

Nagpur Improvement Trust vs M/S. Bombaywala . on 22 January, 2019

Equivalent citations: AIR 2019 SUPREME COURT 3282, AIRONLINE 2019 SC 621, 2019 LAB IC 3224, (2019) 1 ESC 104, (2019) 1 PAT LJR 519, (2019) 1 SCALE 621, (2019) 1 SCT 648, (2019) 1 SERVLJ 283, (2019) 2 SERVLR 922, 2019 (4) ADJ 37 NOC, 2019 (4) KCCR SN 278 (SC), 2019 (4) SCC 237, AIR 2019 SC (CIV) 2794

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Bench: M. R. Shah, Ashok Bhushan, A.K. Sikri

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 937 OF 2019
[Arising out of SLP (C) No. 32089 of 2016]

Nagpur Improvement Trust & Ors. Appellants

Versus

M/s Bombaywala & Ors. Respondents

WITH

CIVIL APPEAL NO. 938 OF 2019
[Arising out of SLP (C) No.33160 of 2016]

CIVIL APPEAL NO. 939 OF 2019
[Arising out of SLP (C) No.33004 of 2016]

CIVIL APPEAL NO. 940 OF 2019
[Arising out of SLP (C) No.33226 of 2016]

CIVIL APPEAL NO. 941 OF 2019
[Arising out of SLP (C) No.34176 of 2016]
CIVIL APPEAL NO. 942 OF 2019
[Arising out of SLP (C) No.38036 of 2016]

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SUSHIL KUMAR
RAKHEJA
Date: 2019.01.22

CIVIL APPEAL NOS. 943-944 OF 2019

17:56:54 IST
Reason:

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[Arising out of SLP (C) Nos.9652-9653 of 2017]

TRANSFERRED CASE ©NO. 23 OF 2018

JUDGMENT

M.R.SHAH, J.

Leave granted in all these Special Leave Petitions.

1. As common question of law and facts arise in this group of appeals arising out of the impugned judgment and order dated 15.09.2016 passed by the High Court of Bombay, Bench at Nagpur passed in Writ Petition No.2695 of 2015, all these appeals are being disposed of by this common judgment and order. For the sake of convenience, Civil Appeal arising out of the SLP© No.32089 of 2016 is treated as lead matter and the facts in the said appeal are narrated.
2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 15.09.2016 passed by the Division Bench of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur passed in W.P.No.2695 of 2015 by which the Division Bench has allowed the said Writ Petition preferred by the respondents Nos.1 to 18 hereinoriginal petitioners Nos.1 to 18 some of the occupants/tenants of the building in question and by which the Division Bench has set aside the notice dated 24.04.2015 issued by the Nagpur Improvement Trust, the original respondentsNagpur Improvement Trust and others have preferred the present appeals.
3. The facts leading to the present appeals in nutshell are as under.

4. That the Nagpur Improvement Trust Act 1936 (hereinafter referred to as the ‘NIT Act’) was enacted on 25.12.1936. That the Nagpur Improvement Trust (hereinafter referred to as the ‘NIT’) vide Board Resolution dated 29.10.1960 framed an improvement Scheme known as “Abhyankar Road Widening and Buty Mahal Street Scheme” (hereinafter referred to as “the Scheme”) in respect of 8.7 acres of land bearing Khasra No.320 and 315 (part) Mouza Sitabuldi, belonging to the Buty Family. That the same Scheme came to be framed under Section 31 of NIT Act for “creating new or improving the existing means of communications and facilities for traffic”. That, inter alia, a new 15 metres wide road was to be constructed to join Mahatma Gandhi Road to Abhyankar Road. That the internal road of 15 metres provided in the said Scheme is the subject matter of issue in the present matters. That, the said Scheme came to be published on 29.10.1961 as per Section 39 of the NIT Act. That, the NIT sought approval of the State Government of the above Scheme. That the State Government sanctioned the said Scheme in exercise of powers under Section 44(1) read with Section 45(1)(a) of the NIT Act on 23.09.1964. Accordingly, a Notification to that effect was also issued under Section 45 of the NIT Act.

4.1 That, thereafter, the Maharashtra Regional Town Planning Act, 1966 (hereinafter referred to as the “MRTP Act”) came into effect on 11.01.1967. At this stage, it is required to be noted that, as per the MRTP Act, any Development Plan made under the said Act had to take precedence over any Scheme to the contrary. The same shall be discussed hereinbelow.

4.2 That NIT was appointed as the “Planning Authority” under the MRTP Act for Nagpur. That, in the year 1967, the First Final Development Plan for the City of Nagpur under Sections 22 and 31 of the MRTP Act was prepared and sanctioned. At this stage, it is required to be noted that, in the said final Development Plan, the above 15 metres road which was provided under the Town Planning Scheme under the NIT Act was not shown in the Development Plan under the MRTP Act.

4.3 That the NIT, in Board meeting dated 05.06.1981 and 31.12.1981, decided to implement the Scheme. That, a Special Land Acquisition Officer came to be appointed by the State Government for acquisition of the land and the proceedings of the land acquisition came to be initiated. 4.4 That a newspaper article was published on 21.06.1981 stating that the NIT has decided to handover the “Buty Mahal Development Scheme” to the land owners for redevelopment. That, in the year 1983, a Writ Petition being WP.No.2326 of 1983 was filed by the land owners before the Nagpur Bench of the Bombay High Court challenging the acquisition. Initially, the High Court granted an interim stay on the acquisition proceedings.

