Ahmedabad Municipal Corporation & Anr vs Ahmedabad Green Belt Khedut Mandal & Ors on 9 May, 2014

Equivalent citations: AIR 2014 SUPREME COURT 2377, 2014 (7) SCC 357, 2014 AIR SCW 2997, 2014 (6) SCALE 630, (2015) 1 RAJ LW 887, (2014) 4 ALLMR 936 (SC), (2014) 4 KCCR 449, (2014) 3 GUJ LR 2516, (2014) 143 ALLINDCAS 25 (SC), AIR 2014 SC (CIVIL) 1633, (2014) 2 WLC(SC)CVL 176

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Bench: M.Y. Eqbal, J. Chelameswar, B.S. Chauhan

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOs.1542-44 OF 2001

Ahmedabad Municipal Corporation & Anr. …Appellants
Versus
Ahmedabad Green Belt Khedut Mandal & Ors. …Respondent
WITH
CIVIL APPEAL NOs.1545-50 OF 2001
State of Gujarat …Appellant
Versus
Ahmedabad Green Belt Khedut Mandal & Ors. …Respondents
WITH
CIVIL APPEAL NOs.1551-56 OF 2001
Ahmedabad Urban Development Authority …Appellant
Versus
Ahmedabad Green Belt Khedut Mandal & Ors. …Respondents

WITH

CIVIL APPEAL NO. 1864 OF 2014
Vadodara Sheheri Sankulan Khedut Mandal & Ors. ..Petitioners
Versus
Vadodara Urban Development Authority & Anr. ..Respondents
WITH
TRANSFERRED CASE (C) NOS. 12-13 OF 2010
Bhikhubhai Vitthalbhai Patel & Ors. etc.
…Petitioners
Versus
The State of Gujarat & Ors. …Respondents

J U D G M E N T

Dr. B.S. CHAUHAN, J.

1. Civil Appeal Nos.1542-44 of 2001 have been preferred challenging the impugned judgment and order dated 24.11.2000, passed in Special Civil Application Nos.1189, 4494 and 4659 of 1998 by the High Court of Gujarat at Ahmedabad, wherein the Writ Petition filed by the respondents has been partly allowed holding that Section 40(3)(jj)(a) of the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as the 'Act 1976') would be operative for the land other than the land covered by Section 20(2) of the Act 1976, though upheld the validity of Section 40(3)(jj) of the Act 1976.

Civil Appeal Nos.1545-50 of 2001 have been preferred by the State of Gujarat against the same judgment raising the grievance to the same extent.

Civil Appeal Nos.1551-56 of 2001 have been filed by the Ahmedabad Urban Development Authority (hereinafter referred to as `AUDA') against the same judgment passed in same cases alongwith Special Civil Application Nos.4859, 5934, 7476 of 1998 and 4271 of 2000.

Civil Appeal No. 1864 of 2014 has been filed against the impugned judgment and order dated 9.10.2009 passed by the High Court of Gujarat at Ahmedabad in Special Civil Application No.10912 of 2009, wherein the matter stood disposed of in terms of the subject matter in appeals referred to above.

In Transferred Case (C) Nos.12-13 of 2010, Writ Petition Nos.2879 and 2880 of 2009 had been filed by the tenure holders/ petitioners before the High Court of Gujarat and as the same factual and legal issues are involved therein, the petitions stood transferred to this court.

2. As similar factual and legal issues are involved in all the cases for convenience T.P. (C) Nos. 12-13 of 2010 and Civil Appeal Nos. 1542-44 of 2001 are taken to be the leading cases.

All these matters relate to the validity and issues of interpretation of Section 40(3)(jj) of the Act 1976 and application of certain statutory provisions of the Gujarat Town Planning and Urban Development Rules, 1979 (hereinafter referred to as the 'Rules 1979'). The basic question that has been raised on behalf of the tenure- holders (Association of land owners) is that whether the provisions contained in Sections 40(3)(jj) of the Act 1976 are ultra-vires of Articles 14, 19 and 300-A of the Constitution of India, 1950 (hereinafter referred to as the 'Constitution') and have also challenged the action on the part of the Municipal Corporations (Ahmedabad and Surat) for declaring the intention to frame town planning schemes by issuing notifications, and further to hold that the action of the Municipal Corporations to take away land of the tenure-holders to the extent of 50% without paying any compensation as ultra-vires and further challenged the respective resolutions of the State Government in this regard.

The main contention of the respondents before the High Court was that by way of the impugned legislation, the appellants have designed a circuitous method to acquire land without paying any amount of compensation. The ancillary ground urged is that the land which was not acquired on

payment of compensation under Section 20 of the Act 1976 cannot again be acquired indirectly and without payment of compensation by introducing the impugned legislation enabling Authority to prepare a town planning scheme and reserve the land to the extent of specified percentage for public purposes like roads, parks, play grounds, gardens and open spaces. Further, as per Section 40(3)(jj)(a)(iv) of the Act, 1976 the sale of land by the Appropriate Authority for raising money for the purpose of providing infrastructural facilities is beyond legislative competence being outside the purview of Entry 18 of List-II and Entry 20 of the concurrent list contained in 7th Schedule to the Constitution. Moreover, compensation payable under Section 82 of the Act, 1976 in respect of property or right injuriously affected by the scheme, on the basis of market value calculated on the date of issue of intention to frame a scheme, is not an adequate compensation. Further, it was not justified under the town planning scheme or the urban development to permit acquisition of certain percentage of properties of citizens for its disposal in the hands of public authorities for the purpose of raising its fund, even to be used for further development. Under the Act 1976, Section 40(3)(j) as it originally stood, provided for reserving only 10 per cent in the town planning scheme for providing housing accommodation to the members of the weaker sections. Therefore, the amendment by which the said area has been increased from 10% to 15% is not only unwarranted but also illegal.

