Yogendra Pal And Others vs Municipality, Bhatinda And Another on 15 July, 1994

Equivalent citations: AIR1994SC2550, JT1994(4)SC376, (1995)109PLR338, 1994(3)SCALE296, (1994)5SCC709, [1994]SUPP1SCR693, AIR 1994 SUPREME COURT 2550, 1994 (6) SCC 709, 1994 AIR SCW 3598, 1994 (2) REVLR 496, (1994) 4 JT 376 (SC), 1995 (109) PUN LR 338, 1994 REVLR 2 496, (1995) 1 PUN LR 338, 1994 (4) JT 376, (1994) 3 SCJ 367, (1994) 2 CURLJ(CCR) 562

Author: P.B. Sawant

Bench: P.B. Sawant

ORDER

P.B. Sawant, J.

1. This is a group of appeals and a writ petition. Although the facts differ, they raise a common question of law, viz., whether the provisions of Section 192(1)(c) of the Punjab Municipal Act, 1911 and the corresponding provisions of Section 203(1)(c) of the Haryana Municipal Act, 1973 for compulsory transfer of the land to the Municipal Committees without payment of compensation, are valid.

2. For the purpose of this common judgment, we propose to narrate the facts in Civil Appeal No. 818 of 1986. That appeal is directed against the decision dated 12th April, 1985 of the Division Bench of the Punjab & Haryana High Court in a group of five writ petitions.

3. On 17th November, 1969, the State Government, under Section 3(18)(b) of the Punjab Municipal Act, 1911 (hereinafter referred to as the 'Act') declared an area admeasuring 22.23 acres as inbuilt. The said area was described in the Notification as pocket No. 6. Thereafter, on 11th May, 1976, the State Government under Section 192(3) of the Act sanctioned a Town Planning Scheme drawn up by the Municipal Committee under Section 192(1) of the Act. Under the said Scheme the said area of 22.23 acres was transferred to the Municipal Committee in terms of the provisions of Section 192[1](c) of the Act. The said area included land admeasuring 11279 sq. yards owned by the writ petitioners before the High Court. Since no compensation was paid for the land, the writ petitioners challenged the transfer of the land as illegal, it being without payment of compensation. The petitioners also assailed the vires of Section 192[1](c) of the Act. The challenge to the transfer of the land was also on other grounds with which we are not concerned here. The High Court dismissed

the writ petitions on the ground, among others, that the vires was no longer open to challenge since it was upheld by the High Court in Om Prakash v. Municipality of Bhatinda and Anr. . The Court also held that the writ petitions suffered from laches and hence rejected the challenge to the validity of the Scheme on that account. Again, we are not concerned here with the other grounds on which the writ petitions were dismissed.

Admittedly, the challenge to the vires of Section 192[1](c) has been repelled by the High Court in other connected matters also, on the ground that the issue had been foreclosed by the aforesaid decision of the High Court in Om Prakash v. Municipality of Bhatinda. We are, therefore, concerned with the challenge to the constitutional validity of Section 192[1](c) of the Act.

In Om Prakash v. Bhatinda Municipality (supra) the validity of the provisions of Section 192(1)(c) of the Punjab Municipal Act, 1911 directly fell for consideration there. The validity was challenged on the ground that the provision violated Articles 14, 19(1)(f) and 31 of the Constitution. The violation of Article 14 was alleged on the ground that the provisions conferred unlimited, unguided and arbitrary powers on the authorities to transfer the land of some persons and not to touch the land of other persons falling under the Scheme and that the provision provided a scope for pick and choose. It was also contended on this score that even the purposes for which the provisions had to be made in the Scheme are not specified and hence the arbitrariness was writ large on the face of it. This challenge was negative by the High Court on the ground that the Legislature had made the provisions for the administration of municipalities and the duties of the municipal committees have been elaborately enumerated under the various heads in the Act itself, and Section 192(1)(c) specifically mentioned that the land shall be transferred to the municipal committees for public purposes including a public street. The Act also made provision for a public notice of the purpose for which the Town Planning Scheme was to be prepared. The second ground of attack based on the alleged violation of Article 14 was that the land could be acquired under the Land Acquisition Act, 1894, the Punjab Town Improvement Act, 1922 and also under Section 192(1)(c) of the Act. If the land is acquired under the former two statutes, the land-owner was entitled to the compensation at the market rate whereas if the land was acquired under the provision of Section 192(1)(c) of the Act, he was deprived of compensation to the extent of 25 per cent of his holdings. Repelling these contentions, the High Court held that the Town Planning Scheme was to be made for the development of the inbuilt area which was ultimately to the advantage of the land owners whose land fell within that area and it would appreciate to a great extent the value of the remaining land of the land owners. Further, there was, according to the Court, no acquisition of the land by the municipal committee and the land owners were not divested of the ownership or of possession of the land and there was also no discrimination between the owners of land whose lands were so transferred to the municipal committee and other land owners.