4.5 That, on 07.06.1984, the land owners – Shri Yogeshwar Buty and Smt. Madhuribai Buty approached NIT to allot a reconstituted plot or plots bearing Nos.6, 7 and 8 belonging to them. However, the said request came to be rejected by the NIT on 17.08.1984.

4.6 That, on 13.03.1995, one Smt. Indirabai Buty (land owner) submitted an application for permission to develop the land stating inter alia, that; (1) Development of the land would be as per the Development Plan of the NIT; (2) All the tenants would be accommodated in the proposed Scheme; (3) The betterment charges would be paid to the NIT. That, the Board of NIT in its meeting held on 11.03.1996 passed a Resolution wherein it was, inter alia, decided(1) A plot was

allocated in the matter of Shri Yadhuraj Sanghani; (2) Smt. Indirabai Buty and others land owners to accommodate in their proposed Scheme, the tenants in the area of the reconstituted plot and (3) All the petitions in respect of the subject plot would have to be withdrawn unconditionally. On the basis of the said Resolution of the NIT dated 11.03.1996, Writ Petition No.2326 of 1983 challenging the acquisition was withdrawn by the land owners.

4.7 In the meantime, in the year 1989, the First Final Development Plan which was earlier prepared and sanctioned in the year 1986, came to be revised. Again, the above 15 metres internal road was not depicted in the revised DP. 4.8 It appears that, in the year 1997, NIT addressed letters to the Urban Development Department requesting the latter to obtain permission from the Government to relax Rule 5(2) of the NIT (Land Disposal) Rules, 1983 (hereinafter referred to as the “1983 Rules”) under Rule 26 of the 1983 Rules, to allocate the reconstituted plot in the present Scheme. That the State Government vide order dated 07.10.1997 issued under Rule 26 of the 1983 Rules relaxed Rule 5(2) and allotted the reconstituted plot in Survey Nos.3117, 3119, 3123, 3127, 3120, 3122, 3124 and 3125 in Khasra No.320 Mouza Sitabuldi, subject to certain conditions including inter alia that(i) The Applicants would accept the compensation of the land fixed by the Land Acquisition Officer and give possession of the lands to him; (ii) Development of the land would as per the Development Plan of NIT; (iii) All the tenants are to be accommodated in the Scheme and (iv) That in the interest of tenants the NIT fixed the plot allotment rate @ 50% of the market value, without prejudice to Rule 7(3) of the 1983 Rules.

4.9 That the NIT passed a Board Resolution on 23.10.1997 to implement the altered Scheme in terms of G.O. dated 07.10.1997. That the Special Land Acquisition Officer, NIT passed an Award dated 16.12.1997 in respect of the land admeasuring 5677 sq.ft bearing Khasra No.320 Sitabuldi, Nagpur. That, pursuant to the Award declared by the Land Acquisition Officer, possession of the land was taken by the Land Acquisition Officer and handed over to NIT. It appears that, out of 271552.60 sq.ft of the land, only 114079.36 sq.ft was acquired by NIT and the rest of the lands remained with the land owners.

4.10 That the Final Development Plan in terms of Section 31 of the MRTP came to be sanctioned in the year 2001. 4.11 That pursuant to the G.O. dated 07.10.1997, the process of widening of the Abhyankar road was initiated and notices were issued for demolition of shops. At that stage, Writ Petition No.798 of 2002 was filed by some of the Abhyankar Road tenants challenging the demolition notices issued by the NIT to the tenants in the process of road widening. The said Writ Petition came to be dismissed by the High Court by judgment and order dated 22.02.2002. The matter was carried before this Court. Before this Court, a compromise was reached between the petitioners of W.P.No.798 of 2002 and land owners and NIT. By order dated 08.04.2002, SLP© No.4846 of 2002 was disposed of in terms of the compromise arrived at between the land owners, the tenants (only on writ petitioners) original petitioners to W.P.No.725 of 2002), wherein inter alia the following conditions were specified:

The Landlord shall construct a multi-storeyed building on the reconstituted plot that was to be allotted to him by the NIT.

The Tenant and Landlord shall within a period of one week from the filing of the compromise petition would vacate such area out of the property covered in the instant proceedings in their possession as is required for widening of the Abhayankar Road. The compromise also provided, NIT to allot one single reconstituted plot and redevelopment of suit property to be carried out in accordance with the Development Plan of Nagpur City and all tenants to be rehoused post development. 4.12 That thereafter, on the request made by the owners, the Resolution was passed by the NIT dated 23.10.2003 to allot a single reconstituted plot admeasuring 10602.09 sq.mts as undivided share and the same was offered to the Buty family.

That thereafter, the Government by letter dated 12.11.2003 allotted the reconstituted plot to the owners. From the letter dated 12.11.2003, it appears that the land for road will be provided as per the Development Plan and that the beneficiaries will have to make land available for road widening and parking.

