Supreme Court of India
State Of Maharashtra & Anr vs Basantibai Mohanlal Khetan & Ors on 13 March, 1986
Equivalent citations: 1986 AIR 1466, 1986 SCR (1) 707
Author: E Venkataramiah
Bench: Venkataramiah, E.S. (J)

PETITIONER:
STATE OF MAHARASHTRA & ANR.

Vs.

RESPONDENT:
BASANTIBAI MOHANLAL KHETAN & ORS.

DATE OF JUDGMENT13/03/1986

BENCH:
VENKATARAMIAH, E.S. (J)
BENCH:
VENKATARAMIAH, E.S. (J)
THAKKAR, M.P. (J)

CITATION:
1986 AIR 1466 1986 SCR (1) 707
1986 SCC (2) 516 1986 SCALE (1)404
CITATOR INFO :
R 1988 SC1989 (12)
F 1990 SC 153 (11)

ACT:
Maharashtra Housing and Development Act , 1976 (Maharashtra Act XXVIII of 1977), sub-sections 3 & 4 of section 44, Constitutional validity of - Whether infringes the provisions of Articles 14, 19, 21, 31 and 300A of the Constitution - Whether provisions of section 44(3) and (4) are protected by Article 31(c) of the Constitution.

HEADNOTE:
One Mohanlal Fakirchand Khetan was the owner of a piece of land measuring 3.98.60 hectares bearing Survey No. 28 at village Bhushi in Maval Taluka of Pune District having purchased it under the sale deed dated January 18, 1966. The said land is, however, situated within the municipal limits of Lonavala town. Mohanlal Fakirchand Khetan died on May 18, 1976 leaving behind him his widow, respondent No. 1, and children respondents Nos. 2 to 5, as his heirs. In order to provide housing accommodation to economically weaker sections and to persons belonging to low income group and middle income group residing within Lonavala municipal limits and at the request of the Maharashtra Housing and

Area Development Authority, a notice was published by the State Government under the proviso to section 41(1) of the Maharashtra Housing and Development Act, 1976 in Government Gazette dated August 30, 1979 inviting objections to the proposed acquisition of lands including the land which originally belonged to Mohanlal Fakirchand Khetan. Pursuant to the said notice Chandrakant Mohanlal Khetan, respondent No. 3 herein lodged his protest on September 6, 1979. After considering the various objections received from different people including the objections filed by Chandrakant Mohanlal Khetan on behalf of himself and the other co-owners, the State Government published the notification under sub-section (1) of section 41 in its Gazette dated July 3, 1980. On the publication of the said notificction the land of Mohanlal Fakirchand Khetan vested in the State Government free from all encumbrances. On December 12, 1980 a notice was

708

issued under section 42(1) of the Act, to the holders of the lands to surrender and deliver possession of their lands to the Collector, Pune within a period of 30 days. In January 1981, the legal representatives of Mohanlal Fakirchand Khetan objected to the notice on the ground that Survey No. 28 of village Bhushi that is, the land belonging to them had not actually been notified in the notification published in the Gazette as it had been shown as lying in village Maval and not in village Bhushi. On discovering the error which had crept into the notification, on May 15, 1981 the State Government published a corrigendum making the requisite correction and thereafter issued a fresh notice on September 15, 1981 to the heirs of Mohanlal Fakirchand Khetan to deliver possession of the land bearing Survey No. 28 of village Bhushi situated within the Municipal limits of Lonavala. The widow and children of Mohanlal Fakirchand Khetan, respondents herein filed a writ petition in the High Court of Bombay questioning the validity of proceedings leading up to the issue of notification under section 41(1) of the Act and also the notification. The High Court negatived all the contentions raised by the respondents in the writ petition except the constitutionality of sub-section (3) and (4) of section 44 of the Act. It found that sub-section 3 and sub-section 4of section 44 of the Act were unreasonable and discriminatory and therefore ultra vires Article 14 of the Constitution. It found that the said provisions were not protected by Article 31C of the Constitution and further held that the impugned provisions of the legislation were otherwise unfair, unjust and unreasonable. The High Court also found that the deprivation of the property under sections 41 and 42 of the Act had not been done by authority of law. The High Court accordingly allowed the writ petition. Aggrieved by the decision of the High Court the State of Maharashtra and the Maharashtra Housing and Area Development Authority have filed this

appeal by special leave.

Allowing the appeal the Court,

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HELD : 1. Sub-sections 3 and 4 of the Maharashtra Housing and Development Act, 1976 are constitutionally valid. [730 F-G]

2.1 Every Act carries with it the presumption of constitutionality and unless a party aggrieved in a writ petition is able to discharge the said burden by placing adequate

709

material, the Court should not strike down a legislative provision particularly by the application of Article 14. [726 A-C]

In the instant case, sub-sections 3 and 4 of section 44 of the Act cannot be said to be discriminatory and violative of Article 14 of the Constitution, merely because in the case of lands in municipal area all the methods of valuation under the Land Acquisition Act, are not made available. [726 B-C]

