the owners of land similarly situated. That we are afraid is not possible. We find no compelling reason for restructuring that clause, and taking acquisition of land to mean 'injurious affection' of the land acquired would be inconsistent with the entire scheme of the Act. We may refer to clause 'fourthly' of section 23 (1) of the land Acquisition Act, 1894 which requires the court to take into consideration in determining the amount of compensation to be awarded for land acquired under that Act, the damage sustained by the "person interested" "by reason of the acquisition injuriously affecting his other property". The expression "person interested" as defined in section 3 of the Land Acquisition Act means all persons claiming an interest in compensation to be made on account of the acquisition of land under that Act. It is made clear in clause 'fourthly' that the damage is for injurious affection of some property other than the land acquired. The sense in which the expression 'injurious affection' is used in section 23 (1) of the Land Acquisition Act is the generally accepted meaning of that expression and we find nothing in the Act concerned in this case that suggests that it should be construed differently.

It was then argued that if neither clause (viii) nor clause (xiii) was applicable, then there was no clause in section 32 (1) of the Act that covers the appellant's case. The contention is not correct. The owner of an original plot who is not provided with a plot in the final scheme gets his right to compensation from section 71 of the Act which says that the net amount of loss shall be payable to him by "the local authority in cash or in such other way as may be agreed upon by the parties". The principle for determining the compensation is the same whether an owner of land is given a reconstituted plot or not; compensation is payable on the basis of the market value of the plot at the date of declaration of the intention to make a scheme. In the appellant's case it would be the value of the original plot and not the final plot. In determining the difference between the total of the values of the original plots and the total of the values of the plots included in the final scheme, the Town Planning Officer under section 32 (1) (iii) has to find out the market value of each of the original plots at the date of the declaration of intention to make a scheme as provided in section 64 (1) (f). Thus the Act contains the necessary provisions for estimating the compensation payable to an owner of land who has not been given a reconstituted plot.

We therefore hold that the High Court was right in finding that the decision of the Town Planning Officer determining the amount of compensation in the appellant's case was not appealable. In the view we take, Mr. Nariman should be allowed to urge the grounds concerning the constitutional validity of the Act. This case may now be placed before a Constitution Bench for hearing. An application has been filed on behalf of the appellant for leave to urge additional grounds; this application may also be considered by the Constitution Bench that will hear this appeal.

P.B.R. Appeal dismissed.