4.13 It appears that thereafter the NIT represented to the State Government vide Representations dated 16.08.2005 and 29.03.2006 purportedly under Section 37(1) of the MRTP Act in order to increase the width of the Abhyankar Road from 12 metres to 24 metres and for converting the reconstituted plot from residential to commercial in order to accommodate the tenants running commercial shops.

4.14 It appears that thereafter on 02.08.2006, the owners entered into a development agreement with one of the petitioners herein – M/s Goel Ganga Infrastructure & Real Estate Pvt. Ltd. For developing the property bearing Khasra No.320.

4.15 That thereafter the State Government passed an order dated 22.06.2007 under Section 37(1) of the MRTP Act permitting the change of use in respect of Khasra No.320 and 315 (Part) from residential to commercial. It appears that the permission was also granted by the State to widen the Abhyankar Road to 24 metres in place of 12 metres. 4.16 It appears that thereafter the provisional sanction was granted by NIT on 22.04.2008 to the drawing/building map to the layout plan submitted by developer for the construction of a commercial complex. It appears that thereafter vide letter dated 18.08.2009, the NIT issued a letter to the land owners allotting a single reconstituted plot admeasuring 114079.36 sq.mts to the land owners, subject to the conditions mentioned in the said letter. That thereafter, on 10.02.2010, a lease deed was executed between the NIT and the land owners in respect of the reconstituted plot subject to the terms and conditions mentioned in the allotment letter dated 18.08.2009. It appears that thereafter on 15.05.2012, the NIT sanctioned the Final Layout Plan in respect of the reconstituted plot as per the D.C.R. of Nagpur City. That the building plan also came to be sanctioned on 27.06.2012 in accordance with the D.C.R. of Nagpur City. That, on 10.12.2014, building permit and commencement certificates were issued by the NIT subject to certain conditions specified therein. That a revised building plan was also sanctioned by the NIT on 11.12.2014 subject to the conditions mentioned therein.

4.17 That thereafter on 24.04.2015, the NIT issued notices to the tenants asking them to vacate a portion of their shops so as to enable construction as per the layout plan. 4.18 The aforesaid notices

gave rise to filing of Writ Petition No.2695 of 2015 before the High Court of Bombay, Nagpur Bench. In the said Writ Petition, the Respondents Nos.1 to 18 herein the original writ petitioners prayed inter alia for an order quashing the notices issued by the NIT on 24.04.2015. That the said petition was opposed by the original writ petitioners as well as the NIT. It appears that thereafter the original writ petitioners filed an application being C.A.No.1615 of 2015 in W.P.No.2695 of 2015 praying for amendment to the prayers in the writ petition and allow them to challenge the sanctioned plan dated 27.06.2012 and the revised plan dated 11.12.2014. The said amendment was opposed by the original land owners and the developers. However, thereafter High Court allowed the said Amendment application. 4.19 It appears that, during the course of the hearing, the High Court by order dated 03.09.2015 in W.P.No.2695 of 2015 directed the Chairman, NIT to explore the possibility of an amicable settlement by calling the representatives of both the tenants and the developers and land owners and directed to submit a report to the Court. It appears that, pursuant to the order dated 03.09.2015, the Chairman, NIT called all the parties. That thereafter the Chairman, NIT submitted a report on 15.10.2015 stating that no settlement could be arrived at between the parties.

4.20 That thereafter, by impugned judgment and order, the High Court has allowed the Writ Petition and has quashed and set aside the demolition notice dated 28.04.2015 issued by the NIT. The High Court has also further observed that it will be open for the NIT to issue fresh notices of demolition to the writ petitioners after the sanctioned layout plan dated 15.05.2012, the building permit granted on 27.06.2012 revised on 11.12.2014 as well as the construction, if any, carried out are brought in conformity with the Scheme published under Section 45 of the NIT Act of 23.09.1964. While passing the impugned judgment and order the High Court has observed and held that the layout plan sanctioned in the building permit granted are contrary to the provisions of the Scheme published and sanctioned under Section 45 of the NIT Act and that the same suffers from vice of internal mischief.

4.21 That the impugned judgment and order passed by the High Court dated 15.09.2016 in W.P.No.2595 of 2016 is the subject matter of the present appeals.

5. It appears that, in the meantime and after the impugned judgment and order passed by the High Court, the original Scheme sanctioned under Section 45 of the NIT Act which provided 15 metres internal road came to be modified as provided under the NIT Act by deleting 15 metres internal road. The same came to be published in the Government of Maharashtra Gazette on 24.04.2017. That the W.P.No.5005 of 2017 was filed by the 18 tenants/shopkeepers before the Nagpur Bench, Bombay High Court questioning the Resolution passed by the NIT dated 24.04.2017 issued under Section 46 of the NIT Act deleting 15 metres internal road and another internal road from the Scheme. That a Transfer Case No.23 of 2018 was filed before this Court praying inter alia for transfer of W.P.No.5005 of 2017 to this Court. That is how, the Transfer Case No.23 of 2015 is also listed along with the present group of appeals.

5.1 We have heard the learned counsel appearing for the respective parties in the transferred Writ Petition No.5005 of 2017 also, along with the other appeals arising out of the impugned judgment and order dated 15.09.2016 passed in W.P.No.2695 of 2015.