2.2 The Act is not introduced for the benefit of areas like Bombay Corporation area and areas under the jurisdiction of other corporations and municipalities only. It is enacted for the whole State more than 90 per cent of which constitutes rural area. The potentialities of a land in a municiple area are far higher than the potentialities of land in a rural area. There is also no occasion under the Act for the State Government to treat one piece of land in a municipal area in one way and another piece of land in that area differently. All lands in a municipal area have to be valued in only one way that is in accordance with section 44(3) and (4) of the Act and all lands in rural areas have also to be valued only in one way and that is in accordance with the provisions of the Land Acquisition Act, 1894. There could have been two different Acts one for municipal areas and another for rural areas, each providing for a different method of valuation of land. Such a classification would have been un-exceptionable having regard to the object and purposes of the two Acts and the difference in the potentialities of the two types of lands. The method of capitalization is also one of the recognised methods which is adopted for the purpose of valuation of properties acquired under the Land Acquisition Act, 1894. All methods of valuation adopted under that Act are intended to achieve the same purpose, namely, determination of the market value of the land acquired. It is difficult to say whether any of them is superior to the other in the context of Article 14 of the Constitution and to hold that there will be discrimination, if any of them is not allowed to be availed of for purposes of valuation. [723 G-H; 724 A-E]

State of Gujarat v. Shri Shantilal Mangaldas & Ors., [1969] 3 S.C.R. 341; Parkash Amichand Shah v. State of Gujarat & Ors., [1986] 1 S.C.C. 581; Raja Vyricherla

Narayana Gajapatiraju v. The Revenue Divisional Officer, [1939] 66 IA 104 =
710
A.I.R. 1939 PC 98; Rustam Cavasjee Cooper v. Union of India [1970] 3 S.C.R. 530; Union of India & Anr. v. Smt. Shanti Devi & Ors., [1983] 4 S.C.C. 542; Special Land Acquisition Officer, Davangere v. P. Veerabhadrappa & Ors., [1984] 2 S.C.C. 120; Oriental Gas Co. Ltd. & Ors., v. State of West Bengal [1979] 1 S.C.R. 617 and Government of Bombay v. Morwanji Muncherji Cama, 10 Bom. LR 907 referred to.

2.3 Even granting for purposes of argument that subsections 3 & 4 of section 44 are violative of Article 14 of the Constitution, the said provisions receive the protection of Article 31C of the Constitution. [726 C-D]

3.1 Article 31C does not say that an Act there should be a declaration by the appropriate legislature to the effect that it is being enacted to achieve the object contained in Article 39(b). In order to ascertain whether it is protected by Article 31C, the Court has to satisfy itself about the character of the legislation by studying all parts of it. The question whether an Act is intended to secure the objects contained in Article 39(b) or not does not depend upon the declaration by the legislature but depends on its contents. [727 B-D]

3.2 The Maharashtra Housing and Development Act, 1976 makes provision for acquisition of private lands for providing sites for building houses or housing accommodation to the community. The title to the lands of the private holders which are acquired first vests in the State Government. Later on the land is developed and then distributed amongst the people as house sites. It also provides for reserving land for providing public amenities without which people cannot live there. Community centres, shopping complex, parks, roads, drains, play grounds, are all necessary for civic life and these amenities are enjoyed by all. That is also a kind of distribution within the meaning of Article 39(b) of the Constitution. The Act is brought into force to implement the directive principle contained in Article 39(b) and hence even if there is any infraction of Article 14 it is cured by Article 31C which is clearly attracted to the case. [727 E-F; 729 A-B]

Sanjeev Coke Manufacturing Company v. Bharat Coking Coal Ltd. & Anr., [1983] 1 S.C.R. 1000; His Holiness Kesavananda Bharati Sripadagalavaru v. State of Kerala, [1973] Supp. S.C.R.
711
1; Minerva Mills Ltd. & Ors. v. Union of India & Ors ., [1981] 1 S.C.R. 206 and State of Karnataka & Anr. etc. v. Shri Ranganatha Reddy & Anr. etc., [1978] 1 S.C.R. 641 referred to.

4. The Maharashtra Housing and Development Act, 1976 does not infringe Article 300A of the Constitution. Article 300A was not in force when the Act was enacted. Article 31

(1) of the Constitution which was couched in the same language was however in force. Article 31C gave protection to the Act even if it infringed Article 31. In this case, sub-section 3 and 4 of section 44 of the Act cannot be struck down on the ground that they are neither just nor fair or reasonable. Nothing contrary has been done by the authorities. Certain vacant lands lying inside a municipal area are being acquired for providing housing accommodation after paying an amount which is computed in accordance with a method considered to be a fair one by Courts. The purpose for which the lands are acquired is a public purpose. The owners are given opportunity to make their representations before the notification is issued. All the requirements of a valid exercise of the power of eminent domain even in the sense in which it is understood in the United States of America where property rights are given greater protection than what is required to be done in our country are fulfilled by the Act. [729 B-F]

5. Land ceiling laws, laws providing for acquisition of land for providing housing accommodation, laws imposing ceiling on urban property etc. cannot be struck down by invoking Article 21 of the Constitution.Article 21 essentially deals with personal liberty. It has little to do with the right to own property as such. This is not a case where the deprivation of property would lead to deprivation of life or liberty or livelihood. On the other hand land is being acquired to improve the living conditions of a larger number of people. To rely upon Article 21 of the Constitution for striking down the provisions of the Act amounts to a clear misapplication of the great doctrine enshrined in Article 21. [730 A-C]

6. Some problems presenting difficulty of valuation in the application of clause 5 of First Schedule to section 44(1) of the Act in regard to valuation of open lands situated in a city like Bombay or lands with building potentialities situated within the limits of big towns, are easily surmountable
712
problems of valuation in relation to individual lands and do not reflect on the constitutionality of the impugned provision. The concerned authorities entrusted with the function of making evaluation will doubtless resolve such problems as are likely to arise appropriately in accordance with law. [730 D-E]

Basanti Bhai Mohanlal Khetan & Ors. v. State of Maharashtra A.I.R. 1984 Bombay 366 reversed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1177 of 1984.

