Rajendra Shankar Shukla And Ors. Etc vs State Of Chhatisgarh And Ors. Etc. Etc on 29 July, 2015

Equivalent citations: AIR 2015 SUPREME COURT 3147, 2016 (157) AIC (SOC) 3 (SC), 2015 AIR SCW 4555, (2015) 7 MAD LJ 578, (2015) 8 SCALE 384, (2016) 4 PAT LJR 426, 2015 (10) SCC 400, (2015) 2 WLC(SC)CVL 692, (2015) 4 JLJR 375

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Bench: C. Nagappan, V.Gopala Gowda

IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 5769-5770 OF 2015
(Arising Out of SLP (C) Nos.30942-30943 of 2014)

RAJENDRA SHANKAR SHUKLA & ORS.ETC. …APPELLANTS

Vs.

STATE OF CHHATTISGARH & ORS.ETC. …RESPONDENTS

WITH

CIVIL APPEAL NOS. 5771-5775 OF 2015
(Arising Out of SLP (C) Nos.30049-30053 of 2014)

J U D G M E N T

V. GOPALA GOWDA, J.

Leave granted.

The appellants-land owners have filed the present group of appeals challenging the common impugned judgment and order dated 16.6.2014 passed by the Division Bench of the High Court of Chhattisgarh at Bilaspur, in Writ Appeal Nos.379, 380, 381, 382, 389 and 393 of 2013 wherein the High Court upheld the order dated 15.4.2013 passed by the learned single Judge of the High Court of Chhattisgarh, Bilaspur, upholding the validity of the Town Development Scheme, namely, 'Kamal Vihar Township Development Scheme No. 4' (for short 'the KVTDS').

The facts of the case are stated hereunder:-

> The appellants herein are the landowners of portions of land (with some construction thereon) situated in the villages Dumartarai, Tikrapara, Boriya Khurd, Deopuri and Dunda of Raipur District in Chhattisgarh State. The respondent No.2-Raipur

Development Authority (RDA) was established under Section 38(1) of the M.P. (C.G.) Nagar Thatha Gram Nivesh Adhiniyam, 1973 (for short 'the Act of 1973'). The KVTDS was planned by the respondent No.2 - RDA while discharging its functions under Section 38(2) of the Act of 1973. Though the KVTDS initially started as a small Town Development Scheme, it subsequently included the aforesaid five villages in Raipur within its Scheme.

As per the evidence on record produced before us, which are the written communications between the State Government, respondent No.2-RDA and the Director of Town and Country Planning, the KVTDS was initially planned and proposed for an area of 416.93 acres only. The Chief Executive Officer of the respondent No.2-RDA had issued public notification declaring its intention of coming up with an integrated township of 416.93 acres only. However, a month after the publication of said notification, the Board of respondent No.2-RDA, increased the area of the integrated Township Scheme from 416.93 acres to 2300 acres which resulted in the inclusion of the lands of the appellants herein.

At present, the said Scheme has a total project area of 647.84 Hect., out of which the area available for development is 610.46 Hect. While 482.29 Hect. of the total land is private land, 128.17 Hect. is government land.

According to the development plan, in the above area of 647.84 Hect., further areas have been marked for recreational land, roads and lanes and other miscellaneous infrastructure like educational, hygienic and various public purpose amenities. The broad features of the Scheme would show that there shall be 15 Sectors and the estimated cost of development of infrastructure would be Rs.1085 crores. The Government agreed to hand over its land to the respondent No.2-RDA and the land belonging to the private owners were to be taken over by the consent or by acquisition under Section 56 of the Act of 1973.

The RDA planned to develop the land and hand over about 35% of the developed plot to the land owners without charging any contribution/incremental cost from them in return for their acquired land for the development of the KVTDS under Section 56 of the Act of 1973. The remaining area of their undeveloped plot would be retained and subsequently, may go to the other land owners or may be utilized for constructing other facilities under the development Scheme. According to respondent No.2-RDA, 15% of the developed plots have also been reserved for economically weaker sections which come to about 32.15 Hect.

Out of the total 4969 private land owners, 39 land owners did not agree to the Scheme/procedure adopted and preferred 23 writ petitions on various grounds which were dismissed by the learned single Judge of the High Court of Chhattisgarh, Bilaspur. Aggrieved by the same, six Writ Appeals were filed by 13 land owners. The Division Bench of the High Court of Chhattisgarh at Bilaspur, after considering the facts, circumstances and evidence on record of the cases, upheld the validity of the KVTDS planned by the RDA and dismissed the appeals on the ground that the same were devoid of

merit. Hence, the present appeals.

We have heard the learned senior counsel for both the parties. On the basis of the factual circumstance and evidence on record produced before us and also in the light of the rival legal contentions raised by the learned senior counsel for both the parties, we have broadly framed the following points which require our attention. The main legal issues which arise in this case are :-

> Whether the KVTDS provide the authority to the Director of the respondent No.2-RDA, to formulate Town Development Scheme and is it in contravention to the 73rd and 74th Amendments to the Constitution of India? Whether the Town Development Scheme in the present case is formulated as per the provision mentioned in Section 50(1) of the Act of 1973? Whether the subsequent alteration of land acquired, is in consonance with the provisions of the Act?
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> Whether the Town Development Scheme framed in the present case by the respondent No.2-RDA, in the absence of a zonal plan, is legal and valid? Whether the Act of 1973 authorises the Town Planning and Development Authority to reconstitute the plots and change the land use apart from public utility?
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> Whether the proposal of the RDA to return 35% of the area of the land taken away from the land owners/appellants is legally permissible? While planning the KVTDS, whether the respondents ensured compliance with EIA clearance procedure from the competent authority?
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> As per Part IX and Part IX-A of the Constitution, a zonal plan has to be framed by democratic institutions as prescribed under its provisions. On the other hand, the Respondent No. 2- RDA, has framed the Town Development Scheme without consulting or taking into account the views of the Panchayat and the District Planning Committee which are constitutionally authorized to undertake the task of framing Scheme. It was argued by Mr. Gopal Subramaniam, learned senior counsel on behalf of the appellants that the Respondent No. 2- RDA had assumed the role of town planning authority by proposing and framing KVTDS with land use which is different from the one prescribed in the Raipur Master Plan (Revised) 2021. In fact, the proposal made by Respondent No. 2- RDA defined spaces that are meant for business Districts, public use, schools, house and parks etc. This task taken up by the Respondent No. 2- RDA of allocation of spaces is by statute vested with the 'local authority' under its power to make zonal plans. It was further contended by the learned senior counsel that the Raipur Master Plan (Revised) 2021, on the basis of which the KVTDS claims to be implementing the Scheme has also amended the same without the participation of the District Planning Committee which is the constitutionally empowered body to carry out social and economic planning for a District.

The 73rd and 74th Amendments were inserted in the Constitution of India with the avowed object and intention of strengthening the local self- governance both at the village and District level. It was argued by the learned senior counsel Mr. Gopal Subramaniam that self-governance was very much a part of the Indian society historically. In support of his contention, he relied upon the words of Sir Charles Metcalfe, the Acting Governor General of India from 1835 to 1836, on the functioning of the village panchayats made during the 19th century which are recorded as under:

"The village communities are little republics, having nearly everything they can want within themselves, and most independent of any foreign relations. They seem to last where nothing else lasts. Dynasty after dynasty tumbles down; revolution succeeds after revolution; but the village community remains the same. The union of the village communities, each one forming a separate little state, in itself, has I conceive, contributed more than any other cause to the preservation of the people of India, through all the revolutions and changes which they have suffered, and is in a high degree conducive to their enjoyment of a great portion of freedom and independence"[1] It is imperative to note here that the Constitution, initially did not vest with power on villages or communities as units. It rather vested power on individual as units of the society. It was proposed by Dr. B.R. Ambedkar, Chairman of the Drafting Committee of the Constitution, that the administration of India should not be carried out at village level since they are ignorant units of communities immune from the progress of the city and are also influenced by social biases and prejudices. With this biases and prejudices, it was apprehended that India, at the time during the drafting of the Constitution, were not suited to be ruled at village and panchayat level. On the other hand, Dr. Ambedkar proposed that there should be a strong Centre governed by the Rule of Law for the administration of the country. Formal inclusion of the panchayats in the constitutional system was deferred for a later time since the framers of the Constitution deemed it fit to introduce social reforms in the village prior to conferring upon them the power of self-governance, in the light of the constraints faced by the new republic of India. Article 40, therefore, was inserted in the Constitution in the form of Directive Principles of State Policy in Part IV of the Constitution so as to move towards the vision of introducing local governance when the time seems fit. Though, this was the decision taken at the time of the drafting of the Constitution, most of the framers in the Constituent Assembly reposed their faith on the potential of village panchayats and were of the opinion that self-governance at local level is the only way forward to realize Swaraj for our country. Shri Ananthasayanam Ayyangar, the member of the Constituent Assembly, presented his opinion on village panchayats before the Assembly which is recorded as under:

"But who are these republics? They have to be brought into existence.....Therefore, I would advise that in the directives, a clause must be added, which would insist upon the various governments that may come into existence in future to establish village panchayats, give them political autonomy also economic independence in their own

way to manage their own affairs."[2] It is further to be noted that Entry 5 in the list-II to the VIIth Schedule of the Constitution enables the State Legislature to make laws pertaining to local government which also include the powers to be vested on the Municipal corporations, Improvement Trusts, Authorities, Mining Settlement Authorities, District Boards and other local authorities for the purpose of village administration and the local self-governance. The constitutional amendment in 1992-93 through the 73rd and 74th Amendment Act provided for uniformity in the structure in terms of three-tier local governments at the District (Zila Parishads-ZPs), Block (Panchayat Samitis-PS) and Village levels (Gram Panchayats-GPs). With the constitutional amendment, the panchayats are constitutionally expected to move away from their traditional role of simply executing the programs handed down to them by higher levels of government. They are on the other hand, expected to implement their own programs of economic development and social justice. The amendments further confer power upon the States in the form of Schedule XI to enlarge the domain of panchayats and to include functions with distributional consequences. This schedule includes key functions such as agriculture, drinking water, education, irrigation, poverty alleviation, primary, secondary and adult education, roads and rural electrification and maintenance of community assets.

It is further submitted by the learned senior counsel, Mr. Gopal Subramaniam that as per Article 243 G(1), the authority to prepare plans for economic development and social justice has been vested with the Gram Panchayat. Articles 243W and 243ZF have also been inserted to vest the local authority with the power to prepare plans for economic development. The 12th Schedule inserted into the Constitution specifically lists "urban planning including town planning" as an entry on which local authorities have full power under Article 243W of the Constitution. Further, Article 243ZD was inserted into the Constitution wherein the power to prepare a draft development plan is vested with the District Planning Committee (DPC). The above mentioned provision of the Constitution is extracted hereunder:

"243ZD. (1) There shall be constituted in every State at the district level a District Planning Committee to consolidate the plans prepared by the Panchayats and the Municipalities in the district and to prepare a draft development plan for the district as a whole.

(2) The Legislature of a State may, by law, make provision with respect to—

(a) the composition of the District Planning Committees;

(b) the manner in which the seats in such Committees shall be filled:

Provided that not less than four-fifths of the total number of members of such Committee shall be elected by, and from amongst, the elected members of the Panchayat at the district level and of the Municipalities in the district in proportion to

the ratio between the population of the rural areas and of the urban areas in the district;

(c) the functions relating to district planning which may be assigned to such Committees;

(d) the manner in which the Chairpersons of such Committees shall be chosen.

(3) Every District Planning Committee shall, in preparing the draft development plan,—

(a) have regard to— (i) matters of common interest between the Panchayats and the Municipalities including spatial planning, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;

(ii) the extent and type of available resources whether financial or otherwise;

(b) consult such institutions and organisations as the Governor may, by order, specify.

(4) The Chairperson of every District Planning Committee shall forward the development plan, as recommended by such Committee, to the Government of the State." Also, under Article 243 ZF, any law inconsistent with the provisions of the Constitution will be held void. Article 243 ZF reads as under:

"243 ZF. Continuance of existing laws and municipalities.- Notwithstanding anything in this Part, any provision of any law relating to Municipalities in force in a State immediately before the commencement of the Constitution (Seventy-fourth Amendment) Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier: Provided that all the Municipalities existing immediately before the commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each House of the Legislative of that State." Similar provision exists for the Gram Panchayats under Article 243 N of the Constitution.