6. Mr. V. Giri, Mr. Mukul Rohtagi and Mr. Dhruv Mehta, learned senior counsel appearing on behalf of the respective appellants have vehemently submitted that the impugned judgment and order passed by the High Court is contrary to the provisions of MRTP Act and also the law laid down by this Court in the case of Manohar Joshi vs. State of Maharashtra & Anr. 2012 (3) SCC 619.

6.1 The learned counsel appearing on behalf of the respective appellants original respondents have vehemently submitted that while passing the impugned judgment and order the High Court has not properly appreciated and considered the relevant provisions of MRTP Act. 6.2 The learned counsel appearing on behalf of the respective appellants have vehemently submitted that though in the original Scheme framed under the provisions of the NIT, 1936 there was a provision for 15 metres internal road, thereafter when the MRTP Act came to be enacted and came into force and the Development Plan framed and sanctioned under the provisions of the MRTP Act did not contain any "internal road" as was there in the Scheme published under Section 45 of the NIT Act, in view of the provisions of the MRTP Act, the Development Plan overrides the DP Scheme and, therefore, there is no question of providing any internal road. It is submitted that the High Court has not properly appreciated the abovesaid at all.

6.3 It is vehemently submitted by the learned counsel appearing on behalf of the respective appellants that, as per the law laid down in the case of Manohar Joshi (supra), the DP Plan overrides the Scheme; and anything contrary to the DP Plan in the Scheme shall have to be varied to bring it in line with the Development Plan sanctioned under the provisions of MRTP Act. It is submitted that, therefore, the High Court has materially erred in quashing and setting aside the notices of demolition which are based upon final layout plan sanctioned on 15.05.2012 and building permit granted on 27.06.2012, and revised on 11.12.2014, which were as per the provisions of MRTP Act.

6.4 It is further submitted by the learned counsel appearing on behalf of the respective appellants that the High Court has materially erred in misreading and/or misinterpreting the judgment of this Court in Manohar Joshi (supra) and held that the statutory obligations created upon the NIT under Section 45 of the NIT Act to execute the Scheme to the extent it is not in variation or modification of the proposals in the Final Development Plan, continues to subsist and can be enforced. It is vehemently submitted by the learned counsel appearing for the respective appellants that the aforesaid observations are just contrary to the observations made by this Court in the case of Manohar Joshi (supra). It is submitted that in the case of Manohar Joshi (supra) this Court has specifically observed and held that even if such a variation as directed under Section 39 of MRTP Act does not take place, the land cannot be put to use in any way in contradiction with the provisions in the DP Plan. 6.5 It is further submitted by the learned counsel appearing on behalf of the respective appellants that even the aforesaid finding and the observation are contrary to Section 43 of the MRTP Act which provides that once the declaration of intention to prepare a Development Plan is presented, no development contrary thereto can be permitted. 6.6 It is further submitted by the learned counsel for the respective appellants that the High Court has not properly appreciated and considered the fact that, in view of the subsequent development and the widening of the existing road, there was no necessity for internal road as provided in the Scheme under the NIT Act. It is submitted that as such in view of the subsequent development and widening of the existing road, when subsequently the DP under the MRTP Act was prepared, there was no provision for 15 metres

internal road as provided earlier in the Scheme under the NIT Act. 6.7 It is further submitted by the learned counsel that the High Court has not properly appreciated the fact that as such in the Development Plan prepared under the provisions of MRTP Act, which was first prepared in the year 1976 and in the subsequent DP, there was no provision for the internal road and, despite the same, the same was not challenged by the original writ petitioners. It is submitted that even initially what was challenged in the main writ petition was demolition notices. It is submitted that even subsequently also the DP prepared and sanctioned under the provisions of MRTP Act, which does not contain any provision for internal road was not under challenge at all. It is submitted that, therefore, the layout plan came to be sanctioned under the provisions of the MRTP Act and the building permit was issued under the provisions of MRTP Act, which came to be challenged subsequently by way of amendment. It is submitted that in view of the relevant provisions of the MRTP Act, the construction has to be made as per the layout plan and the building permit granted under the provisions of MRTP ACT. It is submitted, that, therefore, the High Court has materially erred in quashing and setting aside the final layout plan as well as the building permit solely on the ground that the same is in contravention of the Scheme published under Section 45 of the NIT Act.

6.8 It is further submitted by the learned counsel for the Appellants that the High Court has not properly appreciated and considered the stand of the NIT that punctuated lines in the Development Plan only indicate the boundaries of the Scheme under the control of the NIT and it has no more significance than this.