From the Judgment and order dated 8.11.1983 of the Bombay High Court in W.P. No. 4192 of 1981.

Ashok Desai, M. Ganesh, G.B. Sathe and A.S. Bhasme for the Appellants.

S.B. Bhasme, Mrs. V.D. Khanna, A.M. Khanwalkar and Anil Kumar Gupta for the Respondents.

The Judgment of the Court was delivered by VENKATARAMIAH, J. This appeal by special leave is filed against the judgment dated November 8, 1983 in Writ Petition No. 4192 of 1981 by which the High Court declared sub- section (3) and sub-section (4) of section 44 of the Maharashtra Housing and Development Act, 1976 (Maharashtra Act No. XXVIII of 1977) (hereinafter referred to as `the Act') as void and gave certain ancillary directions.

One Mohanlal Fakirchand Khetan was the owner of a piece of land measuring 3.98.60 hectares bearing Survey No.28 at village Bhushi in Maval taluka of Pune district having purchased it under the sale deed dated January 18, 1966. The said land is, however, situated within the municipal limits of Lonavala town. Mohanlal Fakirchand Khetan died on May 18, 1976 leaving behind him his widow, respondent No.1, and children, respondents Nos. 2 to 5 as his heirs. On August 1, 1978 the Maharashtra Housing and Area Development Authority (hereinafter referred to as `the authority' established under section 3 of the Act wrote a letter to the Municipal Council, Lonavala seeking information regarding its needs for providing housing accommodation to economically weaker sections and to persons belonging to low income group and middle income group residing within Lonavala municipal limits. In order to ascertain the demand for tenements, the Municipal Council of Lonavala issued two advertisements in local newspapers on August 3, 1978 and February 10, 1979 inviting applications for housing accommodation from the general public. After taking into consideration the representations made by the people and assessing there requirements, the municipal council informed the authority about the extent of land needed for providing housing accommodation for the people. The authority in its turn informed the State Government by its letter dated September 15, 1979 that an extent of 26 hectares of land was needed initially for providing accommodation for people within the limits of Lunavala Municipal Council and requested the State Government to issue a notification under sub-section (1) or section 41 of the Act. The proposal was processed by the Public Works Department and the Housing Department of the State Government and a notice was publsied under the proviso to section 41 (1) of the Act in Government Gazette dated August 30, 1979 inviting objections to the proposed acquisition. In that notice it was mentioned that the Government proposed to acquire the land which originally belonged to Mohanlal Fakirchand Khetan refer to above also. Pursuant to the said notice Chandrakant Mohanlal Khetan, respondent No.3 herein lodged his protest on September 6, 1979. After considering the various objections received from different people including the objections filed by Chandrakant Mohanlal Khetan on behalf of himself and the other co-owners the State Government published the notification under sub-section (1) of 41 in its Gazette dated July 3, 1980. On the publication of the said notification the land mentioned in it including the land of Mohanlal Fakirchand Khetan vested in the State Government free from all incumbrances. On December 12, 1980 a notice was issued under section 42(1) of the Act to the holders of the lands which had been notified under section 41(1) of the Act to surrender and deliver possession to the Collector, Pune within a period of 30 days. In January, 1981 the legal representatives of Mohanlal Fakirchand Khetan objected to the notice on the ground that

Survey No. 28 of village Bhushi, that is, the land belonging to them had not actually been notified in the notification published in the Gazette as it had been shown as lying in village Maval and not in village Bhushi. On discovering the error which had crept into the notification, on May 15, 1981 the State Government published a corrigendum making the requisite correction and thereafter issued a fresh notice on September 15, 1981 to the heirs of Mohanlal Fakirchand Khetan to deliver possession of the land bearing Survey No.28 of village Bhushi situated within the municipal limits of Lonavala. The widow and children of Mohanlal Fakirchand Khetan, respondents herein, thereafter filed the writ petition out of which this appeal arises on December 17, 1981 on the file of the High Court of Bombay questioning the validity of proceedings leading up to the issue of the notification under section 41(1) of the Act and also the notification.

The respondents contended in the writ petition filed by them inter alia : (1) that there was no material with the State Government to form an opinion about the need for issuing the notification under section 41(1) of the Act;

(ii) that the respondents had not been heard personally after they had filed the objections under the proviso to section 41(1) of the Act to the proposal of acquisition;

(iii) that the land of the respondents had actually not been notified; and (iv) that the provisions of sub-sections (3) and (4) of section 44 of the Act which contained the basis for the determination of compensation payable in respect of the land were violative of Article 14, Article 19 and Article 31 of the Constitution and therefore the said two sub-sections and the notification were liable to be declared as void. They also stated that the compensation payable to them was illusory in its quantum and the procedure prescribed for the acquisition was not fair and reasonable.

