Supreme Court of India
Prakash Amichand Shah vs State Of Gujarat & Ors on 20 December, 1985
Equivalent citations: 1986 AIR 468, 1985 SCR Supl. (3)1025
Author: E Venkataramiah
Bench: Reddy, O. Chinnappa (J), Venkataramiah, E.S. (J), Eradi, V. Balakrishna (J), Misra, R.B. (J), Khalid, V. (J)

PETITIONER:
PRAKASH AMICHAND SHAH

Vs.

RESPONDENT:
STATE OF GUJARAT & ORS.

DATE OF JUDGMENT20/12/1985

BENCH:
VENKATARAMIAH, E.S. (J)
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VENKATARAMIAH, E.S. (J)
REDDY, O. CHINNAPPA (J)
ERADI, V. BALAKRISHNA (J)
MISRA, R.B. (J)
KHALID, V. (J)

CITATION:
1986 AIR 468 1985 SCR Supl. (3)1025
1986 SCC (1) 581 1985 SCALE (2)1437
CITATOR INFO :
RF 1986 SC1466 (11)
F 1987 SC 493 (3)
D 1989 SC1796 (8)

ACT:

Bombay Town Planning Act, 1954 Sections 32 & 53 - Whether the Town Planning Scheme No. VIII (Umarwada) published under the Act is violative of Articles 14, 19(1)(f) and 31 of the Constitution of India.

Precedents, scope, nature and authority of - Duty of a Constitution Bench to consider the effect of the precedent, explained - The binding nature of Shantilal Mangaldas's case.

Statutes - Act not providing for an appeal from some of the decisions under a particular section while providing an appeal against some other decisions under the very same section Whether could be said to be discriminatory and unconstitutional.

Town Planning Schemes under the Bombay Town Planning Act of 1954 not providing for any solatium while such solatium is available under the Land Acquisition Act - Whether for that reason it could be said to be

discriminatory.

HEADNOTE:

Land admeasuring in all 49 acres 22 gunthas bearing Survey Nos. 75, 81, 83, 84 and 86 situated at Surat City in the State of Gujarat originally belonged to one Ladli Begum. She granted a lease in respect of the said land in favour of a company called Nawab of Belha Spinning, Weaving and Manufacturing Mills, Ltd. under a document dated November 15, 1882 for a period of 99 years with effect from November 1, 1881 with a right for renewal for a further period of 99 years. the company which had taken the land on lease executed a sub-lease in respect of 38 acres 2 gunthas out of the entire plot of land on March 29, 1881 in favour of one Dr. Nassurwanji N. Khambata for the residuary period of 99 years without the right of renewal. This sub-lease was to expire on October 31, 1980. Under a document dated April 30, 1928 Surat Parsi Panchayat Board acquired the lease in respect of the entire 38 acres 2 gunthas, from a lady who was the daughter of one Rustamji who had acquired the rights of Dr. Nassurwanji N. Khambata. On May 24, 1937 the appellant Prakash Amichand Shah
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purchased the right, title ant interest of the head lessee, that is Nawab of Belha Spinning, Weaving and Manufacturing Mills Ltd. in an auction sale held in the course of liquidation proceeding of the said company. The appellant thus became the head lessee of the entire plot of land with the rights specified in the document dated November 15, 1882. Surat Parsi Panchsyat Board which had Acquired the right of the sub-lessee in respect of 38 acres 2 gunthas created sub-lease in respect of 34 acres 4 gunthas in Survey in Survey Nos. 75, 81 and 32 in favour of the Surat Municipal Corporation under a document dated March 30, 1963 relating the sub-lessee's right in the remaining land.

The Surat Borough Municipality passed a resolution on August 2, 1963 to prepare a Draft Development Plan for the entire area within the municipal limits of Surat city in accordance with the Development Regulations issued by it with the object of checking haphazard growth of he city. Pursuant to the said resolution, a notification was issued on April 3, 1965 under section 4 of the Land Acquisition Act, 1894 to acquire a portion of the entire plot of land admeasuring 34 acres 4 gunthas in Survey Nos. 75, 81 and 82 for the purpose of setting up an industrial estate by the Surat Borough Municipality , Surat which involved the shifting of Municipal Workshops and Central Stores. On June 22, 1965 the Surat Borough Municipality made a declaration declaring its intention to prepare a Town Planning Scheme, being the Town Planning Scheme No. VIII of Umarwada in respect of the locality called Umarwada under section 22 of

the L.A. Act. Since the Surat Municipality could not make and publish the draft scheme even within the time allowed under the Bombay Town Planning Act, under sub-section 2 of section 23 of the Act the Collector of Surat was authorised by the State Government to make and publish the draft scheme dated July 4, 1967 the land admeasuring 1,37,961 sq. meters out of the aforesaid land of which the appellant was the head lessee was shown as reserved for the Surat Municipality. The appellant filed his objection to the proposed reservation pointing out therein that he himself needed the land for expansion of his business and for construction of homes for his employees. He also stated that the Surat Municipality had acted mala fide in securing the reservation of such a large piece of land in its favour. The Government of Gujarat after overruling the objection ultimately granted sanction to the draft scheme prepared by the collector of Surat b y its notification dated May 10, 1968. When one Mr. M.C. Makwana appointed as the Town Planning Officer by the Government on February 28, 1969 entered upon his functions under section 32 of the Act, the appellant again filed his objection to reservation of his
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land for the alleged purpose of the Municipal Corporation. In addition the appellant also claimed compensation in respect of the said 38 acres 2 gunthas at the rate of Rs.50 per sq. yard alleging that the land in the vicinity had been sold at that rate and claimed towards his share two-thirds of the total compensation. Then on June 30, 1970 the Town Planning Officer issued a notice expressing his intention to acquire the land in question admeasuring 1,37,961 per sq. meter. Aggrieved by the said decision, the appellant filed an appeal before the Board of appeal. The Board of Appeal held that disputes regarding compensation of lands taken away for the purpose of the scheme being not within the scope of section 33 (1) (xiii) of the Act the decision of the Town Planning Officer on those questions was not appealable under section 34 of the Act. Aggrieved by the decision of the Board the appellant filed a writ petition before the High Court of Gujarat which was dismissed. The Constitution questions raised in the writ petition could not be decided by the High Court as emergency was then in force in the country and the rights guaranteed under Articles 14, 19 and 31 of the Constitution of India on which the appellant's contentions were based remained suspended at that time. The High Court, however, referred to the decision of this Court in State of Gujarat v. Shri Shantilal Mangaldas, [1969] 3 S.C.R. 341 in which the validity of the Bombay Town Planning Act had been upheld . Aggrieved by the judgment of the High Court the appellant filed this appeal by special leave. The appeal was heard by a Bench of this Court consisting of A.C. Gupta and A.P. Sen JJ, which, by its judgment dated July 24, 1981 reported as Prakash Amichand Shah v. State of Gujarat. [1982] 1 S.C.R. 81, came

to the conclusion that the High Court was right in its finding that he decision of the Town Planning Officer determining the amount of compensation in the appellant's case was not appealable. However, the Court felt that the case should be placed before the Constitution Bench for hearing the question relating to the constitutional validity of the Act. Hence the appellant's case before the Constitution Bench.