6.9 It is further submitted by the learned counsel that the High Court has materially erred in observing that, in the absence of any provisions contrary to the internal road, shown in the Development Plan, it cannot be said that the provisions of the internal road vanishes automatically. It is submitted that the High Court has not properly appreciated the fact that as such the Development Plan which has been prepared in consonance with the provisions of the MRTP Act, specifically do not provide any internal road, which was earlier provided in the Scheme under the NIT Act. 6.10 It is further submitted by the learned counsel that even the Government Resolution dated 07.10.1997 specifically provided and/or permitted to develop the land in question as per the Development Plan and not as per the Scheme. It is submitted by learned counsel that while issuing G.O. dated 07.10.1997, it was specifically noted that the 50 ft. (15 metres) wide road through the land is not provided under the Development Plan. It is submitted that the aforesaid was even considered and noted by the NIT. It is submitted that despite the above the High Court has observed that all throughout the NIT desired to implement the Scheme. 6.11 It is further submitted by the learned counsel that the High Court has not properly appreciated the fact that even one consolidated plot was allotted under the provisions of the MRTP Act and thereafter the layout plan as per the provisions of the MRTP Act was submitted and got sanctioned and the development permission was obtained to carry out the construction which was granted as per the DP sanctioned under the provisions of MRTP Act. It is submitted that the High Court has materially erred in quashing and setting aside the demolition notices which as such were consequent upon the sanction of the layout plan and the grant of the permission. It is submitted that the High Court has materially erred in quashing and setting aside the sanctioned layout plan as well as the development permission granted under the provisions of the MRTP Act. It is further submitted by the learned counsel that the High Court has, therefore, materially erred in observing and holding that grant of

permission/sanction of layout plan which was in contravention of the Scheme under the NIT Act was a mischief in law to provide an unfair advantage to the developers and the owners and it deprives the facility of frontage to the tenants on the internal road. 6.12 It is further submitted by the learned counsel that the High Court has materially erred in not appreciating the fact that only 18 tenants filed the writ petition and were aggrieved, against which majority of the tenants accepted the settlement/compromise before this Court. It is stated that the appellants are ready and willing to provide the same benefit to the original writ petitioners herein also. It is submitted, however, for some oblique reason and/or to get some more benefits, only 18 tenants approached the High Court and filed the writ petition.

6.13 The learned Counsel appearing on behalf of the respective appellants have vehemently submitted that, on one hand, the High Court has specifically observed that, in paragraph 86, the High Court has not set aside and it is also not necessary for the High Court to set aside the layout plan and the building permit granted by the NIT, the ultimate observation made by the High Court in paragraph 89(2) would tantamount to quashing and setting aside the sanctioned layout plan and even the building permit. 6.14 Making the above submissions and relying upon the provisions of NIT Act as well as the MRTP Act and the decision of this Court in the case of Manohar Joshi (supra), it is requested to allow the present appeals and quash and set aside the impugned judgment and order passed by the High Court.

7. The present appeals are vehemently opposed by Ms. Rukhmini Bobde, learned Advocate appearing for the writ petitioners and Ms. Deepa Kulkarni learned Advocate also. 7.1 The learned counsel appearing on behalf of the original writ petitioners have supported the impugned judgment and order passed by the High Court.

7.2 It is vehemently submitted by the learned counsel appearing on behalf of the original writ petitioners that the impugned judgment and order passed by this High Court is absolutely in consonance with the provisions of the NIT Act as well as the MRTP Act, which is not required to be interfered by this Court.

7.3 It is vehemently submitted by learned counsel for original writ petitioners that on true interpretation of the provisions of NIT Act, more particularly Section 45(3) and 45 of the NIT Act, the High Court has rightly observed and held that unless and until the Scheme sanctioned under the NIT Act is varied and/or is modified under the provisions of the NIT Act, the Scheme shall prevail and shall have to be acted upon.

7.4 The learned counsel appearing on behalf of the original writ petitioners have emphasised on the object and purpose to provide 15 metres internal road in the Scheme sanctioned under the NIT Act. It is submitted that the internal road provided in the Scheme sanctioned under Section 45 of the NIT Act was a part of Street Scheme so as to avoid the traffic congestion. It is submitted that the use of land in question on the date of such Scheme was initially for residential purposes with internal road, one cinema theatre and the peripheral area being used for shops/offices purposes. It is submitted that the object and purpose for providing the internal road under the Scheme/Street Scheme was for creating new or improving existing means of communication and facilities for

traffic. It is submitted that the execution of the Scheme was for (i) providing huge commercial complex inside the Scheme area to accommodate the tenants apart from others, (ii) widening of Mahatma Gandhi Road and Abhyankar Road outside the Scheme area; (iii) providing 50 ft (15 metres) wide internal road along with others two roads inside the Scheme area to ease out the traffic and removing congestion, and (iv) to provide space open to sky for parking . It is submitted that, therefore, once there was a Scheme/Street Scheme as sanctioned under Section 45 of the NIT Act with specific object and purpose, merely because in the Development Plan prepared under the MRTP Act, there was no specific reference to the internal road, it cannot be said that the sanctioned Scheme which was sanctioned under Section 45 of the NIT Act is not to be implemented, even if the same is not varied or modified under the provisions of the NIT Act.

7.5 It is submitted that the High Court has rightly observed and held that unless and until the Scheme is varied or is modified by the Planning Authority, which in the present case i.e. NIT, after following the due process under Section 46 of the NIT Act, the Scheme has to be implemented and anything including the sanction of the layout plan and/or grant of building permission which would be in contravention of the Scheme under NIT Act, are illegal and contrary to the provisions of the NIT as well as the MRTP Act, and, therefore, the High Court has rightly quashed and set aside the demolition notices and has rightly observed that it would be open for the NIT to issue fresh notices of demolition, after sanctioned plan, the building permit as well as construction, if any, carried out are brought in conformity with the Scheme published under NIT Act on 23.06.1964.