As regards the challenge to the provisions of Section 192[1](c) on the ground of their violating Article 19[1](g) read with Article 31, the High Court held that the area of the respondent-Municipal Committee in that case, viz., Bhatinda Municipality was earlier within the territorial jurisdiction of Patiala State which merged in PEPSU on 22nd May, 1949 by PEPSU Municipal Ordinance No. 2006 B.K. After the PEPSU merged with the State of punjab in 1956, the provisions of the Act were applied to the whole of the area of the erstwhile PEPSU by Act No. 5 of 1959. Thus, according to the

High Court, even before the enforcement of the Indian Constitution on 26th January, 1950 the provisions of the Punjab Municipal Act, 1911 were applicable to the territories which fell within the jurisdiction of the Muncipal Committee, Bhatinda and hence the provisions of Section 192[l](c) being the "existing law" were saved by Article 31[5] of the Constitution and were not hit by Article 31[2] thereof as they stood then.

4. The contention of the appellants/petitioner is that the provision for compulsory transfer of the land to the Municipal Committee for the purpose of the Town Planning Scheme without payment of compensation is ultra vires Articles 19(1)(f) read with Article 31 of the Constitution as the Articles stood then, since the transfer was prior to June 20, 1979 from which date the said Articles stood deleted by the Constitution (Forty Fourth) Amendment Act, 1978. As against this, the contention of the respondent-Municipal Committee and of the State Government is that the section in question provides for a Town Planning Scheme for inbuilt areas. The land is taken for a limited purpose of development and for the benefit of the proprietor whose land is being developed and made legally capable of being built upon. The object of the Scheme is not to deprive any land owner of his land but to frame the Town Planning Scheme for his benefit. There is no divesting of any right or title of the owner of the land nor is the owner deprived of his possessory rights over the land. Both the ownership and possession of the land remain with the land owner. There is thus no acquisition of the land and hence there is no question of payment of any compensation to the land owner. The right of the land-owner is restricted to use the land only for the purpose of the Scheme and no further. It is, further, contended that the Municipal Committee under the Scheme provides certain facilities to the land-owner by of way of streets, parks etc. and develops the land for and on behalf of the land owner and for the benefit of the better use of the land which remains with him. In fact the land owners are also benefited in monetary terms because the value of the land which remains with them appreciates with the development of the facilities of roads, parks etc.

5. In order to appreciate the rival contentions, it is necessary to understand the relevant provisions of the Act. Section 3(13)(a) of the Act define "street" to mean "any road, footway square, court, alley or passage, accessible whether permanently or temporarily to the public and whether a thoroughfare or not; and shall include every vacant space notwithstanding that it may be private property and partly or wholly obstructed by any gates, post, chain or other barrier, if houses, shops or other buildings about thereon, and if it is used by any person as a means of access to or from any public place or thoroughfare, whether such persons be occupiers of such buildings or not, but shall not include any part of such space which the occupier of any such building has a right at all hours to prevent all other persons from using as aforesaid". Section 3(13)(b) defines Public Street as any street - (i) heretofore levelled, paved, metalled, channelled, sewered, or repaired out of municipal or other public funds, unless before such work was carried out, there was an agreement with the proprietor that the street should not thereby become a public street, or unless such work was done without the implied or express consent of the proprietor; or (ii) which under the provisions of Section 171, is declared by the committee to be, or under any other provision of the Act becomes, a public street."

Section 3(17) of the Act defines "public place" to mean " a space which is open to the use or enjoyment of the public whether or not private property and whether or not vested in the

committee."

Sub-section 18(a) of Section 3 defines "built area" to mean "that portion of a municipality of which the greater part has been developed as a business cr residential area" and Sub-section 18(b) defines "inbuilt area" as "an area within the municipal limits which is declared to be such at a special meeting of the committee by a resolution confirmed by the State Government or which is notified as such by the State Government".