In the present case, the District Planning Committee (DPC) has been constituted under Section 3 of the Chhattisgarh Zila Yojna Samiti Act, 1995 (for short 'the Act of 1995') with an intention to democratize the town planning process to give effect to the legislative intendment. Section 7 of the Act of 1995 provides for functions of the DPC as has been prescribed by the Constitution. The Constitution under Article

> 243ZD directs setting up of a DPC to consolidate the plans prepared by Panchayats and Municipalities in the Districts and to prepare a draft development plan for district as a whole and the Director of every DPC shall forward such development plans as recommended by the Committee to the government of the State.
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> After the insertion of part IX-A in the Constitution, development plan for a District can only be drawn by the democratically elected representative body i.e. DPC, by taking into account the factors mentioned in Clause (3)(a) (i), (ii) of Article 243ZD. As per Clause (4) of Article 243ZD, the Chairman of other DPC shall forward the development plan as recommended by the committee to the Government of the State.

To support his contention further, the learned senior counsel Mr. Gopal Subramaniam, relied upon a decision of the Bombay High Court in the case of Charan v. State of Maharashtra[3] wherein it was held as under:

> "22. Article 243 of the Constitution of India defines - District, Gram Sabha, Panchayat, Panchayat Area and Village. Article 243G requires legislature of State to make Law to bestow upon Panchayat powers and authority to enable them to function, as institutions of self- government. It may inter-alia provide for preparation of plans for economic development and social justice, for implementation of schemes for economic development and social justice, as may be entrusted to Panchayats, including those in relation to matters listed in Eleventh Schedule to the Constitution. Panchayat has been defined as an institution [by whatever name called], of self-government, constituted under Article 243B for Rural Areas. Article 243ZD provides for constitution at District level in every State a Committee, known as District Planning Committee. It's purpose is to consolidate the plans prepared by the Panchayats and the Municipalities in Districts and to prepare a draft development plan for district as a whole. Article 243P defines Municipalities. Definition of District in Articles 243P and 243, as also definition of Panchayat in both the Articles is, identical. The purpose of Article 243ZD therefore, appears to have a committee to effectively amalgate together separate plans prepared by the Panchayats and Municipalities, and on its basis to prepare a draft development plan for District as a whole. That Article may also mean that DPC can consolidate these plans and also in addition, independently prepare a draft development plan for district as a whole. As per Article 243-ZD[2], the State Legislature has to provide for composition of DPC and filling in of the seats. 4/5th of the total number of members of such committee need to be elected by and from amongst the elected members of the Panchayat at district level and of the municipalities in districts. The law made by the State Legislature may assign to such committees function relating to district planning. Article 243-ZD [3] obliges the DPC to prepare a draft development plan having regard to the matters of common interest between the Panchayats and Municipalities, including spatial planning, sharing of water and other physical and natural resources, integrated development of infrastructure and environment conservation. For that purpose, extent and type of resources needs to be looked into

and such resources may include finance or other resources. The Legislature of State has been empowered to make law requiring the DPC to discharge functions relating to district planning as may be assigned to it. Under Sub-Article [4] the Chairperson of every District Planning Committee has to forward the development plan recommended by such committee to Government of State. Obviously, it is the draft development plan referred to in earlier part. Perusal of Eleventh Schedule shows 29 entries, which include Agriculture, Land improvement, Animal Husbandry, Social Forestry, Rural housing, Drinking water, Poverty alleviation, Education, Libraries, Market and fairs, Health and Sanitation, Family welfare, Women and Child Development etc. Entry no.13 therein deals with Roads, Culverts, Bridges, Ferries, Waterways and other means of communication. Article 243W casts similar power and obligation upon the Municipalities. Schedule relevant therein is Twelfth Schedule and Roads and Bridges is entry no.4 in it. Article 243N specifies that any law relating to Panchayat in force, immediately before the commencement of the Constitution [73rd Amendment] Act, 1992 which is inconsistent with the provision of this part IX of the Constitution, shall continue to be in force until amended or repealed by a competent legislature or until the expiration of one year from its commencement, whichever is earlier. Thus, these new provision added to Constitution for strengthening the Panchayat Raj must operate after 1 year, if State Legislature had any inconsistent law with provision in said part and if that Legislature does not bring it in consonance with said part within said period of one year.

23. These Constitutional provision no where show the intention of Parliament to deprive the Panchayats or Municipalities of their powers or to dilute their function as institutions of self-government. On the contrary, subject to provision of Constitution, the Legislature of State has been permitted to confer necessary powers and authority upon these bodies to enable them to function effectively. Article 243ZD which makes a provision for DPC, is one such provision. It requires the Legislature to make a law and stipulates that purpose of DPC is to consolidate the plan prepared by the Panchayats and Municipalities in Districts and to prepare a draft development plan for District as a whole. The provision noted by us above show relevance of matters of common interest, as specified in Article 243 ZD [3][a] for said purpose. A Panchayat or Municipality can function only in area over which it has jurisdiction. Schemes prepared by it, therefore may not have any extra territorial application though possibility of its such impact or extending its benefit to outsiders cannot be ruled out. The water reservoir or other physical/natural resources, in jurisdiction of such institution of local self government can be conveniently exploited for larger area of two or more Panchayats or then Panchayats and municipalities at same cost or by saving public revenue. To facilitate such exploitation, the Parliament has thought it fit to create a District Planning Committee [DPC] which can consolidate the otherwise separate plans prepared by the Panchayats and Municipalities and prepare a draft development plan for entire District as a whole. It is, therefore, obvious that when such consolidation of development plans which are otherwise separate, becomes necessary or is found essential in larger public interest, DPC has been

> constituted to undertake that exercise. It has been given power to prepare a draft development plan for district as a whole also. Thus idea seems to be maximum utilization of resources at minimum costs by larger number of people spread over under different local bodies in a district. Article 243ZD does not confer any executable status on such plans and the same need to be sent to Government of the State.

Thus, if development is restricted to area of only one authority and has no extraterritorial potential, the right of concerned local authority to proceed with it, is normally not prejudiced in any way." (emphasis supplied by this Court) As has been mentioned supra, the Respondent No.2-RDA was constituted under Section 38 of the Act of 1973. The Town Development Scheme framed by Respondent No. 2-RDA, however, has to be read in the light of Section 50(4) which provides for the approval of the Town Development Scheme by appropriate authority which reads as under:

> "(4) The Town and Country Development Authority shall consider all the objections and suggestions as may be received within the period specified in the notice under sub section (3) and shall, after giving a reasonable opportunity to such persons affected thereby as are desirous of being heard, or after considering the report of the committee constituted under Sub section (5) approve the draft scheme shall be deemed to have lapsed.]" Further, an amendment was made for the State of Chhattisgarh only, with respect to constitution of committee for evaluating reconstitution of plots for the purpose of the Town Development Scheme. The amendment came into force w.e.f. 6.9.2010 which reads as under:
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> "[(5) Where the town development scheme relates to reconstitution of plots, the Town and Country Development Authority shall, notwithstanding anything contained in Sub- section (4), constitute a committee consisting of the Chief Executive Officer of the said Authority and to other members of whom one shall be representative of the District Collector, not below the rank of Deputy Collector and the other shall be an officer of the Town and Country Planning Department not below the rank of Deputy Director nominated by the Director of Town & Country Planning for the purpose of hearing objection and suggestions received under sub- section (3).]" (emphasis supplied by the Court) Therefore, in the light of the provisions mentioned above if read in harmonious construction, the Chief Executive Officer of Respondent No. 2- RDA is not permitted to unilaterally prepare a development scheme resulting reconstitution of land without taking into consideration the opinion and suggestions of the democratically elected bodies such as the District Planning Committee and Officer of the Town and Country Planning Department, as mentioned in the Act of 1973. However, in the present case, as per the evidence on record put before us, the Chief Executive Officer of Respondent No. 2- RDA, formulated the Town Development Scheme without taking the opinion of the local committees which are constitutionally authorized to make suggestions in the matter of Town Development Scheme under the amended provisions of Section 50(5) of the Act of 1973.

In addition to this, it has been contended by the learned senior counsel on behalf of the appellants that the present master plan, of which the development authority wants to implement, has been prepared by the Chief Executive Officer without regard to the District Planning Committee's power under the constitutional provisions which provisions are incorporated in the State Act. Therefore, it has been argued by the learned senior counsel that the revised master plan itself is opposed to the constitutional and statutory provisions and therefore, it is a nullity in the eyes of law. Following the same, the KVTDS framed and purported in compliance with the Raipur Master Plan (Revised) 2021, is also nullity in the eyes of law.

The above said argument is raised by the learned senior counsel on behalf of the appellants drawing our attention to the case of Chairman, Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemicals Ltd.[4] which will be discussed in the appropriate place of this judgment. It was held in that case that both development plan and master plan are one and the same thing described by different names in different states. It has been admitted by the Respondent No. 2- RDA that they have prepared the Master Plan (Revised) 2021. We are of the opinion that the Master Plan so prepared is in clear contravention of Section 14 of the Act of 1973 read along with Section 17 of the same Act. Section 17 of the Act mandates the requirement of taking into consideration the Annual Development Plan of the District prepared under the Madhya Pradesh Zila Yojana Samiti Adhiniyam 1995. However, in the case in hand, there is no evidence to show that the Respondent No. 2- RDA had taken into consideration any report prepared under the Act of 1995. On the other hand, there is correspondence on record to prove that the Respondent No. 2- RDA, on its own, without taking into consideration any report, revised the Master Plan 2021 to suit it to the requirement of the KVTDS. Therefore, we are of the opinion that the Master Plan (Revised) 2021 requires reconsideration and should be prepared in accordance with the legal procedure.

Next, it is relevant for us to examine Entry 5 of List II of the Seventh Schedule to the Constitution which empowers the local government to elect members to municipal corporations, improvement trusts, District boards, Mining settlement authorities and other local authorities for the purpose of local self-government or village administration. Also, under Entries 1 and 3 of Twelfth Schedule, Urban planning includes town planning and planning for economic and social development respectively. In the light of the above entries, it is contended by the learned senior counsel on behalf of the appellants, Mr. Gopal Subramaniam and Mr. Huzefa Ahmadi that the Act of 1973 in the present case has been read by the respondents without taking into account the subsequent amendments made to the Act in adherence to the constitutional amendment provision. As a consequence, the power vested on the Director of the Planning Authority has been read by the respondent No.2- RDA in isolation to the subsequent amendments made in the Act thereby violating the present constitutional scheme of self governance.

It was further argued by the learned senior counsel on behalf of the appellants that under Article 243 N and Article 243 ZF, the Act of 1973 was required to be amended to make it adherent to the provisions of 73rd and 74th Constitutional amendments. The learned senior counsel further argued that disobedience to the constitutional mandate amounts to breaking down of the federal polity leading to constitutional impasse. The amended provisions of the Act of 1973 clearly provides for a role of local authorities in the planning process. The same cannot be abrogated. It is also contended that the role and functions of the District Planning Committee were notified once Chhattisgarh was notified out of Madhya Pradesh. This was further supplemented by the District Planning Committee. Therefore, in the presence of a notified District Planning Committee, it was argued by the learned senior counsel, that planning for districts as a conglomeration of panchayats cannot be done by Respondent No. 2-RDA.

We are in agreement with the legal contentions raised by the learned senior counsel on behalf of the appellants. Once the Constitution provides for democratically elected bodies for local self-government, a nominated body like Respondent No. 2- RDA cannot assume the role of an elected body and consequently usurp the power of the local authority in framing development schemes and subsequently altering the size and use of land in the KVTDS.

On the other hand, it was argued by Mrs. Pinky Anand and Mr. Prashant Desai, the learned senior counsel on behalf of the respondents that most of the submissions made by the learned senior counsel of the appellants, were not raised before the courts below and have been raised for the first time before this Court on the ground of violation of the 73rd and 74th amendment of the Constitution. Further, it was argued that there has been full compliance of 73rd and 74th Constitutional Amendment and the committee as contemplated by the said amendment, is also responsible for the modification or revision of the development plan under Section 23 read with Sections 14 to 18 of the Act of 1973.

