State Of Gujarat vs Shri Shantilal Mangaldas & Ors on 13 January, 1969

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Author: M. Hidayatullah

Bench: M. Hidayatullah, J.C. Shah, V. Ramaswami, G.K. Mitter, A.N. Grover

PETITIONER:
STATE OF GUJARAT

Vs.

RESPONDENT:
SHRI SHANTILAL MANGALDAS & ORS.

DATE OF JUDGMENT:
13/01/1969

BENCH:
HIDAYATULLAH, M. (CJ)
BENCH:
HIDAYATULLAH, M. (CJ)
SHAH, J.C.
RAMASWAMI, V.
MITTER, G.K.
GROVER, A.N.

CITATION:
1969 AIR 634 1969 SCR (3) 341
1969 SCC (1) 509
CITATOR INFO :

APL	1970 SC 564	(97,98,99,100,155,194,199,200)
RF	1972 SC1730	(16)
RF	1973 SC1461	(601,605,709,710,1175,1185,175
R	1978 SC 215	(15,74)
RF	1979 SC 248	(10,15)
R	1980 SC 326	(17)
RF	1980 SC1955	(30)
E	1981 SC1597	(1,3,6,7,8)
O	1984 SC1178	(17)
E&R	1986 SC 468	(4,21,25,TO 31,37)
RF	1986 SC1466	(11)

ACT:
Bombay Town Planning Act (27 of 1955), ss. 53 and 67-

Compensation at market value on a date many years before the date of extinction of owners' title If violative of Art. 31(2) of Constitution after Fourth Amendment-Acquisition for town planning-If protected by Art. 31(5) (b) (ii).

HEADNOTE:

By a resolution dated April 18, 1927, the Borough Municipality of Ahmedabad declared its intention of making a town-planning scheme under the Bombay Town Planning Act, 1915. A plot of land measuring 18,219 sq. yards belonging to the first respondent was covered by the scheme. In the draft scheme the plot was reconstituted into two plotsone plot measuring 15,403 sq. yards reserved for the first respondent and the other, measuring 2,817 sq. yards reserved for the Municipality. The arbitrators were appointed to decide various matters made little progress. In 1955, the 1915-Act was repealed by the Bombay Town Planning Act, 1955 which received the assent of President on August 1, 1955, and came into force on April 1, 1957. By s. 90(2) of the 1955 Act, the proceedings preparing a scheme commenced under the repealed Act was continued. Under the 1955 Act, on the coming into force of the scheme all lands which are required by the local authority, unless otherwise determined in the scheme, by the operation of s. 53(a) vest absolutely therein free from all encumbrances. By cl. (b), ownership in a plot belonging to a person is substituted by the ownership in the reconstituted plot, his ownership in the original plot is extinguished and simultaneously therewith he becomes the owner of a reconstituted plot subject to the rights settled by the Town Planning Officer. The reconstituted plots, having regard to the exigencies of the scheme need not be of the same dimensions as the original land and are generally smaller. Section 67 provides that the difference between the market value of the plot with all the buildings and works thereon at the date of the declaration of the intention to make a scheme and the market value of the plot as reconstituted on the 'same date and without reference to the improvements contemplated in the scheme is to be 'the compensation due to the owner Section 71, which is a corollary to s. 67, provides, inter alia that if the owner of the original land is not allotted a plot at all, he shall be paid the value of the original plot, at the date of the declaration of intention to make a scheme. The Town Planning Officer informed the first respondent that Rs. 25,411 were awarded to him as compensation. He filed a petition in the High Court, challenging the validity of the Act on the ground that it violated Art. 31(2) of the Constitution 'Me High Court declared ss. 53 and 67 of the Act ultra vires and declared the town planning scheme invalid as a corollary.

In appeal to this Court' on the questions, (1) whether the Act was exempt from the operation of Art. 31(2), because its

object was promotion of public health and fell within the terms of Art. 31(5)(b)(ii) , and (2) whether the Act specifies the principles on which compensation is to be determined and the guarantee under Art. 31(2) is on that account not infringed,

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HELD : (1) Section 53 (a) of the Act is a law for compulsory acquisition of land; it cannot be said that because the object of the Act is to promote public health it falls within the exception of Art. 31(5)(b)(ii) .The principal objects of town planning legislation no doubt are to provide for planned and controlled development and use of land in urban areas with special regard to requirements of better living conditions and sanitation; but acquisition of property for such purposes could not be made under laws coming within the purview of Art. 31(5)(b)(ii) without payment of compensation. [34 F], of

Dy. Commissioner and Collector, Kamrup v. Durga Nath Sarma, [1968] 1 S.C.R. 561, followed.

(2)The legislature specified in the 1955 Act, principles for determination of compensation. The principles for determination of compensation cannot be said to be irrelevant, nor can the compensation determined, be said to be illusory. Being a principle relating to compensation, a challenge to that principle, on the ground that a just equivalent of what the owner was deprived of is not provided, is excluded by Art. 31(2) after the Constitution Fourth Amendment Act. [370 D]

(a)It was not necessary to provide for compensation for the entire land ofwhich a person is deprived, because, the concept that the lands vest inthe local authority when the intention to make a scheme is notified is against the plain intendment of the Act. A part of the plot or even the whole plot belonging to an owner may go to form a reconstituted plot which may be allotted to another person or may be appropriated to public purposes under the scheme. No process actual or notional of transfer is contemplated in that appropriation. The lands covered by the scheme are. subjected by the Act to the power of local authority to readjust titles, but no reconstituted plot vests at any 'stage in the local authority unless it is needed for a purpose of the authority; and when land is so required on the coming into force of the scheme, compensation is paid to the owner of the land. [356B, F-H]

(b)The Act specifies the principles on which the compensation is to be determined and given. Specification of principles means laying down general guiding rules applicable to all persons or transactions governed thereby. Compensation determined on the basis of market value prevailing on a date anterior to the date of extinction of interest is still determined on a principle specified. Whether an owner of land is given a reconstituted plot or not, the rule for determining what is to be given as

recompense remains the same. It is a principle applicable to all cases in which by virtue of the operationof the Town Planning Act a person is deprived of land whether in whole or in part. [357H-358B]

(c) By Art. 31(2)as it originally stood, exercise of the power to legislate for-compulsory acquisition was subject to the condition that the law for compulsory acquisition for public purposes either fixed the amount of the compensation or specified the principles on which, and the manner in which, the compensation was to be determined and given. 'Ibis Court in Bela Banerjee's case [1954] S.C.R. 558 and Subodh Gopals case, [1954] S.C.R. 587, held that 'compensation' meant a 'just equivalent'. But after the Fourth Amendment Act; adequacy of compensation fixed by the Legislature or awarded according to the principles specified by the legislature for determination is not justiciable. It does not mean, however, that something fixed or determined by the application of specified principles which is illusory or can in no sense be regarded as compensation must be upheld by the courts, for to do so, would be to grant a charter of arbitrariness, and permit a device to defeat a constitutional guarantee.

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But compensation fixed or determined on principles specified by the Legislature cannot be permitted to be challenged on the indefinite plea that it is not a 'just or fair' equiv alent. Principles may be challenged on the ground that they are irrelevant to the determination of compensation, but not on the plea that what is awarded as a result of the application of those principles is not just or fair compensation. Such a challenge will be in clear violation of the constitutional declaration that adequacy of compensation provided is not justiciable. [366 A-D]

Observations contra in P. Vajravelu Mudaliar v. The Special Deputy Collector, Madras, [1965] 1 S.C.R. 614, obiter.

Union of India v. Metal Corporation of India Ltd. [1967] 1 S.C.R. 255 overruled, because (i) Parliament had specified in the Metal Corporation of India (Acquisition of Undertaking) Act, 1965, the principles for determining compensation of the undertaking, (ii) those principles expressly related to the determination of compensation payable, (iii) they were not irrelevant to the determination of compensation, and (iv) the compensation was not illusory. [370C]

(d)The statute which permits the property of an owner to be compulsorily acquired by payment of market value at a date which is many years before the date on which the title of the owner is extinguished cannot be attacked on the ground of unreasonableness, because, a law made under Art. 31(2) is not liable to challenge on the ground that it violates Art. 19(1)(f). [370 H]

Smt. Sitabati Debi v. State of West Bengal, [1967] 2 S.C.R. 749, followed.

