State Of Kerala & Ors. Etc vs T.N. Peter & Anr. Etc on 1 April, 1980

Equivalent citations: 1980 AIR 1438, 1980 SCR (3) 290, AIR 1980 SUPREME COURT 1438, 1980 UJ (SC) 530, (1980) KER LT 402, 1980 (3) SCC 554

Author: V.R. Krishnaiyer

Bench: V.R. Krishnaiyer, O. Chinnappa Reddy

PETITIONER:
STATE OF KERALA & ORS. ETC.

Vs.

RESPONDENT:
T.N. PETER & ANR. ETC.

DATE OF JUDGMENT01/04/1980

BENCH:
KRISHNAIYER, V.R.
BENCH:
KRISHNAIYER, V.R.
REDDY, O. CHINNAPPA (J)

CITATION:
1980 AIR 1438 1980 SCR (3) 290
1980 SCC (3) 554
CITATOR INFO :
F 1982 SC1214 (7)
RF 1986 SC 468 (34,35)

ACT:
Cochin Town Planning Act-S.34(1) validity of,

HEADNOTE:
The Cochin Town Planning Act in particular contemplates the creation of a town planning trust, the preparation of town planning schemes (section 12) acquisition of lands in this behalf (section 32) compensation for such compulsory taking (section 34) and modifications in the manner of acquisition and the mode of compensation in the Kerala Land Acquisition Act.

The petitioners' writ petitions challenging the validity of the Town Planning Act were allowed by the High

Court on the ground that the provisions of Section 34(1) and 34(2A) were unconstitutional being violative of article 14 of the Constitution.

In appeal to this Court it was contended that by the use of the provisions for making schemes under section 8 or section 10, the authority may indefinitely immobilize the owner's ability to deal with his land since section 15 clamps restrictions and this is unreasonable.

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HELD: 1. City improvement schemes have facets which mark them out from other land acquisition proposals. To miss the massive import of the 15 specialised nature of important schemes is to expose one's innocence of the dynamics of urban development. The statute has left it to the government to deal expeditiously with the scheme and there are sufficient guidelines in the Act not to make the gap between the draft scheme and governmental sanction too procrastinatory to be arbitrary. [294 G-H]

2. Section 12(6) imparts finality to The scheme and this corresponds to the declaration under section 6 of the Land Acquisition Act. A conspectus of the relevant provisions of the Act makes it clear that improvement scheme cannot hang on indefinitely and an outside limit of two years is given for the preparation and publication- of draft schemes from the time the initial resolution to make or adopt the scheme is passed by the Municipal Council. Conceptwise and strategy-wise development schemes stand on a separate footing and classification of town planning schemes differently from the routine projects demanding compulsory acquisition may certainly be justified as based on rational differentia which has a reasonable relation to the end in view namely improvement of towns and disciplining their development. [295 F-G]

3. There is no substance in the argument that if the land is acquired under the Town Planning Act no solatium is payable while if the land is acquired under the Land Acquisition Act it is a statutory obligation of the acquiring government to pay solatium. The Town Planning Act is a special statute where lands have to be acquired on large scale and as early and as quickly as possible so that schemes may be implemented with promptitude. There is in addition a specific and purposeful provision excluding some sections of the

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Kerala Land Acquisition Act. In such circumstances it is incredible that the authority acting under the Act will sabotage chapter VII, in particular section 34, by resorting to the Kerala Land Acquisition Act in derogation of the express provision facilitating acquisition of lands on less onerous terms. [299C-D]

Maganlal v. Municipal Corporation, [1975] 1 S.C.R. p. 23, referred to.