The petition was contested by the State Government and the Authority. The High Court negatived the contentions of the respondents namely that there was no material before the State Government for forming an opinion about the need for issuing the notification under section 41(1) of the Act, that the respondents had not been given adequate opportunity to submit their objections to the notification under the proviso to section 41(1) of the Act, and that the land belonging to them had not been included in the notification. The High Court found that the correspondence which had preceded the issue of the notification between the Government, the Authority, Municipal Council, Lonavala and the representations received by the Municipal Council, Lonavala from the public and the proceedings of the State Government constituted sufficient basis for the Gcvernment to form opinion about the need for issuing the notification under section 41(1) of the Act. The High Court found that although the names of the respondents had not been shown in the record of rights after the death of Mohanlal Fakirchand Khetan, respondent No.3 who was acting on behalf of all the heirs of Mohanlal Fakirchand Khetan had lodged his objections under proviso to section 41(1) of the Act and that he had also been personally heard by the Collector, Pune before the publication of the notification under sub-section (1) of section 41. The High Court, therefore, held that the respondents suffered no prejudice whatsoever on that account. The High Court further found that the description of the land of the respondents as the land bearing Survey No.28 of village Maval had been duly corrected by the issue of the corrigendum and that there was no doubt about the identity of the land of the respondents which was being acquired. After rejecting the above contention, the High Court

however proceeded to uphold the contention of the respondents as regards the constitutionality of sub-section (3) and sub-section (4) of section 44 of the Act. It found that sub-section (3) and sub-section (4) of section 44 of the Act were unreasonable and discriminatory and therefore ultra vires Article 14 of the Constitution. It found that the said provisions were not protected by Article 31C of the Constitution and further held that the impugned provisions of the legislation were otherwise unfair, unjust and unreasonable. The High Court found that the deprivation of the property under sections 41 and 42 of the Act had not been done by authority of law. The High Court accordingly allowed the writ petition. Aggrieved by the decision of the High Court the State of Maharashtra and the Authority have filed this appeal by special leave.

In the course of this appeal the parties have not questioned the correctness of the decision of the High Court as regards the facts which had been found against the respondents. The arguments were confined to the constitutional validity of sub-sections (3) and (4) of section 44 of the Act.

Before the Act was enacted in the year 1976 by the State H Legislature there were in force in the State of Maharashtra, the Bombay Housing Board Act, 1948, in the Bombay and Hyderabad areas of the State, the Madhya Pradesh Housing Board Act, 1950 in the Vidarbha area of the State, the Bombay Building Repairs and Reconstruction Board Act, 1969 and the Maharashtra Slum Improvement Board Act, 1973. All these Acts were repealed by section 188 of the Act and in their place, the Act was brought into force inter alia with the object of unifying, consolidating and amending the laws relating to housing, repairing and reconstructing dangerous buildings and carrying out improvement works in slum areas. The Preamble to the Act stated that before the Act was passed there were in existence various corporate and statutory bodies in the State for dealing with the problem of housing, accommodation, for repairing and reconstructing buildings in a bad state of disrepair and presenting a dangerous possibility of collapse, for carrying out improvemental works in slum areas, and for advancing loans for construction of houses. It took note of the fact that the programmes undertaken by these bodies were more or less complementary and there was considerable over lapping in their working or functioning and hence it was considered necessary and expedient to co-ordinate the housing programmes for an orderly development of the urban areas in the State. It was felt that it was necessary to provide for a more comprehensive and co-ordinated approach to the entire problem of housing development in a balanced manner, with sufficient attention to ecology, pollution, over-crowding and amenities required for leading a wholesome civic life, and that it was expedient to establish a single Corporate Authority for the whole State and establish new Boards for certain areas of the State to carry out the plans, programmes and other functions of the Authority. The Act was passed by the State Legislature for the aforesaid purposes. It received the assent of the President on April 25, 1977.

Chapter II of the Act provides for the establishment of the Authority and Boards. Section 3 of the Act authorises the State Government to establish the Authority by a notification in the Official Gazette for securing the objectives and purposes of the Act. The Authority is a body corporate having perpetual succession and a common seal with the powers to own property and to enter into contract. Section 18 of the Act provides for the establishment of Boards for implementing the provisions of the Act. Four Boards are constituted for the four areas of the State namely, Bombay area, Nagpur area, Aurangabad area and the Pune area. The functions, duties and powers of the Authority and the

Boards are set out in Chapter III of the Act. Section 28 which is in Chapter III of the Act provides that subject to the provisions of the Town Planning Act and the provisions of clauses (b) and (h) of sub-section (1) of section 12 and section 13 of the Metropolitan Act it is the duty and function of the Authority among others to prepare or direct th Boards to prepare and execute proposals, plans or projects for (i) housing accommodation in the State or any part thereof, sale, including transactions in the nature of hire-purchase of tenements in any building vested in, or belonging to, the Authority, letting or exchange of property of the Authority

(ii) development including provisions for amenities in areas within the jurisdiction of the Authority, (iii) clearance and re-development of slums in urban areas, (iv) development of peripheral areas of existing urban areas to ensure an orderly urban overspill, (v) development of commercial centres, (vi) development of new towns in accordance with the provisions of the Town Planning Act, (vii) development of lands vested in the Authority, etc. etc.. The functions of the Authority as stated above naturally involve acquisition of land and disposal of property of the Authority. Chapter V of the Act deals with the acquisition of land and disposal of property of the Authority. Section 41 of the Act which deals with the power of the State Government to acquire land reads thus :

> "41. (1) Where, on any representation from the Authority or any Board it appears to the State Government that, in order to enable the Authority to discharge any of its functions or to exercise any of its powers or to carry out any of its proposals, plans or projects, it is necessary that any land should be acquired, the State Government may acquire the land by publishing in the Official Gazette a notification to the effect that the State Government has decided to acquire the land in pursuance of this section :
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> Provided that, before publishing such notification, the State Government shall, by notice published in the Official Gazette and served in the prescribed manner, call upon the owner of, or any other person who, in the opinion of that Government, may be interested in, such land to show cause, why it should not be acquired, and after considering the cause, if any, shown by the owner or any other person interested in the land, the State Government may pass such order as it thinks fit. (2) The acquisition of land for any purpose mentioned in sub-section (1) shall be deemed to be a public purpose.
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> (3) Where a notification as aforesaid is published in the Official Gazette, the land shall, on and from the date on which the notification is so published, vest absolutely in the State Government free from all encumbrances."