(e)The validity of the statute cannot depend upon whether in a given case it operates harshly. If the scheme came into force within a reasonable time from the-date on which the declaration of intention to make the scheme was notified, it could not be contended that fixation of compensation according to s. 67, would make the scheme invalid. The fact that considerable time elapsed cannot be a ground for declaring the section ultra vires. [371 B]
(f)If s. 71 read with s. 67 lays down a principle of valuation, it cannot bestruck down on the ground that, because of the exigencies of the scheme,it is not possible to allot a reconstituted plot to an owner of land covered by the scheme. [371 D]
(g)The method of determining compensation in respect of lands which are subject to the town planning scheme is prescribed in the Town Planning Act and when power is given under the statute to do a certain thing in a certain way, it must be done in that way or not at all. Therefore, unlike Vajravelu, Mudaliar's case, where the State Government could resort to one of two methods-the Land Acquisition Act, 1894 or the Land Acquisition (Madras Amendment) Act, 1961,and therefore arbitrarily, in the present case, the local authority can only act under the Town Planning Act for purposes of town planning, and therefore does not violate Art. 14. [372 D-E, H]
Taylor v. Taylor, [1875] 1 Ch. D. 426, applied.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1377 of 1968.

Appeal from the judgment and order dated January 24, 1968 of the Gujarat High Court in Special Civil Application No. 837 of 1960.

N.S. Bindra, S. K. Dholakia and S.P. Nayar, for the appellant.

M. C. Chagla and I. N. Shroff, for respondent Nos. 1 to 3. HIDAYATULLAH, C. J., delivered a Separate Opinion. The Judgment of SHAH, RAMASWAMI, MITTER and GROVER, JJ. was delivered by SHAH, J.

Hidayatullah C.J. I have read the weighty judgment proposed to be delivered by my brother Shah and I find myself so much in agreement with it that I consider it unnecessary for me to express myself. However, it is proper for me to say a few words in ,explanation since I was a party to P. Vajravelu Mudaliar's case(1) and the obiter pronouncement of some opinions there. That case was heard with N. B. Jeejeebhoy's case(2). One was a post Constitution (Fourth Amendment) case and the other a pre-constitution case. The judgment in the two cases were delivered on the same day. It appears that the reasoning in the two cases was not kept separate and the whole of the matter was

discussed in a case in which it was not necessary for the ultimate conclusion. Because of the close proximity of the decisions I it escaped me that the discussion was in the wrong case and the other merely followed it. My brother Shah has not made the two cases to fall in their proper places. It is certainly out of the question that the adequacy ,of compensation (apart from compensation which is illusory or proceeds upon principles irrelevant to its determination) should be questioned after the Amendment of the Constitution' The Amendment was expressly made to get over the effect of the earlier cases which had defined compensation as just equivalent. Such a question could not arise after the amendment. I am in agreement that the remarks in P. Vajravelu's case(1) must be treated as obiter and not binding on us. I am also of the opinion that the Metal Corporation case(s) was wrongly decided and should be over- ruled.

Shah, J. In a writ petition field by the first respondent Shantilal Mangaldas the High Court of Gujarat has declared ss. 53 and 67 of the Bombay Town Planning Act 27 of 1955, ultra vires, insofar. as they authorise the local authority, 2nd respondent in this appeal, to acquire lands under a town-planning scheme, and as a corollary to that view has declared invalid the City Wall Improvement Town Planning Scheme No. 5 framed in exercise of the powers conferred under, the Act.

By Resolution dated April 18, 1927, the Borough Municipality of Ahmedabad which was a local authority under the Bombay Town Planning Act 1 of 1915 declared its intention to make a town-planning scheme known as "The City Wall Improvement (1) [1965] 1 S.C.R. 614. (2) [1965] S.C.R.636. (3)[1967] 1 S.C.R. 255.

Town Planning Scheme." in respect of a specified area. A plot of land No. 221 measuring 18,219 square yards belonging to the first respondent was covered by the scheme. The Provincial Government sanctioned the intention to make the scheme, and a draft scheme was then prepared under which the area of plot No. 221 was reconstituted into two plots-Plot No. 176 measuring, 15,403 square yards reserved for the first respondent and Plot No. 178 measuring 2,816 square yards reserved for the local authority for constructing quarters for municipal employees. The draft. scheme was sanctioned by the Government of Bombay on August 7, 1942. On August 13, 1942, the Government of Bombay appointed an arbitrator under Act 1 of 1915 to decide matters, set out in s. 30 of the Act-. From time to time several arbitrators were appointed, but apparently little progress was made in the adjudication of matters to be decided by them under the act.

The Bombay Town Planning Act 1 of 1915 was repealed by s. 90 of the Bombay Town Planning Act 27 of 1955 with effect from April 1, 1957. By s. 90(2) making of any scheme commenced under the repealed Act was to be continued and the pro- visions of the new Act were to have effect in relation to the publication, declaration of intention, draft scheme, final scheme, sanction, variation, restriction, proceedings, suspension and recovery to be made or compensation to be given. The arbitrator appointed under Act 1 of 1915 was designated "Town Planning Officer" under Act 27 of 1955, and the proceedings under the City Wall Improvement Town Planning Scheme were continued before him. On August 23, 1957, the Town Planning Officer informed the first respondent that Rs. 25,411 were awarded to him as compensation for plot No. 178.

The first respondent then filed a petition in the High Court of Gujarat (which had jurisdiction after reorganization of the State of Bombay) challenging the validity of Act 27 of 1955 and acquisition of plot No. 178 on the plea that the Act infringed the fundamental right of the first respondent guaranteed by Art. 31(2) of the Constitution. The scheme was sanctioned by the Government of Gujarat on July 21, 1965, and the final scheme came into operation on September 1, 1965. The High Court entered upon an elaborate analysis of the provisions of the Act and held :

> "Section 53 read with section 67 in so far as it authorises acquisition of land by the local authority under pending schemes continued under section 90 of the new Act must, therefore, be held to be violative of Article 31(2) and the acquisition of petitioners' lands in the various petitions under the City Wall Improvement Town Planning Scheme No. 5 must be held to be invalid.", and on that view the High Court did not consider the other contentions raised on behalf of the first respondent. With certificate granted by the High Court, this appeal is preferred by the State of Gujarat.
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> The declaration of intention, preparation of the draft scheme and proceeding for preparation of the final scheme were made under Act 1 of 1915. Intimation of the amount of compensation determined to be payable to the first respondent was however given under Bombay Act 27 of 1955 and the scheme was also sanctioned. But by s. 90 of the Act as amended by Gujarat Act 52 of 1963, ,continuity of the operations for making and implementing the Town Planning Scheme is maintained.
>
> The principal objects of the town planning legislation are to provide for planned and controlled development and use of land in urban areas. Introduction of the factory system into methods of manufacture, brought about a great exodus of population from the village into the manufacturing centres leading to congestion and overcrowding, and cheap and insanitary dwellings were hurriedly erected often in the vicinity of the factories. Erection of these dwellings was generally subject to little supervision or control by local authorities, and the new, dwellings were built in close and unregulated proximity with little or no regard to the requirements ,of ventilation and sanitation. Necessity to make a planned development of these new colonies for housing the influx of population in sanitary surroundings was soon felt. The Bombay Legislature enacted Act 1 of 1915 with a view to remedy the situation.
>
> The Bombay Town Planning Act 27 of 1955 is modelled on the same pattern as Act 1 of 1915, but with one important variation. By Ch. 11 of the new Act it is made obligatory upon every local authority to carry out a survey of the area within its jurisdiction and to prepare and publish in the prescribed manner a development plan and submit it to the Government for sanction. A development plan is intended to lay down in advance the manner in which the development and improvement of the entire area within the jurisdiction of the local authority are to be carried out and regulated, with particular reference to-

(a)proposals for designating the use of the land, for the purposes-such as (1) residential, (2) industries (3) commercial, and (4) agricultural;

(b)proposals for designation of land for public purposes such as parks, play-grounds, recreation grounds, open spaces, schools, markets or medical, public health of physical culture institutions;

(c) proposals for roads and highways;

(d) proposals for the reservation of land for the purpose of the Union, any State, any local authority or any other authority established by law in India; and

(e)such other proposals for public or other purposes as may from time to time be approved by a local authority or directed by the State Government in that behalf, By making it obligatory upon a local authority to prepare a development plan under Bombay Act 27 of 1955 it was clearly intended that the Town Planning Schemes should form part of a single cohesive pattern for development of the entire area over which the local authority had jurisdiction.

Chapter III of, Bombay Act 27 of 1955 relates to the making of the Town Planning Scheme. Chapter IV deals with the de- claration of intention to make a scheme and making of a draft scheme. Chapter V deals with the appointment of Town Planning Officers and the Board of Appeal and their powers. Chapter VI deals with the splitting up of schemes into sections and preliminary schemes.' Chapter VII deals with Joint Town Planning Schemes and Ch. VIII with finance. Under Bombay Act 27 of 1955 after a development plan is sanctioned, the local authority makes a declaration of its intention to make a scheme and then prepares a draft scheme setting out the size and shape of every reconstituted plot, 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 space. The scheme may also make provision for lay out of lands; filling up or reclamation of lands, lay out of new streets,, roads, con- struction, diversion, extension, alteration, improvement and stopping up of streets, roads and communications; construction, alteration and removal of buildings, bridges and other structures; allotment or reservation of lands for roads, open spaces, gardens, recreation grounds, schools, markets, green belts, dairies, transport facilities, and public purposes of all kinds; drainage, lighting; ,water- supply; preservation of objects of historical or national interest or beauty and of buildings used for religious purposes; imposition of conditions relating to. constructions and other matters not inconsistent with the object of the Act as may be prescribed. The draft scheme is published after, it receives the sanction of the State Government. The State Government then appoints Town Planning Officer to perform the duties specified in S. 32 of the Act. An appeal lies to a Board of Appeal against certain decisions which the Town Planning Officer may, make. After the Town Planning Officer has dealt with the various matters relating to the draft' scheme, and the appeals against his orders have been disposed of, the State Government may sanction the scheme,, and on and after the date fixed in the notification sanctioning the scheme, the town planning scheme has effect as if it were enacted in the Act.