4. The amount of compensation payable has no bearing on

the distinction whether the lands are acquired for housing or hospital, irrigation schemes or town improvement, school building or police station. 5(a) The exclusion of section 25 of the Land Acquisition Act from section 34 of the Act is unconstitutional. But it is severable. [302G]

(b) The only discriminatory factor as between section 34 of the Act and section 25 of the Land Acquisition Act vis-a-vis quantification of compensation is the non-payment of solatium in the former case because of the provisions of section 34(1) and that section 25 of the Land Acquisition Act shall have no application. To achieve the virtue of equality and eliminate the vice of inequality what is needed is the obliteration of section 25 of the Land Acquisition Act from section 34(1) of the Town Planning Act. The whole of section 34(1) does not have to be struck down. Once the discriminatory and void part in section 34(1) of the Act is excised equality is restored. The owner will then be entitled to the same compensation including solatium that he may be eligible under the Land Acquisition Act. [303E-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 848- 850 of 1977.

From the Judgment and Order dated 16-7-1976 of the Kerala High Court in W.A. Nos. 910, 194 and 253/75.

AND CIVIL APPEAL Nos. 666-669 of 1978.

From the Judgment and decree dated 8-6-1977 of the Kerala High Court in W.A. Nos. 364-365, 472 and 473 of 1975.

P. Govindan Nair and K. R. Nambiar for the Appellants in CAs. 848/77 and 666-667/78 and for Respondents 2 to 4 in CA 849/77 and 2-3 in CA 850/77.

M. M. Abdul Khader and N. Sudhakaran for the Appellant in CAs. 849-850/77 and Respondent 2 in CA 848/77 and RR1 in CA 666/78, 667/78 and RR 2 in CA 668-669/78.

T. S. Krishnamoorthy Iyer, T.P. Sundara Rajan and P. K. Pillai for Respondent No. 1 in 848/77.

T. L. Vishwanath Iyer, and S. Balakrishnan for the Respondent No. 1 in CAs. 668-669/78 and RR 2 in CAs. 666- 667/78.

The Judgment of the Court was delivered by KRISHNA IYER, J. Law and development, as yet a Cinderella of our corpus juris, is a burgeoning branch of creative jurisprudence which needs to be nourished with judicious care, by courts in developing countries. The Town Planning Act, a

developmental legislation amended and updated by the Kerala Legislature, was designed to draw up plans and to execute projects for the improvement of the towns and cities of that over-crowded State with its populous multitudes uncontrollably spiralling, defying social hygiene and economic engineering. Although the Act is of 1932 and originally confined to the Travancore portion of the Kerala State, it has received amendatory attention and now applies to the whole of Kerala with beneficial impact upon explosive cities like Cochin. This legislation, naturally, has made some deviation from the Kerala Land Acquisition Act, 1961, but having received insufficient attention from the draftsman on constitutional provisions, has landed the Act in litigation through a challenge in the High Court where it met with its judicial Waterloo when a Division Bench invalidated Section 31(1) and 34(2A) which were the strategic provisions whose exit from the statute would virtually scotch the whole measure. The State of Kerala has come up in appeal, although the immediate victim is the Cochin Town Planning Trust.

The schematic projection of the Town Planning Act (the Act, for short) may be a good starting point for the discussion of the sub missions made at the Bar. The Act, with a prophetic touch, envisions explosive urban developments leading to terrific stresses and strains, human, industrial and societal. Land is at the base of all development, and demand for the limited space available in the cities may so defile and distort planned progress as to give future shock unless scientific social engineering takes hold of the situation. The State of its specialized agencies must take preemptive action and regulate the process of growth. The Act fills this need and contemplates the creation of a Town Planning Trust, preparation of town planning schemes, acquisition of lands in this behalf, compensation for betterment by citizens and other miscellaneous provisions, apart from creation of development authorities. While this is the sweep of the statute, our concern is limited to schemes sanctioned by Section 12, acquisition of lands for such schemes under Section 32, compensation for such compulsory taking under Section 34 and the modifications in the manner of acquisition and the mode of compensation wrought into the - Land Acquisition Act by the above provisions of the Town Planning Act. It is indisputable that the compensation payable and certain other matters connected therewith, differ as between the provisions in this Act and the Land Acquisition Act. The latter is more beneficial to the owner and the challenge, naturally, has stemmed from this allegedly invidious discrimination. In two separate cases, two judges upheld the challenge and, on appeal, the High Court affirmed the holdings that the provisions of Sub- section 34(1) and 34(2A) were unconstitutional, being violative of Article 14. Hence these appeals.