Section 56(1)(f) and (g), among other things, define "property vested in committee" as follows :

> (f) all land or other property transferred to the committee by the Government of acquired by gift, purchase or otherwise for local public purposes;
>
> (g) all public streets, not being land owned by Government and the pavements, stones and other materials thereof, and also trees growing on and erections, materials, implements and things provided for such streets.

(Emphasis supplied) Section 56(2) then states as follows :

> (2) Where any immovable property is transferred otherwise than by the sale by the State Government to a municipal committee for public purposes it shall be deemed to be a condition of such transfer, unless specially provided to the contrary, that should the property be at any time resumed by government, the compensation payable therefore shall, notwithstanding anything to the contrary in the Land Acquisition Act, 1894, in no case exceed the amount if any paid to the Government for the transfer, together with the cost or the present value, whichever shall be less, or any buildings erected or other works executed on the land by the municipal committee.

(Emphasis ours) Section 169 which deals with the powers of the Municipal Committee in connection with the streets, in Clauses (f) and (g) thereof declares as follows :

> (f) subject to the provisions of any rule prescribing the conditions on which property may be acquired by the committee may acquire any land, along with the building thereon, which it deems necessary for the purpose of any scheme of work undertaken or projected in exercise of the powers conferred under the preceding clause and
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> (g) subject to the provisions of any rule prescribing the conditions on which property vesting in the committee may be transferred, may lease, sell or otherwise dispose of any property acquired by the committee under Clause (f); or any land vesting in and used by the committee for a public street and no longer required there for, and in so doing may impose conditions regulating the. removal and construction of building upon it and the other uses to which such land may be put :

Provided that land owned by proprietors other than the Government shall become the absolute property of the committee after it has continuously vested in the committee for use as a public street for a period of twenty-five years; but that the possession of such land that ceases to be required for use as a public street before the expiry of twenty-five years from the time that it became vested in the committee shall be transferred to the proprietor thereof, on payment by him of reasonable compensation to the committee for improvements of such land, and subject to such restrictions as the committee may impose on the future use of such land, and that should the proprietor be unable or unwilling to pay the amount of such compensation the committee may, subject to such conditions as it may deem fit sell the land, and shall pay to the owner the proceeds, if any, over and above the amount of such compensation which shall be paid into the municipal fund, or may dispose of it in such manner as it may deem fit.

(Emphasis supplied) Section 192 then provides for building scheme. Its relevant provisions read as follows :

192, Building scheme. - (1) The committee may, and if so required by the Deputy Commissioner shall, within six months of the date of such requisition, draw up a building scheme for built areas, and a town planning scheme for inbuilt areas, which may among other things provide for the following matters, namely :

(a) the restriction of the erection or re-erection of buildings, or any class of buildings in the whole or any part of the municipality, and of the use to which they may be put :

(b) the prescription of a building line on either side or both sides of any street existing or proposed; and

(c) the amount of land in such inbuilt area which shall be transferred to the committee for public purposes including use as public streets by owners of land either on payment of compensation or otherwise, provided that the total amount so transferred shall not exceed thirty-five per cent, and the amount transferred without payment shall not exceed twenty-five per cent, of any one owner's land within such inbuilt area.

(Emphasis supplied)

6. The contentions advanced on behalf of the respondents that there is only a transfer of the land from the land-owner to the Municipal Committee and there is no acquisition of the same and that the transferred land does not vest in the Municipal Committee and that the possession remains with the land-owner, are contrary both to the factual and legal position. Section 192 of the Act gives powers to the Municipal Committee to draw up a building scheme for built area and a Town Planning Scheme for inbuilt urea. We are not here concerned with the building scheme for the built area. We are concerned with the town planning scheme for the inbuilt area. The provisions of