In making a town-planning scheme the lands of all persons covered by the scheme are treated as if they are put in a pool. The Town Planning Officer then proceeds to reconstitute the plots for residential buildings and to reserve lands for public purposes. Reconstituted plots are allotted to the landholders. The reconstituted plots having regard to the exigencies of the scheme need not be of the same dimensions as the original land. Their shape, and size may be altered and even the site of the reconstituted plot allotted to an owner may be shifted. The Town Planning Officer may lay out new roads, divert or close existing roads, reserve lands for recreation grounds schools, markets, green belts and similar public purposes, and provide for drainage, lighting, water-supply, filling up or reclamation of low-lying, swamp. or unhealthy areas or leveling up of land so that the total area included in the schem e may conduce to the health and well-being of the residents. Since the town-planning scheme is intended to improve the sanitary conditions prevailing in a locality, the owners of plots are required to maintain land open around their buildings. The object of the scheme being to provide amenities for the benefit of the residents generally the area in the occupation of the individual holders of land is generally reduced, for they have to contribute out of their plots, areas which are required for maintaining the services beneficial to the community.

Under the Act the cost of the scheme is to be met wholly Pr in part by contributions to be levied by the local authority on each plot included in the final scheme calculated in proportion to the increment which is estimated to accrue in respect of each plot.

To ensure that no undue hardship is caused and owners of plots have an opportunity of raising objections to the provisions of the scheme including its financial provisions, power is conferred upon the Town Planning Officer to entertain and hear objections against the reconstitution of the plots and relating to: matters specified in s. 32 i.e. the physical, legal and financial provisions of the scheme. Only after the objections have been heard and disposed of, the scheme is published and becomes final.

The relation between ss. 53 and 67 which have been declared ultra vires by the High Court and the other related provisions may now be determined. Section 53 of the Act provides :

> "On the day on which the final scheme comes into force,-
>
> (a)all lands required by the local authority shall, unless it is otherwise determined in such scheme, vest absolutely in the local authority free from all encum- brances;
>
> (b)all rights in the original plots which have been re-constituted shall determine and the re-constituted plots shall become subject to the rights settled by the Town Planning Officer."

The expression "re-constituted plot" is defined in s. 2(9) as meaning a plot which is in any way altered by the making of a town planning scheme and by the Explanation the word "altered" includes alteration of ownership. By cl. (b) of s. 53 ownership in a plot belonging to a person is substituted by the ownership in the reconstituted plot his ownership in the original plot is extinguished and simultaneously therewith he becomes the owner of a recon- stituted plot subject to

the rights settled by the Town Planning Officer. On the coming into force of the scheme all lands which are required by the local authority, unless otherwise determined in the scheme, by the operation of s. 53(a), vest absolutely therein free from all encumbrances. The result is that there is a complete shuffling up of plots of land, roads, means of communication, and rearrangement thereof. The original plots are re-constituted, their shapes are altered, portions out of plots are separated, lands belonging to two or more owners are combined into a single plot, new roads are laid out, old roads are diverted or closed up, and lands originally belonging to private owners are used for public purposes i.e. for providing open spaces, green belts dairies etc. In this process the whole or part of a land of 'one person, may go to make a reconstituted plot, and the plot so reconstructed may be allotted to another person; and the lands needed for public purposes may be earmarked for those purposes. The re-arrangement of titles in the various plots and reservation of lands for public purposes require financial adjustments to be made. The owner who is deprived of his land has to be compensated, and the owner who obtains a re- constituted plot in surroundings which are conducive to better sanitary living conditions has to contribute towards the expenses of the scheme. This is because on the making of a town planning scheme the value of the plot rises and a part of the benefit which arises out of the un L8Sup.C.I/69--4 earned rise in prices is directed to be contributed towards financing of the scheme which enables the residents in that area to more amenities, better facilities and healthier living conditions. For that purpose provision is made in S. 65 that the increment shall be deemed to be the amount by which at the date of the, declaration of intention to make a scheme, the market value of a plot included in the final scheme, estimated on the assumption that the scheme has been completed, would exceed at that, the market value of the same plot estimated without reference to improvements contemplated by the scheme. By S. 66 the cost of the scheme is required to be met wholly or in part by contributions to be levied by the local authority on each plot included in the final scheme calculated in proportion to the increment which is estimated to accrue in respect of such plot by the Town Planning Officer. Section 67 provides :

> "The amount by which the total value of the plots included in the final scheme with all the buildings and works thereon allotted to a person falls short of or exceeds the total value of the original plots with all the buildings and works thereon of such person shall be deducted from or added to, as the case may be, the contributions leviable from such persons, each of such plots being estimated at its market value at the date of the declaration of intention to make a scheme or the date of a notification under sub- section (1) of section 24 and without reference to improvements due to the alteration of its boundaries."

Section 67, it will clearly appear, is intended to make adjustments between the right to compensation for loss of land suffered by the owner, and the liability to make contribution to the finances of the scheme; and S. 71 is a corollary to s. 67. Section 71 provides "If the owner of an, original plot is not provided with a plot in the final scheme or if the contribution to be levied from him under section 66 is less than the total amount to be deducted therefrom under any of the provisions of this. Act, the net amount of his loss shall be payable to him by the local authority in cash or in such other way as may be agreed upon by the parties."

The provisions relating to payment of compensation and re- covery of contributions are vital to the successful implementation of the scheme. The owner of the reconstituted plot who gets the benefit of the scheme must make contribution towards the expenses of the scheme; the owner who loses his property must similarly be compensated. For the purpose of determining the compensation the Legislature has adopted the basis of market value of land expropriated, but the land is valued not on the date of ex-

tinction of the owner's interest, but on the date of the declaration of intention to make the scheme. In the view of the High Court this pattern of computing com- pensation infringes the fundamental right guaranteed under Art. 31(2), of the Constitution. Since the Act authorises compulsory transfer of ownership in land to the local authority for public purposes the High Court held it clearly falls within the terms of, Art. 31(2A) of the Constitution, and on that account there is acquisition of land within the meaning of Art. 31(2) of the Constitution, and the Act is not protected by Art. 31(5)(b)(ii). The High Court further held that in determining the compensation payable to the owner of the land which is appropriated to public purposes, the increase in the value of the reconstituted plot allotted cannot be taken into account, because it is not attributable or relatable to the acquisition of their plots, but is a benefit which they share in common with the other members of the community as a result of the scheme, "quite irrespective whether their plots are acquired or not", and it is, therefore, not liable to be taken into account in determining whether the compensation received by them for acquisition of their plots was adequate, that in any event the increment in the value of the, plot allotted to the owner is uncertain as well. as irrelevant as a principle for determining compensation, since it is quite possible that no Plot may, be allotted to an owner of land in a Town Planning Scheme. Further, observed the High Court, compensation for loss of land being determined under s. 67 of the Act only on the basis of the market value at the date of declaration of intention to make the scheme and not the market value at the date on which the scheme comes into force, the Act does not give for the original plot of land of the owner a recon- stituted plot together with compensation for loss of the difference in the area between the original and reconstituted plot. The High Court further observed that a provision for awarding compensation on the basis of market value under s. 67 of the Act is a sufficient specification of a principle of compensation within the meaning of Art. 31(2), but the Act was still not saved for two reasons(1) that there was no principle for compensating an owner of land to whom no reconstituted plot was allotted; and (2) that payment provided by the Act in satisfaction of the claim to land statutorily expropriated based on the market value of the land at the date of the declaration of intention to make a scheme was not payment of compensation guaranteed by Art. 31(2). The High Court was of the view that compensation based on the market value may be sufficient specification of principle of compensation within Art. 31(2) only if it is a just equivalent of the land expropriated and payment computed on the market value at a date many years before the date on which the land was acquired is inconsistent with the constitutional guarantee under Art. 31(2). The High Court in coming to' that conclusion felt itself bound by the observations made in the judgments of this Court in P. Vajravelu Mudaliar V. The Special Deputy Collector, Madras(1), The State of West Bengal v. Mrs. Bela Banerjee and Others(1); N. B. Jeejeebhoy v. Assistant Collector, Thana Prant, Thana (3) ; and Union of India v. Metal Corporation of India Ltd. and Another(4). The view taken by the High Court was that the Town Planning Act insofar as it provides for transfer of private rights of ownership to a local authority under s. 53(a) is a law relating to acquisition of lands which attracts the protection of Art. 31(2), and since the Act by s. 67 provides for compensation

which is not a just equivalent in terms of money of the property expropriated it could not be upheld under Art. 31(2) of the Constitution.