Dismissing the appeal, the Court

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HELD: 1.1 There is no constitutional infirmity in the provision of the Bombay Town Planning Act, 1954 and there is no ground to declare the Act which has been upheld in Shantilal Mangaldas's about 17 years ago as unconstitutional now and to unsettle all settled transactions drawing inspiration from certain vague observations made in game subsequent decisions. [1056 D-E; 1060 B-C]

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1.2 The Bombay Town Planning Act is not bad for not extending the procedure of the Land Acquisition Act, 1894 to the proceedings under the Town Planning Scheme. It cannot be struck down on the ground, that if the Land Acquisition Act, 1894 had been applied, the appellant would have had the benefit of the machinery provided under section 18 and 54 of the Acquisition Act ant since it is not available under the procedure prescribed by the Act in the case of lands taken under section 53 thereof the Act is discriminatory. [1057 D-E]

2.1 The object of the Bombay Town Planning Act is not just acquiring a bit of land here or a bit of land there for some public purpose. It consists of several activities which have as their ultimate object the orderly development of an urban area. It envisages the preparation of a development plan, allocation of land for various private and public uses, preparation of a Town Planning Scheme and main provisions for future development of the area in question. On the final Town Planning Scheme coming into force under section 53 of the Act there is an automatic vesting of all lands required by the local authority. It is not a case where the provisions of the Land Acquisition Act, 1894 have to be set in motion either by the Collector or by the Government. The divesting of title takes place statutorily. Section 71 of the Act provides for payment of compensation to the owner of an original plot who is not provided with a plot in the final scheme, or if the contribution to be levied from him under section 66 of the Act is less than the total amount to be deducted therefrom under any of the provisions of the Act. Section 73 of the Act provides for payment due to be made to any person by the local authority by adjustment of account as provided in the Act Section 32 of the Act lays down the various duties and powers of the Town Planning Officer which he has to discharge and exercise for the benefit of the whole community. All his functions

are parts of the social and economic planning undertaken and executed for the benefit of the community at large and they cannot be done in isolation. When such functions happen to be integral parts of a single plan which in this ca e happens to be an urban development plan, they have to be viewed in their totality and not as individual acts directed against a single person or a few persons. It is quite possible that when statutory provisions are made for that purpose, there would be some difference between their impact on rights of individuals at one stage and their impact at another stage. [1046 C-H; 1047 A]

2.2 In this very Act, there are three types of taking over of lands-first under section 11, secondly under section 53 and

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thirdly under section 84 of the Act, each being a part of a single scheme but each one having a specific object and public purpose to be achieved. While as regards the determination of compensation lt may be possible to apply the provisions of the Land acquisition Act, 1894 with some modification as provided in the Schedule to the Act in the case of lands acquired either under section 11 or under section 84 of the Act, ii the case of lands which are needed for the local authority under the owners Planning Scheme which authorises allotment of reconstituted plots to persons from whom original plots are taken, it is difficult to apply the provisions of the Land Acquisition Act, 1894. The provisions of section 32 and the other financial provisions of the Act provide for the determination of the cost of the scheme, the development charges to be levied and contribution to be made by the local authority etc. It is only after all that exercise is done the money will be paid to or demanded from the owners of the original plots depending on the circumstances governing each case. If in the above context, the Act has made special provision under section 67 to 71 of the Act for determining compensation payable to the owners of original plots who do not get the reconstituted plot 6 lt can not be said that there has been any violation of Article 14 of the Constitution. Even there the market value of the land taken 18 ¯ t lost sight of and hence no violation of Article 31(2) of the Constitution either. [1047 A-E]

State of Gujarat v. Shri Shantilal Mangaldas & Ors., [1969] 3. S.C.R. 341., The Zandu Pharmaceutical Works Ltd. v. G.J. Desai & Ors. C.A.No. 1034 of 1967 decided ib 28th August 1969., Maneklal Chhotalal & Ors. v. M.G. Makwana & Ors., [1967] 3 S.C.R. 65 explained an applied.

3.1 A decision ordinarily is a decision on the case before the Court, while the principle underlying the decision would be bindings as a precedent in a case which comes up for decision subsequently. Hence, while applying the decision to a later case, the Court which 18 dealing with lt should carefully try to certain the true principle

laid down by the previous decision. A decision often takes its colour from the questions involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. [1052 C-E]

3.2 Expressions like "virtually overruled" or "in substance overruled" are expression of inexactitude. In such circumstances, it is the duty of a Constitution Bench of the Supreme Court which has to consider the effect of the precedent in question to read

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it over again ant to form its own opinion instead of wholly relying upon the gloss placed on it in some other decision. An inappropriate purpose for which a precedent is used at a later date does not take away its binding character as a precedent. In such cases there is good reason to disregard the later decision. Such occasions in judicial history are not rare. The history of the law relating to the right of labourers to strike in a factory of one such instance. [1055 E-F; H; 1056A]

3.3 Therefore, as long as the Bombay Town Planning Act, 1954 which was upheld by the Supreme Court in Shantilal Mangal das's has not been struck town by this Court in any subsequent decision it would be wholly unjust to declare it inferentially as having been declared as void in a subsequent decision which depends mostly on the reasons in Shantilal Mangaldas's case for its survival. The decision in Shantilal Mangaldas's case has not been overruled by the Bank Nationalisation case which has only explained Shantilal MangalDas's case and does not overrule it particularly after the Nation has first expressed itself in favour of the 25th Constitution Amendment and then decided to delete Article 31 altogether from the Constitution. [1056 B-E]

R.C. Cooper v. Union of India [1970] 3 S.C.R. 530; Kesvananda Bharati v. State of Kerala [1973] Suppl. S.C.R. l; State of Karanataka & Anr. v. Rangnatha Reddy & Anr . [1978] S.C.R. 641 explained.

Temperton v. Russell (1893) 1 Q.B. 715 (CA); Allen v. Flood (1898) A.C.1; Quinn v. Leathem (1901) A.C. 495 referred to.

4. There is no rule that every decision of every officer under a statute should be made appealable and if it is not 80 made appealable the statute should be struck down. It may be salutary if an appeal is provided against decisions on questions which are of great importance either to private parties or to the members of the general public, but ordinarily on Such matters the Legislature is the best judge. Unless the Court finds that the absence of an appeal is likely to make the whole procedure oppressive and arbitrary, the Court does not condemn it as unconstitutional. Considering the status of the officer who is appointed as a Town Planning Officer, Section 32 of the Bombay Town Planning Act cannot be said to confer

uncanalised and arbitrary power on the Town Planning Officer, merely because of the denial of the right of appeal in some cases. [1056 F-H; 1057 A-B]

M/s Babubbsi & Co. Ors. v. State of Gujarat [1985] 2 S.C.C. 732 followed.

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5.1 It is wrong to contend that the denial of the solatium of 15 per cent (or 30 per cent, as the law now is) of the market value of the land in addition to the compensation payable for lands taken by the local authority for purposes of the scheme makes the Bombay Town Planning Act discriminatory. [1057 E-F; 1059 G]

5.2 It cannot also be said as a rule that the State which has got to supply and maintain large public services at great cost should always pay in addition to a reasonable compensation some amount by way of solatium. The interest of the public is equally important. In any event it is not shown that the compensation payable in the present case is illusory and unreal. [1059 H; 1060 A-B]

Nagpur Improvement Trust and Anr. v. Vithal Rao & Ors., [1973] 3 S.C.R. 39; State of Kerala & Ors. v. T.N. Peter & Anr.,[1980] 3 S.C.R. 290; P.C. Goswami v. Collector of Darrang,A.I.R. 1982 S.C. 1214 distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1224 of 1977.

From the Judgment and Order dated 3.9.1976 of the Gujarat High Court in Special Civil Application No. 1501 of 1974.