Section 192(1)(c) envisage that the Municipal Committee prepares a Town Planning scheme for the inbuilt area. The Scheme may, among other things, provide for the extent of land in such inbuilt area which shall be transferred to the Committee for "public purposes including use as public street" by owners of land. The transfer of the land under the said provision is further to be either on payment of compensation or otherwise. This means that the Municipal Committee is given authority to transfer the land from the land-owner to itself either by paying compensation or without any compensation depending upon its discretion, since there is no guideline provided by the said provision as to when compensation is or is not to be paid to the land-owner. There is, however, a restriction contained in the said provision both on the maximum amount of land that may be so transferred from a land-owner as well as the maximum amount of the land which may be transferred without payment of compensation. The proviso says that the total amount of land that may be transferred from any one owner shall not exceed 35 per cent of his land and the land that may be transferred from him without payment of compensation shall not exceed 25 per cent of his land. It will thus be obvious that, in the first instance, if the land transferred from the landowner is less then 25 per cent of his holding, there is no obligation to pay any compensation. Secondly, there is on guideline given in the Act as to when the compensation is to be paid or denied to the land-owner. The very fact, however, that the said provision provides for compensation - whether discretionary or obligatory - depending upon the amount of land transferred from the land owner, shows that the Legislature was aware of the fact that by such transfer, the land-owner will stand deprived of his rights and interests in it. Otherwise, even the said provision for payment of compensation is without any purpose. Further, there is no provision in the Act which shows that the possession of the land is to remain with the land-owner even after it is transferred to the committee. On the contrary, the provision envisages the transfer of the land for public purposes including for use as public street "by owners of the land". The expression "public purpose" has not been defined in the Act. However, the expressions "public street" and "public place" have been defined and we have reproduced the said definitions earlier. It cannot be denied that the expression "public purpose" is of a wide import and any purpose of public utility, of welfare of the public and in public interest which the Municipal Committee under the law am cater to, would be covered by the said expression. In will include public streets, parks and gardens, drainage, lanes and bye- lanes. public buildings etc. The expression "for public purposes including use as public streets by owners of land" cannot be construed to mean that the land would be transferred to the Municipal Committee only for such public purpose or purposes which can be made use of by the owners of the land from whom the land is transferred. The word "including" only suggests that the public purpose for which the land is transferred may be of relevance also to the owners of the land whose land is so transferred. It is not necessary that in all cases it should be so. Secondly, the use of the said expression suggests that the purposes concerned cannot be of benefit only and exclusively to the transferor land-owner. If that were so, the expressions "public purpose" and "public street" used in the said provision would be erroneous. What is more, no land could be transferred compulsorily for such private purpose. On the other hand, the use of the said expressions clearly shows that the purpose for which the land is to be transferred to the Municipal Committee is of utility to members of the public in general. The fact that the transferor land-owner is also benefited by such purpose as a member of the public makes no difference to the position in law that neither he is the exclusive beneficiary of such purpose nor is the purpose meant for his benefit alone. On the other hand, the definitions of expressions, "public street" and "public place" show that the public purpose intended to be served by

the transfer of the land is and has to be of use and benefit to the general public.

7. The contention that the expression used in the said provision being "transferred" and not "acquired" would show that the rights and interests of the land-owner in the land in question are not extinguished and he continues to remain the owner thereof, the transfer being only for a limited purpose, has only to be stated to be rejected. As pointed out above, there is no provision in the Act to suggest that in spite of the land being used for a public purpose, the possession, ownership or occupation, of the transferred land remains with the land-owner and that he can deal with or dispose of the same as he desires. In fact, the provision shows that he can exercise his rights over the land so transferred only as a member of the public and no longer as the owner of the land. His rights vis-à-vis the transferred land are on par with those of the other members of the public. It is also not correct to say that the purpose is limited. We have been unable to understand the expression "limited" in the present context. It is not suggested that the purpose for which the land is taken is of a limited duration and that the land would be restored to the land-owner after the purpose is over. In fact, even for such use of the land for a limited period, the land-owners will have to be compensated suitably.