Mr. Bindra appearing on behalf of the State of Gujarat con- tends that Bombay Act 27 of 1955 is not a law relating to acquisition of lands, but it is a law dealing with health and public sanitation for it is enacted with the object of promotion of public health and on that account falls within the terms of Art. 31(5) (ii) of the Constitution, and is exempt from the operation of cl. (2) of Art. 31. Alternatively, Mr. Bindra contends that the Act specifies the principles on which compensation is to be determined and the guarantee under Art. 31(2) is on that account not infringed.

Counsel urges that the object of the Town Planning Act in pith and substance is to facilitate planned development, to ensure healthy surroundings to the people living in congested localities and to provide them with sanitation and other urban facilities conducive to healthy living and on that account is an Act falling within Entry 6 of List If of the Seventh Schedule-"Public health and sanitation", and Entry 20 of List III-"Economic and social planning". But the competence of the Legislature to enact legislation on the subject matter of the Act and for the object intended to be served thereby are irrelevant in determining whether any fundamental right of a person is infringed by the impugned Act. The doctrine of pith and substance is applicable in determining whether a statute is within the competence of the legislative body, especially in a federal set up, where there is division of legislative powers : it is wholly irrelevant in determining whether the statute infringes any fundamental right.

For a clearer appreciation of the alternative argument it may be useful to set out the terms of Art. 31 of the Constitution as amended by the Constitution (Fourth Amendment) Act, 1955 "(1) No person shall be deprived of his property save by authority of law.

(1) [1965] 1 S.C.R. 614. (2) [1954] S.C.R. 558. (3) [1965] 1 S.C.R. 636. (4) [1967] 1 S.C.R. 255.

(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be, determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate. I (2A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or, requisitioning of property, notwithstanding that it deprives any person of his property.

(3) No such law as is referred to in clause (2) made by the Legislature of a State shall have effect unless such law, having been, reserved for the consideration of the President, has received his assent.

(5) Nothing in clause (2) shall affect-

(a)

(b) the provisions of any law which the State may hereafter make-

(ii) for the promotion of public health or the prevention of danger to life or property, or

(iii) It is settled law that clauses (1) and (2) under the amended Article guarantee different rights to owners of property. Clause (1) operates as a protection against deprivation of property save by authority of law, which, it is beyond question, must be a valid law, i.e. it must be within the legislative competence of the State Legislature, and must not infringe any other fundamental right. Clause (2) guarantees that property shall not be acquired or requisitioned (except in cases provided by cl. (5)) save by, authority of law providing for compulsory acquisition or requisition and further providing for compensation for the property so acquired or requisitioned and either fixes the amount of compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given. If the conditions for compulsory acquisition or requisition are fulfilled, the law is not liable to be called in question before the courts on the ground that the compensation provided by the law is not adequate. Clause (2A) is in substance a definition clause : a law which does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State is not to be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property.

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

It is common ground that a law for compulsory acquisition of property by a local authority for public purposes is a law for acquisition of property by the State within the meaning of that expression as defined in Art. 12. The Act,was reserved for the consideration of the President and received his assent on August 1, 1955, and since it provides expressly by S. 53(a) that on the coming into force of the scheme the ownership in the lands required by the local authority for public purposes shall, unless it is other-wise determined in such scheme, vest absolutely in the local authority free from all encumbrances, the clause contem- plates transfer of ownership by law from private owners to the local authority. The Act is, therefore a law for compulsory acquisition of land.

We are also unable to agree with counsel for the State that because the object of the Act is intended to promote public health, it falls within the exception in Art. 31 (5)(b)(ii). The question is now settled by a recent judgment of this Court; Deputy Commissioner & Collector, Kamrup & Others v.

Durga Nath Sharma(1) This Court held in Durga Nath Sharma's case(1) that the Assam Acquisition of Land for Flood Control and Prevention of Erosion Act 6 of 1955 which provided for the acquisition of land on payment of compensation in accordance with the principles in s.6 of that Act was a purely exproprietary measure, and being a law for acquisition of land, though for prevention of danger to (1) [1968] 1 S.C.R. 561.

life and property, was not protected by Art. 31(5)(b)(ii). It was observed at p. 574 :

> "A law authorising the abatement of a public menace by destroying or taking temporary possession of private properties if the peril cannot be abated in some other way can be regarded as a law for promotion of public health or prevention of danger to life or pro- perty within the purview of cl. (5)(b)(ii). But it is not possible to say that a law for permanent acquisition of property is such a law. The object of the acquisition may be the opening of a public park for the improve- ment of public health or the erection of an embankment to prevent danger to life or property from flood. Whatever the object of the "acquisition may be, the acquired property belongs to the State. . . Clause (5)(b)(ii) was intended to be an exception to cl. (2) and must be strictly construed. Acquisition of property for the opening of a public park or for the erection of dams and embankments were always made under the Land Acquisition Act, and it could not have been intended that such acquisition could be made under laws coming within the purview of cl. (5)(b)(ii) without payment of compensation."

The first contention urged by Mr. Bindra cannot, therefore, be accepted. But, in our judgment, the contention urged by Mr. Bindra for the State of Gujarat that ss. 53 and 67 of the Act regarded as law for acquisition of land for public purposes do not infringe the fundamental right under Art. 31(2) of the Constitution is acceptable, because the Act specifies the principles on which compensation is to be determined and given.

Article 31 guarantees that the law providing for compulsory acquisition must provide for determining and giving compensation for the property acquired. The expression "compensation' is not defined in the Constitution. Under the Land Acquisition Act compensation is a ways paid in terms of money. But that is no reason for holding- that compensation which is guaranteed by Art. 31(2) for compulsory acquisition must be paid in terms of money alone. A law which provides for making satisfaction to an expropriated owner by allotment of other property may be deemed to be a law providing for compensation. In ordinary parlance the expression compensation means any thing given to make things equivalent; a thing given to or to make amends for loss, recompense, remuneration or pay; it need not therefore necessarily be in terms of money. The phraseology of the constitutional provision also indicates that compensation need not necessarily be in terms of money, because it expressly provides that the law may specify the principles on which, and the manner in which, compensation is to be determined and "given". If it were to be in terms of money alone, the expression "paid" would have been more appropriate.

The principal argument which found favour with the High Court in holding s. 53 ultra wires is that when a plot is reconstituted and out of that plot a smaller area is given to the owner and the

remaining area is utilised for public purpose, the area so utilised vests in the local authority for a public purpose, and since the Act does not provide for giving compensation which is a just equivalent of the land expropriated at the date of extinction of interest, the guaranteed right under Art. 31(2) is infringed. White adopting that reasoning counsel for the first respondent adopted another line of approach also. Counsel contended that under the scheme of the Act the entire area of the land belonging to the owner vests in the local authority, and when the final scheme is framed, in lieu of the ownership of the original plot, the owner is given a reconstituted plot by the local authority, and compensation in money is determined in respect of the land appropriated to public purposes according to the rules contained in ss. 67 & 71 of the Act. Such a scheme for compensation is, it was urged, inconsistent with the guarantee under Art. 31(2) for two reasons--(1) that compensation for the entire land is not provided; and (2) that payment of compensation in money is not provided even in respect of land appropriated to public use. The second branch of the argument is not sustainable for reasons already set out, and the first branch of the argument is wholly without substance. Section- 53 does not provide that the reconstituted plot is transferred or is to be deemed to be transferred from the local authority to the owner of the original plot. In terms s. 53 provides for statutory readjustment of the rights of the owners of the or plots of land. When the scheme comes into force all rights in the original plots are extinguished and simultaneously therewith ownership. springs in the reconstituted plots. There is no vesting of the original plots in the local authority nor transfer of the rights of the local authority in the reconstituted plots. A part or even the whole plot belonging to an owner may go to form a reconstituted plot which may be allotted to another person, or may be appro- priated to public purposes under the scheme. 'Me source of the power to appropriate the whole or a part of the original plot in forming a reconstituted plot is statutory. It does not predicate ownership of the plot in the local authority, and no process actual or notional of transfer is contemplated in the appropriation. The lands covered by the scheme are subjected by the Act to the power of the local authority to readjust titles, but no reconstituted plot vests at any stage in the local authority unless it 'is needed for a purpose of the authority. Even under cl. (a) of s. 53 the vesting in a local authority of land required by it is on the coming into force of the scheme. The concept that lands vest in the local authority when the intention to make a scheme is notified is against the plain intendment of the Act.