We will now proceed to scan the substance of the submissions and the reasoning in the High Court's judgment.

Counsel for the State, Shri P. Govindan Nair, supported by counsel for the Trust, Shri Abdul Khader, have canvassed the correctness of the reasons which have appealed to the High Court, and some decisions of this Court have been brought to our notice in this connection. The owners of the lands acquired have been represented before us by Sri T. C. Raghavan who has, in his short submission, supported the judgment under appeal. One of the appeals has become infructious, because the State, after the High Court invalidated Section 34 of the Act, proceeded under the Land Acquisition Act, acquired the land, paid compensation and took possession thereof, thus completely satisfying the land owner. Shri T. S. Krishnamurthi Iyer, appearing for the owner, pointed out this circumstance

and so we dismissed that appeal but mention it here because Shri T. C. Raghavan has relied on this fact in support of one of his arguments, as we will presently disclose. Before entering into the merits, we may recall the submissions of Shri T. L. Viswanathan, a young lawyer from Kerala, who made us feel that orality, marked by pointed brevity and suasive precision, is more telling than advocacy with counter- productive prolixity. Although the responsible scrutiny that a bench decision of the High Court deserves has been bestowed, we are unable to support the judgment under appeal or the arguments of counsel in support.

The controversy regarding the vires of Sec. 34 revolved round a few points. Before us, Art. 14 has loomed large and a submission has been made that by use of the provisions for making schemes under Sec. 8 or Sec. 10 the authority may indefinitely immobilize the owner's ability to deal with his land since Sec. 15 clamps restrictions, and this is unreasonable.

We agree that it is a hardship for the owner of the land if his ability to deal with his property is either restricted or prevented by a notification, and nothing happens, thereafter, leaving him guessing as to what the State may eventually do. Indeed, if such a state of suspense continues for unlimited periods, it may be unreasonable restriction on the right to property, although currently the right to pro-

perty itself has been taken away from Part III. That apart, we must see whether there is any justifiable classification between common cases of compulsory acquisition under the Land Acquisition Act and the special class of acquisitions covered by the Town Planning Act which may furnish a differentia sufficient to repel the attack of Article 14. Section 15 of the Act forbids dealings by the owner in many ways, once the publication of a notification is made. The grievance particularised by Shri Raghavan is that after a draft scheme has been prepared by the municipal council and published, it becomes operational only on the sanction by Government but there is no time limit fixed in Sec. 12 within which Government shall sanction. Supposing it takes several years for Government to express its approval or disapproval, the owner may suffer.

We regard this grievance as mythical, not real, for more than one reason. The scheme is for improvement of a town and, therefore, has a sense of urgency implicit in it. Government is aware of this import and it is fanciful apprehension to imagine that lazy insouciance will make Government slumber over the draft scheme for long years. Expeditious despatch is writ large on the process and that is an in-built guideline in the statute. At the same time, taking a pragmatic view, no precise time scale can be fixed in the Act because of the myriad factors which are to be considered by Government before granting sanction to a scheme in its original form or after modification. Section 12 and the other provisions give us some idea of the difficulty of a rigid time-frame being written into the statute especially when schemes may be small or big, simple or complex, demanding enquiries or provoking discontent. The many exercises, the differences of scale, the diverse consequences, the overall implications of developmental schemes and projects and the plurality of considerations, expert techniques and frequent consultations, hearings and other factors, precedent to according sanction are such that the many-sided dimension of the sanctioning process makes fixation of rigid time limits by the statute an impractical prescription. As pointed out earlier, city improvement schemes have facets which mark them out from other land acquisition proposals. To