We may in this connection contrast the provisions of Section 192(1)(c) with those of Section 169. The said section gives the Municipal Committee powers in connection with laying and making public streets and constructing tunnels and other works subsidiary thereto. Clause (f) of the said section provides for acquisition of any land along with the building thereon for that purpose. The proviso to Clause (g) of the said section provides that the land so acquired shall become the absolute property of the Municipal Committee after it has continuously vested in it for use as a public street for a period of 25 years and that if the land so acquired is not needed for use as a public street before the expiry of 25 years from the time that it became vested in the Municipal Committee, it shall be transferred back to the proprietor of the land on payment by him of reasonable compensation to the Municipal Committee for improvement made on such land and subject to such restrictions as the Municipal Committee may impose on the future use of such land. If the proprietor is unable or unwilling to pay the amount of such compensation, the Municipal Committee is authorised to sell the land subject to such conditions as it may deem fit and has to pay to the owner the proceeds, if any, over and above the amount of such compensation. Thus, the provisions of Section 169 which give powers to the Municipal Committee for laying public streets show firstly that the Municipal Committee has to acquire the land for the purpose by paying compensation to the land owner. Secondly, if such acquired land continues to be with the Municipal Committee for use as a public street for a period of 25 years or more, it becomes the absolute property of the Municipal Committee in the sense that is no obligation on the Municipal Committee for restoring its possession to the original owner of the land even if the land ceases to be used for the purpose thereafter. However if such land ceases to be required for use as a public street before the expiry of 25 years from the time that it was acquired there is an obligation on the Municipal Committee to transfer the same to its original owner albeit on payment by him of reasonable compensation to the Committee for improvement made on such land and subject also to his using the said land in accordance with the restrictions that the Municipal Committee may impose. If the original land-owner is unable or unwilling to pay the amount of compensation, the Municipal Committee is given power to sell it. However, in that case, it has to pay to the original land-owner the proceeds of such sale, if any,

which are over and above such compensation. These provisions of Section 169 show that there is a distinct inconsistency between them and the provisions of Section 192(1)(c). Whereas under Section 169, the land is to be acquired only for making or laying public streets, under Section 192(1)(c), the land may be "transferred" for any public purpose including for use as a public street. Further, under Section 169, the land is to be acquired by payment of compensation for the whole of it and, as pointed out above, if within 25 years of such acquisition it is not required for use as a public street it is to be restored to the original land-owner subject to his agreeing to pay the compensation for the improvement made thereon and accepting the restrictions as may be imposed by the Municipal Committee for its future use. What is more, if he is unable or unwilling to take the land back on the said terms, and the Municipal Committee sells such a land to others, he is entitled to receive the excess sale proceeds, if any. However, under Section 192(1)(c), no compensation is payable to the land-owner when the land "transferred" even though for use as public street is below 25 per cent of the total land of the land-owner and the rate at which the compensation shall be paid when it is above 25 per cent, is in the discretion of the Municipal Committee. What is more, when the land is so transferred for use as public street under Section 192(1)(c), the land remains for ever with the Municipal Committee and there is no provision for its restoration to the land-owner even if it is not required or ceases to be required for use as public street within 25 years of such transfer.

8. The contention that the expression used under Section 192(1)(c) , is "transferred" as against "acquired" and, therefore, the landowner does not lose his rights or ownership and that the possession continues to be with the land-owner has also no merit. In the absence of any provision in the Act which suggests that the landowner continues to be the owner of the land or that the land remains in his possession in spite of the transfer and that he is entitled to deal with or disposed of the same as he desires, it is obvious that the use of the word "transferred" is a euphemism for "acquisition". We have also emphasised above the fact that if the land was not to vest in the Municipal Committee there was no need for the Legislature to provide for payment of compensation even when the land so "transferred" exceeds 25 per cent of the total holding of the land-owner. We are, therefore, more than satisfied that when the land is "transferred" under Section 192(1)(c) of the Act, the transfer is nothing short of acquisition divesting the land-owner of all his rights as owner of the land.

9. The next contention is that the transfer of the land is also for the benefit of the transferor land-owner and in fact the balance of the land which remains with him appreciates in value to an extent which more than sufficiently compensates him for the loss of the land. Hence there is no need to pay him separate compensation for the extent of land upto 25 percent transferred to the Municipal Committee. The contention suffers from several fallacies. In the first instance, as the provisions of the section themselves point out, the land is to be transferred for a public purpose including for use as public street. The purpose of the transfer itself suggests that the transferor land-owner is not exclusively to be benefited by the public purpose. He enjoys the benefit, if any, along with the other members of the public. There is no reason why, therefore, he should alone for the said benefit in terms of his land. Secondly, the public purpose which is served by the Municipal Committee, assuming it increases the value of the remaining land, also contributes to the increase in the value of the land of all other land-owners, which lands are similarly benefited by the said public purpose. There is, therefore, no reason why the land- owner whose land is "transferred" for the