3. Facts and circumstances giving rise to these matters are as under:

> A. In 1963, Ahmedabad Municipal Corporation (hereinafter referred to as the 'AMC') prepared and submitted a development plan under the Bombay Town Planning Act, 1964 (hereinafter referred to as "Bombay Act") whereby the lands of the respondents known as the 'green belt' were kept for open space and recreation. On 21.8.1965, the State Government sanctioned the development plan which came into force on 1.10.1965.
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> B. AMC prepared its revised development plan and published it on 15.1.1976 whereby lands of the respondents were reserved for "public housing".

C. The Bombay Act was replaced by the Act 1976 under which AUDA was alone competent to draft development plan.

D. The State Government sanctioned the development plan on 2.11.1987 which came into force on 3.12.1987 whereby the area known as 'green belt' was reserved for "public housing for different government organizations".

E. The AUDA prepared draft revised development plan which was published on 29.11.1997. The land reserved for "public housing for different government organizations" was de-reserved and put under the category as "restricted residential utility services and other uses zones".

F. The AUDA in exercise of the powers under Section 21 of the Act 1976 came out with a draft revised development plan in the year 1998.

G. The respondents herein filed a Writ Petition before the Gujarat High Court challenging the draft revised development plan and for direction to the appellants herein to acquire their lands as per the plan of 1987 within a period of 6 months failing which the plan would lapse.

H. The Act 1976 was amended on 1.5.1999 and Section 40(3)(jj) was inserted. The writ petition was amended and the vires of Sections 12 and 40(3)(jj) of the Act 1976 were also challenged. I. The AUDA vide its resolution dated 5.5.1999 approved the proposed revised development plan. Declarations were made in the year 2000 for making town planning schemes covering "restricted residential utility services and other uses zones".

J. The writ petition was partly allowed by the High Court vide impugned judgment and order dated 24.11.2000.

Hence, these appeals.

4. We have heard S/Shri C.A. Sundaram, Shirish H. Sanjanwala, Suresh Shelat, Huzefa Ahmadi, learned senior counsel for the tenure- holders or association of farmers and S/Shri Harish N. Salve, T.R. Andhyarujina, learned senior counsel and Preetesh Kapur, learned counsel for the State and statutory authorities.

5. All the submissions advanced by the counsel for the respective parties are the same which had been agitated before the High Court and reference thereof has already been made. Learned counsel appearing for the tenure-holders have submitted that the judgment of the High Court as far as the validity of the statutory provision is concerned, does not require any interference whatsoever but earmarking of the land to the extent of 50% without paying any compensation amounts to expropriation and in all circumstances percentage fixed by the statutory provisions is excessive.

6. On the contrary, learned counsel appearing for the state and statutory authorities have submitted that the judgments impugned have made the scheme unworkable as one tenure holder may get all infrastructure facilities while the adjacent neighbour may not get any facility at all. The area which can be taken away by the authority for sale to the extent of 15% relates to the total area covered by the scheme and not from each and every plot.

7. In order to properly understand the dispute herein, reference has to be made to various provisions of the Act 1976. The Preamble of the Act 1976 indicates that the purpose of the legislation is to consolidate and amend the law relating to the making and execution of development plans and town planning schemes in the State of Gujarat. Section 12 of the Act 1976 provides for proposals and reservations to be made in the development plan for the approval of the State Government.

8. Clause (x) of Section 2 of the Act 1976 defines "development plan" while clause (xxvi) thereof defines "scheme".

Section 9 of the Act 1976 provides that the Development Authority shall prepare and submit the development plan to the State Government for the whole or any part of the development area in

accordance with the provisions of this Act. Section 10 thereof requires that a copy of draft development plan is to be kept open for public inspection.

Section 12 provides for the contents of draft development plan generally providing the manner in which the use of land in the area covered by it shall be regulated and also indicating the manner in which the development therein shall be carried out. In particular, it shall provide, so far as may be necessary, proposal for designating the use of the land for residential, industrial, commercial, agricultural and recreational purposes; for the reservation of land for public purposes, such as schools, college and other educational institutions, medical and public health institutions; proposals for designation of areas for zoological gardens, green belts, natural reserves and sanctuaries; transport and communications, such as roads, highways, parkways, railways, waterways, canals and airport, including their extension and development; proposals for water supply, drainage, sewage disposal, other public utility amenities and service including supply of electricity and gas; reservation of land for community facilities and services, etc. Section 20 of the Act reads as under:

> "?(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 (I of 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 acquisitions, the designation of the land as aforesaid shall be deemed to have lapsed".

Section 40(3) (j) & (jj)(a) of the Act reads as under:

> "(j) the reservation of land to the extent of ten percent; or such percentage as near thereto as possible of the total area covered under the scheme for the purpose of providing housing accommodation to the members of socially and economically backward classes of people.
>
> (jj) (a) the allotment of land from the total area covered under the scheme, to the extent of:
>
> (i) Fifteen percent for roads;
>
> (ii) Five percent for parks, playgrounds, garden and open space
>
> (iii) Five percent for social infrastructure such as schools, dispensary, fire brigade, public utility place as earmarked in the Draft Town Planning Scheme.

(iv) Fifteen percent for sale by appropriate Authority for residential, commercial or industrial use depending upon the nature of development.

Provided that the percentage of the allotment of land specified in paragraphs (i) to (iii) may be altered depending upon the nature of development and for the reasons to be recorded in writing;

(b) the proceeds from the Sale of land referred to in para (iv) of sub-clause (a) shall be used for the purpose of providing infrastructural facilities in the area covered under the scheme.