miss the massive import and specialised nature of improvement schemes is to expose one's innocence of the dynamics of urban development. Shri Raghavan fairly pointed out that, in other stages, the Act provides for limitation in time (for example, sec. 33 which fixes a period of three years between the date of notification and the actual acquisition). Only in one minimal area where time-limit may not be workable, it has not been specified. The statute has left it to Government to deal expeditiously with the scheme and we see sufficient guideline in the Act not to make the gap between the draft scheme and governmental sanction too procrastinatory to be arbitrary. We need hardly say, that the court is not powerless to quash and grant relief where, arbitrary protraction or mala fide inaction of authorities injures an owner.

An aside: We are surprised at the obsolescent and obscurantist vocabulary surviving in the Town Planning Act because there are many B feudal and incongruous expressions such as 'our Governments and references to a Land Acquisition Act which has already been repealed by the Kerala Land Acquisition Act, 1961. Modernisation is a process necessary even for the statute book and yet it has not been done, despite opportunity for the legislature, while amending later, to carry out such simple, verbal and yet necessary changes. Be it remembered that the Town Planning Act did undergo an extensive amendment as late as 1976 when, surely, some of the verbal replacements could easily have been made. Medievalism lingering in legislations is hardly a tribute to the awareness of our legislators.

Section 12 of the Act provides for publishing the draft schemes so that objections or suggestions may be put forward by affected persons. The scheme is then passed by the Municipal Council, of course, after considering objections and suggestions. Thereupon, it is submitted to the Government for sanction and the fact of such submission is also published so that the public may still raise objections or make suggestions to Govt. which will consider them, make further inquiries, if necessary, and ultimately sanction the scheme with or without modifications or may even refuse sanction or return the scheme to the Council for fresh consideration. Once the scheme is sanctioned by the Government, it is again published. Section 12(6) imparts finality to the scheme and this virtually corresponds to the declaration under sec. 6 of the Land Acquisition Act. Chapter III of the Act is comprehensive and complex because the subject of scheme-making demands expert attention and affects community interest. A Director of Town Planning is appointed who shall be consulted by Municipal Councils in matters of town planning. Developmental schemes are not sudden creations. On the other hand, the Municipal Council first decides to prepare a scheme, adopts a draft scheme, if any, made by the owners of the lands, prepares the necessary plan of the lands which is proposed to be included in the scheme and notify its resolution for public information. A copy of the plan is kept for the inspection of the public. Since all improvement schemes are matters of public concern, on the passing of a resolution and its notification under sec. 8, a time-bound obligation is cast on the Municipal Council by s. 9, which reads thus :

> "S. 9: Publication of draft scheme:
>
> (1) If the resolution is to make a scheme, municipal council shall, within twelve months from the date of the notification under s.8 or within such further period not exceeding twelve months, as our Government may allow, and after consulting, in the

> prescribed manner, the owners of lands and buildings in the area affected, prepare and publish a draft scheme."

It is apparent that improvement schemes cannot hang on indefinitely and an outside limit of 2 years is given for the preparation and publication of draft schemes from the initial resolution to make or adopt the scheme is passed by the Municipal Council. Government itself may step in and direct the Municipal Council to prepare schemes and sec. 10 empowers it in this behalf. Sec. 11 contains detailed provisions regarding the material to be included in the draft scheme. These are preparatory exercises, and then comes the sanction of the scheme by the Government under Sec. 12. We indicate the elaborate character of the strategy, stages, contents and character of schemes for improvement and the opportunities for objections and suggestions to the public and the consultation with technical experts and Government, time and again, only to emphasise the complex nature of modern urban development schemes which makes it a different category altogether from the common run of 'public purposes' for which compulsory acquisition is undertaken by the State. Conceptwise and strategywise, development schemes stand on a separate footing and classification of town planning schemes differently from the routine projects demanding compulsory acquisition may certainly be justified as based on a rational differentia which has a reasonable relation to the end in view viz., improvement of towns and disciplining their development.