7.6 It is vehemently submitted by the learned counsel that the impugned judgment and order passed by the High Court is absolutely in furtherance of the object of the Scheme published under Section 45 of the NIT Act i.e. for better development and to avoid the traffic congestion. The learned counsel appearing on behalf of the original writ petitioners has heavily relied upon the decision of this Court in the case of Manohar Joshi (supra) reported in (2012) 3 SCC 619, in support of their submissions that planning involving highly complex cities depends upon scientific research, study and experience and, thus deserves due reverence and therefore, the Scheme which is prepared after due consideration of necessity for better street planning has to be implemented, unless the same is varied and/or is modified after following due procedure as required under the provisions of the NIT Act.

7.7 It is vehemently submitted by the learned counsel that as the appellants have as such subsequently implemented the impugned judgment and order passed by the High Court by modifying the Scheme which was earlier sanctioned and prepared under the NIT Act, as permitted by the High Court and, therefore, now thereafter it is not open for the appellants to challenge the impugned judgment and order passed by the High Court.

8. Now, so far as challenge to variation/modification of the Scheme under Section 46 of the NIT Act, which is the subject matter of the Transfer Petition, it is vehemently submitted by the learned counsel on behalf of the writ petitioners that the same is absolutely in breach of the provisions of the NIT Act. It is submitted that a detail procedure required to be followed for variation and/or modification of the Scheme as provided under the NIT Act has not been followed at all. It is submitted that neither any objections were invited nor any opportunity was given to the writ

petitioners. It is submitted that, therefore, subsequent variation and/or modification of the Scheme is absolutely illegal and deserves to be quashed and set aside. It is submitted that even the same can be said to be in violation of the principles of natural justice. In support of the above, the learned counsel appearing on behalf of the writ petitioners the tenants has heavily relied upon the decision of this Court in Scheduled Caste and Weaker Section Welfare Association vs State of Karnataka reported in (1991) 2 SCC 604.

8.1 By making the above submission, it is requested to dismiss the appeals and uphold the impugned judgment and order passed by the High Court and to allow the Transfer Petition and quash and set aside the variation and/or modification of the Scheme published under Section 46 of the NIT Act.

9. Now, so far as the Transfer Petition is concerned, and challenge to the subsequent variation and/or modification of the Scheme published under Section 46 of the NIT Act is concerned, the learned counsel appearing on behalf of the NIT as well as the original land owners and developers have vehemently submitted that the Scheme is varied/modified after following due procedure required under the provisions of the MRTP Act. It is submitted that, as per Section 39 of the MRTP Act, where a final Development Plan contains proposals which are in variation, or modification of those made in a Town Planning Scheme, which has been sanctioned by the State Government before the commencement of the MRTP Act, the Planning Authority shall vary such Scheme suitably under Section 92 to the extent necessary by the proposals made in the Final Development Plan. It is submitted that Section 92 authorises the State Government to vary and/or modify the Scheme. It is submitted that, therefore, if Sections 39 and 92 of the MRTP Act are conjointly read, it can be seen that the variation of the Scheme subsequently shall be a formal action to bring the Scheme in consonance with the Development Plan. It is submitted that, therefore, when the Development Plan was sanctioned after inviting the objections etc. the subsequent variation of the Scheme to bring the Scheme in consonance with the sanction Development Plan would be only a formality which is required to be done under Section 92 of the MRTP Act. It is submitted that, therefore subsequent variation and/or modification of the Scheme which in the present case would be as per Section 39 and Section 92 of the MRTP Act would be absolutely in consonance with the provisions of the MRTP Act as well as the NIT Act. It is submitted that the provisions of the MRTP Act and NIT Act are required to be read harmoniously to subserve the objects and purposes of Sections 39 and Section 92 and other relevant provisions of the MRTP Act.

10. Now, so far as the submission on behalf of the original writ petitioners that in view of the fact and subsequently the Scheme came to be varied as permitted by the High Court in the impugned judgment and order and, therefore, the judgment and order passed by the High Court can be said to have been implemented and, therefore, the appellants may not be permitted to challenge the impugned judgment and order of the High Court is concerned, it is submitted that merely because without prejudice and to be on safer side if the Scheme is varied and/or modified, it cannot be said that appellants have waived their right to challenge the impugned judgment and order, more particularly when the High Court by the impugned judgment and order has set aside the demolition notices and virtually sought as to know that the sanctioned layout plan and validly granted the building permit.