R.F. Nariman, P.K. Manohar and P.H. Parekh for the Appellants.

T.S. Krishnamoorthy Iyer, T.U. Mehta , Prashant Desai and S.C. Patel for the Respondents.

The Judgment of the Court was delivered by VENKATARAMIAH, J. This appeal by special leave is preferred against the judgment dated September 3, 1976 in Special Civil Application No. 1501 of 1976 on the file of the High Court of Gujarat filed under Article 226 of the Constitution of India in which the appellant had challenged the constitutional validity of the Town Planning Scheme No. VIII (Umarwada) in respect of certain lands situated at Surat City in the State of Gujarat, published under the provisions of the Bombay Town Planning Act, 1954 (hereinafter referred to as 'the Act') in so far as the said scheme pertained to the land of which the appellant was the lessee, alleging inter alia that it was violative of Article 14, 19(1)(f) and 31 of the Constitution of India.

The land in question originally belonged to one Ladli Begum. She granted a lease in respect of the said land in favour of a company called Nawab of Belha Spinning, Weaving and Manufacturing Mills Ltd. under a document dated November 15, 1882 for a period of 99 years with effect from November

1, 1881 with a right of renewal for a further period of 99 years. The land was described as the land bearing Survey Nos. 75, 81, 83, 84 and 86 measuring in all 49 acres 22 gunthas. The company which had taken the land on lease executed a sub-lease in respect of 38 acres 2 gunthas out of the entire plot of land on March 29, 1884 in favour of one Dr. Nassurwanju N. Rhambata for the residuary period of 99 years without the right of renewal. This sub-lease was to expire on October 31, 1980. Under a document dated April 30, 1928 Surat Parsi Panchayat Board required the lease in respect of the entire 38 acres 2 gunthas, referred to above, from a lady who was the daughter of one Rustamji who had acquired the rights of Dr. Nassurwanji N. Khambata. On May 24, 1937 the appellant purchased the right, title and interest of the head lessee, i.e., Nawab of Belha Spinning, Weaving and Manufacturing Mills Ltd. in an auction sale held in the course of liquidation proceedings of the said company. The appellant thus became the head lessee of the entire plot of land with the rights specified in the documents dated November 15, 1882, referred to above. Surat Parsi Panchayat Board which had acquired the right of the sub-lessee in respect of 38 acres 2 gunthas created a further sub-lease in respect of 34 acres 4 gunthas out of the 38 acres 2 gunthas in favour of the Surat Municipal Corporation under a document dated March 30, 1963 retaining the sub-lessee's right in the remaining land.

The Surat Borough Municipality passed a resolution on August 2, 1963 to prepare a Draft Development Plan for the entire area within the municipal limits of Surat City in accordance with the Development Regulations issued by it with the object of checking haphazard growth of the city. Pursuant to the said resolution, a notification was issued on April 3, 1955 under section 4 of the Land Acquisition Act, 1894 to acquire a portion of the entire plot of land admeasuring 34 acres 4 gunthas in Survey Nos. 75, 81 and 82 for the purpose of setting up an industrial estate by the Surat Borough Municipality, Surat which involved the shifting of Municipal Workshops and Central Stores. On June 26, 1965 the Surat Borough Municipality made a declaration declaring its intention to prepare a Town Planning Scheme, being the Town Planning Scheme No. VIII of Umarwada in respect of the locality called Umarwada under section 22 of the Act. The Municipality however could not make and publish the draft scheme within 12 months from the declaration of its intention as required by section 23(1) of the Act. The State Government, however, by its Notification dated August 31, 1966 in exercise of its power under the proviso to section 23(1) extended the period for making and publishing the draft scheme by six months. The Municipality could not make and publish the draft scheme even within that extended period of six months. Then under sub-section (2) of section 23 of the Act the Collector of Surat was authorised by the State Government to make and publish the draft scheme within nine months from December 26, 1966. Accordingly, the Collector of Surat by Notification dated July 4, 1967 published a draft scheme. In the draft scheme as made and published by the Collector, the land admeasuring 1,37,961 sq. metres out of the aforesaid land of which the appellant was the head lessee was shown as reserved for the Surat Municipality. The appellant filed his objection to the proposed reservation pointing out therein that he himself needed the land for expansion of his business and for construction of homes for his employees. He also stated that the Surat Municipality had acted mala fide in securing the reservation of such a large piece of land in its favour. The Government of Gujarat after overruling the objection ultimately granted sanction to the draft scheme prepared by the Collector of Surat by its Notification dated May 10, 1968. On June 7, 1968 one Shri N.R. Bhambhani was appointed as the Town Planning Officer to finalise the scheme. He was succeeded by Shri M.G.Makwana who was

appointed as the Town Planning Officer by the Government on February 28, 1969. When the Town Planning Officer entered upon his functions under section 32 of the Act, the appellant again filed his objection to the reservation of his land for the alleged purpose of the Municipal Corporation. In addition the appellant also claimed compensation in respect of the said 38 acres 2 gunthas at the rate of Rs.50 per sq. yard alleging that the land in the vicinity had been sold at that rate and claimed towards his share two-thirds of the total compensation. Then on June 30, 1970 the Town Planning Officer issued a notice expressing his intention to acquire the land in question admeasuring 1,37,961 sq. metres. On November 4, 1971 he determined the compensation payable in respect of the said land at the rate of Rs.2.40 paise per sq. metre. Aggrieved by the said decision, the appellant filed an appeal before the Board of Appeal. The Board of Appeal held that disputes regarding compensation of lands taken away for the purpose of the scheme being not within the scope of section 33(1)(xiii) of the Act the decision of the Town Planning Officer on those questions was not appealable under section 34 of the Act. The Board of Appeal inter alia observed that it was not for the Board to say anything regarding the propriety of the action taken by the Town Planning Officer in reserving the entire plot of land admeasuring 1,37,961 sq. metres, in which the appellant was interested, for the purpose of the Surat Municipality. It also held that on the question of apportionment of the compensation no appeal lay to it. Aggrieved by the decision of the Board, the appellant filed a writ petition before the High Court of Gujarat out of which this appeal arises.

The High Court dismissed the writ petition concurring with the Board of Appeal that the appeal was incompetent. The constitutional questions raised in the writ petition could not be decided by the High Court as emergency was then in force in the country and the rights guaranteed by Articles 14,19 and 31 of the Constitution of India on which the appellant's contentions were based remained suspended at that time. The High Court however referred to the decision of this Court in State of Gujarat v. Shri Shantilal Mangaldas,[1969] 3 S.C.R. 341, in which the validity of the Act had been upheld. Aggrieved by the judgment of the High Court the appellant has filed this appeal by special leave.

This appeal was heard first by a bench of this Court consisting of A.C. Gupta and A.P. Sen, JJ. On that occasion the learned counsel for the appellant submitted that in case the Court upheld that the appeal preferred by the appellant before the Board of Appeal was maintainable he would not press the grounds questioning the constitutional validity at that stage and the matter should then go back to the Board of Appeal for its decision on the adequacy of the compensation. He further submitted that if the Court found that the Board of Appeal was right in holding that the appeal was not maintainable, he should be given leave to urge the grounds challenging the validity of the Act. The learned Judges who heard the appeal came to the conclusion that the High Court was right in finding that the decision of the Town Planning Officer determining the amount of compensation in the appellant's case was not appealable by its judgment dated July 24, 1981 which is reported as Prakash Amitchand Shah v. State of Gujarat,[1982] 1 S.C.R.