The object of s. 67 is to set out the method of adjustment of contribution against compensation receivable by an owner of land By that section the difference between the total value of the plots included in the final scheme with all the buildings and works thereon allotted to a person and the total value of the original plot with all the buildings and works thereon must, be estimated on the basis of the market value at the date of the declaration of intention to make a scheme, and the difference between the two must be ad- justified towards contribution payable by the owner of the plot included in the scheme. In other words, s. 67 provides that the difference between the market value of the plot with all the buildings and works thereon at the date of the declaration of intention to make a scheme and the market value of the plot as reconstituted on the same date and without reference to the improvements contemplated in the scheme is to be the compensation due to the owner. Section 71 which is a corollary to s. 67 provides, inter alia, that if the owner of the original land is not allotted a plot at all, he shall be paid the value of the original plot at the date of the declaration of intention to make a scheme. The question that falls then to be considered is whether the scheme of the Act which provides for adjustment of the market value of land at the date of the

declaration of intention of making a scheme against market value of the land which goes to form the reconstituted plot, if any, specifies a principle for determination of compensation to be given within the meaning of Art. 31(2). Two arguments were urged on behalf of the first respondent-41) that the Act specifies no principles on which the compensation is to be determined and given; and (2) that the scheme for recom- pense for loss is not a scheme providing for compensation. It is true that under the Act the market value of the land at the date of declaration of intention to make a scheme determines 'the amount to be adjusted, and that is the guiding rule in respect of all lands covered by the scheme. The High Court was, in our judgment, right in holding that enactment of a rule determining payment or adjustment of price of land of which the owner was deprived by the scheme estimated on the market value on the date of declaration of the intention to make a scheme amounted to specification of a principle of compensation within the meaning of Art. 31(2). specification of principles means laying down general guiding rules applicable to all persons or transactions governed thereby. Under the Land Acquisition Act compensation is determined on the basis of "market value" of the land on the date of the notification under s. 4(1) of that Act. That is a specification of principle. Compensation determined on the, basis of market value prevailing on a date anterior to the date of extinction of interest is still determined on a principle specified. Whether an owner of land is given a _reconstituted plot or not, the rule for determining what is to be given as recompense remains the same. It is a principle applicable to all cases in which by virtue of the operation of the Town Planning Act a person is deprived of his land whether in whole or in part.

On the second branch of the argument it was urged that a provision for giving the value of land, not on the date of extinction of interest of the owner, but on the footing of the value prevailing at the date of the declaration of the intention to make a scheme, is not a provision for payment of compensation. With special reference to the facts of the present case, it was said, that whereas the declaration of intention to make a scheme was made in 1927, the final scheme was published in 1957, and a provision for payment of market value prevailing in the year 1927 is not a provision for compensation. It is perhaps right to say that com- pensation cases should not be allowed to drag on for a long time, because then the compensation paid has no relevance to the exact point of time when the extinction actually takes place. But the validity of an Act cannot ordinarily be judged in the light of the facts in a given case. In support of the argument that the value of land determined by reference to a date far removed from the date on which the tide of the land is extinguished, though determined according to a guiding rule, is not compensation, because it is not a just equivalent of the land expropriated, strong reliance was placed upon certain observations made by this Court in P. Vajravelu Mudaliar's case(1) and in the Metal Corporation of India Ltd.'s case(2). If the argument that for compulsory acquisition of property an owner is by the Constitution guaranteed a "just equivalent' of the property of which he is deprived at the date of acquisition, the plea that what is provided, as compensation by ss. 67 and 71 as the value to be adjusted against the amount of contribution, if any, infringes the guarantee of Art. 31(2), would be unassailable.

The argument raised by counsel for the first respondent raises a question of importance as to the true effect of Art. 31 of the Constitution and requires careful consideration in the light of the historical development of the principles governing payment of compensation by the State for compulsory acquisition of property. Section 299 of the Government of India Act, 1935, insofar as it is material, provided:-

"(1) No person shall be deprived of his property save by authority of law.

(1) [1965] 1 S.C.R. 614.

(2) [1967] 1 S.C.R. 255.

(2) Neither the Federal or a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking, or any interest in, or in any company owning, any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, it is to be determined."

Article 31 as originally enacted in the Constitution was substantially in the same terms as s. 299. Clause (1) of Art. 31 was enacted verbatim in the same terms as cl. (1) of s 299. Clause (2) of Art. 31 reproduced with some variation the principle of s. 299(2). It was thereby enacted:

"No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the pro- perty taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given.

Shortly after the coming into force of the Constitution, disputes were raised about the validity of laws which abolished the Zamindari rights of landholders in the State of Bihar. In Kameshwar Singh v. State of Bihar(1) the Patna High Court held that the Bihar Land Reforms Act, 1951, contravened Art. 14 in that it accorded differential treatment to landowners in the matter of compensation. Similar challenge raised to the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, was rejected by the High Court of Allahabad: Surya Pat v. State of U.p.(2). A group of petitions challenging the validity of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act 1951 was moved in this Court: Visheswar v. State of Madhya Pradesh(3), but before these petitions could be disposed of, the Constitution (First Amendment) Act, 1951, was enacted with a view to eliminate all litigation challenging the validity of legislation for the abolition of proprietary and intermediary interests in agricultural lands on the ground of contravention of the fundamental rights contained in Part HI of the Constitution. To effectuate this purpose, Art. 31A was incorporated in the (1) I.L.R. 30 Pat. 454. (2) I.L.R. [1952] 2 All. 46. (3) [1952] S.C.R. 1020.

Constitution with retrospective effect, and Art. 31B and the Ninth ,Schedule were added placing certain Acts and Regulations beyond the challenge that they were inconsistent with, or took away or ,abridged any of the rights conferred by any provision of Part III. But the amendments made by the Constitution (First Amendment) Act were inadequate to deal with questions relating to payment of compensation to an owner of property (not covered by legislation falling within Arts. 31A and 31B) who was deprived of it by compulsory acquisition.

Two cases decided by this Court in the month of December 1953 require to be noticed : In Mrs. Bela Banerjee's case(1) validity of the West Bengal Land Development and Planning Act, 1948, which was enacted primarily for acquisition of land for setting migrants from East Bengal on account of communal disturbances, fell to be determined. Compensation payable for compulsory acquisition of land needed for the purposes specified was under the Act was not to exceed the market value of the land on December 31, 1946. The Calcutta High Court declared the provisions of s. 8 ultra vires, and this Court confirmed that decision. It was observed by this Court that Entry 42 of List III of the Seventh Schedule conferred on the Legislature the discretionary power of laying down the principles which govern the determination of the amount to be given to the owner of the property acquired and Art. 31(2) required that such principles 'must ensure that what is determined as payable is compensation, that is, a just equivalent of what the owner has been deprived. In delivering the judgment of the Court, Patanjali Sastri, C.J. observed "While it is true that the legislature is given the discretionary power of laying down the principles which should govern the determination of the amount to be given to the owner for the property appropriated, such princ iples must ensure that what is determined as payable must be compensation, that is, a just equivalent of what the owner has been deprived of Within the limits of this basic requirement of full indemnification of the expropriated owner, the Constitution allows free play to the legislative judgment as to what principles should guide the determination of the amount payable. Whether such principles take into account all the elements which make up the true value of the property appropriated and exclude matters which are to be neglected, Is a justiciable issue to be adjudicated by the Court."

The other ease decided on December 17 1963 but not unanimously, was the State of West Bengal v. Subodh Gopal Bose and In that case it was held by a majority of the Court (1) [1954] S.C.R. 558.

(2) [1954] S.C.R. 587.

that Art. 31 protects the right to property by defining limitations on the power of the State to take away property without the consent of the owner : that clauses (1) and (2) of Art. 31 are not mutually exclusive in scope and content, but should be read together and understood as dealing with the same subject, namely, the protection of the right to property by placing limitations on the power of the State to take away the property, the deprivation contemplated by cl. (1) being no other than the acquisition or taking possession of the property referred to in cl. (2) : and that the words "taking of .... possession or acquisition" in Art. 3 1 (2) and the words "acquisition or requisitioning" in Entry 33 of List 1 and Entry 36 of List 11 as also the words "acquired or requisitioned" in Entry 42 of List 111, are different expressions connoting the same concept and instances of different kinds of deprivation of property within the meaning of Art. 31 (1) of the Constitution. The result of the two decisions was to declare that cls. (1) and (2) dealt with the States' power of, what the American lawyers call,

eminent domain; that power could only be exercised by giving a just equivalent of what the owner has been deprived; and that whether the law made in exercise of power under Entry 42 of List III laid down principles which took into account the elements which made up the true value of the property appropriated, and excluded such matters which are to be neglected, was a justiciable issue. The power to legislate for compulsory acquisition of property was originally distributed under three entries. Entry 33 List I"Acquisition or requisitioning of property for the purposes of the Union"; Entry 36 of List II-

> "Acquisition or requisitioning of property, except for the purposes of the Union, subject to the pro- visions of Entry 42 of List 111"; and Entry 42 of List III-"Principles on which compensation for property acquired or requisitioned for the purposes of the Union or of a State or for any other public purpose is to be determined, and the form and the manner in which such compensation is to be given". By cl. (2) of Art. 31 exercise of the power to legislate for compulsory acquisition of property was subject to the condition that the law for Compulsory acquisition for public purposes either fixed the amount of the compensation or specified the principles on which, and the manner in which the compensation was to be determined and given. The expression "compensation" according to this Court in Mrs. Bela Banerjee's case(1) meant a just equivalent or full indemnification of the expropriated owner, and the expression "deprived" had the same connotation as taking possession of or acquisition. According to Subadh Gopals CaSe(2) the law providing for acquisition or extinction of interest of private owners in properties (1) [1954] S.C.R. 558.
>
> (2) [1954] S.C.R. 587, not governed by Art. 31A and Art. 31B read with the Ninth Schedule, was liable to be struck down unless the law provided for payment to the expropriated owner compensation which was a just equivalent.