Section 42 of the Act confers power on the State Government to require the person in possession of land which is vested under sub-section (3) of section 41 of the Act to surrender or deliver possession thereof to the State Government. Section 43 of the Act provides that every person having any interest in any land acquired under Chapter V of the Act would be entitled to receive from the State Government an amount as provided by the provisions contained in Chapter V, Sections 44 to 49 of the Act deal with acquisition of lands in municipal areas and section 50 deal with acquisition of lands in rural areas. The land situated in any area within the jurisdiction of any Municipal

Corporation or Municipal Council is considered as land lying in a municipal area for purposes of determination of compensation and the land outside the jurisdiction of a Municipal Corporation or a Municipal Council is treated as land in a rural area for the said purpose. Section 44 which is material for purposes of this case which lays down the basis for determination of the amount for acquisition of lands in municipal areas read thus :

> "44. (1) Where any land including any building. hereon is acquired and vested in the State Government under this Chapter and such land is situated in any area within the jurisdiction of any Municipal Corporatlon or Municipal Council, the A State ch acquisition an amount which shall be determined in accordance with the provisions of this section.
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> (2) Where the amount has been determined with th concurrence of the Authority by agreement between the State Government and the person to whom it is payable, it shall be determined and paid in accordance with such agreement.
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> (3) Where no such agreement can be reached, the amount payable in respect of any land acquired shall be an amount equal to one hundred times the net average monthly income actually derived from such land, during the period of five consecutive years immediately preceding the date of publication of the notification referred to in section 41 as may be determined by the Land Acquisition Officer.
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> (4) The net average monthly income referred to in sub-section (3) shall be calculated in the manner and in accordance with the principles set out in the First Schedule.
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> (5) The Land Acquisition Officer shall, after holding an inquiry in the prescribed manner, determine in accordance with the provisions of sub-section (4) the net average monthly income actually derived from the land. The Land Acquisition Officer shall then publish a notice in a conspicuous place on the land and serve it in the prescribed manner calling upon the owner of the land and every person interested therein to intimate to him, before a date specified in the notice, whether such owner or person agrees to the net average monthly income actually derived from the land as determined by the Land Acquisition Officer. If such owner or person does not agree, he may intimate to the Land Acquisition Officer before the specified date what amount he claims to be such net average monthly income.
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> (6) Any person, who does not agree to the net average monthly income as determined by the Land Acquisition Officer under sub-section (5) and the amount for acquisition to be paid on that basis and claims a sum in excess of that amount may prefer an appeal to the Tribunal, within thirty days from the date specified in the notice referred to in sub-section (5).
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> (7) On appeal, the Tribunal shall, after hearing the appellant, determine the net average monthly income and the amount to be paid on that basis and its

determination shall be final and shall not be questioned in any court.

Section 45 of the Act provides for apportionment of amount payable on acquisition amongst different persons claiming interest in the amount of compensation. Section 46 of the Act lays down the procedure for payment of amount for acquisition or for depositing of same in the Court. Section 47 - of the Act lays down the powers of the Land Acquisition Officer in relation to determination of the amount for acquisition and section 48 of the Act provides for payment of interest on that amount at the rates specified therein, by the State Government. The Land Acquisition Officer is appointed by the State Government under the powers conferred by section 49 of the Act. Section 50 of the Act which contains the provisions relating to the basis for determination of amount for acquisition of lands in rural areas and the procedure to be followed in that case reads thus :

> "50. (1) Where any land (including any building thereon) is acquired and vested in the State Government under this Chapter and such land is situated in any area outside the jurisdiction of any Municipal Corporation or Municipal Council (in this Chapter referred to as 'a rural area'), the State Government shall pay for such acquisition an amount, which shall be determined in accordance with the provisions of this section. (2) Where the amount has been determined, with the concurrence of the Authority, by agreement between the State Government and the person to whom it is payable it shall be determined and paid in accordance with such agreement.
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> (3) Where no such agreement can be reached, the State Government shall refer the case to the Collector, who shall determine the amount for acquisition in accordance with the principles for determining compensation laid down in the Land Acquisition Act, 1894, and the provisions of that Act (including provisions for reference to Court and appeal) shall apply thereto mutatis mutandis as if the land has been acquired and compensation had to be determined, apportioned and paid under the provisions of that Act, subject to the modifications that reference in section 23 and 24 of that Act to the date of publication of the notification under section 4, sub-section (1) were reference to the date on which the notice under the proviso to sub-section (1) of section 41 of this Act is published, and the references to the time or date of the publication of the declaration under section 6 of that Act were references to the date of publication of the notification refer to in sub-section (3) of section 41 of this Act in the Official Gazette.
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> Explanation - In this section, "Collector" means the Collector of a District and includes any officer specially appointed by the State Government or by the Commissioner to perform the functions of a Collector under the Land Acquisition Act, 1894".