81. In view of the above conclusion the court felt that the case should be placed before Constitution Bench for hearing the questions relating to the constitutional validity of the Act. That is how the case is now before this Constitution Bench to consider the said questions.

Before taking up for consideration the contentions urged on behalf of the appellant, it is necessary to understand the objects and the scheme of the Act. The principal objects of any Town Planning legislation generally are to provide for planning, the development and control of the use of land and to confer on public authorities such as City Municipalities, Municipal Boroughs, Town Municipalities, Town Panchayats etc. powers in respect of the acquisition and development of land for planning and other purposes. Such laws generally provide for the preparation of schemes that might be made in respect of the land with the general object of controlling its development, securing proper sanitary conditions, amenities and conveniences such as public parks, play grounds, hospital areas etc., preserving existing buildings or other objects of architectural, historic and artistic interest and places of natural interest or beauty and generally of protecting existing amenities. The Act is one such piece of legislation. It was enacted in the place of an earlier statute which was in force in the province of Bombay, namely, the Bombay Town Planning Act, 1915. The Act came into force on April 1, 1957 before the reorganisation of the State of Bombay and it continued to be in force in the State of Gujarat even after the Bombay Reorganisation Act 1960 came into force. Under the Act every local authority as defined under section 2(4) thereof was required by section 3 of the Act to carry out a survey of the area within its jurisdiction and not later than four years from the date on which the Act came into force to prepare and publish in the prescribed manner a development plan and to submit it to the State Government for sanction. Before carrying out a survey of the area referred to in sub- sections (1) and (2) of section 3 of the Act for the purpose of preparing the development plan for such area, a local authority is required to make a declaration of its intention to prepare the development plan and to despatch a copy thereof to the State Government for publication in the Official Gazette and to publish it in the prescribed manner for inviting suggestions from the public within a period of two months. Section 4 to 7 of the Act provide for the declaration of intention of making development plan, the manner of preparing a development plan, power of entry for carrying out survey for preparing development plan and the contents of a development plan. Section 7 of the Act which deals with the contents of development plan states that generally the development plan should indicate 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. The local authority is required to indicate in the development plan its proposals with regard to the following :

(a) proposals for designating the use of the land for the purposes such as (1) residential (2) industrial, (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 or physical culture institutions;

(c) proposals for roads and highways;

(d) proposals for reservation of land for the purposes 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 the local authority or directed by the State Government in this behalf.

By requiring a local authority to prepare a development plan, the Act intends that the Town Planning Schemes should form part of a single and cohesive plan for development of the entire area over which the local authority has jurisdiction. The local authority is required to submit the development plan for the sanction of the State Government. After the receipt of the sanction of the State Government of the development plan, the local authority is authorised by section 11(1) of the Act to acquire any land designated in the development plan for purposes specified in clauses

(b),(c),(d) & (e) of section 7 of the Act either by agreement or under the Land Acquisition Act, 1894. Sub- Section (2) of section 11 of the Act provides that the Land Acquisition Act, 1894 as amended by the Schedule to the Act would apply to the determination of the compensation for the acquisition of such land.

Chapter III of the Act deals with the provisions relating to the making of Town Planning Schemes. Section 18 of the Act provides that subject to the provisions of the Act or any other law for the time being in force a local authority may make one or more town planning schemes for the area within its jurisdiction or any part thereof having regard to the proposals in the final development plan. Every such Town Planning Scheme may make provisions for any of the matters such as the laying out or re-laying out of land, either vacant or already built upon; the filling up or reclamation of low-laying swamp or unhealthy areas or levelling up of land; laying out of new streets or roads; construction, diversion, extention, alteration, improvement and stopping up of streets, roads and communications; the construction, alteration and removal of buildings, bridges and other structures, the allotment or reservation of land for roads, open spaces, gardens, recretion grounds, schools, markets, green belts and dairies, transport facilities and public purposes of all kinds; the preservation of objects of historical or national interest or natural beauty and of buildings actually used for religious purposes; the imposition of conditions and restrictions in regard to the open space to be maintained about buildings etc. Before preparing a Town Planning Scheme the local authority having jurisdiction over any such land as is referred to in Section 21 of the Act is required by section 22 of the Act to declare its intention to make a Town Planning Scheme in respect of the whole or any part of such land. Within 21 days from the date of such declaration the local authority is required to publish its declaration of intention to make a scheme in the prescribed manner. A copy of such declaration is required to be sent to the State Government. The local authority is also required to send a plan to the State Government showing the area which it proposes to include in the Town Planning Scheme. Under section 23(1) within 12 months from the date of declaration of intention to make a scheme the local authority shall prepare a draft scheme. Under the proviso to section 23 of the Act however the State Government may extend the time to do so by such period specified not exceeding six months in all. Under sub- section (2) of section 23 of the Act the State Government or an officer authorised by the State Government in that behalf may make and publish the draft scheme if the draft scheme is not made and published by the local authority within the period specified in sub-section (1) of section 23 of the Act or within the period so extended under the proviso to sub- section (1) of section 23 of the Act within a further period of 9 months from the date of the expiry of the extended period. If such declaration is not made by the State Government within the further period specified in sub- section (2) of section 23 of the Act, the declaration of intention to make such scheme shall elapse and until aperiod of three years has elapsed from the date of such declaration it shall not be competent to the local authority to declare its intention to make any Town

Planning Scheme for the same area or any part of it. Section 25 of the Act provides that the draft scheme shall contain the following particulars :

(a) the area, ownership and tenure of each original plot;

(b) the land allotted or reserved under sub-clause

(a) of clause (2) of section 18 with a general indication of the uses to which such land is to be put and the terms and conditions' subject to which such land is to be put to such uses;

(c) the extent to which it is proposed to alter the boundaries of original plots;

(d) an estimate of the net cost of the scheme to be borne by the local authority;

(e) a full description of all details of the scheme under such sub-clauses of clause (2) of section 18 as may be applicable;

(f) the laying out or re-laying out of land either vacant or already built upon;

(g) the filling up or reclamation of low-lying swamp or unhealthy areas or levelling up of land; and

(h) any other prescribed particulars.

Section 26 deals with reconstituted plots. In the draft scheme the size and shape of every reconstituted plot shall be determined, so far as may be, to render it suitable for building purposes and where the plot is already built upon, to ensure that the building; as far as possible, complies with the provisions of the scheme as regards open spaces. For the purpose of sub-section (1) of section 26 of the Act the draft scheme may contain the following proposals :-

(a) to form a reconstituted plot by the alteration of the boundaries of an original plot;

(b) to form a reconstituted plot by the transfer wholly or partly of the adjoining lands;

(c) to provide with the consent of the owners that two or more original plots each of which is held in ownership in severality or in joint ownership shall hereafter, with or without alteration of boundaries, be held in ownership in common as reconstituted plot;

(d) to allot a plot to any owner dispossessed of land in furtherance of the scheme and;

(e) to transfer the ownership of a plot from one person to another.

Section 27 of the Act provides for representation to be made by persons affected by such scheme. Section 28 of the Act confers the powers on the State Government to grant sanction to the scheme and to publish it. Within one month from the date on which the sanction of the State Government to the draft scheme is published in the Official Gazette the State Government is required to appoint a Town Planning Officer for the purpose of implementing the scheme. The duties of the Town Planning Officer are set out in Section 32 of the Act. It reads thus :

"32(1) In accordance with the prescribed procedure the Town Planning Officer shall -

(i) after notice given by him in the prescribed manner, define and demarcate the areas allotted to, or reserved, for a public purpose or purpose of the local authority and the reconstituted plots ;

(ii) after notice given by him in the prescribed manner, determine, in the case in which a reconstituted plot is to be allotted to persons in ownership in common, the shares of such persons;

(iii) fix the difference between the total of values of the original plots and the total of the values of the plots included in the final scheme, in accordance with the provisions contained in clause (f) of sub-section (1) of section 64;

(iv) determine whether the areas used, allotted or reserved for a public purpose or purpose of the local authority are beneficial wholly or partly to the owners or residents within the area of the scheme.