purpose alone should pay for the increase in the value of his remaining land in terms of the transferred land. In fact, whereas it is only the remaining land of the transferor land-owner which is benefited by such increase in value, if any the whole of the land in the possession of the other land-owners is benefited by the accretion in value. Thus, on both accounts, there is a clear violation of Article 14 of the Constitution to make only the transferor land-owner suffer for the public purpose. What is further, it is problematic and is in the realm of speculation as to whether the appreciation of the value of the remaining property of the transferor land-owner will always be equivalent to or more than the value of the land transferred to the Municipal Committee, that the public purpose for which the land is taken over contributes to the increase in the value of the remaining property. Lastly, and this is assuming equally important, in many cases the accretion to the value of the remaining property may merely be on paper and be a poor consolation to the transferor land-owner if he cannot or is unable for one reason or the other to sell or otherwise dispose of the said property. On the other hand, in such cases, the accretion in value may prove a burden if the property tax, wealth tax, estate duty etc. are calculated on the basis of the market value of the property. The so-called increase in the value of the property may thus prove a liability to those who cannot dispose of their property. Looked at from any angle, the argument that the transferor land-owner is benefited because his remaining property appreciates in value and, therefore, he need not be paid separate compensation for the land which is transferred, is untenable in law. We thus find that the provisions of Section 192(1)(c) are violative of Article 14 of the Constitution.

10. The reliance placed on behalf of the respondent on the decisions of this Court in Ajit Singh v. State of Punjab and Anr. Prakash Amichand Shah v. State of Gujarat and Ors. , is obviously misplaced.

In Ajit Singh's case (supra), the facts were that some land was owned by the Gram Panchayat which was used for common purposes. In a consolidation scheme of the village under the provisions of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, some further area was reserved for common purposes after applying cut on all the right holders on pro rata basis. The appellant contended that as he was a small land-holder holding land within the ceiling limit and some land under his personal cultivation had also been taken under the consolidation scheme without payment of compensation as required under second to Article 31-A(1) of the Constitution, the acquisition was illegal and confiscatory. The Majority held that under the consolidation scheme, all the proprietors of land were to enjoy benefits derived from use of land for common purposes and the Panchayat as such was not to enjoy any benefit. Thus, the beneficiary of the modification of rights was no the State and hence, there was not acquisition by the State within the meaning of the said provision of the Constitution.

In Prakash Amichand Shah case (supra), the land was acquired for a town planning scheme under Scheme 53 of the Bombay Town Planning Act, 1954. The Court held that the acquisition was not violative of Article 14 of the Constitution on the ground of deprivation of a more favourable procedure under the Land Acquisition Act from the point of view of the procedure safeguards and from the point of view of the quantum of compensation payable. The Act in question was not bad for not extending to such acquisition the procedure of the Land Acquisition Act, The Court pointed out that there were two separate provisions, one for acquisition of land by the Stale Government under

the Land Acquisition Act and the other for acquisition for the purpose of Town Planning Scheme by the local authorities under the Bombay Town Planning Act. There was no option to the local authority to resort to one or the other of the alternative methods resulting in acquisition. The Court further pointed out that while as regards the determination of compensation, it was possible to apply the provisions of the land Acquisition Act, with some modifications as provided in the schedule to the Bombay Town Planning Act, in the case of land acquired either under Section 11 or 84 of that Act, in the case of the lands which were needed for the local authority under the town planning scheme which authorised allotment of reconstituted plots to persons from whom original plots were taken, it was difficult to apply the provisions of the Land Acquisition Act. Section 32 and the other financial provisions of that Act provide for determination of the cost of the scheme, the development charges to be levied and contribution to be made by the local authority etc. It was only after that exercise was done that the money was to be paid to or demanded from the owners of the original plots depending on the circumstances governing each case. It is in that context that the Act had also made special provisions under Sections 67 to 71 for determining compensation payable to the owners of original plots, who did not get the reconstituted plots. In the circumstances, it could not be said that there had been any violation of Article 14. The Court also held that the provisions of the act for giving the value of land on the basis of the value prevailing at the date of the declaration of the intention to make a scheme instead of on the date of extinction of interest of the owner could not be assailed on the ground of not being a provision for payment of compensation as stated in Article 31(2) of the Constitution. The Act was also not discriminatory merely on the ground of denial of the solatium of 15 per cent (which is now increased to 30 per cent). The proceedings relating to the scheme were not like acquisition proceedings under the Land Acquisition Act. The Court also held that it could not be said that as a rule the State should always pay solatium. The interests of the public are equally important.