11. We have heard the learned counsel appearing on behalf of the respective parties. What is challenged in the present batch of appeals is the impugned judgment and order dated 15.09.2016 passed by the Bombay High Court passed in Writ Petition No.2695 of 2015. On consideration of the impugned judgment and order passed by the High Court, it appears that the following two questions fell for determination before the High Court:

“1. Whether mere absence of proposal of “internal road ” in the final Development Plan under sub-section (6) of section 31 of the Maharashtra Regional and Town Planning Act and its existence in the Scheme, published under Section 45 of the Nagpur Improvement Trust Act, can be termed as ‘variation’ or ‘modification’, as contemplated by section 39 of the MRTP Act?,

1. Whether the impugned notices of demolition, based upon final layout plan sanctioned on 15.05.2012 and the building permit granted on 27.06.2012 and revised on 11.12.2014, need to be set aside for want of Internal Road, which was the part of the Scheme sanctioned under Section 44 of the NIT Act? 11.1 It is required to be noted that initially demolition notices dated 24.04.2015 were challenged before the High Court issued by the NIT. At this stage, it is required to be noted that the said demolition notices were issued consequent upon the sanctioned layout plan dated 15.05.2012, the building permit granted on 27.06.2012 and revised on 11.12.2014. Subsequently, by an amendment, the original writ petitioners challenged the plan sanctioned by the NIT on 27.06.2012 and the sanction granted to the revised plan on 11.12.2014. The said amendment was allowed. The challenge was mainly on the ground that the sanction granted is illegal and contrary to the Scheme. The Scheme which was sanctioned in the year 1964 under Section 45 of the NIT Act provided 15 metres internal road.

At this stage, it is required to be noted that the improvement Scheme known as the “Abhyankar Road Widening and Buty Mahal Street Scheme” was prepared and sanctioned under the provisions of NIT Act in the year 1964. However, thereafter, the MRTP Act came to be enacted and came into effect subsequent to the enactment of the NIT Act i.e. with effect from 28.12.1966. From the chronology of list of events noted hereinabove it appears and it is not in dispute that the First Final Development Plan under Section 31 of the MRTP Act came to be sanctioned on 03.06.1976, which do not contain 15 metres internal road as was there in the Scheme sanctioned under Section 45 of the NIT Act. Even subsequently also, when the DP was revised in the year 1989 and thereafter in 2001, the above internal road was not depicted in the revised DP. That thereafter the Government allotted reconstituted composite plot under the MRTP Act and original land owners/developers submitted the layout plan, which came to be sanctioned by the NIT and even the building permission was granted under the provisions of the MRTP Act. Therefore, the NIT issued the demolition notices dated 24.04.2015 impugned before the High Court so as to allow/permit the original land owners/developers to put up the construction on the land in question as per the sanctioned layout plan and the building construction permission. The High Court by the impugned judgment and order has held that as in the Scheme sanctioned under Section 45 of the NIT Act 15 metres internal road is provided, unless the same is varied and/or modified under Section 46 of the

NIT Act by the Planning Authority, the same shall have to be implemented and thereby the High Court has quashed and set aside the notices of demolition dated 24.04.2015 keeping it open for the NIT to issue fresh notices of demolition to the original writ petitioners after the sanctioned layout plan dated 15.05.2012, the building permit granted dated 27.06.2012 and revised on 11.12.2014 as well as the construction, if any, carried out are brought in conformity with the Scheme published under Section 45 of the NIT Act on 23.06.1964.

11.2 Therefore, the short question which is posed for consideration before this Court is whether, in the facts and circumstances of the case, when the Development Plan sanctioned under the provisions of MRTP Act do not provide an internal road from the land in question, still the Scheme published under Section 45 of the NIT Act which provided 15 metres internal road would be applicable and/or would have to be implemented, though the Scheme may be contrary to the Development Plan sanctioned under the provisions of the MRTP Act ?

11.3 To answer the aforesaid question the object and purpose of MRTP Act, relevant provisions of MRTP Act are required to be referred to and considered.

11.4 From the statement and object of the MRTP Act 1966, it appears that the same has been enacted to make provisions for: (1) planning the development and use of land in regions established for their purposes and for constitution of Regional Planning Boards therefor; (2) to make better provisions for the preparation of Development Plan with a view to ensuring that Town Planning Schemes are made in the proper manner and the execution is made effective; (3) to provide for the compulsory acquisition of land required for public purposes in respect of the plans, and (4) for purposes connected with the matters aforesaid. The said Act is enacted to make provisions for planning the development and the use of land in regions established for their purpose and to ensuring that Town Planning Schemes are made in a proper manner and their execution is made effective. Therefore, the MRTP Act came to be enacted with aforesaid object and purpose.

11.5 Section 3 of the Act permits the State Government to establish any area in the State to be a region. A regional plan is supposed to be prepared for various subjects which are mentioned in Section 14 of the Act. The ‘Development Plan’ is defined under Section 2(9) of the Act as a plan for the development or redevelopment of the area within the jurisdiction of Planning Authority. Section 2(19) defines the “Planning Authority” to mean a local authority, and it includes some other specified authorities also. There is no dispute that the Development Plan has to be prepared “in accordance with the provisions of regional plan” which is what is specifically stated in Section 21(1) of the Act.” 11.6 Section 39 of the MRTP Act provides for □Section 39. “Variation of town planning scheme by development plan – where a final development plan contains proposals which are in variation or modification of those made in a town planning scheme which has been sanctioned by the State Government before the commencement of this Act, the Planning Authority shall vary such scheme suitably under Section 92 to the extent necessary by the proposals made in the final development plan.” 11.7 We are concerned with the Final Development Plan of 1976 which does not contain the 15 metres internal road from the land in question as against the 15 metres internal road provided in the final Scheme of 1964. Thus the Scheme of 1964 prepared and sanctioned the provisions of the NIT Act to the extent of providing 15 metres internal road can be said to be not in