We are not able to agree with the contention of the respondent that a ground raised before this Court for the first time is not maintainable because it has been raised before us for the first time and has not been raised before the courts below. Though the said legal plea is raised for the first time in these proceedings, the learned senior counsel on behalf of the appellants placed reliance upon the judgment of the Privy Council In Connecticut Fire Insurance Co. v. Kavanagh[5] wherein, Lord Watson has observed as under:

“when a question of law is raised for the first time in a court of last resort, upon the construction of a document, or upon facts either admitted or proved beyond controversy, it is not only competent but expedient, in the interests of justice, to entertain the plea.” The aforesaid views of the Court of Appeal have been relied upon by this Court in Gurcharan Singh v. Kamla Singh[6]. The above mentioned aspect of

Article 243ZD, although is being raised before this Court for the first time, we are of the view that the same is based on admitted facts. The legal submission made on behalf of the appellants under Article 243ZD of the Constitution has to be accepted by this Court in view of the similar view that a new ground raising a pure question of law can be raised at any stage before this Court as laid down by this Court in V.L.S. Finance Limited v. Union of India & Ors.[7], which reads thus :-

"7. Mr Shankaranarayanan has taken an extreme stand before this Court and contends that the Company Law Board has no jurisdiction to compound an offence punishable under Section 211(7) of the Act as the punishment provided is imprisonment also. Mr Bhushan, however, submits that imprisonment is not a mandatory punishment under Section 211(7) of the Act and, hence, the Company Law Board has the authority to compound the same. He also points out that this submission was not at all advanced before the Company Law Board and, therefore, the appellant cannot be permitted to raise this question for the first time before this Court. We are not in agreement with Mr Bhushan in regard to his plea that this question cannot be gone into by this Court at the first instance. In our opinion, in a case in which the facts pleaded give rise to a pure question of law going to the root of the matter, this Court possesses discretion to go into that. The position would have been different had the appellant for the first time prayed before this Court for adjudication on an issue of fact and then to apply the law and hold that the Company Law Board had no jurisdiction to compound the offence." Further, this Court in Greater Mohali Area Development Authority & Ors. v. Manju Jain & Ors.[8] held as under :-

"26. Respondent 1 raised the plea of non-receipt of the letter of allotment first time before the High Court. Even if it is assumed that it is correct, the question does arise as to whether such a new plea on facts could be agitated before the writ court. It is settled legal proposition that pure question of law can be raised at any time of the proceedings but a question of fact which requires investigation and inquiry, and for which no factual foundation has been laid by a party before the court or tribunal below, cannot be allowed to be agitated in the writ petition. If the writ court for some compelling circumstances desires to entertain a new factual plea the court must give due opportunity to the opposite party to controvert the same and adduce the evidence to substantiate its pleadings. Thus, it is not permissible for the High Court to consider a new case on facts or mixed question of fact and law which was not the case of the parties before the court or tribunal below. [Vide State of U.P. v. Dr. Anupam Gupta, Ram Kumar Agarwal v. Thawar Das, Vasantha Viswanathan v. V.K. Elayalwar, Anup Kumar Kundu v. Sudip Charan Chakraborty, Tirupati Jute Industries (P) Ltd. v. State of W.B. and Sanghvi Reconditioners (P) Ltd. v. Union of India.]

27. In the instant case, as the new plea on fact has been raised first time before the High Court it could not have been entertained, particularly in the manner the High

Court has dealt with as no opportunity of controverting the same had been given to the appellants. More so, the High Court, instead of examining the case in the correct perspective, proceeded in haste, which itself amounts to arbitrariness. (Vide Fuljit Kaur v. State of Punjab.)" In National Textile Corporation Ltd. v. Naresh Kumar Badrikumar Jagad[9], it was held as under:-

"19. There is no quarrel to the settled legal proposition that a new plea cannot be taken in respect of any factual controversy whatsoever, however, a new ground raising a pure legal issue for which no inquiry/proof is required can be permitted to be raised by the court at any stage of the proceedings. [See Sanghvi Reconditioners (P) Ltd. v. Union of India and Greater Mohali Area Development Authority v. Manju Jain.]" Further, this Court has frowned upon the practice of the Government to raise technical pleas to defeat the rights of the citizens in Madras Port Trust v. Hymanshu International[10] wherein it was opined that it is about time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Para 2 from the said case reads thus :-

"2. We do not think that this is a fit case where we should proceed to determine whether the claim of the respondent was barred by Section 110 of the Madras Port Trust Act (II of 1905). The plea of limitation based on this section is one which the court always looks upon with disfavour and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a just claim of the citizen. It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well-founded, it has to be upheld by the court, but what we feel is that such a plea should not ordinarily be taken up by a government or a public authority, unless of course the claim is not well-founded and by reason of delay in filing it, the evidence for the. purpose of resisting such a claim has become unavailable. Here, it js obvious that the claim of the respondent was a just claim supported as it was by the recommendation of the Assistant Collector of Customs and hence in the exercise of our discretion under Article 136 of the Constitution, we do not see any reason why we should proceed to hear this appeal and adjudicate upon the plea of the appellant based on Section 110 of the Madras Port Trust Act (II of 1905)." We are also not inclined to accept the contention urged by the learned senior counsel on behalf of the respondents that the committee is authorised to modify or alter the Development Plan under Sections 14 and 17 read with Section 23 of the Act of 1973.

As has been mentioned earlier, section 14 of the Act confers the power upon the Director of Town and Country Planning appointed under the Act, to prepare development plans. However, this power conferred upon the Director has to be read

along with Section 17 of the Act, which mandates the Director to take into consideration, any draft Five Year Plan and Annual Development Plan of a district prepared under the Madhya Pradesh Zila Yojana Samiti Adhiniyam, 1995. In the case in hand, there is no evidence to prove that the Director had taken into account any report made under the 1995 Adhiniyam. On the other hand, the evidence on record produced before us clearly shows that the Development Plan has been altered to suit the requisites of KVTDS. This action by the Director is impermissible and unlawful.

Therefore, we are inclined to accept the contention raised by the learned senior counsel on behalf of the appellants and hold that KVTDS, having formulated solely by the Respondent No. 2- RDA without taking into consideration the reports of the local authority, violates the Act of 1973 as well as Part IX and IX-A of the Constitution.

We are inclined to agree with the fact that the Development Plan and its modification has not been made in accordance with the constitutional mandate and the Act of 1973. It is further contended by the learned senior counsel on behalf of the appellants that in the backdrop of the aforesaid Constitutional morality and the fact situation of the cases in hand, the decision of the Respondent No.2- RDA to add 1900 acres of land at different stages, and also change of land use, is sullied by bias of Sri S.S. Bajaj, who acted in different capacities in relation to the same transaction wherein each authority was expected to apply its mind independently of each other. The said contention by the learned senior counsel on behalf of the appellants is well founded and the same must be accepted by this Court. There is strong substance and evidence in the submissions of the learned senior counsel of the appellants. As per the evidence produced before us, on 20.07.2009, one Sri S.S. Bajaj, served as the CEO of the Respondent No. 2- RDA proposed addition of 1900 acres of land in KVTDS. About 20 days later, on 10.08.2009, the same Mr. S.S. Bajaj was serving as Special Secretary, Department of Housing & Environment, Chhattisgarh Government, which is Respondent No.1 before us has approved the said addition of 1900 acres of land to the scheme which is a clear case of bias. This Court has on many occasions, mentioned the bare minimum requirement of trust and fairness by the state that should ensure its people in running of the government. In the case of Mohinder Singh Gill v. Chief Election Commissioner[11], this Court held as under:

“3. The moral may be stated with telling terseness in the words of William Pitt: 'Where laws end, tyranny begins'. Embracing both these mandates and emphasizing their combined effect is the elemental law and politics or Power best expressed by Benjamin Dizreeli:

I repeat...that all power is a trust-that we are accountable for its exercise-that, from the people and for the people, all springs, and all must exist."

(Vivien Grey, BK. VI. Ch. 7) Aside from these is yet another, bearings on the play of natural justice, its nuances, non-applications, contours, colour and content. Natural

Justice is no mystic testament of judge made juristic but the pragmatic, yet principled, requirement of fairplay in action as the norm of a civilised justice-system and minimum of good government-crystallised clearly in our jurisprudence by a catena of cases here and elsewhere...." It has also been held by this Court that principles of natural justice are applicable to administrative enquiries as well, and that no person can be a judge in his own cause. It was held in the case of A.K Kraipak & Ors. v. Union of India & Ors.[12]:

"20.The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely (1) no one shall be a judge in his own case (Nemo debet esse judex propria causa) and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon there- after a third rule was envisaged and that is that quasi- judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi- judicial enquiries as well as administrative enquiries." For the above reason alone as rightly contended by the learned senior counsel on behalf of the appellants, the enhancement of land in the KVTDS is vitiated due to lack of objectivity and non-application of mind. The initial intention to prepare the KVTDS of 416.93 acres was published in the Gazette on 05.06.2009. Thereafter, on 14.07.2009, Sri S.S. Bajaj serving as CEO of Respondent No. 2- RDA presided over the meeting of the Board of Directors of the RDA wherein the decision to add 1900 acres of land of villages including Dumartarai Village to KVTDS was taken. Pursuant to the said Board Resolution, the CEO-RDA sent a proposal dated 20.07.2009 to the State Government seeking addition of an area of 1900 acres to the KVTDS. It is clear from the minutes of the Board meeting on 14.7.2009 as well as the said proposal dated 20.7.2009 that no prior survey or assessment of the need for addition of land to the area of the scheme was undertaken by the RDA.

As rightly pointed out by the learned senior counsel on behalf of the appellants, a proposal for the Town Development Scheme required to be submitted to the State Government in accordance with the Government Order dated 18.11.1999 and it is the

obligation of the Respondent No. 1- State Government to independently consider such a proposal and exercise its mind as to whether the same is proper and if it raises concerns of public interest when such inclusion of the land use is made under the Town Development Scheme. Independently, it is evident from the fact that on 20th July, 2009, a proposal was sent by the Respondent No. 2- RDA to the Respondent No. 1- State Government and the same was approved by Sri S.S. Bajaj, who at that point of time was acting as Special Secretary, Department of Housing and Environment, Government of Chhattisgarh who had also proposed the addition of 1900 acres to be included in the scheme when he was acting as the CEO of the RDA. It is evident from the evidence put on record before us that the same person was acting in two different capacities who proposed as well as accepted the plan of addition of land at subsequent stage. The said proposal was accepted within a span of 20 days only i.e. on 10.08.2009.

In view of the aforesaid undisputed facts as pointed out by the learned senior counsel on behalf of the appellants, the aforesaid decision taken by Sri S.S. Bajaj as Special Secretary, Department of Housing and Environment, Government of Chhattisgarh (Respondent No. 1) in approving the proposal of RDA to include large extent of land to the KVTDS is vitiated action in law as the same is tainted with bias and non-application of mind on the part of the State Government-Respondent No.1 with regard to the proposal of the Respondent No. 2- RDA to include large extent of land in the scheme. The Respondent No. 2- RDA released an affidavit dated 23.11.2010 on the ground of challenge by stating that:

“all decisions and actions have been taken by the Authority and not by any individual. Even otherwise the communications done by the officer for the answering respondent was not his individual communication but was on behalf of the Committee as well as Board of Directors and therefore could not be said to have in his individual capacity. Likewise, whole corresponding on behalf of the State Government and on behalf of His Excellency the Governor and in his individual capacity.” However on the basis of the evidence on record produced before us, we are unable to concede with the affidavits so released by Respondent No. 2- RDA since the evidence of bias and self-interest is evident. This Court in one occasion, in the case of The State of Punjab and Anr. v. Gurdial Singh and Ors.[13] opined with respect to mala fide in jurisprudence of power, as under :-

“9. The question, then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions is the attainment of ends beyond the sanctioned purposes" of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end

> different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in Law when he stated: "I repeat that all power is a trust that we are accountable for its exercise that, from the people, and for the people, all springs, and all must exist".Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malices-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action mala fides or fraud on power, vitiates the acquisition or other official act." In the case in hand, we are convinced that the action taken by Respondent No. 2- RDA as mentioned in the affidavit issued by it, meets different ends than the reason for which power had been assigned to it. It is contended by the learned senior counsel on behalf of the appellants that there was no "Committee" in place. We are in agreement with this contention raised by the learned senior counsel. As per the Order issued by the Revenue Branch of Respondent No. 2- RDA, the said Committee which was to review the scheme under Section 50(5) of the Act of 1973, was constituted only on or about 30.11.2009 but the decision to further extend the land size into the Town Development Scheme can be traced as early as 14.7.2009 with the report of Board Meeting No. 03/09.