It would thus be apparent from the facts of this case that the acquisition was not without payment of compensation and that the amount of compensation was to be determined after ascertaining the cost of preparing the scheme, the benefit to be derived by the proprietor of the land under the scheme etc. Since the acquisition under the Town Planning Scheme was for a particular purpose, the Act could separately provide for payment of compensation for such acquisition and that it was not necessary that the payment of compensation should have been under the Land Acquisition Act. This was, therefore, not a case acquisition of land without payment of compensation. It is also interesting in this connection to remember that under the Bombay Town planning Act, 1954 there is an elaborate procedure prescribed for determination of the compensation to be paid to those land-holders whose land is acquired for the purpose of the scheme, for allotment of alternative plots to them, for levy of betterment charges on all the land holders whose lands are benefited by the scheme etc. There is no such provision under the present Act. On the contrary, under the provisions of Section 192(1)(c), the Municipal Committee which prepares the Town Planning Scheme is given a naked power of acquiring the land without payment of compensation if the land acquired is upto 25 per cent of the holding of the land-owner and of payment of compensation according to the discretion of the Municipal Committee without laying down the principles for payment of compensation if the land acquired is above 25 per cent of the holding.

11. In the present case the so-called transfer which as held above was nothing but acquisition, was effected prior to 20. 6.1979. Being without payment of compensation, it was hit by Article 31(2) of the Constitution as it stood prior to 20.6.1976. The Article provided that no property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provided for acquisition or requisitioning of the property for an amount which may be fixed by such law or which may be determined in accordance with such principles and given in such manner as may be specified in such law. As has been discussed above, Section 192(1)(c) of the Act provides for acquisition of the land without providing for payment of compensation upto 25 per cent of the land of the land-owner and also without providing for either the amount or the principles of fixation of such amount for the remaining 10 per cent of the land. Section 192(1)(c), therefore, clearly violated the provisions of the said Article.

However, Sub-clause(5) of Article 31 of the Constitution saves the , provisions of any existing law from the operation of Sub-clause(2) thereof. The expression "existing Law" has been defined by Sub-clause(10) of Article 366 to mean any law, ordinance, order, bye-law, rule or regulation passed or made before the commencement of the Constitution by any Legislature, authority or person having power to make such law, ordinance, order, bye-law, rule or regulation. The laws which were in existence prior to the commencement of the Constitution were continued by virtue of the provisions of Article 372 of the Constitution subject to such adaptations and modifications as may be necessary or expedient to be made by the President. Explanation (1) to Article 372 clarifies that the expression "law in force" would include a law passed or made by the legislature or other competent authority in the territory of India before the commencement of the Constitution notwithstanding that it or parts of it may not be then in operation either at all or in particular areas. Since the Punjab Municipal Act, 1911 passed by the then legislature was the existing law within the meaning of Article 366(10) and was also the "law in force" before the commencement of the Constitution, the provisions thereof would not violate Article 31(2) of the Constitution. Hence, the attack against the provisions of Section 192(1)(c) of the Punjab Municipal Act, 1911 and against the corresponding provisions of Section 203(1)(c) of the Haryana Municipal Act, 1973 on the ground of their violation of Article 19(1)(f) read with Article 31 as they stood then, must fail. It is no disputed that the Haryana State was formed w.e.f. 1.11.1966 with part of the territories which earlier formed part of the State of Punjab and which were governed by the Punjab Municipal Act, 1991.

12. We may now state in brief the facts in each case before us.

CA.3656/1987 & W.P. 569 of 1987 The appellant and the petitioner-Society (hereinafter referred to as the 'petitioner') is an owner in possession of the land measuring 2420 sq. yards situated within the revenue limits of village Bohar. The petitioner had constructed pucca foundations around the disputed land since long and wanted to raise boundary walls over those foundations. The respondent-Rohtak Municipal Committee, Haryana, however, restrained the petitioner from doing so and also intended to dispossess the petitioner from the land by force without following the due process of law. The petitioner filed a suit before the sub-Judge, Rohtak claiming that the Municipal Committee had no right, title or interest over the land and for restraining it from interfering with the peaceful possession of the petitioner of the land. The Municipal Committee resisted the suit on the ground that the suit property being situated in the municipal area of the Rohtak city, was not