The two cases raised more problems than they solved. The Court did not indicate the meaning of the expression "just equivalent", nor the date with reference to which the just equivalent was referable. It was also not stated whether compensation was to be the 'market value" determined on principles set out in the Land Acquisition Act inclusive of the potential value as decided by the Judicial Committee in Raja Vyricherla Narayana Gajapatiraju v. The Revenue Divisional Officer(1), or the value of mere existing advantages, apart from the potentialities was to be given. It was easier to state what was not a "just equivalent" than to define what the "just equivalent" was. The decisions did not indicate the limits on the power of the State to fix by law the amount of compensation, which by the express words used in Art. 31(2) the Legislature possessed. But according to the judgment in Mrs. Bela Banerjee's case(2) the principles specified by the Legislature for determining compensation were open to judicial review. The Court in effect decided that a statute was liable to be struck down as infringing a guaranteed fundamental right on the ground that the compensation provided thereby was inadequate. It needs to be emphasized that compensation payable, for compulsory deprivation of property is not by the application of any principles, determinable as a precise sum; and by calling it just or fair equivalent, no definiteness can be attached thereto. Rules enunciated by the Courts for determining compensation for compulsory acquisition under the Land Acquisition Act vary according to the nature of the land acquired. For properties which are not marketable commodities,

such as lands buildings and incorporeal rights, valuation has to be made on the application of different rules. Principle of capitalisation of net rent at the cur- rent market rate on guilt-edged securities,, principle of reinstatement, principle of determination of original value less depreciation determination of break-up value in certain types of property which have outgrown their utility, and a host of other so-called principles are employed for determination of compensation payable for acquisition of lands houses, incorporeal rights, etc. in determining compensation payable under the Land Acquisition Act, special adaptability to schemes of development and potentialities, but not the urgent need of the acquirer and the disinclina- tion of the vendor, have to be taken into account. The Land Acquisition Act provides for determination of compensation by (1) L.R. 66 I.A. 104.

(2) [1954] S.C.R. 558.

36 3 reference to the market value subject to certain matters being taken into account and some others being excluded as set out in ss. 23 and 24 of that Act. The rules relating to determination of value in regard to the agricultural and non-agricultural lands, house-sites, buildings, machinery and other properties, greatly vary and the value in respect of the same item of property by the application of different rules may lead to vast disparities.

Right to compensation, in the view of this Court, was intended by the Constitution to be a right to a just equivalent of the property of which a person was deprived. But the just equivalent was not capable of precise determination by the application of any recognized rules. The decisions of this Court in the two cases-Mrs. Bela Banerjee's case(1) and Subodh Gopal Bose's case(2) were therefore likely to give rise to formidable problems, when the principles specified by the Legislature as well as the amounts determined by the application of those principles, were declared justiciable. By qualifying "equivalent" by the adjective "just", the enquiry was made more controversial; and apart from the practical difficulties, the law declared by this Court also placed serious obstacles in giving effect to the directive principles of State policy incorporated in Art. 39.

The Constitution was, in that state of the law declared by this Court, amended by the Constitution (Fourth Amendment) Act, 1955, which came into force on April 27, 1955. Thereby Clause (2) of Art. 31 was substituted by new cls. (2) and (2A). Article 31A was amended with retrospective effect; seven more Acts were added-to the Ninth Schedule including the West Bengal Land Development and Planning Act, 1948, of which s. 8 was declared ultra vires by this Court in Subodh Gopal Bose's case (2), and certain consequential provisions were made by substitution of an amended Art. 305 in place of the original Art. 305.

The principal effect of this amendment, in so far as that is relevant in this appeal, was to snap the link which, according to this Court, existed between cls. (1) and (2)- that was achieved by enacting cl. (2A); greater clarity was secured by enacting in cl. (2) that property shall be compulsorily acquired only for a public purpose, and by authority of law which provides for compensation, and either fixes the amount of compensation or specifies the principles on which and the manner in which, compensation is to be determined and given; and that the law for acquisition or requisition shall not be called in question in any court on the ground that the compensation provided thereby is not adequate. By the amendment made in Art. 31A certain classes of statutes were placed with

retrospective effect outside the purview of attack (1) [1954] S.C.R.558.

(2) [1954] S.C.R. 587.

before the Courts on the ground of infringement of the fundamental rights under Art. 14, 19 and 31, and by the addit ion of certain Acts in the Ninth Schedule a challenge to those Acts that they infringed any fundamental rights in Part III could not be entertained. But the amendments made in Art. 3 1 were not given any retrospective operation. The result was that in cases where acquisition was made pursuant to the statutes enacted before April 27, 1955, the law declared in Mrs. Bela Banerjee's case(1) and Subodh Gopal Bose's case(2) continued to apply .

In State of Madras v. D. Namasivaya Mudaliar and Others(3) this Court held that the Madras Lignite, (Acquisition of Land) Act 1953, which came into force on August 20, 1953 in so far as it purported to provide for award of compensation for compulsory acquisition of land, which was not to include any rise in value between a fixed date and the date of issue of the notification under S. 4(1) of the Land Acquisition Act and denied compensation for the value of non- agricultural improvements since that fixed date, was invalid as infringing the guarantee under Art. 31(2) of the Constitution before it was amended. In N. B. jeejeebhoy's case(4) this Court held that ascertainment of compensation on the basis of the value of the lands acquired as on January 1, 1948, and not as on the date on which the notification under s. 4 of the Land Acquisition Act was issued under the provisions of the Land Acquisition (Bombay Amendment) Act, 1948, was arbitrary and violated S. 29 9(2) of the Government of India Act, 1935, relating to compensation. In N. B. Jeejeebhoy's case(4) the Court was dealing with a pre-Constitution statute and it was held that the principle on which compensation was to be paid under S. 299(2) of the Government of India Act, 1935, and Art. 31 (2) of the Constitution, were the same, and a different interpretation giving a more restricted meaning to S. 299(2) of the Government of India Act, 1935, could not be given. In Union of India v. Kamlabai Harjiwandas Pareskh and others(5) it was again held by this Court that compensation admissible under the Requisitioning and Acquisition of Immovable Property Act, 1952, enacted on March 14, 1952, at the market value of the property at the date of acquisition or twice the market value of the property at the time of requisitioning of that property under r. 75-A(1) of the Defence of India Rules, whichever was less, was void as infringing Art. 31(2) of the Constitution. These three cases were decided, following the principle of Mrs. Bela Banerjee's case(3), in respect of the Acts enacted before the Constitution (Fourth Amendment) Act, 1955.

(1) [1964] S.C.R. 558 (3) [1964] 6 S.C.R. 936. (5) [1968] 1 S.C.R. 463.

(2) [1954] S.C.R. 587. (4) [1965] 1 S.C.R. 636.

Counsel for the respondent urged that the amendment to the Constitution has by the (Fourth Amendment) Act made no subs- tantial difference in, the concept of compensation as a just equivalent or just recompense for the property of which the owner is deprived, and any scheme or principle of payment of compensation to a person deprived of property which does not adequately compensate him for the loss of property by awarding to him a just recompense at the date of expropriation must be deemed void.

Before considering this part of the argument, it is necessary to refer to one other Constitutional Amendment. By the Constitution (Seventh Amendment) Act, 1956, which came into force on November 1, 1956, Entries 33 of List I and 36 of List II were deleted from the Seventh Schedule and Entry 42 of List III was amended and now reads-"Acquisition and requisitioning of property". The effect of that amendment is that the power of acquisition and requisitioning of property falls in the concurrent list and it makes no reference to the principles on which compen- sation for acquisition or requisitioning is to be determined.