Apart from the said contravention made by the Respondent No. 2- RDA, its proposal to have township of 2300 acres of land was examined by a Committee constituted under Section 50(5) of the Act of 1973, which prepared its report dated 8.6.2010. The same was accepted by Shri S.S. Bajaj, Chairman of Respondent No. 2-RDA in the Board meeting held on 21.6.2010 and 22.6.2010. Therefore, the entire exercise made by RDA under Section 50 (5) of the Act has been rendered otiose and an empty formality in the light of the decisions of this Court mentioned supra and in view of the aforesaid undisputed facts in relation to the action taken by the Respondent No. 1- State Government, to give permission only after applying its mind independently on the materials submitted by the Respondent No. 2-RDA which is not done by the State Government and therefore, the power exercised by the State Government in sanctioning the proposed scheme of Respondent No. 2- RDA has rendered otiose. It is a well established principle in the Indian jurisprudence that no one can be a judge in his own case. The fact has been established by various decisions of this Court. It was held in the case of M/s. J. Mohapatra and Co. and Anr. v. State of Orissa & Anr.[14] as under:

> "12. There is, however, an exception to the above rule that no men shall be a judge in his own cause, namely, the doctrine of necessity. An adjudicator, who is subject to disqualification on the ground of bias or interest in the matter which ha has to decide, may be required to adjudicate if there is no other person who is competent or authorized to adjudicate or if a quorum cannot be formed without him or if no other

competent tribunal can be constituted. In such cases the principle of natural justice would have to give way to necessity for otherwise there would be no means of deciding the matter and the machinery of justice or administration would break down. Thus, in The Judges v. Attorney-General for Saskatchewan 53 TLR 464, the Judges of the Court of Appeal were held competent to decide the question whether Judges of the Court of Appeal, of the Court of King's Bench and of the District Courts of the Province of Saskatchewan were subject to taxation under the Income-tax Act, 1932, of Saskatchewan on the ground that they were bound to act ex necessitate. The doctrine of necessity applies not only to judicial matters but also to quasi-judicial and administrative matters. The High Court, however, wrongly applied this doctrine to the author-members of the Assessment Sub- Committee. It is true, the members of this Sub-Committee were appointed by a Government Resolution and some of them were appointed by virtue of the official position they were holding, such as, the Secretary, Education Department of the Government of Orissa, and the Director, Higher Education, etc. There was, however, nothing to prevent those whose books were submitted for selection from pointing out this fact to the State Government so that it could amend its Resolution by appointing a substitute or substitutes, as the case may be. There was equally nothing to prevent such nonofficial author-members from resigning from the committee on the ground of their interest in the matter." Therefore, in the light of the reasons mentioned by us above, we are of the considered view that there is total lack of application of mind by the Respondent No. 1- State Government in not taking into consideration all the relevant aspects while declaring the KVTDS as well as the finance Scheme proposed by the Respondent No. 2- RDA. The Respondent No. 1- State Government could not have sanctioned the aforesaid Scheme as the same is in contravention to the procedure laid down comprehensively in Section 50 of the Act of 1973. The initial approval of the Scheme was on 25.1.2008 and approval to add 1900 acres of land to KVTDS dated 10.08.2009 was granted by the State Government without any application of mind and objective consideration by the Respondent No. 1-State Government which fact is expressly clear as the said proposed scheme was neither in accordance with the Development Plan nor did any Zonal Plan which existed at the material point of time. Therefore, for the reasons mentioned by us, we answer this point in favour of the appellants.

It is contended by the learned senior counsel on behalf of the appellants that the Town Development Scheme KVTDS prepared in the case in hand, is in contravention to the provisions laid down in Section 50 of the Act. Section 50(1) of the Act of 1973 reads thus:

"Preparation of Town Development Schemes-

The Town and Country Development Authority may, at any time, declare its intention to prepare a Town Development Scheme:

[Provided that no such declaration of intent shall be made without the prior approval of the State Government].

……." Reliance has been placed upon the phrase "at any time" in Section 50(1) of the Act of 1973 by the learned senior counsel on behalf of the appellants contending that it is not a source of arbitrary and unbridled power/discretion to exercise its power arbitrarily but requires study, survey and assessment of need/requirement of plots for the residents of the area before the intention of the RDA can be declared by the Town and Country Development Authority.

In this regard, the learned senior counsel on behalf of the appellants have rightly placed reliance upon the judgment of this Court in the case of Chairman, Indore Vikas Pradhikaran (supra), wherein it was held as under: "80. Section 50(1) of the Act provide for declaration of this intention to prepare town development scheme "at any time". The words "at any time" do not confer upon any statutory authority an unfettered discretion to frame the town development scheme whenever it so pleases. The words "at any time" are not charter for the exercise of an arbitrary decision as and when a scheme has to be framed. The words "at any time" have no exemption from all forms of limitation for unexplained and undue delay. Such an interpretation would not only result in the destruction of citizens' rights but would also go contrary to the entire context in which the power has been given to the authority.

81. The words "at any time" have to be interpreted in the context in which they are used. Since a town development scheme in the context of the Act is intended to implement the development plan, the declaration of intention to prepare a scheme can only be in the context of a development plan. The starting point of the declaration of the intention has to be upon the notification of development plan and the outer limit for the authority to frame such a scheme upon lapsing of the plan. That is the plausible interpretation of the words "at any time" used in Section 50(1) of the Act.

(See State of H.P. v. Rajkumar Brijender Singh." The phrase "at any time" under Section 50(1) of the Act is not a charter for the exercise of an arbitrary decision as and when a scheme has to be framed. The words 'At any time" have no exemption from all forms of limitation for unexplained and undue delay. Such an interpretation would not only result in destruction of citizens rights but would also go contrary to the entire context in which the power has been conferred upon the authority.

Also, a proviso added to Section 50(1) of the Act in the year 2012 states that a Development Authority can declare its intention of preparing Town Development Scheme only with the prior approval of the State Government.

Section 49 of the Act of 1973 provides for the matters for which a Town Development Scheme can be prepared. Section 49 of the Act reads thus:

"49. Town Development Scheme- A Town Development Scheme may make provision for any of the following matters:-

(i) acquisition, development and sale or leasing of land for the purpose of town expansion;

(ii) acquisition, relaying out of, rebuilding, or relocating areas which have been badly laid out or which has developed or degenerated into a slum;

(iii) acquisition and development of land for public purposes such as housing development, development of shopping centres, cultural centres, administrative centres;

(iv) acquisition and development of areas for commercial and industrial purposes;

(v) undertaking of such building or construction work as may be necessary to provide housing, shopping, commercial and other facilities;

(vi) acquisition of land and its development for the purpose of laying out or remodelling of road and street patterns;

(vii) acquisition and development of land for playgrounds, parks, recreation centres and stadia;

(viii) re-construction of plots for the purpose of buildings, roads, drains, sewage lines and other similar amenities;

(ix) any other work of a nature such as would bring about environmental improvements which may be taken up by the authority with prior approval of the State Government." Section 50(1) of the Act of 1973 vests the jurisdiction on the Town and Country Development Authority to declare its intention for preparing a Town Development Scheme, which in this case is the Respondent No. 2-RDA. Section 49 provides that a Town Development Scheme can be proposed for the purpose of town expansion, for rebuilding and regenerating areas which have degenerated into slums, acquire and development land for public, commercial and industrial purpose and also for other work which would bring about environmental improvement which shall also be taken up with the prior approval of the State Government. It may be noted that Respondent No. 2-

RDA has not put any document on record, either before the High Court or this Court which shows any assessment of "need" or "requirement" for town expansion conducted by it prior to proposing the KVTDS. Even though KVTDS has allegedly been introduced for a population of 16,000 per 40 Hect. of land there is no document /survey report on record to show how the said figure was arrived at by the RDA. The requirement of such assessment was all the more necessary because already a

new capital called 'Naya Raipur' has been built near Raipur.

Further, frequent changes in the extent of land acquired for the KVTDS by the RDA is a very strong indicator of the fact that there is no rationale behind the proposal of the said Scheme. The Respondent No.2- RDA had proposed the area of KVTDS to be 900 acres on 31.7.2006, 1100 acres on 14.11.2006, 394 acres on 3.6.2008 and eventually 2300 acres on 20.7.2009, without assigning reasons for coming to such conclusions in expanding the area to the scheme. In view of the above, there is clear non-application of mind on the part of the State Government behind the increase in the sanctioned area of KVTDS from 416.93 acres of land to 2300 acres of land. In fact, in the letter dated 27.8.2008 to the Joint Director, Town and Country Planning Authority, it has been specifically noted that physical survey of the area must be carried out. It is contended by the learned senior counsel on behalf of the appellants that even the letter dated 20.7.2009 addressed by Respondent No. 2- RDA to the Respondent No. 1- State Government admits that survey of the area is being carried out in respect of previous 416.93 acres of land. In the instant case, the proposal to have KVTDS as well as sanction for the same by the Respondent No. 1- State Government, is not preceded by a survey of the area, which renders the exercise of its power of ex post facto survey into an empty formality which action of it is wholly unsustainable in law.

Further, the purpose of the KVTDS as has been cited by the Respondent No. 2- RDA, is only with the purpose of curbing illegal plotting which can be served by regulating development work by exercise of statutory power vested in the Respondent No. 2- RDA under the Act of 1973. On the pretext of regulating development or stopping illegal construction/ plotting, the Respondent No.2- RDA cannot take away the land of the appellants in exercise of the power of eminent domain by the State Government. The Town Development Scheme envisaged under Section 49 of the Act is for the purpose of acquisition, development and sale or leasing of land for the purpose of town expansion. Under Section 49 (i) and (ii) of the Act, the Respondent No. 2- RDA has power only to provide for housing and not for plotting. Reconstruction of plot under Section 49 clause (viii) of the Act, is confined only for the limited purpose of buildings, roads, drains, sewage, sewage lines and other similar amenities. Reliance was also placed by the learned senior counsel on behalf of the appellants, on the decision of this Court in the case of Bondu Ramaswamy v. Bangalore Development Authority[15] to show that this Court had already expressed its concern about the lackadaisical manner in which the land is acquired by the State Government in favour of the Bangalore Development Authority for housing scheme in the metropolitan area without conducting proper enquiry about the need of the residents of the area and plights of the land owners. It was held in the case as under :

> "150. Frequent complaints and grievances in regard to the following five areas, with reference to the prevailing system of acquisitions governed by Land Acquisition Act, 1894, requires the urgent attention of the state governments and development authorities:
>
> (i) absence of proper or adequate survey and planning before embarking upon acquisition;

(ii) indiscriminate use of emergency provisions in Section 17 of the LA Act;

(iii) notification of areas far larger than what is actually required, for acquisition, and then making arbitrary deletions and withdrawals from the acquisitions;

(iv) offer of very low amount as compensation by Land Acquisition Collectors, necessitating references to court in almost all cases;

(v) inordinate delay in payment of compensation; and

(vi) absence of any rehabilitatory measures.