agricultural land and that Town Planning Scheme No. 9 (Supplementary) had been framed on 31st May, 1977 in the said area and the land was required for park and a park had actually been laid out on the land and was bounded by barbed wires. Thus, according to the Municipal Committee, the land was reserved for the benefit of the public and for the welfare and comfort of the inhabitants of the locality. The suit was dismissed and the firs appeal filed by the petitioner was also dismissed by the Additional District Judge, Rohtak. The second appeal was reject by the High Court in limine. The petitioner has, therefore, filed this appeal and has also filed the writ petition separately challenging the vires of Section 203(1)(c) of the Haryana Municipal Act, 1973. The writ petition was admitted and is on board along with the present appeal. We are dismissing the writ petition, since it is not maintainable. The appellant has already filed the present appeal and has challenged the decision of the High Court, which decision rests on the validity of Section 203(1)(c) of the Haryana Municipal Act of 1973.

CA. 2535 of 1981 The appellant is an exclusive owner of a plot measuring 300 sq. yards comprised in Khasra No. 6165/2049 situated at Bhatinda. The respondent-Bhatinda Municipal Committee framed a Town Planning Scheme known as Town Planning Scheme of Area No. 2 Part III under Section 192(1) of the Punjab Municipal Act, 1911 and the Government sanctioned the same on 1/2nd March, 1977. By virtue of the said scheme, 66 per cent of the land of the appellant was transferred to the Municipal Committee for park and road. The appellant filed a writ petition before the High Court challenging the scheme and vires of Section 192(1)(c) of the Act on the ground of the violation of Articles 19 and 31 of the Constitution. The High Court by a decision dated 23.3.1980 dismissed the petition both on the ground of delay as well as on the ground that the issue was concluded in Om Prakash v. Municipality Bhatinda and Anr. .

CA. NOS. 814-816 OF 1986 In these appeals the appellants are the owners of lands parts of which were transferred under the Town Planning Scheme to the respondent-Bhatinda Municipal Committee. The Scheme was prepared by the Municipal Committee and sanctioned by the Government on 11.5.1976. The lands are transferred under the Scheme variously for streets, green parks, pavements parking and open space etc. under Section 192(1)(c) of the Act.

13. As held above, the provisions of Section 192(1)(c) of the Punjab Municipal Act, 1911 and of Section 203(1)(c) of the Haryana Municipal Act, 1973 are violative of Article 14 of the Constitution. Hence the acquisitions of the appellants' land under the respective provisions were bad in law. The question still remains as to what relief the appellants can be granted. It is now well-settled by the decisions of this Court beginning with I.C. Golak Nath and Ors. v. State of Punjab and Anr. that the Court can mould the relief to meet the exigencies of the circumstances and also make the law down by it prospective in operation. We are informed that till date the Municipal Committees in both Punjab and Haryana States have similarly acquired lands for their respective town planning schemes and in many cases the schemes have also been completed. It is only some of the land-owners who had approached the courts and the decisions of the courts have become final in many of those cases. It would not, therefore, be in the public interest to unsettle the settled state of affairs. It would create total chaos and an unmanageable situation for the Municipal Committees if the said provisions of the respective statutes and the land acquisitions made thereunder are declared void with retrospective effect. We, therefore, propose to declare that the concerned provisions of the

two enactments would be void from the date of this decision.

14. This judgment will not prevent the respondent-State Governments from suitably amending Section 192(1)(c) of the Punjab Municipal Act and Section 203(1)(c) of the Haryana Municipal Act as the case may be, and making appropriate provisions in the statutes on the lines of the enactments prevailing in other States for making the town planning scheme such as the Bombay Town Planning Act, 1954.

15. Hence, while we hold that the provisions of Section 192(1)(c) of the Punjab Municipal Act, 1911 and of Section 203(1)(c) of the Haryana Municipal Act, 1973 being violative of Article 14 of the Constitution are void with effect from the date of this judgment and set aside the impugned decision of the High Court, we for the reasons already stated, in the peculiar facts of these cases, dismiss the appeals and the writ petition.

In the facts and circumstances, however, we direct that the respondent-Municipal Committee in C.A. No. 818 of 1986 shall make an ex-gratia payment of Rs. 30,000 to the appellants therein and the respondent-Municipal Committees in each of the C.A. Nos. 814-16 of 1986, 2535 of 1981 and C.A. 3656of 1987 shall make an ex-gratia payment of Rs. 5,000, to the appellants in the respective appeals.