(v) estimate the portion of the sums payable as compensation on each plot used, allotted or reserved for a public purpose or purpose of the local authority which is beneficial partly to the owners or residents within the area of the scheme and partly to the general public, which shall be included in the costs of the scheme;

(vi) calculate the contribution to be levied on each plot used, allotted or reserved for a public purpose or purpose of the local authority which is beneficial partly to the owners or residents within the area of the scheme and partly to the general public;

(vii) determine the amount of exemption, if any, from the payment of the contribution that may be granted in respect of plots exclusively occupied for the religious or charitable purposes;

(viii) estimate the increment to accrue in respect of each plot included in the final scheme in accordance with the provisions contained in section 65;

(ix) calculate the proportion in which the increment of the plots included in the final scheme shall be liable to contribution to the costs of the scheme in accordance with the provisions contained in section 66

(x) calculate the contribution to be levied on each plot included in the final scheme

(xi) determine the amount to be deducted from, or added to, as the case may be, the contribution leviable from a person in accordance with the provisions contained in section 67;

(xii) provide for the total or partial transfer of any right in an original plot to a reconstituted plot or provide for the extinction of any right in an original plot in accordance with the provisions contained in section 68;

(xiii) estimate in reference to claims made before him, after the notice given by him in the prescribed manner the compensation to be paid to the owner of any property or right injuriously affected by the making of a town-planning scheme in accordance with the provisions contained in section 69;

(xiv) draw in the prescribed form the final scheme in accordance with the draft scheme; Provided that---

(a) he may make variation from the draft scheme;

(b) any variation estimated by him to involve an increase of 10 per centum in the costs of the scheme as is described in section 64 or rupees one lakh, whichever is lower shall require the sanction of the State Government :

Provided further that the Town Planning Officer shall make no substantial variation and without the consent of the local authority and without hearing any objections which may be raised by the owners concerned.

(2) If there is any difference of opinion between the Town Planning Officer and the local authority whether variation made by the Town Planning Officer is substantial or not, the matter shall be referred by the local authority to the State Government whose decision shall be final and conclusive.

(3) The Town Planning Officer appointed for any draft scheme shall decide all matters referred to in sub-section (1) within a period of twelve months from the date of his appointment :

Provided that the State Government may from time to time by order in writing extend the said period by such further period as may be specified in the order."

Section 33 of the Act provides that excepting in matters arising out of clauses (v), (vi), (viii), (ix), (x) and (xiii) of sub-section (1) of section 32, every decision of the Town Planning Officer shall be final and conclusive and binding on all persons. Section 34 of the Act however provides for appeals being preferred against any decision of the Town Planning Officer under clauses (v), (vi), (viii)

(ix), (x) and (xiii) of sub-section (1) of section 32 of the Act to the Board of Appeal constituted under section 35 of the Act. Thereafter a final scheme should be prepared and submitted to the State Government. The State Government is authorised to accord sanction to such final scheme under section 51 of the Act. Thus it is seen that the Town Planning Schemes are to be prepared in two distinct stages by two different authorities. The first stage constitutes the preparation of draft town planning scheme by the local authority and the second stage consists of the scheme to be prepared by the Town Planning Officer. If the State Government sanctions the final scheme under section 51 of the Act it shall state in the notification the place at which the final scheme is kept open for the public inspection and a date which shall not be earlier than one month after the date of the publication of the notification on which all the liabilities created by the scheme shall take effect and the final scheme shall come into force. On and after the date fixed in such notification a town planning scheme shall have effect as if it had been enacted in the Act. The effect of final schemes is set out in section 53 of the Act. Section 53 read thus :-

> "53. 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 encumbrances;
>
> (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."

Section 64 of the Act specifies what sums should be considered as costs of a town planning scheme. Under the provisions of the statute the costs of the town planning scheme is to be partly met from the contribution from the plot-owners and partly from the funds of the local authorities. There are provisions in section 66 of the Act relating to the contribution towards costs of scheme. Section 66 reads thus:-

> "66. (1) The costs of the scheme shall be met wholly or in part by a contribution 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 : Provided that -
>
> (i) no such contribution shall exceed half the increment estimated by the Town Planning Officer to accrue in respect of such plot;
>
> (ii) where a plot is subject to a mortgage with possession or to a lease the Town Planning Officer shall determine in what proportion the mortgages or lessee on the one hand and the mortgagor or lessor on the other hand shall pay such contribution;
>
> (iii) no such contribution shall be levied on a plot used, allotted or reserved for a public purpose or purpose of the local authority which is solely for the benefit of owners or residents within the area of the scheme; and

(iv) the contribution levied on a plot used, allotted or reserved for a public purpose or purpose of the local authority which is beneficial partly to the owners or residents within the area of the scheme and partly to the gneneral public shall be calculated in proportion to the benefit estimated to accrue to the general public from such use, allotment or reservation. (2) The owner of each plot included in the final scheme shall be primarily liable for the payment of the contribution leviable in respect of such plot.

Section 67 of the Act makes provisions for certain adjustments and it reads thus:-

"67. 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 contribution leviable from such person, 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 contemplated in the scheme other than improvements due to the alteration of its boundaries."

Where the cost of the scheme does not exceed half the increment, the cost shall be wholly met by the contribution of the plot-holders but where it exceeds half the increment, to the extent of half the increment it shall be met by the contribution from plot-holders and the excess shall be borne by the local authority. The rules for levying incremental contribution are set out on section 66 of the Act, referred to above. It is seen that the valuation of the land is done in three stages :-

(i) Original value of the land as on the date of the first notification which does not take into account any of the effects of the improvement scheme that is to follow.

(ii) Semi-final value, that is the value of the reconstituted plots allotted in their new size and shape but in their original condition, ignoring the benefit from the scheme.

(ii) Final value, that is the enhanced value of the reconstituted plots due to the scheme.

The difference between the first two is the compensation that is due to the owner. The difference between the second and third is the increment of the value of the reconstituted plots that remain with the owner on the completion of the scheme and only 50 per cent of the increment can be recovered from the owner as his increment contribution towards the cost of the scheme and no more. Any excess incurred will have to be met by the local authority from its funds.

Section 84 of the Act provides that if at any time the State Government is of the opinion that any land included in a town planning scheme is needed for a public purpose other than that for which it is included in the scheme it may make a declaration to that effect in the Official Gazette in the

manner provided in section 6 of the Land Acquisition Act, 1894 and on the publication of such declaration the Collector shall proceed to take order for the acquisition of the land and the provisions of the Land Acquisition Act, 1894, as amended by the Schedule to the Act, as far as may be, shall apply to the acquisition of the said land. Thus it is seen that there are three methods of acquisition of land under the Act which are as under:-

(i) acquisition of land provided in section 11 of the Act for development purposes specified in clauses (b), (c), (d) and (e) of section 7 of the Act for which compensation is payable under the provisions of the Land Acquisition Act, 1894 as amended by the provisions contained in the Schedule to the Act ;

(ii) transfer of lands that takes place on the coming into force of the final scheme under section 53 of the Act for which compensation is payable in accordance with section 67 of the Act; and

(iii) acquisition of land under section 84 of the Act which empowers the State Government to acquire land included in the town planning scheme at a subsequent stage where again compensation is payable in accordance with the provisions of the Land Acquisition Act, 1894 as amended by the Schedule to the Act.