(c) The land allotted for the purposes referred to in paragraphs

(ii) and (iii) of sub-clause (a) shall not be changed by variation of schemes for the purpose other than public purpose." Section 48 of the Act 1976 defines the power of the State Government to sanction draft scheme. Further, Section 48-A reads as under:

"(1) Where a draft scheme has been sanctioned by the State Government under sub-section (2) of section 48, (hereinafter in this section, referred to as 'the sanctioned draft scheme'), all lands required by the appropriate authority for the purposes specified in clause (c), (f), (g), or (h) of sub-section (3) of section 40 shall vest absolutely in the appropriate authority free from all encumbrances.

(2) Nothing in sub-section (1) shall affect any right of the owner of the land vesting in the appropriate authority under that sub-section." Section 77 of the Act 1976 deals with cost of scheme, which also includes all sums payable as compensation for land reserved or designated for any public purpose or for the purposes of appropriate authority which is solely beneficial to the owners of the land or residents within the area of the scheme and also includes portion of the sums payable as compensation for land reserved or designated for any public purpose. It also includes legal expenses incurred by the appropriate authority in making and in the execution of the scheme. Clause (f) thereof reads as under:

(f) any amount by which the total amount of the values of the original plots exceeds the total amount 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 the said date and without reference to improvements contemplated in the scheme other than improvements due to alteration of its boundaries.

Clause (2) of Section 77 reads:

(2) If in any case the total amount of the values of the plots included in the final scheme exceeds the total amount 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 79 of the Act 1976 provides for contribution towards costs of scheme.

Section 82 of the Act 1976 reads as under:

> Compensation in respect of property or right injuriously affected by scheme.
>
> 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 be compensated in respect thereof by the appropriate authority or by any person benefited or partly by the appropriate authority and partly by such person as the Town Planning Officer may in each case determine:
>
> Provided that the value of such property or rights shall be deemed to be its market value at the date of the declaration of intention to make a scheme or the date of the notification issued by the State Government under sub-section (1) of section 43 without reference to improvements contemplated in the scheme, as the case may be.

Section 84 thereof deals with the cases in which amount payable to owners exceeds amount due from him. As per the provisions of Section 84, if the owner of an original plot is not provided with a plot in the preliminary scheme or if the contribution to be levied from him under Section 79 is less than the total amount to be deducted therefrom, the net amount of his loss, shall be payable to him.

Section 85 of the Act 1976 deals with the cases in which the value of the developed plot is less than the amount payable by the owners. In case the amount which would be due to the appropriate authority under the Act from the owner of a plot to be included in the final scheme exceeds the value of such plot estimated on the assumption that till scheme has been completed, the owner of such plot has to make payment to authority of the amount of such excess within the prescribed period.

Sub-Section (2) of Section 85 provides that on meeting certain legal requirements, the plot included in the final scheme “shall vest absolutely in the appropriate authority free from all encumbrances but subject to the provisions of the Act”.

9. Rule 22 of the Rules 1979 reads as:

> (1) The compensation payable under section 45 shall be difference between the value of the property (inclusive of structure) on the basis of the existing use and that on the basis of permitted use both values being determined as on the date of declaration of intention to prepare the scheme.
>
> (2) In making the valuation on the basis of permitted use, allowance shall be made for the expenses that may have to be incurred in so converting the existing structures

as to make them suitable for permitted use.

(3) In case provision is made for continuance of the existing use for a number of years taking into consideration the future life of the structure the compensation payable shall be limited to present value of the standing structure less value of materials at the end of such period.

(4) X X X

10. Form H attached to the Rules 1979 is a Form to be filled by the Town Planning Officer while preparing the draft planning scheme and it clearly makes it evident that "any person who is injuriously affected by the above town planning scheme, is entitled to claim the damages in accordance with Section 82 of the Act 1976".

11. Form K attached to the said Rules 1979 is also to be filled up and sent by the Town Planning Officer while preparing the final draft planning scheme as required under Section 52(3) and it puts him under an obligation to determine and record as under:

"(i) The compensation payable to you under Section 80

(ii) Amount payable by you under Section 80

(iii) Estimated amount of the increment under Section 78

(iv) Amount of incremental contribution under Section 79

(v) The compensation under Section 82

(vi) Net amount of contribution

(vii) Net amount payable to you"

12. The aforesaid provisions read conjointly gives a clear picture that the scheme is just like the consolidation proceedings as the land, belonging to various persons, covered by the scheme first be put into a pool and then the land be allocated for different purposes and, in such a way, after having all deductions for the purpose of either by way of acquisition of land under the Land Acquisition Act 1894 (hereinafter referred to as `Act 1894') or the land taken under the provisions of Section 40(3)(jj)(a) of the Act 1976, the loss and profit of individual tenure holder is to be calculated. After assessing the market value on the date of declaration of the intention to frame a scheme and the value of the property after making all these deductions, adjustments, improvements etc. and, therefore, if a person has suffered any loss, his loss is to be made good from the funds of the scheme and if a person has gained an amount equivalent to net gain, is to be recovered from him.