While the plight of project oustees and landlosers affected by acquisition for industries has been frequently highlighted in the media, there has been very little effort to draw attention to the plight of farmers affected by frequent acquisitions for urban development." XXX XXX XXX

156. When BDA prepares a development scheme it is required to conduct an initial survey about the availability and suitability of the lands to be acquired. While acquiring 16 villages at a stretch, if in respect of any of the [pic]villages, about 30% area of the village is not included in the notification under Section 4(1) though available for acquisition, and out of the remaining 70% area which is notified, more than half (that is, about 40% of the village area) is deleted when final notification is issued, and the acquisition is only of 30% area which is non-contiguous, it means that there was no proper survey or application of mind when formulating the development scheme or that the deletions were for extraneous or arbitrary reasons.

157. Inclusion of the land of a person in an acquisition notification, is a traumatic experience for the landowner, particularly if he was eking out his livelihood from that land. If large areas are notified and then large extents are to be deleted, it breeds corruption and nepotism among officials. It also creates hostility, mutual distrust and disharmony among the villagers, dividing them on the lines of "those who can influence and get their lands deleted" and "those who cannot". Touts and middlemen flaunting political connections flourish, extracting money for getting lands deleted. Why subject a large number of citizens to such traumatic experience? Why not plan properly before embarking upon acquisition process? In this case, out of the four villages included at the final stages of finalising the development scheme, irregularities have been found at least in regard to three villages, thereby emphasising the need for proper planning and survey before embarking upon acquisition.

158. Where arbitrary and unexplained deletions and exclusions from acquisition, of large extents of notified lands, render the acquisitions meaningless, or totally unworkable, the court will have no alternative but to quash the entire acquisition. But where many land losers have accepted the acquisition and received the compensation, and where possession of considerable portions of acquired lands has already been taken, and development activities have been carried out by laying plots and even making provisional or actual allotments, those factors have to be taken note of, while granting relief. The Division Bench has made an effort to protect the interests of all parties, on the

facts and circumstances, by issuing detailed directions. But implementation of these directions may lead to further litigations and complications." Section 2 (u) of the Act of 1973 defines a Town Development Scheme as a scheme formulated to implement the developmental plan. In the instant case, the development plan is the Master Plan of Raipur planning area. Therefore, the very definition clearly states that unless master plan allows use of a particular area as 'residential', it is not open for the Respondent No.2- RDA to propose a township or a town development scheme whose land use is at variance with the one provided in the development plan. Till such time as the lands in question is notified for residential use, the Respondent No. 2- RDA cannot propose a Town Development scheme for the said land. Respondent No.2- RDA is entrusted with a duty to implement the master plan under Section 38(2) of the Act of 1973. The resolution dated 5.11.2009 passed by the Respondent No. 2-RDA proposing to the State government to get the land use changed under Section 23A of the Act in order to implement its township project either by itself or the CEO, on their own or in a manner that is inconsistent with the text as well the provisions of the Act of 1973. In this regard, this Court has already laid down the legal principle in the case of Bangalore Medical Trust v. B.S. Muddappa[16], which reads as under:

> "49. ..... There is no Section either in the Act nor any rule was placed to demonstrate that the Chairman alone, as such, could exercise the power of the Authority. There is no whisper nor there is any record to establish that any meeting of the Authority was held regarding alteration of the scheme. In any case the power does not vest in the State Government or the Chief Minister of the State. The exercise of power is further hedged by use of the expression, if 'it appears to the Authority'. In legal terminology it visualises prior consideration and objective decision. And all this must have resulted in conclusion that the alteration would have been improvement. Not even one was followed. The Chairman could not have acted on his own. Yet without calling any meeting of the authority or any committee he sent the letter for converting the site. How did it appear to him that it was necessary, is mentioned in the letter dated 21st April, because the Chief Minister desired so. The purpose of the Authority taking such a decision is their knowledge of local conditions and what was better for them. That is why participatory exercise is contemplated. If any alteration in Scheme could be done by the Chairman and the Chief Minister then Sub-section (4) of Section 19 is rendered otiose. There is no provision in the Act for alteration in a scheme by converting one site to another, except, of course if it appeared to be improvement. But even that power vested in the Authority not the Government. What should have happened was that the Authority should have applied its mind and must have come to the conclusion that conversion of the site reserved for public park into a private nursing home amounted to an improvement then only it could have exercised the power. But what happened in fact was that the application for allotment of the site was accepted first and the procedural requirements were attempted to be gone through later and that too by the State Govt. which was not authorised to do so. Not only that the Authority did not apply its mind and take any decision if there was any necessity to alter the Scheme but even if it is assumed that the State Govt. could have any role to play, the entire exercise instead of proceeding from below, that is, from the BDA to State Government proceeded in reverse direction, that, from the State

> Government to the BDA……" As per the factual averments of this case, the Respondent No. 2- RDA, without any resolution of the Board, on its own motion, addressed a letter dated 31.7.2006 and approached the State Government for change of land use because it had to propose the township in Tikrapara, Devpuri and Boriakhurd villages. Thereafter, KVTDS was also proposed, published, finalised and approved before the land use was changed by the State Government. Under the provisions of the Act of 1973, the development plan/ Raipur Master Prevised 2021 that is prevailing, the Respondent No. 2- RDA as well as the State Government gave primacy to KVTDS and sought changes in the master plan to suit KVTDS. This is impermissible in law. The finding recorded by the High Court of Chhattisgarh, Bilaspur, in its judgment in this regard that no finality can be attached to the master plan is an erroneous finding. Accordingly, we are of the opinion that the Town Development Scheme which is KVTDS in the present case, was not prepared in accordance with Section 50 of the Act of 1973 and we hold that KVTDS is ultra vires to the Act of 1973.

Though we have answered point no. 2 in favour of the appellant, we intend to mention other grounds too, which render KVTDS as illegal. The learned senior counsel on behalf of the appellants contended that in the absence of a zonal plan, a Town Development Scheme cannot be framed by Respondent No. 2- RDA, and therefore, the acquisition proceedings of the land of the appellants cannot be allowed to sustain.

The town development scheme is always subservient to the master plan as well as the zonal plan, as provided under Section 17 of the Act of 1973, which reads as under :-

> "Section 17: Contents of development plan. A development plan shall take into account any draft five year and Annual Development plan of the district prepared under the Madhya Pradesh Zila Yojana Samiti Adhiniyam, 1995 (No. 19 of 1995) in which the planning area is situated……" Master plan falls within the category of broad development plans and is prepared by only after taking into account the Annual Development Reports prepared by constitutionally elected bodies of local panchayats and municipalities etc. A zonal plan is mandated to be prepared only after the publication of the Development Plan. Section 20 of the Act reads thus:
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> "20. Preparation of Zonal Plans- The Local Authority may on its own motion at any time after the publication of the development plan, or thereafter if so required by the State Government shall, within the next six months of such requisition, prepare a Zoning Plan" Further, Section 21 of the Act reads thus:
>
> Section 21: Contents of zoning plan. The zoning plan shall "enlarge" the details of the land use as indicated in the development plan....
>
> (emphasis laid by the Court) Thus, it is evident from the language of Sections 20 and 21 of the Act, that a Zonal Plan can be prepared only in adherence to the

Development Plan which in the present case is the Raipur Master Plan of 2021. Next, Section 49 of the Act which provides for the provisions for which a Town Development Scheme can be prepared, has to be read along with Section 21 of the Act, which clearly mentions that the land required for acquisition by the Town and Country Development Authority for the purpose of any development scheme has to be laid down in the Zonal Plan. Therefore, a combined reading of Sections 17, 21 and 49 lays down that the Development Plan is the umbrella under which a zonal plan is made for the city. The zonal plan in turn, allocates the land which could be acquired for town development schemes. The Respondent No. 2- RDA on the other hand, has taken the following stand in their common counter affidavit dated 23.11.2011 filed in the writ petition proceedings: "That, thus, earlier the Master Plan, 2021 is modified as per scheme under Section 23A or the scheme is modified as per Master Plan under Section 52(1) (b) of the Act, the net results remains that there is no violation of Master Plan, 2021 and therefore, the allegations of the petitioner that the scheme has been formulated and finalised in violation of the Master Plan, 2021 is incorrect." Therefore, in the absence of a zonal plan in place, the Respondent No. 2- RDA has skipped the legal mandate in place for preparation of a Town Development Scheme.

The importance of zonal planning lies in its distinguished characteristic which lays down with sufficient particularity the use to which a particular piece of land could be put. The object and purpose of the 1973 Act itself foresees that zonal plan is necessary for implementation of a Town Development Scheme. The preamble of the Act clearly discloses that a Town Development Scheme is at best a vehicle to implement the Development Plan and Zonal Plan. The object and purpose of the Act reads thus: "An Act to make provision for planning and development and use of land; to make better provision for the preparation of development plans and zoning plans with a view to ensuring town planning schemes are made in a proper manner and their execution is made effective to,....." (emphasis laid by this Court) Therefore, the Object and Purpose of the Act also provides that a Town Development Scheme can be prepared in the presence of a Zonal Plan which in turn has to be prepared for the implementation of the Development Plan. In fact, Section 2(g) of the Act of 1973 defines "development plan" as including "a zonal plan". Therefore, unless a Zonal Plan and also a development plan is prepared, a Town Development Scheme cannot be proposed. The provisions of Sections 49 and 50 of the Act of 1973 categorically provide for "Development Plan" to mean "master plan" as well as "Zonal Plan".

In the case in hand, the KVTDS has been prepared in the absence of a Zonal Plan. It is not possible to define the utilization of land under the Town Development Scheme unless the Zonal Plan formulated by the local authority describes with sufficient particularity the details for which the broadly indicated use of land in the Development Plan may be put. Respondent No. 2- RDA is not permitted to either usurp or bypass the power vested with the local authorities for preparing town development scheme in the absence of zoning plan merely on the ground that the local authority did not exercise its constitutional power in preparing the zonal plan

following the direction of Respondent No. 1- State Government under Section 20 of the Act of 1973. A mere glance at the Master Plan would clearly go to show that it does not set out the detailed land use with sufficient particulars. Therefore, the framing of a Zonal Plan by local authority in laying out a detailed plan of land use with sufficient particulars is a sine qua non under the provisions of the Act.

The legal contention urged on behalf of the respondents that a Town Development Scheme can be framed pursuant to the Development Plan without there being a zonal plan, is not sustainable. The learned senior counsel Mrs. Pinky Anand and Mr. Prashant Desai on behalf of the respondents relied upon the Act pari materia for the State of Gujarat where the Town Planning Act does not contemplate a Zonal Plan, and which contemplates "DP-TP".

The letter of Respondent No. 2-RDA dated 20.07.2009 addressed to Respondent No. 1- State Government seeking permission for the Town Development Scheme in the enhanced area itself highlights the importance of planning at Zonal level to stop illegal development. Having regard to the provisions of Sections 17, 19, 20, 21 and 49 of the Act of 1973, the relationship between the scope of Development Plan, Zoning Plan and Town Development Scheme can be well understood and in view of the aforesaid provisions and the factual position in relation to the KVTDS, unless a Zoning Plan exists, it is not possible for the Planning Authority to ascertain as to which area is to be used for which purpose. A development authority under Section 38(2) of the 1973 Act cannot, in the name of planning and implementing a Town Development Scheme, usurp the power of the local authorities and define the land use under the Town Development Scheme and subsequently, seek changes in the Master Plan to bring it in conformity with the KVTDS. In support of this contention, reliance has been placed upon by the learned senior counsel on behalf of the appellants on the judgment of this Court in Chairman, Indore Vikas Pradhikaran case mentioned supra, the relevant portion of which is quoted hereunder :

"37. When a planning area is defined, the same envisages preparation of development plan and the manner in which the existing land use is to be implemented. A development plan in some statutes is also known as a master plan. It lays down the broad objectives and parameters wherewith the development plan is to deal with. It also lays down the geographical splitting giving rise to preparation and finalization of zonal plans. The zonal plans contain more detailed and specific maters than the master plan or the development plan. Town planning scheme or lay-out plan contains further details on plot-wise basis. It may provide for the manner in which each plot shall be dealt with as also the matter relating to regulations of development.

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72. Land use, development plan and zonal plan provided for the plan at macro level whereas the town planning scheme is at a micro level and, thus, would be subject to

development plan. It is, therefore, difficult to comprehend that broad based macro level planning may not at all be in place when a town planning scheme is prepared.