These are broadly the features of the Act.

The first contention urged by the learned counsel for the appellant is that it being possible in this instant case to acquire the land of the appellant either under the Land Acquisition Act, 1894 which is more favourable to the owner of the land both from the point of view of the procedural safeguards and from the point of view of the quantum of compensation payable for the land which includes solatium payable under section 23(2) thereof than the Act which does not provide for appeals against many of the orders passed by the Town Planning Officer under section 32 of the Act and does not authorise payment of solatium in addition to the market value of the land, the acquisition of the land under the Town Planning Scheme under section 53 of the Act is discriminatory and violative of Article 14 of the Constitution which guarantees equality before law and equal protection of the laws. This question is no longer res integra. In The Zandu Pharmaceutical Works Ltd. v. G.J. Desai and Ors., Civil Appeal No. 1034 of 1967 decided on 28th August, 1969, dealing with the very provisions of the Act this Court observed thus :

"When the Town Planning Scheme comes into operation the land needed by a local authority vests by virtue 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 Government, 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. Hence the provisions of ss.53 and 67 are not invalid on the ground that they deny equal protection of the laws or equality before the laws."

In order to appreciate the contentions of the appellant it is necessary to look at the object of the legislation in question as a whole. The object of the Act is not just acquiring a bit of land here or a bit of land there for some public purpose. It consists of several activities which have as their ultimate object the orderly development of an urban area. It envisages the preparation of a development plan, allocation of land for various private and public uses, preparation of a Town Planning Scheme and making provisions for future development of the area in question. The various aspects of a Town Planning Scheme have already been set out. On the final Town Planning Scheme coming into force under section 53 of the Act there is an automatic vesting of all lands required by the local authority, unless otherwise provided, in the local authority. It is not a case where the provisions of the Land Acquisition Act, 1894 have to be set in motion either by the Collector or by the Government.

The divesting of title takes place statutorily. Section 71 of the Act provides for payment of compensation to the owner of an original plot who is not provided with a plot in the final scheme, or if the contribution to be levied from him under section 66 of the Act is less than the total amount to be deducted therefrom under any of the provisions of the Act. Section 73 of the Act provides for payment due to be made to any person by the local authority by adjustment of account as provided in the Act. Section 32 of the Act lays down the various duties and powers of the Town Planning Officer which he has to discharge and exercise for the benefit of the whole community. All his functions are parts of the social and economic planning undertaken and executed for the benefit of the community at large and they cannot be done in isolation. When such functions happen to be integral parts of a single plan which in this case happens to be an urban development plan, they have to be viewed in their totality and not as individual acts directed against a single person or a few persons. It is quite possible that when statutory provisions are made for that purpose, there would be some difference between their impact on rights of individuals at one stage and their impact at another stage. As we have seen in this very Act there are three types of taking over of lands- first under section 11, secondly under section 53 and thirdly under section 84 of the Act, each being a part of a single scheme but each one having a specific object and public purpose to be achieved. While as regards the determination of compensation it may be possible to apply the provisions of the Land Acquisition Act, 1894 with some modification as provided in the Schedule to the Act in the case of lands acquired either under section 11 or under section 84 of the Act, in the case of lands which are needed for the local authority under the Town Planning Scheme which authorises allotment of reconstituted plots to persons from whom original plots are taken, it is difficult to apply the provisions of the Land Acquisition Act, 1894. The provisions of section 32 and the other financial provisions of the Act provide for the determination of the cost of the scheme, the development charges to be levied and contribution to be made by the local authority etc. It is only after all that exercise is done the money will be paid to or demanded from the owners of the original plots depending on the circumstances governing each case. If in the above context the Act has made special provisions under section 67 to 71 of the Act for determining compensation payable to the

owners of original plots who do not get the reconstituted plots it cannot be said that there has been any violation of Article 14 of the Constitution. It is seen that even there the market value of the land taken is not lost sight of. The effect of the provisions in sections 67 to 71 of the Act has been explained by this Court in Maneklal Chhotalal & Ors. v. M.G. Makwana & Ors., [1967] 3 S.C.R. 65 and in State of Gujarat v. Shri Shantilal Mangaldas & Ors. (supra).

Justice Shah (as he then was) speaking on behalf of the Constitution Bench of this Court in State of Gujarat v. Shri Shantilal Mangaldas & Ors. (supra) while dealing with the very Act the very Act observed at page 357 thus ;-

> "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 adjusted 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".

Proceeding further the learned Judge said on the question whether the Act violated clause (2) of Article 31 of the Constitution at pages 357 and 358 thus :-

> "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 - (1) that the Act specifies no principles on which the compensation is to be determined and given; and (2) that the scheme for recompense 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 or 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 transanctions 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 the 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."

Rejecting the second branch of the argument that the provision for giving the value of land not on the date of extinction of interest of the owner, but on the basis of the value prevailing at the date of the declaration of the intention to make a scheme was not a provision for payment of compensation as stated in Article 31(2) of the Constitution Shah, J. observed at pages 365 and 366 thus:-

> "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 compen-
>
> sation 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 guarantees 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 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 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 learned Judge also rejected the contention based on Article 14 of the Constitution. Justice Shah observed at pages 371 and 372 thus :-

"One more contention which was apparently not raised on behalf 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 [1965] 1 S.C.R. 614, which deals with the infringement of the equality clause of the Constitution by the impugned Madras Act. Counsel submit that it is always open to the State 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 for a public purpose of a local authority under the provision of the Bombay Town Planning Act the compensation which is payable is determine 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 sanction ed, 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 purpose of a Town Planning Scheme cannot be acquired otherwise than under the Act, for it is settled rule of interpretation of statues 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 that all: Taylor v. Taylor, (1875) 1 Ch.D. 426. 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."

Thus it is seen that all the arguments based on Article 14 and Article 31(2) of the Constitution against the Act were of repelled by the Constitution Bench in the State of Guajart v. Shri Shntilal Mangaldas Ors. (supra). With great respect, we approve of the decision of the Court in this case.

But the learned counsel for the appellant however drew our attention to certain subsequent decisions of this Court to persuade us to differ from the above view. First he referred us to the decision of this Court in R.C. Cooper v. Union of India, [1970] 3 S.C.R. 530 which is popularly known as the Bank Nationlisation Case, in which again the majority judgment was written by Shah, J. Then the learned counsel referred us to the decision in Kesvaoanda Bharati v. State of Kerala, [1973] Suppl. S.C.R. 1 and to the decision in State of Karnataka & Anr. v. Ranganatha Redy & Anr., [1978] 1 S.C.R. 641 in support of his plea that the decision in Shantilal Mangaldas's case (supra) stood overruled. We have gone through these decisions carefully. Before embarking upon the examination of these decisions we should bear in mind that what is under consideration is no a statute of a legislation but a decision of the Court. A decision ordinarily is a decision on the case before the court while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. Hence while applying the decision to a later case, the Court which is dealing with it should carefully try to ascertain the true principle laid down by the previous decision. A decision often takes its colour from the questions involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. We have earlier seen what Justice Shah has laid down in Shantilal Mangaldas's case (supra). The very same Judge delivered the majority judgment in the Bank Nationalisation Case (supra) in which he observed at pages 303 & 304 thus :-

> "There was apparently no dispute that Article 31(2) before and after it was amended guaranteed a right to compensation for compulsory acquisition of property and that by giving to the owner, for compulsory acquisition of his property, compensation which was illusory, or determined by the application of principles which were irrelevant, the constitutional guarantee of compensation was not complied with. There was difference of opinion on the matter between the decisions in P. Vajravelu Mudaliar's case (supra) and Shantilal Mangaldas's case (supra). In the former case it was observed that the constitutional guarantee was satisfied only if a just equivalent of the property was given to the owner : in the latter case it was held that "compensation , being itself incapable of any precise determination, no definite connotation could be attached thereto by calling it just equivalent or full indemnification , and under Acts enacted after the amendment of Article 31(2) it is not open to the Court to call in question the law providing for compensation on the ground that it is inadequate, whether the amount of compensation is fixed by the law or is to be determined according to principles specified therein. It was observed in the judgment in Shantilal Mangalda's case (supra) at p.651 : 'Whatever may have been the meaning of the expression compensation" under the unamended Article 31(2), when the Parliament has expressly encated 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 which 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 deprived.