> 13. The main issue involved herein is whether after the lapse of the period for reservation as per Section 20(2) of the Act 1976, can the said land be again acquired by resorting to the provisions of Section 40 of the Act 1976. In the present case, the State Government had sanctioned a development plan on 2.11.1987 which came into force on 3.12.1987 wherein the area known as the "green belt" was reserved for "public housing for different government organizations". The said area was deemed to be de-reserved by virtue of the provisions of Section 20 after the expiry of a period of 10 years. Despite the respondents having served the six months' notice, the said land was still not acquired by the government. It has been submitted on behalf of the respondents that having regard to the provisions of Section 20 read with Section 40 of the Act 1976, the said land could not be re-

acquired/re-designated by framing a town planning scheme. Section 48- A of the Act 1976 provides for vesting of land in the appropriate authority. However, the said section does not cover the requirement under Section 40(3)(jj)(a) of the Act. It has been further argued that the other relevant provision is Section 107 of the Act 1976 which provides that land needed for a town planning scheme shall be deemed to be land needed for a public purpose within the meaning of the Act 1894. Therefore, without invoking the provisions of the Act 1894, the said land could not be re-notified under Section 40 of the Act 1976.

14. After considering all the submissions of the parties, the High Court has recorded the following conclusions:

> I) The contention that prescribing of various percentage under Section 40(3)(jj)(a) of the Act 1976 amounts to excessive legislation is rejected. The unamended clause (jj) of Section 40 provided for allotment of 10% of the land in the scheme or such percentage as near thereto as possible for the purpose of sale for residential, commercial and industrial use. The present provision as exists today has now specified various percentage of the land to be set aside for specific purpose, i.e. 15% for roads, 5% for parks, playgrounds etc., 5% for social infrastructure and 15% for sale for providing infrastructural facilities. There has only been an increase of 5% in the percentage of land that could be sold of by the appropriate authority as compared to an increase of 30% as contended by the respondents. The current provision now only specifies specific percentage of the land to be set aside for the specified purpose which was already provided for in the Act 1976 and there is no further reservation that is provided.
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> II) Entry 18 of List II of the Constitution provides for legislative competence with respect to land i.e. rights in or over the land including land improvement. Entry 20 of Concurrent List of the Constitution deals with economic and social planning. Therefore, the State Legislature was well within its competence to specify the percentage of areas to be demarcated/used for the specified purpose.

Further, a mere increase of percentage of land to be demarcated for a specific purpose can in no way said to be an excessive legislation. Section 91 of the Act 1976 provides for establishment of funds for utilization by the appropriate authority in order to meet expenditures for the development of land, administration of the Act and such other purpose as the State Government may direct. With the increase in cost of construction, the requisite funds for development would naturally increase and therefore, there does not seem to be any impediment in prescribing a higher percentage of land that is to be sold for such purposes.

III) The respondents` claim to the benefit under Article 300-A of the Constitution which provides for a constitutional right to property is also stood rejected. Each and every claim to property cannot be termed as a right to property and any legislation prescribing a reasonable restriction over the same is a valid exception to the said Article.

IV) Even the contention of the respondents that the compensation prescribed under Section 82 of the Act 1976 was inadequate stands rejected.

15. The aforesaid findings have been challenged by the State/statutory authorities as well as by the Association of land owners to the extent the findings have been recorded against them.

16. It is in this backdrop that we have to test the submissions advanced on behalf of the parties in the light of law declared by this Court earlier on the issues involved herein.

In Jilubhai Nanbhai Khachar etc.etc. v. State of Gujarat & Anr., etc.etc., AIR 1995 SC 142, this Court held:

> "...Though Articles 31 and 19(1)(f) of the Constitution accorded to 'property' the status as a fundamental right, there emerged conflict between the animation of the Founding Fathers and the judicial interpretation on the word 'compensation' when private property was expropriated to subserve common good or to prevent common detriment.....Concomitantly legislature has power to acquire the property of private person exercising the power of eminent domain by a law for public purpose. The law may fix an amount or which may be determined in accordance with such principles as may be laid therein and given in such manner as may be specified in such law. However, such law shall not be questioned on the grounds that the amount so fixed or amount determined is not adequate. The amount fixed must not be illusory. The principles laid to determine the amount must be relevant to the determination of the amount..... We are conscious that Parliament omitted Article 31(2) altogether. However when the State exercises its power of eminent domain and acquires the property of private person or deprives him of his property for public purpose, concomitantly fixation of the amount or its determination be must in accordance with such principles as laid therein and the amount given in such manner as may be specified in such a law....."

17. In Ashutosh Gupta v. State of Rajasthan & Ors., AIR 2002 SC 1533, this Court held:

> "There must be proper pleadings and averments in the substantive petition before the question of denial of equal protection of infringement of fundamental right can be decided. There is always a presumption in favour of the constitutionality of enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. The presumption of constitutionality stems from the wide power of classification which the legislature must, of necessity possess in making laws operating differently as regards different groups of persons in order to give effect to policies. It must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience."

18. In Prakash Amichand Shah v. State of Gujarat & Ors., AIR 1986 SC 468, this Court relied upon the judgment of this Court in Zandu Pharmaceutical Works Ltd. v. G.J. Desai, Civil Appeal No. 1034 of 1967 decided on August 28, 1969 dealing with the very provisions of the Act, wherein this Court had observed :

> "When the Town Planning Scheme comes into operation the land needed by a local authority vests by virtue of Section 53(a) and that vesting for purposes of the guarantee under Article 31(2) is deemed compulsory acquisition for a public purpose. To lands which are subject to the scheme, the provisions of Sections 53 and 67 apply, and the compensation is determined only in the manner prescribed by the Act. There are therefore two separate provisions one for acquisition by the State Government, and the other in which the statutory vesting of land operates as acquisition for the purpose of town planning by the local authority. The State Government can acquire the land under the Land Acquisition Act, and the local authority only under the Bombay Town Planning Act. There is no option to the local authority to resort to one or the other of the alternative methods which result in acquisition. Hence the provisions of Sections 53 and 67 are not invalid on the ground that they deny equal protection of the laws or equality before the laws." (Emphasis added)