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75. The purpose of declaring the intent under Section 50(1) of the Act is to implement a development plan. Section 53 of the Act freezing any other development is an incidence arising consequent to the purpose, which purpose is to implement a development plan. If the purpose of declaring such an intention is merely to bring into play Section 53, and thereby freeze all development, it would amount to exercise of the power of Section 50(1) for a collateral purpose, i.e., freezing of development rather than implementation of a development plan. The collateral purpose also will be to indirectly get over the fact that an owner of land pending finalization of a development plan has all attendant rights of ownership subject to the restraints under Section 16. If the declaration of intent to formulate a town development scheme is to get over Section 16 and freeze development activities under Section 53, it would amount to exercise of power for a collateral purpose.

76. A bare perusal of Sections 17 and 49 would show that it is the development plan which determines the manner of usage of the land and the town development scheme enumerates the manner in which such proposed usage can be implemented. It would follow that until the usage is determined through a development plan, the stage of manner of implementation of such proposed usage cannot be brought about. It would also therefore follow that what is contemplated is the final development plan and not a draft development plan, since until the development plan is finalized it would have no statutory or legal force and the land use as existing prior thereto with the rights of usage of the land arising therefrom would continue.

77. To accept that it is open to the town development authority to declare an intention to formulate a town development scheme even without a development plan and ipso facto bring into play a freeze on usage of the land under Section 53 would lead to complete misuse of powers and arbitrary exercise thereof depriving the citizen of his right to use the land subject to the permitted land use and laws relating to the manner of usage thereof.

This would be an unlawful deprivation of the citizen's right to property which right includes within it the right to use the property in accordance with the law as it stands at such time. To illustrate the absurdity to which such an interpretation could lead it would then become open to the town development authority to notify an intent to formulate a town development scheme even in the absence of a development plan, freeze all usage of the property by a owner thereof by virtue of Section 53 of the Act, and should no development plan be finalized within 3 years, such scheme would lapse and the authority thereupon would merely notify a fresh intent to formulate a town development scheme and once again freeze the usage of the land for another three years and continue the same ad infinitum thereby in effect completely depriving the citizen of the right to use

his property which was in a manner otherwise permitted under law as it stands.

78. The essence of planning in the Act is the existence of a development plan. It is a development plan, which under Section 17 will indicate the areas and zones, the users, the open spaces, the institutions and offices, the special purposes, etc. Town planning would be based on the contents of the development plan. It is only when the development plan is in existence, can a town planning scheme be framed. In fact, unless it is known as to what the contents of a possible town planning scheme would be, or alternatively, whether in terms of the development plan such a scheme at all is required, the intention to frame the scheme cannot be notified.

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87. An area conceived of under the Act, as noticed hereinbefore, consists of both plan area and non-plan area. Development of plan area may be in phases. A master plan may be followed by a zonal plan and a zonal plan may be followed by a town development scheme." Further, the learned senior counsel on behalf of the appellants have rightly placed reliance upon the principle of Constitutional morality as explained by Dr. B. R. Ambedkar to the Constituent Assembly on 4th November 1948. The relevant portion of which is extracted hereunder:

> "While everybody recognizes the necessity of the diffusion of Constitutional morality for the peaceful working of a democratic Constitution, there are two things interconnected with it which are not, unfortunately, generally recognized. One is that the form of administration has a close connection with the form of the Constitution. The form of the administration must be appropriate to and in the same sense as the form of the Constitution. The other is that it is perfectly possible to pervert the Constitution, without changing its form by merely changing the form of the administration and to make it inconsistent and opposed to the spirit of the Constitution." In the light of the facts and circumstances of the case, the legal contentions urged before us, the provisions of the Act and also in the light of the legal principles already laid down by this Court, we are of the opinion that Respondent No. 2- RDA could not have formulated KVTDS-for Raipur without a Zoning Plan there in place. Accordingly, we answer this point in favour of the appellants.
>
> Section 50 (5) of the Act of 1973, read with Section 50 (6) of the Act of 1973, provides for constitution of a committee which shall determine the various aspects of a Town Development Scheme such as its viability, cost effect etc. Section 50(6) of the Act provides that a committee constituted under section 50(5) of the Act shall consider the objections and suggestions and give hearing to any person desirous of being heard. Thereafter, the committee shall submit its report to the Town and Country Development Authority and, is required to submit its proposal on these aspects:
>
> Define and demarcate areas allotted or reserved for public purpose; Demarcate the reconstituted plots;

Evaluate value of original plots and reconstituted plots; Determine whether the areas marked for public purpose are wholly or partially beneficial to the residents;

Estimate the compensation or contribution from beneficiaries of the scheme;

Evaluate increment in value of the reconstituted plot for calculating incremental value;

Evaluate the reduction in value and assess compensation payable therefor;

The committee, in the case, in hand, has recorded in its report only on the first four aspects and has held the last three aspects as not applicable to the scheme without assigning any valid reasons. Therefore, in providing this report, the committee has violated the mandatory provision of providing a complete report before acquiring land from landowners which often results in loss of livelihood for poor agriculturists. This aspect of loss of livelihood has been noted by this Court in the case of Bondu Ramaswamy mentioned supra.

The learned single judge of the High Court of Chhattisgarh, Bilaspur, in his judgment, has held that the aforesaid three aspects are not applicable in the present case for the reason that the Respondent No. 1- State government has decided not to seek payment of incremental cost/contribution cost from the land-holder on account of development of area while prescribing the size of the reconstituted plots for which respective landholders would be entitled.

The said view of the learned single Judge has been erroneously upheld by the Division Bench of the High Court of Chhattisgarh, Bilaspur. The said view taken by both the learned single judge and Division Bench of the High Court of Chhattisgarh, Bilaspur, is contrary to the provision of the Act of 1973, since the High Court has not noticed in arriving at the aforementioned conclusion that the committee was not adhering to the mandatory provisions with regard to development scheme. Therefore, the scheme is vitiated in law for lack of compliance with the provisions of the Act of 1973. The manner in which the computation of increment in the value of the reconstituted plot has been arrived at, is vague.

The affidavit of RDA dated 23.11.2011 by way of its reply to the writ petitions, has taken the following stand:

“However, finally the Committee came to the conclusion that as the scheme is to be made in participation with, the general public, therefore, neither any charge would be levied on the public under any head nor any compensation would be payable to any of the members of public on account of reduction of his plot size or value... However, while finally making its recommendation the committee on internal page No. 114 and 115 of the Annexure categorically recommended that the provisions of sub-section (v)

> (vi) and (vii) of the Section 50 (6) would not be applicable on the scheme." From the above averments of the Respondent No. 2- RDA in its affidavit by way of reply, it is evident that it has unilaterally decided to make the mandatory provisions of Section 50(6) (v) (vi) and (vii) of the Act of 1973, inapplicable to the scheme without providing any reason for the same.

It could not have stated so, as this aspect is no more res integra. This court has already taken the view that the provisions of Section 50 are mandatory in nature in the case of Ahmedabad Municipal Corpn. v. Ahmedabad Green Belt Khedut Mandal[17], which will be discussed at appropriate place in this judgment.

Further, there is no board resolution for the village Dumartarai, and in any event, Board resolution of Respondent No. 2- RDA does not amount to intention to declare under Section 50 (1) to develop a town development scheme in terms of the Government Order dated 18.11.1999. The Respondent No. 2- RDA, on the other hand, is required to seek permission from Respondent No. 1- State Government to publish the intention in the official gazette. The RDA under the aforesaid provision was required to declare its intention to the public at large.

In the instant case, the Respondent No. 1- State Government granted permission to Respondent No. 2- RDA to publish its intention under Section 50(2)of the Act of 1973, on 25.1.2008 for village Dunda alone. It published its intention under the aforesaid provision for the villages of Dunda as well as Tikrapara pursuant to the Board Resolution by circulations dated 12.5.2009 and 5.6.2009. Afterwards the Respondent No. 1- State Government granted permission dated 10.8.2009 for increasing the area of the Scheme to 2300 acres. The Board of the RDA issued another resolution by circulation dated 20.8.2009 for inclusion of three villages namely Boriakhurd, Dumartarai and Devpuri. The Board Resolution is only for publication of the scheme in the gazette and the same was for KVTDS Scheme No. 5 and not KVTDS Scheme No.4. Pursuant to the Board Resolution dated 20.08.2009, a declaration of intention was published for amended scheme on 4.9.2009. The board resolution is merely for publication of the scheme in the official gazette. There is no provision under the 1973 Act to issue declaration only in so far as amended portion is concerned. Thus, the inclusion of village Tikrapara is not in accordance with the procedure prescribed under the Act and the entire process had to be commenced de novo.

The learned senior counsel for the appellants have rightly pointed out the procedure of passing a resolution, by placing reliance upon the provisions of Section 289 of the Company's Act, 1956 which specifically allows resolution by circulation in the following terms:

> "289. Passing of resolutions by circulation. No resolution shall be deemed to have been duly passed by the Board or by a committee thereof by circulation, unless the resolution has been circulated in draft, together with the necessary papers, if any, to all the directors, or to all the members of the committee, then in India (not being less in number than the quorum fixed for a meeting of the Board or committee, as the case may be), and to all other directors or members at their usual address in India, and has been approved by such of the directors as are then in India, or by a majority

of such of them, as are entitled to vote on the Resolution." Thus, since there is no declaration of intent preceding publication in the gazette, Board Resolutions which are not declared to the public in the matter prescribed under the Act of 1973, and same do not amount to declaration.

The Act does not empower the Respondent No. 2- RDA to reconstitute plots. Even if any authority can be read into it, it has to be limited to public utilities.

The provision under Section 49 of the Act of 1973 only allows a Town Development Scheme to make provision for reconstruction of plots for the purpose of buildings, roads, drains, sewage lines and other similar amenities. It may be noted that the Maharashtra Regional and Town Planning Act, 1966 and the Gujarat Town Planning and Urban Development Act, 1976 specifically provide for reconstituted plots and the Acts also provided the procedure to be followed for the same under the respective statutes. Section 65 (1) of the Maharashtra Act and Section 45 (1) of the Gujarat Act are in pari material, which are reproduced hereunder:

"Section 65 (1) of the Maharashtra Act: In the draft scheme, the size and shape of every reconstituted plot shall be determined, so far as may be, to render it suitable for building purposes, and where a plot is already built upon, to ensure that the buildings as far as possible comply with the provisions of the scheme as regards open spaces." Section 45 (1) of Gujarat Act: In the draft scheme referred to in Section 44, the size and shape of every plot shall be determined, so far as may be, to render it suitable for building purposes and where the plot is already built upon, to ensure that the building, as far as possible, complies with the provisions of the scheme as regards open spaces" Further Section 49 (viii) of the Act of 1973 empowers RDA to make provision for reconstitution, which reads as under:

"49. Town Development Scheme – A town development scheme may make provision for any of the following matters:

.....

(viii) Re-constitution of plots for the purpose of buildings, road, drains, sewage lines and other similar amenities...." From a careful reading of the aforesaid conclusions, it is evident that the board conferred power upon the Respondent No. 2-RDA to make provision for reconstitution and not for reconstruction per se. In any event, such power to make provision for reconstitution is limited to certain specified public purposes, which does not include general housing scheme.

There is conspicuous absence of any empowering mechanism under the Act of 1973 for the above purpose and no authority has been vested under the provision of the Act applicable to Chhattisgarh, to adjust rights of parties in the land. In view of the aforesaid provision, mere prescription or the scope of the activity in the Town Development Scheme under Section 49 of the Act will not ipso

facto confer the power upon Respondent No. 2- RDA to alter rights of landowners in their properties. This unique anomaly under the Act may be contrasted with the Gujarat Act and the Maharashtra Act wherein the office of the Town Planning Officer has been specifically created for the said purpose.