Once this basic factor is recognised, the raison detre of a separate legislation for and separate treatment of town planning as a special subject becomes clear. It was pointed out that under the Kerala Land Acquisition Act, there is a time limit of 2 years written into Section 6 by engrafting a proviso thereto through an amendment of 1968 Act (Act 29 of 1968). Section 6 deals with a declaration that land is required for a public purpose and the relevant proviso thereto reads:

> "S.6(i) Proviso :
>
> Provided that no declaration in respect of any particular land covered by a notification under sub- section (1) of Sec. 3 shall be made after the expiry of two years from the date of publication of such notification."

An argument was put forward that under the Land Acquisition Act there is thus a protection against unlimited uncertainty for the owners once lands are frozen in the matter of dealing with them by an initial notification. This protection against protraction and inaction on the part of the State and immobilisation of ownership is absent in the Town Planning Act. According to Mr. T. C. Raghavan, appearing for some respondents, this makes for arbitrariness and discrimination invalidatory of the relevant provisions of the Town Planning Act. In our view there is no substance in this submission, having regard to the specialised nature of improvement schemes and the democratic a participation in the process required in such cases. We repel the submission.

Much argument was addressed on the 'either or' arbitrariness implicit in s. 33 of the Act. The precise contention is that it is open to the Trust to acquire either under the Kerala Land Acquisition Act or under Chapter VII of the Town Planning Act. In the latter event, no solatium is payable while under the former statute it is a statutory obligation of the acquiring Govt. Thus, if an Authority has an

option to proceed under one statute or the other and the consequences upon the owner are more onerous or less, such a facultative provision bears the lethal vice of arbitrariness in its bosom and is violative of Art. 14 and is therefore, void. Section 32 of the Act is the foundation for this argument and reads thus:

> 32. Modification of Land Acquisition Act:
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> Immovable property required for the purpose of town planning scheme shall be deemed to be land needed for a purpose within the meaning of the Land Acquisition Act, XI of 1089, and may be acquired under the said (Act) modified in the manner provided in this chapter. What is spun out of the words used is that for the purposes of town planning schemes an immovable property "may be acquired under the said Act (The Land Acquisition Act) modified in the manner provided in this Chapter". Of course, Chapter VII, particularly sub-sec. (1) of s. 34 thereof, relates to compensation and does not provide for payment of solatium. Moreover, it is mentioned that the provisions of ss. 14, 22 and 23 (both sides agree, this should be read as Sec. 25) of the Land Acquisition Act shall have no application in the acquisition of property for the purpose of the Town Planning Act.
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> We do not accept the argument that there is a legal option for the authority to acquire either under the Land Acquisition Act or under the Town Planning Act when land is needed for a scheme. Theoretically, yes, but practically, no. Which sensible statutory functionary, responsible to the Treasury and to the community, will resort to the more expensive process under the Land Acquisition Act as against the specially designed and less costly provision under s. 34? Fanciful possibilities, freak exercise and speculative aberrations are not realistic enough for constitutional invalidation on the score of actual alter. natives or alive options, one more onerous than the other. In Magan lal's case, the Court pointed out :
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> "The statute itself is the two classes of cases before us clearly lays down the purpose behind them, that is premises belonging to the Corporation and the Government should be subject to speedy procedure in the matter of evicting unauthorised persons occupying them. This is a sufficient guidance for the authorities on whom the power has been conferred. With such an indication clearly given in the statutes one expects the officers concerned to abail themselves of the procedures prescribed by the Acts and not resort to the dilatory procedure of the ordinary Civil Court. Even normally one cannot imagine an officer having the choice of two procedures, one which enables him to get possession of the property quickly and the other which would be a prolonged one, to resort to the latter. Administrative officers, no less than the courts, do not function in a vacuum. It would be extremely unreal to hold that an administrative officer would in taking proceedings for eviction of unauthorised occupants of Govt. property or Municipal property resort to the procedure prescribed by the two Acts in one case and to the ordinary Civil Court in the other. The provisions of these two Acts cannot be struck down on the fanciful theory that power