19. In Prakash Amichand Shah (Supra) this Court held:

> ".....All his functions are parts of the social and economic planning undertaken and executed for the benefit of the community at large and they cannot be done in isolation. When such functions happen to be integral parts of a single plan which in this case happens to be an urban development plan, they have to be viewed in their totality and not as individual acts directed against a single person or a few persons. It is quite possible that when statutory provisions are made for that purpose, there would be some difference between their impact on rights of individuals at one stage and their impact at another stage. As we have seen in this very Act there are three types of taking over of lands - first under Section 11, secondly under Section 53 and thirdly under Section 84 of the Act, each being a part of a single scheme but each one having a specific object and public purpose to be achieved. While as regards the determination of compensation it may be possible to apply the provisions of the Land

> Acquisition Act, 1894 with some modification as provided in the Schedule to the Act in the case of lands acquired either under Section 11 or under Section 84 of the Act, in the case of lands which are needed for the local authority under the Town Planning Scheme which authorises allotment of reconstituted plots to persons from whom original plots are taken, it is difficult to apply the provisions of the Land Acquisition Act, 1894. The provisions of Section 32 and the other financial provisions of the Act provide for the determination of the cost of the scheme, the development charges to be levied and contribution to be made by the local authority etc. It is only after all that exercise is done the money will be paid to or demanded from the owners of the original plots depending on the circumstances governing each case. If in the above context the Act has made special provisions under Sections 67 to 71 of the Act for determining compensation payable to the owners of original plots who do not get the reconstituted plots it cannot be said that there has been any violation of Article 14 of the Constitution. It is seen that even there the market value of the land taken is not lost sight of. The effect of the provisions in Sections 67 to 71 of the Act has been explained by this Court in Maneklal Chhotalal v. M.G. Makwana, AIR 1967 SC 1373, and in State of Gujarat v. Shantilal Mangaldas, AIR 1969 SC 634.
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> Thus it is seen that all the arguments based on Article 14 and Article 31(2) of the Constitution against the Act were repelled by the Constitution Bench in the Shantilal Mangaldas (supra). With great respect, we approve of the decision of the court in this case…….We do not therefore find any substance in the contention that the Act violated Article 31(2) of the Constitution as it stood at the time when the Act was enacted or at any time thereafter." (Emphasis added)

20. This Court in the said case also explained the decision of this Court in Nagpur Improvement Trust & Anr. v. Vithal Rao & Ors., AIR 1973 SC 689, wherein the High Court had held that as the acquisition was by the State, in all cases where the property was required to be acquired for the purposes of a scheme framed by the Trust and such being the position, it was not open to the State to acquire any property under the provisions of the Act 1894 as amended by the Improvement Trust Act without paying compensation on the same parameters and the solatium also. It was, therefore, held by the High Court that the paras 10(2) and 10(3) insofar as they added a new clause 3(a) to Section 23 and a proviso to sub-section (2) of Section 23 of the Act 1894 were ultra vires as violating the guarantee of Article 14 of the Constitution.

This Court further held:

> "…..The development and planning carried out under the Act is primarily for the benefit of public. The local authority is under an obligation to function according to the Act. The local authority has to bear a part of the expenses of development. It is in one sense a package deal. The proceedings relating to the scheme are not like acquisition proceedings under the Land Acquisition Act, 1894. Nor are the provisions of the Land Acquisition Act, 1894 made applicable either without or with modifications as in the case of the Nagpur Improvement Trust Act, 1936. We do not

understand the decision in Nagpur Improvement Trust case (supra) as laying down generally that wherever land is taken away by the government under a separate statute compensation should be paid under the Land Acquisition Act, 1894 only and if there is any difference between the compensation payable under the Land Acquisition Act, 1894 and the compensation payable under the statute concerned the acquisition under the statute would be discriminatory....."

21. In Bhavnagar University v. Palitana Sugar Mill Pvt. Ltd. & Ors., AIR 2003 SC 511, this Court held:

"37. The words "so far as may be" 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 which is given by one hand should be taken away by the other.

38. Section 21 does not envisage that despite the fact that in terms of sub-section (2) of S. 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 S. 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 S. 20(2) otiose and redundant.

39. Sub-section (1) of S. 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 S. 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 S. 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 S. 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." (See also: Chairman, Indore Vikas Pradhikaran v. M/s. Pure Industrial Cock & Chem. Ltd. & Ors., AIR 2007 SC 2458; and Shrirampur Municipal Council, Shrirampur v. Satyabhamabai Bhimaji Dawkher & Ors., (2013) 5 SCC 627)

22. In view of the provisions of the Act 1976 and particularly Section 40 (3)(jj)(a)(iv), the question does arise as to whether selling of land provided therein maximum to the extent of 15% is illegal; and whether on lapsing of designation under the development plan under Section 20, can there be any fresh reservation/designation under the town planning scheme for the same land which is designated and whether such land if acquired, can only be acquired independently under the Act 1894.

23. As we have explained hereinabove that the town planning scheme provides for pooling the entire land covered by the scheme and thereafter re-shuffling and reconstituting of plots, the market value of the original plots and final plots is to be assessed and authority has to determine as to whether a land owner has suffered some injury or has gained from such process. Re-constitution of plots is permissible as provided under the scheme of the Act as is evident from cogent reading of Section 45(2)(a)(b)(c) and Section 52(1)(iii) in accordance with Section 81 of the Act 1976. By re-constitution of the plots, if anybody suffers injury, the statutory provisions provide for compensation under Section 67(b) read with Section 80 of the Act 1976. By this re-constitution and readjustment of plots, there is no vesting of land in the local authority and therefore, the Act provides for payment of non-monetary compensation and such a mode has been approved by the Constitution Bench of this Court in Shantilal Mangaldas (supra), wherein this Court has held that when the scheme comes into force all rights in the original plots are extinguished, and simultaneously therewith ownership springs in the re-constituted plots. It does not predicate ownership of the plots in the local authority, and no process - actual or notional - of transfer is contemplated in that appropriation. Under clause (a) of Section 53, vesting of land in local authority takes place only on commencement of scheme into force. The concept that lands vest in a local authority when the intention to make a scheme is notified, is against the plain intendment of the Act. Even steps taken by the State do not involve application of the doctrine of eminent domain.