That after discussing the decision in P. Vajravelu Mudaliar's case Shah, J. observed thus :-

"The compensation provided by the Madras Act, according to the principles specified was not the full market vale at the date of acquisition. It did not amount to full indmnification of the owner : the Court still held that the law did not offend the guarantee under article 31(2) as amended, because the objection was only as to be adequacy of compensation. In Shantilal Mangldas's case (supra), the Court held that (after) the constitution (Fourth Amendment) Act, Article 31(2) guarantees a right to receive compensation for loss of property compulsorily acquired, but compensation does not mean a just equivalent of the property. If compensation is provided by law to be paid and the compensation is not a illusory or is not determinable by the application of irrelevant principles, the law is not open to challenge on the ground that compensation fixed or determine to be paid is inadequate. Both the lines of thought which converge in the ultimate results, support the view that the principles specified by the law for determination of compensation is behind the pale of challenge, if it is relevant to the determination of compensation and is a recognised principle applicable in the determination of compensation for property compulsorily acquired and the principle is appropriate in determining the value of the class of property sought to be acquired. On the application of the view expressed in P. Vajravelu Mudliars's case (supra) or in Shantilal Mangaldas's case (supra), the Act, in our judgment, is liable to be struck down as it face to provide to the expropriated banks compensation determined according to relevant principles.

It is seen that Shah, J. relied on the decision in Shantilal Mangalda's case (supra) also in deciding the Bank Nationalisation Case. The learned Judge does not say that the earlier decision rendered by him in Shantilal Mangadas's case stood overruled. In Kesvananda Bharati's case (supra) no doubt Shantilal Mangaldas's case was discussed and considered in the serveral judgments delivered in that case. But it is seen that the said decision was not overruled. It is true that in some of the judgments Kesvananda Bharati's case (supra) there are observations to the effect that the case of Shantilal Mangaldas (supra) was virtually overruled or in substance overruled in the Bank Nationalisation case. (supra). Some of the observations are:

"In State of Gujarat v. Shantilal Mangaladas and Ors. [1969] 3 S.C.R. 341, the decision in Metal Corporation of India [1967] 1 S.C.R. 255 was overruled which itself was virtually overruled by R.C. Cooper v. Union of India, [1970] 3 S.C.R. 530 (Per Shelat and Grover, J. P.282).

"In the Bank Nationalisation case the majority decision virtually overruled the decision in Guajart v. Shantilal. (Per Methew J. P.845). "But soon thereafter came the majority decision in R.C. Cooper v. Union of India, [1970] 3 S.C.R.

530. Cooper in substance overruled Shantilal Mangaldas and restored the old position . (Per Dwivedi, J. P.929).

But Hegde and Mukherjee, JJ. observed at page 336 thus :

"Then came the Bank Nationalisation case. The majority judgment in that case was delivered by Shah, J. (as he then was). In that judgment he referred somewhat extensively to the decision in Shantilal Mangalda's case and other cases rendered by this Court. He did not propose to deviate from the rule laid down in Shantilal case. (Per Hegde & Mukherjee, JJ P.336) In the State of Karnataka v. Ranganatha Reddy (supra) also there are observations made by Untwalia J. to the following effect at page 652 :-

"Then came the decision in State of Gujarat v. Shri Shantilal Mangaldas Ors. where Shah, J., as he then was in his leading judgment to which was appended a short concurring note by Hidayatullah C.J., made a conspicuous departure from the views expressed in Vajravelu's case and the case of the Metal Corporation (supra) and the said decisions were overruled. Thereafter came the decision of 11 Judges of this court the leading judgment being of Shah, J. on behalf of himself and 9 others in what is known as the Bank Nationalisation case in Rustom Cavasjee Cooper v. Union of India. Although in terms the decision of this Court in the case of Shantilal Mangaldas (supra) was merely explained, in substance it was over-ruled.

Expressions like 'virtually overruled' or 'in substance overruled' are expressions of inexactitude. In such circumstances, it is the duty of a Constitution Bench of this Court which has to consider the effect of the precedent in question to read it over again and to form its own opinion instead of wholly relying upon the gloss placed on it in some other decisions. It is significant that none of the learned Judges was decided the subsequent cases has held that the Act had become void on account of any constitutional informity. They allowed the Act to remain in force and the State Governments concerned have continued to implement the provisions of the Act. What cannot be overlooked is that the decision in Shantilal Mangaldas's case (supra) was quoted in extenso with approval and relied on by the very same judge while deciding the Bank Nationalistion case (supra). He may have arrived at an incorrect or contradictory conclusion in striking down the Bank Nationalisation Act. The result achieved by him in the subsequent case may be wholly wrong but it cannot have any effect of the efficacy of the decision in Shantilal Mangaldas case (supra). An inappropriate purpose for which a precedent is used at a later date does not take away its binding character as a precedent. In such cases there is good reason to disregard the later decision. Such occasions in judicial history are not rare.

The history of the law relating to the right of labourers to strike in a factory is one such instance. Temperton v. Russell, [1893] 1 Q.B. 715 (C.A.), Allen v. Flood [1898] A.C. 1, Quinn v. Leathem, [1901] A.C. 495 and other cases belonging to that group show the ambivalence in the attitudes of

courts with regard to certain matters which vitally affect society. As long as the Act, i.e., the Bombay Town Planning Act, 1954 which was upheld by this Court in Shantilal Mangaldas case has not been struck down by this Court in any subsequent decision it would be wholly unjust to declare it inferentially as having been declared as void in a subsequent decision which depends mostly on the reasons in Shantilal Mangaldas's case for its survival. With great respect to the learned Judges who decided Kesavananda Bharati's case and the case State of Karnataka v. Ranganatha Reddy, we are not prepared to hold that the decision in Shantilal Mangaldas's case is overruled by the Bank Nationalisation case which has only explained Shantilal Mangaldas's case but does not overrule it particularly after the nation has first expressed itself in favour of the 25th (Constitution) Amendment and then decided to delete Art.31 altogether from the Constitution. We cannot upset the Constitution Bench decision in Shantilal Mangaldas's case when no subsequent Constitution Bench has expressly overruled it. We do not therefore find any substance in the contention that the Act violated Article 31(2) of the Constitution as it stood at the time when the Act was enacted or at any time thereafter.