Reverting to the amendment made in cl. (2) of Art. 31 by the Constitution (Fourth Amendment) Act, 1955, it is clear that adequacy of compensation fixed by the Legislature or awarded according to the principles specified by the legislature for determination is not justiciable. it clearly follows from the terms of Art. 31 (2) as amended that the amount of compensation payable, if fixed by the Legislature, is not justiciable, because the challenge in such a case, apart from a plea of abuse of legislative power, would be only a challenge to the adequacy of compensation. If compensation, fixed by the Legislature-and by the use of the expression "compensation" we mean what the Legislature justly regards as proper and fair recompense for compulsory expropriation of property and not something which by abuse of legislative power though called compensation is not a recompense at all or is something illusory-is not justiciable, on the plea that it is not a just equivalent of the property compulsorily acquired, is it open to the Courts to enter upon an enquiry whether the principles which are specified by the Legislature for determining compensation do not award to the expropriated owner a just equivalent ? In our view, such an enquiry is not open to the Courts under- the statutes enacted after the amendments made in the Constitution by the Constitution (Fourth Amendment) Act. If the quantum of compensation fixed by the Legislature is not liable to be canvassed before the Court on the ground that it is not a just equivalent, the principles specified for determination of compensation will also not be open to challenge on the plea that the compensation determined by the application of those principles is not a just equivalent. The right declared by the Constitution guaran 7 Sup CI/69-5 tees that compensation shall be given before a person is, compulsorily expropriated of his property for a public purpose. What is fixed as compensation by statute, or by the, application of principles specified for determination of compensation is guaranteed : it does not mean however that something fixed or determined by the application of specified principles which is illusory or can in no sense be r egarded as compensation must be upheld by the Courts, for, to do so, would be to grant a charter of arbitrariness, and permit a device to defeat the constitutional guarantee. But ,compensation fixed or determined on principles specified by the Legislature can-not be permitted to be challenged on the somewhat indefinite plea that it is not a just or fair equivalent. Principles may be challenged on the ground that they are irrelevant to the determination of compensation, but not on the plea that what is awarded as a result of the application of those principles is not just or fair compensation. A challenge to a statute that the principles specified by it do not award a just equivalent will be in clear violation of the constitutional declaration that inadequacy of compensation provided is not justiciable. The true effect of the amended Art. 31(2) fell to be deter- mined for the first time before this Court in P. Vajravelu Mudaliar's case (1). In that case lands belonging to a person were notified for acquisition for the purpose of housing schemes and proceedings in respect of compensation payable to him in accordance with the provisions of the Land Acquisition (Madras Amendment) Act, 1961, were pending. The owner challenged the vires of the Land Acquisition (Madras Amendment) Act, 1961,

on the ground that it infringed the fundamental rights under Arts. 14, 19 and 31(2) ,of the Constitution. The Act made provisions which departed from the Land Acquisition Act, 1894, in determining compensation in three respects-' (1) compensation was to be determined on the basis of average market value of the land during five years immediately preceding the date of the notification under S. 4(1) of the Land Acquisition Act or the market value on the date of the notification whichever was less; (2) the solarium payable to the owner for compulsory acquisition was to be 5% of the market value; and (3) that the owner was not to get any compensation for the suitability of the land for use other than the use to which it was put on the date of publication of the notification i.e. potentiality of the land was to be discarded. This Court held that in making this three-fold modification in the application of the Land Acquisition Act for determining compensation payable the statute did not infringe the guarantee contained in Art. 31(2). It only specified certain principles for determination of compensation. Those principles may result in inadequacy of compensation, but did not constitute fraud on power and therefore the Amending (1) [1965] 1 S.C.R. 614.

Act did not offered Art. 31(2) of the Constitution. But Subba Rao, J.1 in delivering the judgment of the Court observed :

> "If the definition of "compensation" and the question of justiciability are kept distinct, much of the cloud raised will be dispelled. Even after the amendment, provision for compensation or laying down of the principles for determining the compensation is a condition for the making of a law of acquisition or requisition..... The fact that Parliament used the same expressions namely, "compensation" and "principles" as were found in Art. 31 before the Amendment is a clear indication that it accepted the meaning given by this Court to those expression in Mrs. Bela Banerjee's case. It follows that a Legislature in making a law. of acquisition or requisition shall provide for a just equivalent of what the owner has been deprived of or specify the principles for the purpose of ascertaining the "just equivalent"

of what the owner has been deprived of. . . .

It will be noticed that the law of acquisition or requisition is not wholly immune from scrutiny by the court. But what is excluded from the court's jurisdiction is that the law cannot be questioned on the ground that the compensation provided by that law is not adequate. It will further be noticed that the clause excluding the jurisdiction of the court also used the word "compensation" indicating thereby that what is excluded from the court's jurisdiction is the adequacy of the compensation fixed by the Legislature a more reasonable interpretation is that neither the principles prescribing the "just equivalent"

> nor the "just equivalent" can be questioned by the court on the ground of in adequacy of the compensation fixed or arrived at by the working of the principles."

At p. 629, he summarised the legal position as follows "If the question pertains to the adequacy of compensation, it is not justiciable; if the compensation fixed or the principles evolved for fixing it

disclose that the legislature made the law in fraud of powers in the sense we have explained, the question is within the jurisdiction of the Court."

These observations were however, not necessary for the purpose of the decision in P. Vajravelu Mudaliar's case(1). The Court held that the Amending Act did in fact specify principles for ascertaining the value of the property acquired and the principles were not irrelevant in the determination of compensation;

(1) [1865] S.C.R. 614.

if there was inadequacy in the compensation awarded by the application of those principles it was not open to question in view of the express provision made in the last clause of Art. 31(2). In our judgment, the observation made by the Court that Art. 31(2) as amended means that "neither the principles prescribing the 'just equivalent' nor the 'just equivalent' can be questioned by the Courts on the ground of inadequacy of the compensation fixed or arrived at by the working of the principles" needs to be clarified. If by that observation it is intended that the attack on the principles specified for determining compensation is excluded only when it is founded on a plea of inadequacy of compensation, a restricted meaning is given to Art. 31(2) which practically nullifies the amendment. Whatever may have been the meaning of the expression "compensation' under the unmended article 31(2), when the Parliament has expressly enacted under the amended clause that "no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate", it was intended clearly to exclude from the jurisdiction of the Court an enquiry that what is fixed or determined by the application of the principles specified as compensation does not award to the owner a just equivalent of what he is de- prived. Any other view is contrary to the plain words of the amendment: it is also contrary to the ultimate decision of the Court in P. Vajravelu Muddliar's case(1) that the principles specified by the Court which did not award what may be called a just equivalent were still not open to question.

In our view, Art. 31(2) as amended is clear in its purport. If what is fixed or is determined by the application of specified principles is compensation for compulsory acquisition of property the Courts cannot be invited to determine whether it is a just equivalent of the value of the property expropriated. In P. Vajravelu Mudaliar's case(1) the Court held that the principles laid down by the impugned statute were not open to question. That was sufficient for the purpose of the decision of the case and the other observations were not necessary for deciding that case, and cannot be regarded as a binding decision. In the Metal Corporation Ltd.'s case(2) the facts Were that the Metal Corporation of India (Acquisition of Undertaking) Act 1965, was enacted for acquiring in the public interest, the undertaking of the Metal Corporation of India- The Act provided that the Corporation was to vest in the Central Government on the commencement of the Act; and that in the absence of an agreement between the Government and the Corporation, corn-

(1) [1965] 1 S.C.R. 614.

(2) [1967] 1 S.C.R. 25S.

pensation payable to the Corporation was to be an amount equal to, the sum total of the value of the properties and assets of the Corporation on the date of the commencement of the Act calculated in accordance with the provisions of Paragraph II of the Schedule to the Act, less the liabilities on the said date, calculated in accordance with the provisions of Paragraph HI of the Schedule. One of the clauses laying down principles of compensation, viz., clause

(b) of Paragraph 11 was in two parts. The first part pro- vided for the valuation of plant, machinery or other equipment which had not been worked or used and was in good condition, and the second part provided for the valuation of any other plant, machinery or equipment. The former, according to the Schedule, had to be valued at the actual cost incurred by the Corporation in acquiring them, and the latter at the written down value determined in accordance with the provisions of the Income-tax Act, 1961. The validity of the Act was challenged, and this Court held that the Act contravened Art. 31(2) of the Constitution and was therefore void. The judgment of the Division Bench is open to review by this Court. The Court after setting out the principles laid down by this Court in Mrs. Bela Banerjee's case(2); D. Namasivaya Mudaliar's case(3) and N. B. Jeejeebhoy's case(3) observed at p. 264 :

> ". - - - the relevant aspect of the legal position evolved by the said decisions may be stated thus : Under Art. 31(2) of the Constitution, no property shall be compul- sorily acquired except under a law which provides for compensation for the property acquired and either fixes the amount of compensation or specifies the principles on which, and the manner in which, compensation is to be determined and given. The second limb of the provision says that no such law shall be called in question in any court on the ground that the compensation provided by the law is not adequate. If the two concepts, namely, "compensation" and the jurisdiction of the court are kept apart, the meaning of the provisions is clear. The law to justify itself has to provide for the payment of a "just equivalent" to the land acquired or lay down principles which will lead to that result. If the principles laid down are relevant to the fixation of compensation and are not arbitrary, the adequacy of the resultant product cannot be questioned in a court of law. The validity of the principles, judged by the above tests, falls within judicial scrutiny, and if they stand the tests, the adequacy of the product falls outside its jurisdiction."