24. In Maneklal Chhotalal (supra), re-adjustment of plots has been approved by this Court observing as under:

> "Even if, an original plot owner is allotted smaller extent of land in the final plot and has to pay certain amount as contribution, having regard to the scheme and its objects, this is inevitable and is not deprivation."

25. Thus, it is evident that in case a land owner is not provided with a final plot, amount of his loss would be payable to him as required under Section 84 of the Act 1976. (It is agreed by learned counsel for the parties that there is not a single instance herein where the land owner is deprived of his land completely and has not been given a re-constituted plot). However, it is suggested by learned counsel for the State that in such an event, such tenure holder would be entitled for market value of the land to be determined under the Act 1976 and the provisions of the Act 1894 would not be applicable in view of the judgment of this Court in Prakash Amichand Shah (supra). Be that as it may, as there is no such instance where the land owner is deprived completely of his land and does not get reconstituted plots, we do not want to proceed further with an academic question.

26. In Shantilal Mangaldas (supra), this Court held:

> "The provisions relating to payment of compensation and recovery of contributions are vital to the successful implementation of the scheme. The owner of the re-constituted plot who gets the benefit of the scheme must make contribution towards the expenses of the scheme; the owner who loses his property must similarly be compensated." The aforesaid judgment is still a good law on this aspect.

27. In view of the commencement of the 44th Amendment of the Constitution w.e.f. 20.6.1979, whereby Articles 31(2) and 19(1)(g) have been deleted, we do not propose to go into the enquiry and consider the judgments in State of West Bengal v. Mrs. Bella Banerjee & Ors., AIR 1954 SC 170; and Rustom Cavasjee Cooper v. Union of India, AIR 1970 SC 564. More so, the judgments in P. Vajravelu Mudaliar v. The Special Deputy Collector for Land Acquisition, West Madras & Anr., AIR 1965 SC 1017; and Union of India v. The Metal Corporation of India & Anr., AIR 1967 SC 637, have been over-ruled by this Court in subsequent judgment. (See: Ishwari Khetan Sugar Mills (P) Ltd. etc.etc. v. The State of U.P. & Ors., AIR 1980 SC 1955).

Thus, there is no fundamental right to hold property. But the right to compensation on compulsory acquisition is still available under the second proviso to Article 31A subject to the limitation as specified therein. However, we need not elaborate the same as the said averment is not argued before us.

28. Article 300-A of the Constitution though creates a human right being a constitutional provision, but is not a fundamental right. Article 300-A provides that no person can be deprived of his property except by authority of law. The Town Planning Act is definitely an authority of law by which a person is deprived of his property if we assume that the town planning scheme deprives a person of his property, though it is not so in view of the judgments of this Court in Shantilal Mangaldas (supra) and Prakash Amichand Shah (supra).

29. So far as the question that upon lapsing of designation under the development plan under Section 20 there cannot be any reservation/designation under a town planning scheme for the same land, is to be understood reading the provisions of the Act 1976 cogently. The development plan is prepared under Chapter II and town planning scheme is made under Chapter V. Therefore, they are two different things. The development plan is a macro plan for a vast area wherein a town planning scheme is minor scheme within the town. Section 40(1) simply provides that in the making of town planning scheme the authority has to have regard to the final development of the plan, if any. Thus, the words "having regard to the development plan" in Section 40 means that town planning scheme cannot disregard or ignore the designation/reservation made in the development plan.

Under Section 20 of the Act, it is provided that if an acquisition does not take place by agreement or under the Act 1894, in respect of certain lands designated in the final development plan for the six purposes mentioned in sub-section (2) of Section 12 within a period of 10 years from the coming into force of the final development plan, the designation of the land under these clauses shall be deemed to have lapsed. Therefore, the provision for lapsing of the designation of the land does not take it out of the purview of town planning scheme and such a provision does not prevent the making of a provision in a town planning scheme for any reservation specified in Section 40(3). If

the judgment of the High Court on this issue is approved, the town planning scheme would be impermissible. Thus, even after the lapse of designation of the land under Section 20, a town planning scheme will have to include the land for roads, open spaces, gardens under Section 40(3)(e), reservation of land for accommodation to members of socially and economically backward classes of people under Clause 40(3)(j) but not for items mentioned in Section 40(3)(jj)(a) would lead to absurdity.

30. Section 40(3)(jj) only regulates discretion of the Area Development Authority (ADA) while making the draft development plan. The land acquired under Section 20 read with Section 12 of the Act 1976 would need infrastructural facility and the original plot which is acquired would require to be re-constituted as a final plot and to make a building site. The settled legal proposition in respect of interpretation of statute is that the provisions of the Act have to be read as a whole and therefore the provision of Section 40(3)(jj)(a)(iv) for sale has to be read inconsonance/conjointly with the other statutory provisions and not in isolation. The sale upto the extent of 15% is from the total area covered under the scheme and not in respect of every plot of land. In order to generate financial resources for the development of infrastructure, the saleable plot for residential, commercial and industrial use are allotted by the appropriate authority. Similarly, while re-constituting the plots, final plot is offered to the original owner for its beneficial use.