Further, under Section 52 of the Gujarat Act the town planning officer carries out the task of reconstitution of lands. The provision reads as under:

> "52(1) In a preliminary scheme, the Town Planning Officer shall:-
>
> After giving notice in the prescribed manner and in the prescribed form to the persons affected by the scheme, define and demarcate the areas allotted to, or reserved for, any public purpose, or for the purpose of the appropriate authority and the final plots;
>
> After giving notice as aforesaid, determine in a case in which a final plot is to be allotted to persons in ownership in common, the share of such persons;
>
> Provide for the total or the partial transfer of any right in an original plot to a final plot or provide for the transfer of any right in an original plot in accordance with the provisions of Section 81; Determine a period within which works provided in the scheme shall be completed by the appropriate authority." Also, Section 81 of the Gujarat Town Planning and Urban Development Act reads as under:
>
> "Any right in an original plot which in the opinion of the Town Planning Officer is capable of being transferred wholly or in part, without prejudice to the making of a town planning scheme, to a final plot shall be transferred and any right in an original plot which in the opinion of the Town Planning Officer is not capable of being so transferred shall be extinguished:
>
> Provided that an agricultural lease shall not be transferred from an original plot to final plot without the consent of all the parties to such lease." The Maharashtra Act of 1966 confer this right on an Arbitrator appointed by the State Government. Section 72 (3) (xiii) of the Act reads as under: "72 (3)in accordance with prescribed procedure, every Arbitrator shall,- .....
>
> (xiii) provide for the total or partial transfer of any right in the original plot to a final plot or provide for the execution of any right in an original plot in accordance with the provisions contained in section 101;" In the light of the provisions above mentioned, it is clear that under both the town planning legislations for Gujarat and Maharashtra States, a specific authority has been statutorily authorized to alter rights in property and to reconstitute plots, whereas no such authority has been so empowered under the Chhattisgarh Town Planning Act, 1973. Therefore, without an official amendment to the Chhattisgarh Act and without following the mandatory

procedure, no reconstitution of land under the Town Development Scheme can take place.

To further establish this point, reliance has been placed by the learned senior counsel on behalf of the appellants on the following judgment of this Court in Ahmedabad Municipal Corpn. v. Ahmedabad Green Belt Khedut Mandal (supra), wherein it was held as under :

> "27. The aforesaid provisions read conjointly give 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 "the 1894 Act") or the land taken under the provisions of Section 40(3)(jj)(a) of the 1976 Act, 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.
>
> The case mentioned supra, further reads:
>
> "40. As we have explained hereinabove that the town planning scheme provides for pooling the entire land covered by the scheme and thereafter reshuffling and reconstituting of plots, the market value of the original plots and final plots is to be assessed and the authority has to determine as to whether a landowner has suffered some injury or has gained from such process. Reconstitution of plots is permissible as provided under the scheme of the Act as is evident from cogent reading of Sections 45(2)(a),
>
> (b), (c) and Section 52(1)(iii) in accordance with Section 81 of the 1976 Act. By reconstitution of the plots, if anybody suffers injury, the statutory provisions provide for compensation under Section 67(b) read with Section 80 of the 1976 Act. By this reconstitution 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, 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 reconstituted 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." It is further contended by the learned senior counsel on behalf of the appellants that apart from this, the allotment of reconstituted plots to the original land owners is being done in an arbitrary and discriminatory manner and therefore the same is wholly unsustainable in law. It was further contended that the Respondent No.1-State government arbitrarily excluded and included lands in the scheme without any rational basis or explanation for initial proposal of the Town Development Scheme on land measuring 416.93 acres and there is neither rational explanation or basis for subsequent addition of another 1900 acres of land included pursuant to RDA's Resolution dated 20.7.2009. Barring one acre land of Jalaram Cooperative Housing Society, which was originally included in the earlier sanctioned area of 416.93 acres, the entire land of the appellants have been affected by the enhancement of acquisition of area to about 2300 acres of land. The villages of Tikrapara and Dumartarai were not originally included in the first phase of development in the Raipur Master Plan (Revised) 2021.

The location of the land of the appellants which is also shown in the map/plan annexed to the Convenience Compilation is produced by the appellants, stating that-

The total 22 acres of land of which about 11 acres of land is of Rajendra Shankar Shukla and family of Village Dumartarai is an island, separated by distance of 1.5 kms from the main site. Thus, this piece of 11 acres of land is separate from the rest of land parcel being developed, and there is no reason for its inclusion except malice in law.

Land of petitioner's Chinmay Builders and Jalaram Cooperative Housing Society of village Tikrapara is on the fringe of their existing colonies, and is therefore, sufficiently developed.

Land of petitioner's Chhatri Family and petitioner Vijay Rajani and family is on the main orad and is sufficiently developed on account of proximity to the main road.

Only a piece of land jointly owned by Vijay Rajani, Rakesh Amrani and Pradeep Prithwani admeasuring about 1 acres is in the centre of the township.

It was further argued that draft Scheme was published on 20.11.2009 which included vast tracts of agricultural land as well as abadi areas. However, the final scheme published on 16.07.2010 was for 1600 acres. It is submitted by the learned senior counsel on behalf of the appellants that firstly the inclusion of 1900 acres of land was approved on 10.08.2009 without following the procedure and conducting the survey. But after harassing the land owners, the Respondent No. 2- RDA excluded 700 acres of land, which were as under:

> Land notified for agricultural use under the Master Plan (Revised) 2021 Land carrying construction over them, and Land of private colonizers whose layout had been approved irrespective of whether construction has been carried out or not in the permission dated 25.01.2008, the State Government had itself directed that lands with trees and construction will not be included, and therefore, the question of

having such a huge area including constructed land did not arise for its consideration.

As a consequence of the above said exclusion, portions of land belonging to the appellants in Civil Appeal arising out of SLP (C) No. 30942 of 2014 measuring about 11 acres was separated from the main proposed township by a distance of about 1.5 kms. Between these two chunks of land, there lies a densely populated area. Apparently, there are no means to provide services to the separated land other than by spending disproportionate costs on separate infrastructural facilities such as sub-station, sewerage treatment plant, water pumping station, separate water pipeline, separate sewerage plant etc. Therefore, it is contended that there will be no adverse implication for the proposed township if lands belonging to the appellants in the above mentioned appeal are excluded from the KVTDS. Further, the lands of other appellants namely, Vijay Rajani and family, Jalaram Cooperative Housing Society, Bulamal Chhatri and Chinmay Developers are also on the fringe of the township and as such there is no adverse implication for the proposed township if the said land of the appellants is excluded. In support of the aforesaid reasons, the learned senior counsel on behalf of the appellants has rightly placed reliance upon the following decisions of this Court in Bondu Ramaswamy v. Bangalore Development Authority, (supra) wherein it was held as under:

> "134. Therefore, if a development authority having acquired a large tract of land withdraws or deletes huge chunks, the development by the development authority will resemble haphazard developments by unscrupulous private developers rather than being a planned and orderly development expected from a Development Authority. therefore when a large layout is being planned, the development authorities should exercise care and caution in deleting large number of pockets/chunks of land in the middle of the proposed layout. There is no point in proposing a planned layout but then deleting various portions of land in the middle merely on the ground that there is a small structure of 100 sq.ft or 200 sq.ft. which may be authorized or unauthorized. Such deletions make a mockery of development. Further such deletions/exclusions encourage corruption and favouritism and bring discontent among those who are not favourably treated.
>
> 135. The complaint by appellants is that in the proposed Arkavathi layout, rich and powerful with "connections" and "money power" were able to get their lands, (even vacant lands) released, by showing some imaginary structure or by putting up some unauthorised structure overnight. Though we do not propose to go into motives, the concurrent finding by the learned Single Judge and Division Bench is that there are arbitrary unexplained deletions. While we may not comment on policy, it is obvious that deletion from proposed acquisition should be only in regard to areas which are already well developed in a planned manner.
>
> 136. Sporadic small unauthorised constructions in unauthorised colonies/ layouts, are not to be deleted as the very purpose of acquisition for planned development is to avoid such unauthorised development. If hardship is the reason for such deletion, the appropriate course is to give preference to the land/plot owners in making allotments

> and help them to resettle and not to continue the illegal and haphazard pockets merely on the ground that some temporary structure or a dilapidated structure existed therein. A development authority should either provide orderly development or should stay away from development. It cannot act like unscrupulous private developers//colonisers attempting development of small bits of land with only profit motive. When we refer to private developers/colonisers by way of comparison, our intention is not to deprecate all private developers/colonisers. We are aware that several private developers/colonisers provide large, well planned authorized developments, some of which are even better than developments by development authorities.

What is discouraged and deprecated is small unauthorized layouts without any basic amenities. Be that as it may.

137. What do we say about a `development', where with reference to the total extent of a village, one-third is not notified at all, and more than half is deleted from proposed acquisition of the remaining two-third and only the remaining about 20% to 30% area is acquired, that too not contiguously, but in different parcels and pockets. What can be done with such acquisition? Can it be used for orderly development? Can it avoid haphazard and irregular growth? The power of deletion and withdrawal unless exercised with responsibility and fairly and reasonably, will play havoc with orderly development, will add to haphazard and irregular growth and create discontent among sections of society who were not fortunate to have their lands deleted." The above decision holds true in the present case in the light of the fact that vast amount of tracts have been deleted subsequently without the respondents assigning any reason for the same. As a consequence, KVTDS has turned into disconnected pockets of acquired land and land deleted subsequently after acquisition.

The functioning of the Committee under Section 50(5) of the Act of 1973 is dissatisfactory and required the process to be followed afresh. The committee constituted under the aforesaid Act to hear objections of the desirous parties, was a mere eye wash. The committee rejected the objections submitted by the appellants without providing any reasons for the same and not even providing any hearing opportunities to put forth their objections before the said Committee. Therefore, the recommendations of the Committee did not carry any weight. This action of the State Government is vitiated in law and therefore liable to be set aside.

It can be asserted from the evidence on record produced before us that the Committee constituted under Section 50(5) of the Act, heard objections of the land owners from 25.01.2010 to 2.6.2010. At the same time, the Respondent No. 2- RDA proposed change of land use on 15.4.2010 and 20.5.2010 and even the lay-out plan was also prepared and approved on 26.5.2010. This shows that the hearing and consideration of the land owner's objections was only a sham. The committee had pre-decided about the plan and was hearing objections of the land owners only as a formality procedure. Clearly, when the land plan was prepared and approved on 26.5.2010, the hearing of objections till 2.6.2010 was immaterial.

The committee took decision to exclude agricultural land which was formally taken on 22.6.2010 after acceptance of the report of the Committee dated 8.6.2010. But even before this, vide letter dated 15.4.2010, CEO of the Respondent No. 2- RDA had made it clear to the Respondent No. 1- State Government that agricultural land will be excluded. The committee constituted under Section 50(5) was headed by CEO of Respondent No. 2- RDA who himself proposed inclusion of 1900 acres of land vide letter dated 20.7.2009. This affects the rights of the appellants. For this reason also, they did not receive fair hearing from the Committee. The recommendations of the committee were considered by the Board of Directors of Respondent No. 2- RDA on 21.6.2010. While the committee was hearing the objections, there was no freezing of land use and Respondent No. 2- RDA kept on proposing change in land use. This affected the statutory rights of the land owners who were entitled to fair hearing against the acquisition of land.

In the case of Raghbir Singh Sehrawat v. State of Haryana[18], held as under:

> "40. Though it is neither possible nor desirable to make a list of the grounds on which the landowner can persuade the Collector to make recommendations against the proposed acquisition of land, but what is important is that the Collector should give a fair opportunity of hearing to the objector and objectively consider his plea against the acquisition of land. Only thereafter, he should make recommendations supported by brief reasons as to why the particular piece of land should or should not be acquired and whether or not the plea put forward by the objector merits acceptance. In other words, the recommendations made by the Collector must reflect objective application of mind to the objections filed by the landowners and other interested persons.
>
> Further, in the case of Indore Development Authority v. Madan Lal[19], it was held as under:
>
> "10. We do not think that the Development Authority was justified in following a short cut in this case. The procedure followed under the Trust Act could not be sufficient to dispense with all the requirements of Section 50 of the Adhiniyam. As earlier noticed that Section 50 of the Adhiniyam provides procedure for preparation and approval of scheme for development. After preparing a draft scheme, the Development Authority must invite objections and suggestions from the public. There must be due consideration of the objections and suggestions received in [pic]the light of the Master Plan of Indore. Indeed, the public must also have an opportunity to examine the scheme and file objections in the light of the Master Plan if the Development Authority wants to adopt the scheme. Since the scheme in question was not an approved scheme under the Trust Act, the Development Authority could not have dispensed with the procedure prescribed under Section 50 of the Adhiniyam." Therefore, in the light of the facts and circumstances of the case and the legal principles laid down by this Court, we are of the opinion that reconstitution of plot for the purpose of town development scheme is permissible for public purpose only and that too by following the legal procedure of publication by

the authority in gazette about its intent to acquire land. In the absence of the same, and also when the purpose for reconstitution of land is not for public purpose, such reconstitution of land is impermissible under the Act. Therefore, we answer this point in favour of the appellants that the respondent No.2-RDA could not have reconstituted plot for any other purpose other than public purpose.