Wherever the amount payable on acquisition is settled by agreement there is no distinction between a land in a municipal area or a land in a rural area. The point of distinction which is alleged to be discriminatory between the two types of land lies in the method of computation of the amount payable on acquisition where there is no agree- ment. Whereas in the case of the land situated in a

rural areas section 50 of the Act provides that the valuation of the land shall be made in accordance with the provisions contained in section 23 and section 24 of the Land Acquisition Act, 1894 in the case of the land situated in a municipal area the amount payable has to be calculated according to sub-section (3) of section 44 of the Act. Section 44(3) of the Act provides that the said amount shall be equal to one hundred times the net average monthly income actually derived from such land during the period of five consecutive years immediately preceding the date of publication of the notification referred to in section 41 of the Act as may be determined by the Land Acquisition Officer. Under sub-section (4) of section 44 of the Act the net average monthly income referred to in sub-section (3) of section 44 is required to be calculated in the manner and in accordance with the principles set out in the First Schedule to the Act. The First Schedule to the Act reads thus :

> FIRST SCHEDULE (See sub-section (1) of section 44) Principles for determination of the net average monthly income :-
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> 1. The land Acquisition Officer shall first determine the gross rent actually derived by the owner of land acquired, including any building on such land, during the period of five consecutive years referred to in sub-section (3) of section
>
> 44.
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> 2. For such determination, the Land Acquisition Officer may hold any local inquiry and obtain, if necessary, certified copies of extracts from the property tax assessment books of the local authority concerned showing the rental value of such land.
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> 3. The net average monthly income referred to in sub-section (3) of section 44 shall be sixty per cent, of the average monthly gross rent which shall be one-sixtieth of the gross rent during the five consecutive years as determined by the Land Acquisition Officer under paragraph 1.
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> 4. Forty per cent, of the gross monthly rental referred to above shall not be taken into consideration in determining the net average monthly income but shall be deducted in lieu of the expenditure which the owner of the land would normally incur for payment of any property tax to the local authority, for collection charges, income tax or bad debts as well as for works of repair and maintenance of the building, if any, on the land.
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> 5. Where the land or any portion thereof has been unoccupied, or the owner has not been in receipt of any rent for the occupation of the land during the whole or any part of the said period of five years, the gross rent shall be taken to be the income which the owner would in fact have derived if the land had been leased out for rent during the said period, and for this purpose the rent actually derived from the land during a period prior or subsequent to the period during which it remained vacant or from similar land in the vicinity shall be taken into account."

The High Court does not say that the amount payable under sub-sections (3) and (4) of section 44 of the Act for the land situated in municipal area is illusory. It however says that the method of capitalization set out in section 44(3) and (4) of the Act being the only method out of the several methods of valuing the land under the Land Acquisition Act, 1894 the owner of land in a municipal area is placed in a less advantageous position and is denied equality of treatment. In order to appreciate this ground of objection, it is necessary to examine whether the classification of the land under the Act into the land in municipal area and the land in rural area for purposes of determining the amount payable on acquisition is bad. It is not denied that the land in municipal area commands various advantages which are not available in the case of land in rural areas. The Act is not introduced for the benefit of areas like Bombay Corporation Area and area under the jurisdiction of other Corporations and municipalities only. It is enacted for the whole State more than 90 per cent of which constitutes rural area. The potentialities of a land in a municipal area are far higher than the potentialities of land in a rural area. There is also no occasion under the Act for the State Government to treat one piece of land in a municipal area in one way and another piece of land in that area differently. All lands in a Municipal area have to be valued in only one way that is in accordance with section 44(3) and (4) of the Act and all lands in rural areas have also to be valued only in one way and that is in accordance with the provisions of the Land Acquisition, 1894. There could have been two different Acts one for municipal areas and another for rural areas, each providing for a different method of valuation of land. Such a classification would have been unexceptionable having regard to the object and purposes of the two Acts and the difference in the potentialities of the two types of lands. It may be noticed that in State of Gujarat v. Shri Shantilal Mangaldas & Ors., [19691 3 S.C.R. 341 this Court has upheld the classification of land under the same Act for purposes of valuation at different stages of town planning. This view is adopted and followed in Prakash Amichand Shah v. State of Gujarat 6 Ors., [1986] 1 S.C.C. 581, recently. The method of capitalization is also one of the recognised methods which is adopted for the purpose of valuation of properties acquired under the Land Acquisition Act, 1894. All methods of valuation adopted under the Act are intended to achieve the same purpose, namely, determination of the market value of the land acquired. It is difficult to say whether any of them is superior to the other in the context of Article 14 of the Constitution and to hold that there will be descrimi- nation, if any of them is not allowed to be availed of for purposes of valuation. In the case of agricultural lands, the method of capitalization is followed by our Courts for several years (See Raja Vyricherla Narayana Gajapatirai v. The Revenue Divisional Officer. [1939] 66 I.A. 104, A.I.R. 1939 P.C. 98, Rustom Cavasjee Cooper v. Union of India, [1970] 3 S.C.R. 530, Union of India & Anr. v. Smt. Shanti Devi & Ors., [1983] 4 S.C.C. 542, Special Land Acquisition Officer, Davangere v. P. Veerabhadrappa & Ors., [1984] 2 S.C.C. 120 and Oriental Gas Co. Ltd. & Ors. v. State of West Bengal, [1979] 1 S.C.R. 617). No doubt, such calculation has been made by adopting varying methods, that is, from 33-1/3 times to 8 times the annual net return as explained in Shantidevi's case (supra). Such variation has taken place on account of the variation of the rate of interest on gilt- edge securities as pointed out in that case. The higher the rate of interest, the lower would be the number of years' purchase adopted by courts to determine the market value of the property acquired.