31. The High Court has committed an error interpreting the provisions under challenge as it failed to appreciate that the provisions of the Town Planning Scheme in Chapter-V, no where indicate that the lands under Section 20 cannot be subject matter of the Town Planning Scheme. The interpretation given by the High Court tantamounts to rewriting the provisions of the Act 1976 as the High Court has held that the land under Section 20 cannot be the subject of Section 40(3)(jj). Section 40(3)(jj)(a) only illustrates and provides the guidance to the authority.

32. So far as the observation made by this Court in Bhavnagar University (supra) is concerned, the court held that the land which has been de-reserved under Section 20 cannot be subject matter of revised development plan under Section 20(1). However, the issue involved in that case was in respect of applicability of Section 40 while framing the scheme, and this court had not dealt with the provisions of the scheme under Chapter-V of the Act.

33. A Constitution Bench of this Court in K.L. Gupta & Ors. v. The Municipal Corporation of Greater Bombay & Ors., AIR 1968 SC 303 had examined the validity of the provisions of Sections 9, 10, 11, 12 and 13 of the Bombay Town Planning Act, 1954 (hereinafter referred to as the `Act 1954') and held as under:

> "With regard to the complaint that the period of ten years fixed under s. 11(3) of the Act was too long, and an unreasonable restriction on the rights of a land owner to deal with his land as he pleased, it is enough to say that in view of the immensity of the task of the local authorities to find funds for the acquisition of lands for public purposes, a period of ten years was not too long.

> .....No one can be heard to say that 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. The finances of a local authority are not unlimited nor have they the power to execute all schemes of proper utilisation of land set apart for public purposes as expeditiously as one would like. They can only do this by proceeding with their scheme gradually, by improving portions of the area at a time, obtaining money from persons whose lands had been improved and augmenting the same with their own resources so as to be able to take up the improvement work with regard to another area marked out for development. The period of ten years fixed at first cannot therefore be taken to be the ultimate length of time within which they had to complete their work. The legislature fixed upon this period as being a reasonable one in the circumstances obtaining at the time when the statute was enacted. We cannot further overlook the fact that modifications to the final development plan were not beyond the range of possibility. We cannot therefore hold that the limit of time fixed under s. 4 read with s. 11(3) forms an unreasonable restriction on the rights of a person to hold his property." (Emphasis added)

> 34. In Shantilal Mangaldas (supra), a Constitution Bench of this Court examined the scheme under the Act 1954 which was applicable earlier to the State of Gujarat wherein with respect of the land situated therein, the Borough Municipality of Ahmedabad declared its intention of making a town planning scheme vide resolution dated 18.4.1927 under the Bombay Town Planning Act, 1915, wherein the High Court of Gujarat had allowed the writ petition filed by the tenure-

holders. This Court reversed the said judgment observing as under:

> "22. The following principles emerge from an analysis of Clauses (2) and (2A): compulsory acquisition or requisition may be made for a public purpose alone, and must be made by authority of law. Law which deprives a person of property but does not transfer ownership of the property or right to possession of the property to the State or a corporation owned or controlled by the State is not a law for compulsory acquisition or requisition. The law, under the authority of which property is compulsorily acquired or requisitioned, must either fix the amount of compensation or specify the principles on which, and the manner in which, the compensation is to be determined and given. If these conditions are fulfilled the validity of the law cannot be questioned on the plea that it does not provide adequate compensation to the owner..... The first contention urged by Mr. Bindra cannot, therefore, be accepted.....

> The principal argument which found favour with the High Court in holding Section 53 ultra vires is that when a plot is reconstituted and out of that plot a smaller area is given to the owner and the remaining area is utilised for public purpose, the area so

utilised vests in the local authority for a public purpose, and since the Act does not provide for giving compensation which is a just equivalent of the land expropriated at the date of extinction of interest, the guaranteed right under Article 31(2) is infringed.....

There is no vesting of the original plots in the local authority nor transfer of the rights of the local authority in the reconstituted plots. A part or even the whole plot belonging to an owner may go to form a reconstituted plot which may be allotted to another person, or may be appropriated to public purposes under the scheme. The source of the power to appropriate the whole or a part of the original plot in forming a reconstituted plot is statutory. It does not predicate ownership of the plot in the local authority, and no process- actual or notional-of transfer is contemplated in that appropriation. The lands covered by the scheme are subjected by the Act to the power of the local authority to readjust titles, but no reconstituted plot vests at any stage in the local authority unless it is needed for a purpose of the authority. Even Under Clause (a) of Section 53 the vesting in a local authority of land required by it is on the coming into force of the scheme. The concept that lands vest in the local authority when the intention to make a scheme is notified is against the plain intendment of the Act.....

The question that falls then to be considered is whether the scheme of the Act which provides for adjustment of the market value of land at the date of the declaration of intention of making a scheme against market value of the land which goes to form the reconstituted plot, if any, specifies a principle for determination of compensation to be given within the meaning of Article 31(2) .....

On the second branch of the argument it was urged that a provision for giving the value of land, not on the date of extinction of interest of the owner, but on the footing of the value prevailing at the date of the declaration of the intention to make a scheme, is not a provision for payment of compensation..... .....The method of determining compensation in respect of lands which are subject to the town-planning schemes is prescribed in the Town Planning Act. There is no option under that Act to acquire the land either under the Land Acquisition Act or under the Town Planning Act. Once the draft town-planning scheme is sanctioned, the land becomes subject to the provisions of the Town Planning Act, and the final town-planning scheme being sanctioned, by statutory operation the title of the various owners is readjusted and the lands needed for a public purpose vest in the local authority. Land required for any of the purposes of a town-planning scheme cannot be acquired otherwise than under the Act, for it is settled rule of interpretation of statutes that when power is given under a statute to do a certain thing in a certain way the thing must be done in that way or not at all....." (Emphasis added)

35. Thus, we do not find any force in the submissions made on behalf of the tenure-holders for the simple reason that after the judgment in Bhikhubhai Vithalbhai Patel v. State of Gujarat & Anr., AIR 2008 SC 1771, it was not permissible for the statutory authorities to bring any scheme whatsoever for the reason that as per that judgment also, land could be used for residential purposes and the authority's draft scheme also provides for residential purposes. That does not mean that it would be used exclusively for residential purpose and it cannot have even small marketing place or a small dispensary.