It has been argued by the learned senior counsel on behalf of the appellants that taking away land located in prime location and giving away land anywhere as per the discretion of Respondent No. 2- RDA, that too, to the extent of mere 35% of the area, is constitutionally impermissible. Against this contention raised by the learned senior counsel for the appellants, the learned senior counsel for the the Respondent No. 1-State Government as well as the High Court of Chhattisgarh, relied upon the decision of this Court in the case of State of Gujarat v. Shantilal Mangaldas and Ors.[20], to hold that taking away land and giving back 35% developed land in return, is in accordance with the Constitution. On this aspect, we are inclined to rely upon the decision of this court in His Holiness Kesavananda Bharathi v. State of Kerala[21] which laid down the subsequent development on the jurisprudence of compensation and overruled the decision of Shantilal in the process. It was held in the case of Kesavananda Bharati v. State of Kerala as under:

"584. The later decisions had continued to uphold the concept of "compensation" i.e. just equivalent of the value of the property acquired in spite of the amendments made in 1955. In State of Gujarat v. Shantilal Mangaldas and Others the decision in Metal Corporation of India, was overruled which itself was virtually overruled by R.C. Cooper v. Union of India. According to the Advocate-General of Maharashtra, if Shantilal Mangaldas case, had not been overruled by R.C. Cooper v. Union of India, there would have been no necessity of amending Article 31(2). .....

1744. In the Bank Nationalisation case, the majority decision virtually overruled the decision in Gujarat v. Shantilal. The majority was of the view that even after the Fourth Amendment 'compensation' meant "the equivalent in terms of money of the property compulsorily acquired" according to "relevant principles" which principles must be appropriate to the determination or compensation for the particular class of property sought to be acquired." Since compensation for acquisition of land need to be reasonable and adequate in the interest of justice, we rely upon the decision of Kesavananda Bharathi case (supra) to hold that returning 35% of land in lieu of acquisition is constitutionally impermissible. This is also because the 'development' which occurs due to the implementation of the Town Development Scheme accrues the benefit to everyone. In the same way, the appellants whose land has been acquired and proposed to be developed, would have gained from the development, if at all, as a member of the community gaining from the town development scheme and not in his individual capacity. When the compensation for land acquisition is determined, the price of the land on the date of the declaration of intention of acquisition is taken into consideration and not subsequent development after

acquisition since the development is not connected to acquisition. In the same manner, if the land is reconstituted in plots for distribution to the Economically Weaker Sections of the community or other public purposes, the same cannot be done by arbitrarily depriving the land owners of their Constitutional rights guaranteed under Article 300 A of the Constitution of India. They are entitled for the compensation from the State Government. The State Government on the other hand, cannot involuntarily acquire land and impose developmental charges in the same breath.

We come to this conclusion further on the ground that 35% figure was arrived at by Respondent No. 2- RDA while allocating reconstituted land to the appellants, without any valid form of calculation arrived at by the respondents. This action of the respondents is arbitrary also because the percentage of reconstituted land to be returned to the land owners vary from 35% to 58% for large plot holders and small plot holders. Also, from the letter dated 20.7.2009, it is evident that Respondent No. 2- RDA had already taken a decision that not more than 40% of land will be returned to the land owners. This decision is arrived at without taking into consideration the value of each portion of land on the basis of their geographical locations.

It is further submitted by the learned senior counsel on behalf of the appellants that taking land under "Development Contribution" to the extent of 65% is not contemplated under Section 50(6) of the Act. Section 50(6)(vi) of the Act of 1973 reads as under:

".....(vi)evaluate the increment in the value of each reconstituted plot and assess the development contribution leviable on each plot holder: Provided that the contribution shall not exceed half the accrued increment in value." Even under Section 40(3)(jj)(a) of the Gujarat Act, the maximum permissible contribution of land by land owner cannot exceed 50%. Therefore, in the absence of any reasonable procedure arrived at by the Respondents, taking 65% of the area of the plot as development contribution is wholly unfair and arbitrary, and is also impermissible as per Section 50 (6)(vi) of the 1973 Act. We hold that the respondents were not justified in returning only 35% of reconstituted plots and retaining 65% for different purposes mentioned by them.

The learned senior counsel on behalf of the appellants urged that the Respondent No. 2- RDA's application for Environmental Impact Assessment clearance dated 17.6.2010, was prior to the date of approval of KVTDS by the Board of RDA, the same being accorded on 22.6.2010 and published on 16.7.2010. Therefore, the application of the Respondent No.2- RDA was initially for EIA clearance for 2300 acres, whereas the final scheme was only for 1600 acres of land. As per the condition (v) of the General Condition of the Environmental Clearance (EC) dated 25.1.2011, if the RDA has changed the scope of the project, it has to take a fresh EC. The EC was sought for considerably more than the area for which the final scheme was notified i.e. 1600

acres.

As per the MoEF, EIA notification dated 14.9.2006 was issued by which Townships and Area Development Projects are put in Category–B1. The KVTDS Scheme No.-04 falls in this category. As per general conditions of 14.9.2006 notification, projects of "B1" category will be considered as projects of category "A" if the same falls in critically polluted areas. Then the Central Government is the competent authority to grant clearance to such projects.

Further, MoEF, issued a circular dated 25.8.2009, which has noted that the Central Pollution Control Board (CPCB) had identified critically polluted areas. The Expert Appraisal Committee (EAC) is appraising proposal of EC to the areas. Thereafter the concerned State Pollution Control Board will send its representative with its comments. The circular pertained to the procedure of grant of EC to development projects in Critically Polluted Areas.

The MoEF issued O.M. dated 13.1.2010 listing out 'critically polluted' and 'severely polluted' areas. Raipur falls in severely polluted area (S. No. 63 with CEPI-65.45). Para 4.1.1 and 4.1.2 of the said O.M. puts a complete prohibition on grant of environmental clearance to projects falling in 'critically polluted areas' for 8 months and the said moratorium was further extended by letter dated 31.10.2010. Para 4.2 of the said O.M provides that the procedure for grant of environmental clearance to development projects in 'severely polluted' areas will be as per circular dated 25.8.2009, i.e. for critically polluted areas. Therefore, the effect of O.M. referred to supra is that that the EC to the said projects will have to be given by the Central Government.

The Respondent No. 2-RDA submitted its application on 17.6.2010 for EIA approval for 2300 acres of township. On 25.1.2011, EC clearance/EIA approval was granted by the State Level Environment Impact Assessment Authority (SEIAA) to Respondent No.2–RDA which is not the authority to give such clearance as per O.M dated 13.1.2010 since the same has to be granted by the MoEF.

The MoEF in its affidavit filed before the High Court in Writ Petition (c) No.6040 of 2011, has stated that general conditions of EIA Notification dated 14.9.2006 were made inapplicable on the projects in item 8(b) vide MoEF O.M. dated 24.5.2011. The High Court has relied on the aforesaid affidavit and dismissed the contention of the appellants with regard to the EC issue, thereby it has erred in not appreciating the said O.M. issued after SEIAA had given EC to KVTDS-04. As on 25.1.2011, the general conditions of EIA notification dated 14.9.2006 were applicable to category 'B' projects and Central Government was the competent authority to grant EC to KVTDS-Scheme No. 04.

Even assuming that the EIA clearance granted by the SEIAA to RDA is valid, the RDA has deviated mandatory conditions as prescribed under the EC dated 25.1.2011. In the EC certificate, there is a specific condition that 'the project proponent shall not deviate from the land use proposals in the scheme area as provided under the said master plan'. On 31.1.2011, the respondent no.1- The State Government issued circular with regard to change in land use from agricultural to residential purposes. The land use in the concerned khasras was already notified as 'residential' under the Master Plan. The notification dated 4.3.2011 was published in the official gazette of the State government with regard to change of the land use of khasras from Agricultural to Residential

purposes in the villages Dunda, Devpur and Dumartarai and also from Educational to Residential area in village Tikrapara.

As per condition (ii) in the aforesaid notification, 185 hectares of land has to be maintained. The land use approved by the Board on 22.6.2010 only provides for 129.42 hectares of land for green zone.

On 25.1.2011, condition (v) of the General Conditions, stipulated that if the scope of a project is changed, fresh permission should be sought from the SEIAA. Scope of KVTDS-04 was changed as hereunder:

> On 17.6.2010, i.e. the date of application for EIA, RDA sought clearance for 2300 acres/847.84 hectares but finally the scheme was published on 16.7.2010 for 1600 acres.
>
> 4.3.2011: change in land use notified on 31.1.2011 published in official gazette
> 17.8.2011: In RDA Board Meeting, layout plan was amended in view of G.O. dated 25.2.2011.

This resulted in change in scope of the project. Thus in view of the specific condition (ii) of the Environmental Clearance dated 25.1.2011, fresh EC should have been sought and obtained by the RDA but the same has not been obtained by it.

Section 50(8) of the Act cannot be made retrospectively applicable. In the absence of vesting of land with the RDA, layout is not complete and no allotment can be done. The aforesaid provision of the Act was inserted by Ordinance dated 16.6.2010. Therefore, the same cannot be made applicable retrospectively to the Scheme as it was sanctioned by the State Government on 25.1.2008 and 10.8.2009.

The Scheme was finalised on 26.5.2010, by which date, no land had been acquired by Respondent No. 2- RDA nor any piece of land vested in it. Plots are being earmarked only on paper and such 'on paper' allotment of plots have been done by Respondent No. 2- RDA. Therefore, we are of the opinion that due to the change in the scope of the project, Respondent No. 2- RDA was required to seek sanction for the project from the Central Government. The same has not been done. Therefore, the KVTDS scheme has also failed to obtain the environmental clearance requirement which is the mandatory requirement in law for initiating any project by the RDA. A faulty town development scheme prepared through incompetent authorities with blatant violation of legal and environmental procedure cannot be the reason for deprivation of constitutional rights of the appellants.

Since we answered all the points framed in these cases in favour of the appellants, we allow these appeals by setting aside the impugned judgments and orders passed by the High Court of Chhattisgarh at Bilaspur in writ appeals and writ petitions of the appellants and further allow the prayer of the appellants by quashing the acquisition of their land of the villages which were included subsequently in the KVTDS in their respective writ petitions. The appeals are allowed. No costs.

.....J.

[V.GOPALA GOWDA]

.....J.

[C. NAGAPPAN]

New Delhi, July 29, 2015

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[1] Report of the Select Committee of House of Commons. 1832 Vol. III p. 331 as quoted in T.N. Srivastava, Local 'Self' Governance and the Constitution, EPW July 27, 2002 at p. 3190- 3191 [2] Constituent Assembly Debates, Vol. VII at p. 352 on November 9th, [3] 2012 (4) Bom CR 40 at para 22- 23 [4] (2007) 8 SCC 705 [5] [(1892) A.C. 473, 480 (Privy Council) [6] (1976) 2 SCC 152 [7] (2013) 6 SCC 278 [8] (2010) 9 SCC 157 [9] (2011) 12 SCC 695 [10] (1979) 4 SCC 176 [11] (1978) 1 SCC 405 [12] (1969) 2 SCC 262 [13] AIR 1980 SC 319 [14] AIR 1984 SC 1572 [15] (2010) 7 SCC 129 [16] (1991) 4 SCC 54 [17] (2014) 7 SCC 357 [18] (2012) 1 SCC 792 [19] (1990) 2 SCC 334 [20] AIR 1969 SC 634 [21] (1973) 4 SCC 225

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