A reading of the rules contained in the First Schedule to the Act shows that they lay down fairly appropriate principles to be followed in determining the net average monthly income. The net average monthly income referred to in sub-section (3) of section 44 of the Act is required to be

determined in accordance with paragraph 3 of the First Schedule to the Act at sixty per cent of the average monthly gross rent which shall be one sixtieth of the gross rent during the five consticutive years as determined by the Land Acquisition Officer under paragraph 1 of the First Schedule. In paragraph 7 of its judgment the High Court observes that the Act does not give any indication as to why the amount of forty per cent out of the gross rental is required to be deducted. This is an incorrect statement. Paragraph 4 of the First Schedule gives the reason for such deduction. It says that forty per cent of the gross monthly rental shall not be taken into consideration in determining the net average monthly income but shall be deducted in lieu of the expenditure which the owner of the land would normally incur for payment of any property tax to the local authority, for collection charges, income tax or bad debts as well as for works of repair and maintenance of the building if any on the land. In the case of agricultural lands many times one- half of the annual yield is deducted towards cultivation charges, land revenue, cost of personal labour etc. before determining the net annual yield for purposes of capitalization. In the instant case the Act directs payment of 100 times the net monthly income, that is, 8 1/3 times the net annual income from the property as the amount payable on its acquisition which cannot be considered to be too low having regard to the rate of interest on safe investments which is prevailing from 1976-77 onwards. In Oriental Gas Co's (supra) eight times the net annual income was considered to be adequate compensation by this Court. The High Court erred in relying upon the decision in Government of Bombay v. Morwanji Muncherji Cama, 10 Bom. L.R. 907, a decision rendered at the commencement of this century to say that 16 2/3 years purchase of unsecured annual ground rent as the basis for determination of market value by capitalization method in recent years. It may incidentally be mentioned that even that decision does not lay down that the valuation of vacant land by the application of the rule of capitalization is not a reasonable method. Paragraph 5 of the First Schedule to the Act provides that method of valuation of unoccupied lands or lands where the owner is not in receipt of rents. The High Court while deciding the case before it has overlooked the principle that every Act carries with it the presumption of constitutionality and unless the petitioner is able to discharge the said burden by placing adequate material, the Court should not strike down a legislative provision particularly by the application of Article 14. We fail to see any hostile discrimination in the instant case which will make sub-section (3) and sub-section (4) of section 44 of the Act violative of Article 14 of the Constitution merely because in the case of lands in municipal area all the methods of valuation under the Land Acquisition Act are not made available.

Even granting for purposes of argument that sub- sections (3) and (4) of section 44 are violative of Articlel 14 of the Constitution, we are of the view that the said provisions receive the protection of Article 31C of the Constitution. We shall proceed to test the validity of the argument keeping aside for the time being the observations in Sanjeev Coke Manufacturing Company. v. Bharat Coking Coal Ltd. & Anr. [1983] 1 S.C.R. 1000. Let us proceed on the basis that after His Holiness Kesavananda Bharati Sripadagalavaru v. State of Kerala [1973] Supp. S.C.R. 1. and Minerva Mills Ltd & Ors. v. Union of India & Ors. [1981] 1 S.C.R. 206, Article 31C reads as "notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing the principles specified in clause (b) or clause (c) of Article 39 shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14 or Article 19. Clause (b) of Article 39 of the Constitution which is relevant for our purpose states that the State shall, in particularly direct its policy towards securing that the ownership and control of material

resources of the community are so distributed as best to subserve common good. The High Court rightly observed at the end of paragraph 14 of its judgment following Sanjeev Coke Manufacturing Company's case (supra) that the expression 'material resources' of the community' would cover the lands held by private owners also. But it however erred thereafter in reaching the conclusion that Article 31C was not applicable to the case for the reason that (i) the Act did not contain a declaration that it was enacted to give effect to Article 39(b), (ii) by undertaking development of commercial centres while providing housing accommodation, the Authority was expected to make profits and hence following that the power to acquire was not conferred with a view to achieving the directive principles in Article 39(b), and (iii) the object of enacting the legislation was obviously to provide wholesome civic life to the citizens and not distribution of material resources. We are of the view that each one of these reasons is invalid and erroneous. First Article 31C does not say that in an Act there should be a declaration by the appropriate legislature to the effect that it is being enacted to achieve the object contained in Article 39(b). In order to ascertain whether it is protected by Article 31C, the Court has to satisfy itself about the character of the legislation by studying all parts of it. The question whether an Act is intended to secure the objects contained in Article 39(b) or not does not depend upon the declaration by the legislature but depends on its contents. We have already dealt with the objects of the Act with which we are concerned in this case. It inter alia makes provision for acquisition of private lands for providing sites for building houses or housing accomodation to the community. The title to the lands of the private holders which are acquired first vests in the State Government. Later on the land is developed and then destributed amongst the people as house sites. It also provides for reserving land for providing public amenities without which people cannot live there. Community centres, shopping complexes, parks, roads, drains, play grounds, are all necessary for civic life and there amenities are enjoyed by all. That is also a kind of distribution. In State of Karnataka & Anr. etc. v. Shri Ranganatha Reddy & Anr.Etc. [1978] 1 S.C.R. 641 at pages 69 dealing with the question whether nationalisation of bus transport was covered by Article 39(b), Justice Krishna Iyer has observed thus :