would be exercised in such an unrealistic fashion. In considering whether the officers would be discriminating between one set of persons and another, one has got to take into account normal human behaviour and not behaviour which is abnormal. It is not every fancied possibility of discrimination but the real risk of discrimination that we must take into account. This is not one of those cases where discrimination is writ large on the face of the statute. Discrimi-

nation may be possible but is very improbable. And if there is discrimination in actual practice this Court is not powerless. Furthermore, the fact that the Legis- lature considered that the ordinary procedure is insufficient or ineffective in evicting unauthorized occupants or Govt. and Corporation property and provided a special speedy procedure therefor is a clear guidance for the authorities charged with the duty of evicting unauthorised occupants. We therefore, find ourselves unable to agree with the majority in the Northern India Caterers' case."

The same reasoning applies to the present situation. The Town Planning Act is a special statute where lands have to be acquired on a large scale and as early and quickly as possible so that schemes may be implemented with promptitude. What is more, there is a specific and purposeful provision excluding some sections of the Kerala Land Acquisition Act. In such circumstances, it is incredible that the authority acting under the Act will sabotage Chapter VII, in particular s. 34, by resorting to the Kerala Land Acquisition Act in derogation of the express provision facilitating acquisition of lands on less onerous terms. He functions under the Town Planning Act, needs Lands for the schemes under that Act, has provisions for acquisition under that Act. Then would be, by reckless action, travel beyond that Act and with a view to oblige the private owner betray the public interest and resort to the power under the Land Acquisition Act, disregarding the non obstante provision in Sec. of the Act? Presumption of perversity cannot be the foundation of unconstitutionality. Moreover, the expression, used in the context of s. 32, clearly (does not bear the meaning attributed to it by the counsel for the respondents. All that it means is that when immovable property is found necessary for the purpose of a 'scheme' it may be acquired by the compulsory process written into s. 32. It is, as if there were only one option, not two. If the scheme is to be implemented, the mode of acquisition shall be under s. 32 and the manner of such acquisition is the same under the Land Acquisition Act minus ss. 14, 22 and 25 thereof. A slight reflection makes it clear that the mode prescribed is only one, and so the theory of alternatives one of which being mere onerous than the other, and the consequent inference of arbitrariness, cannot arise. We overrule that argument.

We must notice, before we part with this point, the argument of Sri Raghavan for the respondents that the existence of alternatives is not theoretical nor chimerical but real, and proof of the pudding is in the eating. He pointed to one of the appeals in this batch where the proceedings under sec. 34 of the Act were given up, the provision of the Land Acquisition Act used, and full compensation and solatium paid to the

owner. This instance gave flesh and blood to the submission about discrimination. Shri Khader, for the trust countered this argument by-stating that because the High Court struck clown the Act and the land was needed. the only statute then available to the State was the Land Acquisition Act. So, the authority was reluctantly constrained to notify and acquire under the Land Acquisition Act. Had Sec. 34 of the Act been available, this step would not have been taken and absent Sec. 34 the argument of alternatives has no basis. We agree with this reasoning and repel the submission of arbitrary power to pick and choose. At worst, a swallow does not make a summer but we must warn that prodigal state action to favour some owner when sec. 34 has been resuscitated will be betrayal of public interest and invalidated as mala fide even at the instance of a concerned citizen. The legislature cannot be stultified by the suspicious improvidence, or worse, of the Executive.