Then it is contended that the Act which does not provide for an appeal from some of the decision of the Town Planning Officer taken under section 32 of the Act, while it has provided appeal to the Board of Appeal against some other decisions taken under the very same section was discriminatory. There is no rule that every decision of every officer under a statute should be made appealable and if it is not so made appealable the statute should be struck down. It may be salutary if an appeal is provided against decisions on questions which are of great importance either to private parties or to the members of the general public, but ordinarily on such matters the Legislature is the best judge. Unless the Court finds that the absence of an appeal is likely to make the whole procedure oppressive and arbitrary, the Court does not condemn it as unconstitutional. On going through the provisions of section 32 and other cognate provisions of the Act and considering the status of the officer who is appointed as a Town Planning Officer, we are of the view that it is not possible to hold that section 32 of the Act is a provision which confers uncanalised and arbitrary power on the Town Planning Officer merely because of the denial of the right of appeal in some cases. Dealing with a similar contention advanced against section 54 of the Act and Rule 27 of the Bombay Town Planning Rules, 1955 framed under the Act which authorised summary eviction of the occupants of land vesting in the local authority under section 53 of the Act, this Court has held in M/s Babubbai & Co. Ors. v. State of Gujarat, [1985] 2 S.C.C. 732, that the absence of a corrective machinery by way of an appeal does not always make a provision unreasonable. We agree with the above view. In any event the remedy under Article 226 of the Constitution of India is avaliable to a person aggrieved by such orders.

We do not also find any substance in the allied contention that if the Land Acquisition Act, 1894 had been applied, the appellant would have had the benefit of the machinery provided under section 18 and 54 of the Land Acquisition Act, 1894 and since it is not available under the procedure prescribed by the Act is the case of lands taken under section 53 thereof the Act is discriminatory. If the Land Acquisition Act, 1894 had been applicable, then all the procedural and substantive provisions would have no doubt become applicable. We have already held that the Act is not bad for not extending the procedure of the Land Acquisition Act, 1894 to the proceedings under the Town Planning Scheme. For the reasons already given above in this judgment we do not find it possible to strike down the

scheme on this ground.

It was next contended that the denial of the solatium of 15 per cent (or 30 per cent, as the law now is) of the market value of the land in addition to the compensation payable for lands taken by the local authority for purposes of the Scheme makes the Act discriminatory. Reliance is placed on the decision of this Court in Nagpur Improvement Trust and Anr. v. Vithal Rao Ors., [1973] 3 S.C.R. 39, in which it is held that the different terms of compensation for land acquired under two Acts would be discriminatory. In that case the petitioner was a tenant of some field in a village. He had applied to the Agricultural Land Tribunal under a local Act for fixing the purchase prise of the said field. The land in question however was acquired under the Nagpur Improvement Trust Act, 1936. Aggrieved by the said acquisition he filed a Writ Petition in the High Court of Bombay, Nagpur Bench, challenging the validity of the Nagpur Improvement Trust Act, 1936 on various grounds one of the grounds being that the said Act empowered the acquisition of the land at prices lower than those payable under the Land Acquisition Act, 1894. He urged that the denial of the solatium at 15 per cent of the market value was discriminatory. The High Court held that as the acquisition was by the State in all cases where the property was required to be acquired for the purposes of a scheme framed by the Trust and such being the position, it was not open to the State to acquire any property under the provisions of the Land Acquisition Act, 1894 as amended by the Improvement Trust Act without paying the solatium also. It was therefore held by the High Court that the paragraphs 10(2) and 10(3) insofar as they added a new clause 3(a) to section 23 and a proviso to subs-section (2) of section 23 of the Land Acquisition Act, 1894 were ultra vires as violating the guarantee of Article 14 of the Constitution. On appeal the judgment of the High Court was affirmed by this Court by the above decision. The provision under consideration in the above decision corresponds to section 11 and to section 84 of the Act, which we are now considering. Section 59 of the Nagpur Improvement Trust Act, 1936 provided that the Trust might, with the previous sanction of the State Government acquire land under the provisions of the Land Acquisition Act, 1894 as modified by the provisions of the said Act for carrying out any of the purposes of the said Act. But the provisions which are questioned before us are of a different pattern altogether. They deal with the preparation of a scheme for the development of the land. On the final scheme coming into force the lands affected by the scheme which are needed for the local authority for purposes of the scheme automatically vest in the local authority. There is no need to set in motion the provisions of the Land Acquisition Act, 1894 either as it is or as modified in the case of acquisition under section 11 or section 84 of the Act. Then the Town Planning Officer is authorised to determine whether any reconstituted plot can be given to a person whose land is affected by the scheme. Under section 51(3) of the Act the final scheme as sanctioned by the government has the same effect as if it were enacted in the Act. The scheme has to be read as part of the Act. Under Section 53 of the Act all rights of the private owners in the original plots would determine and certain consequential rights in favour of the owners would arise therefrom. If in the scheme, reconstituted or final plots are allotted to them they become owners of such final plots subject to the rights settled by the Town Planning Officer in the final Scheme. In some cases the original plot of an owner might completely be allotted to the local authority for a public Purpose. Such private owner may be paid compensation or a reconstituted plot in some other place. It may be a smaller or a bigger plot. It may be that in some cases it may not be possible to allot a final plot at all. Sections 67 to 71 of the Act provide for certain financial adjustments regarding payment of money to the local authority or to the owners of the original

plots. The development and planning carried out under the Act is primarily for the benefit of public. The local authority is under an obligation to function according to the Act. The local authority has to bear a part of the expenses of development. It is in one sense a package deal. The proceedings relating to the scheme are not like acquisition proceedings under the Land Acquisition Act, 1894. Nor are the provisions of the Land Acquisition Act, 1894 made applicable either without or with modifications as in the case of the Nagpur Improvement Trust Act, 1936. We do not understand the decision in Nagpur Improvement Trust's case (supra) as laying down generally that wherever land is taken away by the Government under a separate statute compensation should be paid under the Land Acquisition Act, 1894 only and if there is any difference between the compensation payable under the Land Acquisition Act, 1894 and the Compensation payable under the statute concerned the acquisition under the statute would be discriminatory. That case is distinguishable from the present case. In State of Kerala and Ors. v. T.N. Peter & Anr., [1980] 3 S.C.R. 290, also section 34 of the Cochin Town Planning Act which came up for consideration was of the same pattern as the provisions in the Nagpur Improvement Trust Act, 1936 and for that reason the Court followed the decision in the Nagpur Improvement Trust s case (supra). But in that decision itself the Court observed at pages 302 & 303 thus :-

> "We are not to be understood to mean that the rate of compensation may not vary or must be uniform in all cases. We need not investigate this question further as it does not arise here although we are clear in our mind that under given circumstances differentiation even in the scale of compensation may comfortably comfort with Article 14. No such circumstances are present here nor pressed."

The decision in P.C. Goswami v. Collector of Darrange, A.I.R. 1982 S.C. 1214, also belongs to the category of State of Kerala & Ors. v. T.N. Peter and Anr., (supra) both of which are again distinguishable from the present one.

It cannot also be said as a rule that the State which has got to supply and maintain large public services at great cost should always pay in addition to a reasonable compensation some amount by way of solatium. The interest of the public is equally important. In any event it is not shown that the compensation payable in this case is illusory and unreal.

We do not find any constitutional infirmity in the provisions under challenge before us. There is no ground to declare the Act which has been upheld in Shantilal Mangaldas's case (supra) about 17 years ago as unconstitutional now and to unsettle all settled transactions drawing inspiration from certain vague observations made in some subsequent decisions.

In the result, this appeal fails and it is dismissed but without any order as to costs.

S.R. Appeal dismissed.