(1) [1954] S.C.R. 558.(3) [1965] 4 S.C.R. 6361 (2)[1964] 6 S.C.R. 936, The Court then proceeded to hold that the two principles laid down in cl. (b) of Paragraph II of the Schedule to the Act(i) that compensation was to be equal to the cost price in the case of unused machinery in good condition; and (ii) written down value as understood in the Income-tax law was to be the value of the used machinery, were irrelevant to the fixation of the-value of the machinery as on the date of acquisition.

We are unable to agree with that part of the judgment. The Parliament had specified the principles for determining compensation of the undertaking of the company. The principles expressly related to the determination of compensation payable in respect of unused machinery in good condition and used machinery. The principles were set out avowedly for determination of compensation. The principles were not irrelevant to the determination of compensation and the compensation was not

illusory. In our judgment, the Metal Corporation of India Ltd.'s case(1) was wrongly decided and must be overruled.

Turning to the Bombay Town Planning Act, 1955, it was clear that the Legislature has specified principles for determina- tion of compensation which has to be adjusted in determining the amount of contribution. The principle for determination of comsation cannot be said to be irrelevant, nor can the compensation determined be regarded as illusory. Being a principle relating to compensation, in our judgment, it was not liable to be challenged. If what is specified is a principle for determination of compensation, the challenge to that principle on the ground that a 'just equivalent of what the owner is deprived is not provided is excluded by the plain words of Art. 31(2) of the Constitution. It was urged that in any event the statute which permits the property of an owner to be compulsorily, acquired by payment of market value at a date which is many years before the date on which the title of the owner is extinguished is unreasonable. This Court has, however held in Smt. Sitabati Debi and Anr. v. State of West Bengal(2) that a law made under cl. (2) of Art. 31 is not liable to be challenged on the ground that it imposes unreasonable restrictions upon the right to hold or dispose of property within the meaning of Art. 19(1) (f) of the Constitution. In Smt. Sitabati Debi's case (2) an owner of land whose property was requisitioned under the West Bengal Land (Requisition and Acquisition) Act, 1948, questioned the validity of the Act by a writ petition filed in the High Court of Calcutta on the plea that it offended Art. 19(1)(f) of the Constitution. This Court unanimously held that the validity of the Act relating to acquisi-

(1) [1967] 1 S.C.R. 255.

(2) [1967] 2 S.C.R. 949.

37 1 tion and requisition cannot be 'questioned on the ground that it offended Art. 19(1) (f) and cannot be decided by the criterion under Art. 19(5). Again the validity of the statute cannot depend upon whether in a given case it operates harshly. If the scheme came into force within a reasonable distance of time from the date on which the declaration of intention to make a scheme was notified, it could not be contended that fixation of compensation according to the scheme of s. 67 per se made the scheme invalid. The fact that considerable 'time has elapsed since the declaration of intention to make a scheme cannot be a ground for declaring the section ultra vires. It is also contended that in cases where no reconstituted plot is allotted to a person and his land is wholly appropriated for a public purpose in a scheme, the owner would be entitled to the value of the land as, prevailing many years before the extinction of interest without the benefit of the steep rise in prices which has taken Place all over the country. But if s. 71 read with s. 67 lays down a principle of valuation, it cannot be struck down on the ground that because of the exigencies of the scheme, it is not possible to allot a reconstituted plot to an owner of land covered by the scheme.

Our attention was invited to ss. 81 and 84 of the Bombay Town Planning Act, 1955. Section 81 merely provides that the land needed for the purpose of a town planning scheme or development plan shall be deemed to be land needed for a public purpose within the meaning of the Land Acquisition Act, 1894. This provision only declares what is implicit in the scheme of the Act. Section 84 only contemplates a special class of cases in which the land which is included in a town planning

scheme is needed by the State Government for a public purpose other than that for which it is included in the scheme. In such a case the State Government may make a declaration to that effect and the provisions of the Land Acquisition Act, 1894, as modified' the Schedule apply. We are not concerned in this case with any such notification issued by the Government, nor has it any relevance to the question in issue.

One more contention which was apparently not raised on be- half of the first respondent before the High Court may be briefly referred to Counsel contends that ss. 53 and 67 in any event infringe Art. 14 of the Constitution and were on that account void. Counsel relies principally upon that part of the judgment in P. Vajravelu Mudaliar's case(1) which deals with the infringement of the equality clause of the Constitution by the impugned Madras Act. Counsel submits that it is always open to the State (1) [1965] 1 S.C.R. 614.

Government to acquire lands for a public purpose of a local authority and after acquiring the lands to vest them in the local ,authority. If that be done, compensation will be payable under the Land Acquisition Act, 1894, but says counsel, when land is acquired: 1 for a public purpose of a local authority under the provisions of the Bombay Town Planning Act the compensation which is payable is determined at a' rate prevailing many years before the date on which the notification under S. 4-of the Land Acquisition Act is issued. The argument is based on no solid foundation. The method of determining compensation in respect of lands which are subject to the town-planning schemes is prescribed in the Town Planning Act. There is no option under that Act to acquire the land either under the Land Acquisition Act or under the Town Planning Act. Once the draft town planning scheme is sanctioned, the- land becomes subject to the provisions of the Town Planning Act, and the final town- planning scheme being sanctioned, by statutory operation the title of the various owners is readjusted and the lands needed for a public purpose vest in the local authority. Land required for any of the purposes of a town-planning scheme cannot be acquired, otherwise than under the Act, for it is settled rule of interpretation of statutes that when power is given under a statute to do a certain thing in' a certain way the thing must be done in that way or not at all: Taylor v. Taylor(). Again it cannot be said that because it is possible for the State, if so minded, to acquire lands for a public purpose of a local authority, the statutory effect given to a town-planning scheme results in discrimination between persons similarly circumstanced. In P. Vajravelu Mudaliar's case(2) the Court struck down the acquisition on the ground that when the lands are acquired by the State Government for a housing scheme under the Madras Amending Act, the claimant gets much smaller compensation than the compensation he would get if the land or similar lands were acquired for the same public purpose under the Land Acquisition Act, 1894. It was held that the discrimination between persons whose lands were acquired for housing schemes and those whose lands were acquired for other public purposes could not be sustained on any principle of reasonable classification founded on intelligible differenti a which had a rational relation to the object sought to be achieved. One broad ground of distinction between P. Vajravelu Mudaliar's case(2) and this case is clear : the acquisition was struck down in P. Vajravelu Mudaliar's case(2) because the State Government could resort to one of the two methods of acquisition-the Land Acquisition Act, 1894, and the Land Acquisition (Madras Amendment) Act, 1961-and no guidance (1) [1875] 1 Ch.D. 426.

(2) [1965] 1 S.C.R. 614.

was given by the Legislature about the statute which should be resorted to in a given case of acquisition for a housing scheme. Power to choose could, therefore, be exercised arbitrarily. Under the Bombay Town Planning Act 1955, there is no acquisition by the State Government of land needed for a town-planning scheme. When the town Planning, Scheme comes into operation the land needed by a local authority vests by vitrue of s. 53(a) and' that-vesting for purposes of the guarantee under Art. 31(2) is deemed compulsory acquisition for a public purpose. To lands which are subject to the scheme, the provisions of ss. 53 and 67 apply, and the compensation is determined only in the, manner prescribed by the Act. There are therefore two separate provisions, one for acquisition by the State Gov- ernment, and the other in which the statutory vesting of land operates as acquisition for the purpose of town- planning by the local authority. The State Government can acquire the land under the Land Acquisition Act, and the local authority only under the Bombay Town Planning Act. There is no option to the local authority to resort to one or the other of the alternative methods which result in acquisition. The contention that the provisions of ss. 53 and 67 are invalid on the ground that they deny the equal protection of the laws or 'equality before the laws must,, therefore, stand rejected.

The High Court has apparently not considered the other ar- guments which were advanced at the Bar, and has observed that it was not necessary to consider those other contentions raised in the petition. As the petition has not been heard by the High Court in respect of the other contentions which the first respondent may choose to raise, we set aside the order passed by the High Court declaring s. 53 read with s. 67 insofar as it authorised acquisition of land by the local authority under a town-planning scheme, as violative of Art. 31(2) of the Constitution, and the acquisition of the first respondent's land under the City Wall Improvement Town Planning Scheme No. 5 as invalid. The appeal is allowed. The case is remanded to the High Court with a direction that it be dealt with and disposed of according to law. The order of costs passed by the High Court is set aside. There will be no order as to costs in this Court.

R.K.P.S. Appeal allowed.