The more serious submission pressed tersely but clearly, backed by a catena of cases, by Shri Viswanathan merits our consideration. The argument is shortly this. As between two owners of property. the presence of public purpose empowers the State to take the lands of either or both. But the differential nature of the public purpose does not furnish a rational ground to pay more compensation for one owner and less for another and that impertinence vitiates the present measure. The purpose may be slum clearance, flood control or housing for workers, but how does the diversity of purposes warrant payment of differential scales or quantum of compensation where no constitutional immunity as in Art. 31A, or applies? Public purpose sanctions compulsory acquisition, not discriminatory compensation, whether you take A's land for improvement scheme or irrigation scheme, how can you pay more or less, guided by an irrelevance viz. the particular public purpose? The State must act equally when it takes property unless there is an intelligent and intelligible differentia between two categories of owners having a nexus with the object, namely the scale of compensation. It is intellectual confusion of constitutional principle to regard classification good for one purpose, as obliteration of differences for unrelated aspects. This logic is neatly applied in a series af cases of this Court.

It is trite that the test to rebuff Art. 14 turns of the differentia vis-a-vis the object of the classification. In Vajarveu Mudaiar's case, the Court took the view, (on this aspect the decision is not shown to have been overruled) that where there is no rational relation in the matter of quantum of compensation between one public purpose and another you cannot differentiate between owners. Whether you acquire for a hospital or university, for slum clearance or housing scheme, compensation cannot vary in the rate or scale or otherwise.

"Out of adjacent lands of the same quality and value, one may be acquired for a housing scheme under the Amending Act and the other for a hospital under the Principal Act, out of two adjacent plots belonging to the same individual and of the same quality' and value, one may be acquired under the Principal and the other under the Amending Act. From whatever aspect the matter is looked at, the alleged

differences have no reasonable relation to the object sought to be achieved.

In Durganath Sharma's case, a special legislation for acquisition of land for flood control came up for constitutional examination. We confine ourselves to the differentiation in the rate of compensation based on the accident of the nature of the purpose where the Court struck a similar note. In the Nagpur Improvement Trust case and in the Om Prakash case, this Court voided the legislation which provided differential compensation based upon the purpose. In the latter case the Court observed :

"There can be no dispute that the Govt. can acquire land for a public purpose including that of the Mahapalika or other local body, either under the unmodified Land Acquisition Act, 1894, or under that Act as modified by the Adhiniyam. If it chooses the first course, then the land-owners concerned will be entitled to better compensation including 15% solatium, the potential value of the land etc. nor will there be any impediment or hurdle such as that enacted by s. 372(a) of the Adhiniyam in the way of such land owners, dissatisfied by the Collector's award, to approach the Court under s. 18 of that Act.

....It is not necessary to dilate further on this point at this matter stands concluded by this Court's decision in Nagpur Improvement Trust's case by the ratio of which we bound. It will be sufficient to close the discussion by extracting here what Sikri C.J., speaking for the Court in Nagpur Improvement Trust's case said:

"Can the Legislature say that for a hospital land will be acquired at 50% of the market value, for a school at 60 % of the value and for a Govt. building at 70 % of the market value? All three objects are public purposes and as far as the owner is concerned it does not matter to him whether it is one public purpose or the other. Art. 14 confers an individual right and in order to justify a classification there should be something which justifies a different treatment to this individual right. It seems to us that ordinarily a classification based on the public purpose is not permissible under Art. 14 for the purpose of determining compensation.

The position is different when the owner of the land himself is the recipient of benefits from an improvement scheme, and the benefit to him is taken into consideration in fixing compensation. Can classifications be made on the basis of authority acquiring the land? In other words can different principles of compensation be laid if the land is acquired for or by an Improvement Trust or Municipal Corporation or the Government? It seems to us that the answer is in the negative because as far as the owner is concerned it does not matter to him whether the land is acquired by one authority or the other.

It is equally immaterial whether it is one Acquisition Act or another Acquisition Act under which the land is acquired. If the existence of two Acts could enable the State to give one owner different treatment from another equally situated the owner who is discriminated against, can claim the

protection of Article 14."