> "The next question is whether nationalisation can have nexus with distribution. Should we assign a narrow or spacious sense to this concept? Doubtless, the latter, for reasons so apparent and eloquent. To 'distribute'even in its simple dictionary meaning, is to 'allot, to divide into classes or into groups and distribution' embraces 'arrangement, classification, placement, disposition, apportionment, the way in which items, a quantity, or the like, is divided or apportioned; the system of dispersing goods throughout a community' (See Random House Dictionary). To classify and allocate certain industries or services or utilities or articles between the private and the public sectors of the national economy is to distribute those resources. Socially conscious economists will find little difficulty in treating nationalisation of transport as a distributive process for the goods of the community. You cannot condemn the concept of nationalisation in our Plan on the score that Article 39(b) does not envelope it. It is a matter of public policy left to legislative wisdom whether a particular scheme of takeover should be undertaken.
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> Two conclusions strike as quintessential. Part IV, especially Article 39(b) and (c), is a furturistic mandate to the state with a message of transformation of the economic

> and social order. Firstly, such change calls for collaborative effort from all the legal institutions of the system: the legislature, the judiciary and the administrative machinery. Secondly and consequentially, loyalty to the high purpose of the Constitution, viz. social and economic justice in the context of material went and utter inequalities on a massive scale, compass the court to ascribe expansive meaning to the pregnant words used with hopeful foresight, not to circumscribe their connotation into contradiction of the objectives inspiring the provision. To be Pharisaic towards the Constitution through ritualistic construction is to weaken the socialspiritual thrust of the founding fathers' dynamic faith."

These observations are noted with approval by another Constitution Bench in Sanjeev Coke Manufacturing Company's case (supra). It is true that when public money is invested on the development of land, the Authority is expected to reimburse itself to some extent. The Authority, however, is expected to conduct its operations as a public utlity concern and not as a private land development agency. The High Court erred in taking a very narrow view of the objects of the Act and the functions of the Authority under it. We are satisfied that the Act is brought into force to implement the directive principle contained in Article 39(b) and hence even if there is any infraction of Article 14 it is cured by Article 31C which is clearly attracted to the case.

We next proceed to consider a contention lacking in merit which has unfortunately been accepted by the High Court namely that the Act infringes Article 300A of the Constitution. Article 300A was not in force when the Act was enacted Article 31(1) of the Constitution which was couched in the same language was however in force. Article 31C gave protection to the Act even if it infringed Article 31. Let us assume that the action of acquiring private properties should satisfy now Article 300A also because the proceedings to acquire the land started in the instant case after Article 300A came into force. Let us also assume that a law should be fair and reasonable and not arbitrary and that a law should also satisfy the principle of fairness in order to be effective and let us also assume that the said principle of fairness lies outside Article 14. We are assuming all these, without deciding these questions, since the action can be upheld even if all these assumptions are well-founded. What is it that is being done now in the instant case? Certain vacant lands lying inside a municipal area are being acquired for providing housing accomodation after paying an account which is computed in accordance with a method considered to be a fair one by courts. The purpose for which the lands are acquired to be is a public purpose. The owners are given opportunity to make their representations before the notification is issued. All the requirements of a valid exercise of the power of eminent domain even in the sense in which it is understood in the United States of America where property rights are given greater protection than what is required to be done in our country are fulfilled by the Act. Yet the High Court, with respect, grievously erred in holding that even assuming that the provisions of Chapter V of the Act are protected from challenge under Articles 14, 19 and 31 of the Constitution due to the applicability of Article 31C of the Constitution still the impugned provisions of the Act are required to be struck down as the said provisions are neither just nor fair or reasonable.

Then in the end we have to consider the argument based on Article 21 of the Constitution which is urged on behalf of the respondents. Article 21 essentially deals with personal liberty. It has little to

do with the right to own property as such. Here we are not concerned with a case where the deprivation of property would lead to deprivation of life or liberty or livelihood. On the other hand land is being acquired to improve the living conditions of a large number of people. To rely upon Article 21 of the Constitution for striking down the provisions of the Act amounts to a clear misapplication of the great doctrine enshrined in Article 21. We have no hesitation in rejecting the argument. Land ceiling laws, law providing for acquisition of land for providing housing accommodation, laws imposing ceiling on urban property etc. cannot struck down by invoking Article 21 of the Constitution.

Before concluding we may refer to one other point. Our attention has been called to the fact that some problems presenting difficulty or valuation will have to be faced in the application of clause 5 of First Schedule (See Section 44 (1) in regard to valuation of open lands situated in a city like Bombay or lands with building potentialities situated within the limits of big towns. These are easily surmountable problems of valuation in relation to individual lands and do not reflect on the constitutionality of the impugned provisions. The concerned authorities entrusted with the function of making evaluation will doubtless resolve such problems as are likely to arise appropriately in accordance with law. Be that as it may the constitutionality of the impugned provisions remains unimpaired.

In the result we hold that the judgment of the High Court is liable to be set aside to the extent that sub- sections (3) and (4) of Section 44 of the Act have been held unconstitutional and struck down. We wish to make it clear that the findings recorded against the writ petitioners on other points remain unaffected by this judgment. We accodingly allow this appeal, uphold the provisions contained in sub-sections (3) and (4) of section 44 of the Act and dismiss the writ petition filed by the respondents. There shall, however, be no order as to costs.

S.R. Appeals allowed.