36. Section 40 of the Act 1976 contains the words "regard being had" and thus it suggests that while the condition specified therein are to be taken into consideration they are only a guide and not fetters upon the exercise of power.

37. It is a settled legal proposition that hardship of an individual cannot be a ground to strike down a statutory provision for the reason that a result flowing from a statutory provision is never an evil. It is the duty of the court to give full effect to the statutory provisions under all circumstances. Merely because a person suffers from hardship cannot be a ground for not giving effective and grammatical meaning to every word of the provisions if the language used therein is unequivocal. (See: The Martin Burn Ltd. v. The Corporation of Calcutta, AIR 1966 SC 529; Tata Power Company Ltd. v.

Reliance Energy Limited & Ors., (2009) 16 SCC 659; and Rohitash Kumar & Ors. v. Om Prakash Sharma & Ors., AIR 2013 SC 30).

38. The interpretation given by the High Court runs contrary to the intention under the scheme and may frustrate the scheme itself as in the pockets left out in the scheme the basic amenities may not be available. The result would be that a portion of the land would be left without infrastructural facility while the adjacent area belonging to neighbours would be provided infrastructural facility.

39. In view thereof, we are of the considered opinion that the High Court has recorded an erroneous finding that if a designation lapses under Section 20, the land cannot be again reserved in a town planning scheme, and further if the land cannot be acquired under Section 20 for want of capacity to pay any compensation under the Act 1894, it cannot be allowed to be acquired indirectly on lesser payment of compensation as provided under the Act 1976. Thus, the judgment of the High Court to that extent is not sustainable in the eyes of law.

40. In the transferred cases, the resolution dated 16.5.2008 providing the extent of taking over the land to 50% has been challenged on the ground that in other similar schemes in Vadodara, the maximum land taken by the State/Authority had been only upto 30%. Therefore, the deduction to the extent of 50% of the total land of a tenure-holder is illegal acquisition or amounts to expropriation and not acquisition. It is further submitted by Shri Huzefa Ahmadi, learned senior counsel appearing for the petitioners in transferred cases that in case of non-agricultural land, the deduction may be upto 20% and for agricultural land it may be upto 30%. Shri Ahmadi has placed a

very heavy reliance on a chart filed by him showing that in other similar cases, a very lesser area had been deducted by the State/Authority and in the instant case 15% area had been proposed for sale without drawing the balance sheet. In such a fact-situation, the cases have to be allowed.

41. On the contrary, Shri Preetesh Kapur appearing for the respondents has submitted that it is pre-mature to challenge the resolution dated 16.5.2008 as it is a first step to initiate the proceedings under the Act and the Rules. The draft scheme issued under Section 48 of the Act 1976 empowers the State Government to sanction a draft scheme and clause (3) thereof provides that if the State Government sanctions the scheme, a notification shall be issued stating at what place and time the draft scheme shall be open for the inspection of the public after which the procedure prescribed under Sections 50 and 51 would be followed. At that stage Rule 26 which provides that for the purpose of preparing the preliminary scheme and final scheme, the Town Planning Officer shall give notice in Form 'H' of the date on which he will commence his duties and shall state the time as provided in Rule 37 within which the owner of any property or right which is injuriously affected by the making of a scheme would be entitled under Section 82 to make a claim before him. Such notice should be published in the official gazette also and the law further requires the filing of the objections and the personal hearing to such person who would be adversely affected.

42. In the instant Transferred Case, as the authority is only dealing with the issues at a draft stage and the applicants have ample opportunity to file their objections and are entitled to personal hearing as required under Rule 26 clause (4), the matter can be adjudicated before the statutory authority.

Therefore, in view of the above, we are of the considered opinion that the apprehensions raised by the applicants at this stage are pre-mature. Admittedly, the applicants have filed their objections raising their grievance and they had also been given the personal hearing by the statutory authorities on all permissible, factual and legal grounds. The learned counsel appearing for the State/Authorities has submitted that in case the applicants are not satisfied and make fresh objections within 30 days from today, they would be provided a fresh opportunity of hearing. However, it is too early to anticipate as what order would be passed on their objections. In case, they are aggrieved by the order passed after hearing their objections, they have a statutory right to approach the appropriate forum challenging the same.

43. In view of the above, we do not think it proper to decide the cases on merits at such a premature stage. More so, there is no reason to believe that the authorities would act arbitrarily and would not take into consideration the grievance raised by the applicants.

44. In view of the above, Civil Appeal Nos.1542-44 of 2001, 1545-50 of 2001 and 1551-56 of 2001 are allowed. The judgment impugned therein are set aside to the extent hereinabove. Civil Appeal No.1864 of 2014 and Transferred Case (C) Nos.12-13 of 2010 are dismissed. However, it is clarified that any observation made herein in the transferred cases would not adversely affect either of the parties. No order as to costs.

.....J. (Dr. B.S. CHAUHAN) .....J. (J. CHELAMESWAR) .....J. New Delhi, (M.Y. EQBAL) May 9, 2014