The principle that may be distilled from these rulings and the basics of 'equality' jurisprudence is that classification is not permissible for compensation purposes so long as the differentia relied on has no rational relation to the object in view viz. reduction in recompense.

Is it rational to pay different scales of compensation, as pointed out by Sikri, C.J. in the Nagpur Improvement Trust case, depending on whether you acquire for housing or hospital, irrigation scheme or town improvement, school building or police-station? The amount of compensation payable has no bearing on this distinction, although it is conceivable that classification for purposes of compensation may exist and in such cases the statute may be good. We are unable to discern any valid discremen in the Town Planning Act vis-a-vis the Land Acquisition Act warranting a classification in the matter of denial of solatium.

We uphold the Act in other respects but not when it deals invidiously between two owners based on an irrelevant criterion viz. the acquisition being for an improvement scheme. We are not to be understood to mean that the rate of compensation may not vary or must be uniform in all cases. We need not investigate this question further as it does not arise here although we are clear in our mind that under given circumstances differentiation even in the scale of compensation may comfortably comport with Art. 14. No such circumstances are present here nor pressed. Indeed, the State, realising the force of this facet of discrimination offered, expilatory fashion, both before the High Court and before us, to pay 15% solatium to obliterate the hostile distinction.

The core question now arises. What is the effect even if we read a discriminatory design in Sec. 34? Is plastic surgery permissible or demolition of the section inevitable? Assuming that there is an untenable discrimination in the matter of compensation does the whole of s. 34 have to be liquidated or severable portions voided? In our opinion, scuttling the section, the course the High Court has chosen, should be the last step. The Court uses its writ power with a constructive design, an affirmative slant and a sustaining bent. Even when by compulsions of inseverability, a destructive stroke becomes necessary the court minimises the injury by an intelligent containment. Law keeps alive and "operation pull down" is de mode. Viewed from this perspective, so far as we are able to see, the only discriminatory factor as between s. 34 of the Act and s. 25 of the Land Acquisition Act vis-a-vis quantification of compensation is the non-payment of solatium in the former case because of the provision in s. 34(1) that s. 25 of the Land Acquisition Act shall have no application. Thus, to achieve the virtue of equality and to eliminate the vice of inequality what is needed is the obliteration of s. 25 of the Land Acquisition Act from s. 34(1) of the Town Planning Act. The whole of s. 34(1) does not have to be struck down. Once we excise the discriminatory and, therefore, void part in Sec. 34(1) of the Act, equality is restored. The owner will then be entitled to the same compensation, including solatium, that he may be eligible for under the Land Acquisition Act. What is rendered void by Art. 13 is only to the extent of the contravention of Art. 14. The lancet of the Court may remove the offending words and restore to constitutional health the rest of the provision.

We hold that the exclusion of Sec. 25 of the Land Acquisition Act from sec. 34 of the Act is unconstitutional but it is severable and we sever it. The necessary consequence is that s. 34(1) will be

read omitting the words 'and s. 25' . What follows then? Section 32 obligates the state to act under the Land Acquisition Act but we have struck down that part which excludes sec. 25 of the Land Acquisition Act and so, the 'modification' no longer covers s. 25. It continues to apply to the acquisition of property under the Town Planning Act. Section 34(2) provides for compensation exactly like s. 25(1) of the Land Acquisition Act and, in the light of what we have just decided, s. 25(2) will also apply and "in addition to the market value of the land as above provided, the court shall in every case award a sum of fifteen per cen tum on such market value in consideration of the compulsory nature of the acquisition."

The upshot of this litigation thus is that the appeal must be allowed except to the extent that solatium shall be payable as under the Land Acquisition Act. Since the State has always been willing to pay that component and has repeated that offer even before us right from the beginning, we direct the parties to bear their respective costs. P.B.R. Appeal allowed.