consonance with the Development Plan sanctioned under the provisions of the MRTP Act. 11.8 Section 43 of the MRTP Act provides for restrictions on development of the land after the date on which the declaration of intention to prepare the Development Plan for any area is published in the official gazette except as provided under proviso to Section 43 of the Act. Section 46 of the MRTP Act provides that the Planning Authority in considering the application for permission for development shall have due regard to the provisions of any draft or final plan or proposals published by means of notice submitted or sanctioned under the MRTP Act. Section 59 of the MRTP Act provides for preparation of the Scheme under the MRTP Act, which specifically provides that the Planning Authority may prepare one or more Town Planning Scheme for the area within its jurisdiction or any part thereof for the purpose of implementing the proposals in the Final Development Plan. As such, we not concerned with Section 59 of the MRTP Act, as in the present case, the Scheme which provides 15 metres internal road was prepared and sanctioned under the provisions of the NIT Act and prior to the enactment of MRTP Act and, therefore, Section 39 read with Section 92 shall be applicable.

11.9 Therefore, on conjoint reading of Sections 39, 43, 46 and even Section 59 of the MRTP Act, the Development Plans prepared and sanctioned under the provisions of the MRTP Act shall prevail. Therefore, there cannot be any development and/or construction permitted contrary to the Development Plan prepared and sanctioned under the provisions of the MRTP Act, though the Scheme prepared and sanctioned under Section 45 of the NIT Act may permit such development and/or construction. As such, the aforesaid view which we are taking is supported by the decision of this Court in the case of Manohar Joshi (*supra*). In the case of Manohar Joshi (*supra*), after considering the relevant provisions of the MRTP Act as well as the NIT Act, this Court has specifically observed and held that when there is a conflict between the Development Plan prepared and sanctioned under the provisions of MRTP Act and the Scheme sanctioned under the provisions of the NIT Act, the DP shall override the TP Scheme. It is also further observed that even if the variation, as directed under Section 39 of the MRTP Act does not take place, the land cannot be put to use, in any way, in contradiction with the provisions of DP Plan. In the case of Manohar Joshi (*supra*) this Court confirmed the findings recorded by the High Court that the DP Plan overrides the TP Scheme. This Court did not accept the submission that the Development Plan and the TP Scheme operate independent of each other and, until the State Government exercise its power of eminent domain under the Development Plan, and acquires the land, the land owners can develop its property as per the user permitted under the TP Scheme. While not accepting the above submission, it is observed by this Court that permitting a development contrary to the provisions of the Development Plan, knowing fully well that the user under the TP Scheme is at variance in the Development Plan will make provisions of Sections 39, 42, 46 and 52 of the MRTP Act meaningless. Therefore, the contrary observation and finding recorded by the High Court that unless and until the Scheme is varied under Section 46 of the NIT Act as required under provisions of Section 39 of the MRTP Act, the Scheme sanctioned under Section 45 of the NIT Act shall subsist and can be enforced, cannot be sustained and the same deserves to be quashed and set aside.

11.10 It is required to be noted that though in the Scheme sanctioned under the provisions of the NIT Act proposing 15 metres internal road was in operation since 23.01.1964, when the MRTP Act came into force and even thereafter when the First Development Plan was sanctioned under Section

31 of the MRTP Act for Nagpur in the year 1976 in which there was no proposal for 15 metres internal road, and even thereafter, twice the Development Plan was revised first in the year 1989 and again in the year 2001 in which also there was no provision for the 15 metres internal road, despite the above, at no point of time, anybody including the original writ petitioners challenged the Development Plan under the MRTP Act in which the 15 metres internal road was not shown. Even thereafter also, at no point of time, and even in the writ petition, the original writ petitioners challenged and prayed to set aside the Development Plan in which there was no provision for 15 metres internal road, though the same was mentioned in the Scheme prepared and sanctioned under Section 45 of the NIT Act.

11.11 It is also required to be noted that even the land owners/developers have got the layout plan sanctioned and obtained the building permission under the provisions of the MRTP Act. Considering the object and purpose of the MRTP Act noted hereinabove, it appears that though there was a provision for internal 15 metres road in the Scheme under the NIT Act which was sanctioned in the year 1964, thereafter much development had taken place and there are changed circumstances. In the Development Plan/revised Development Plan the existing road came to be widened from 12 metres to 24 metres and, therefore, when the DP was prepared and sanctioned under the MRTP Act, there was no proposal for 15 metres internal wide road. As discussed hereinabove, the Development Plan prepared and sanctioned under the MRTP Act would override the TP Scheme. As observed hereinabove, there cannot be any development and/or construction permitted contrary to the DP Plan under the MRTP Act. Under the circumstances, the impugned judgment and order passed by the High Court cannot be sustained.

11.12 A faint attempt was made on behalf of the original writ petitioners that, in the DP Plan, there was punctuated line which can be said to be 15 metres internal road from Abhyankar Road. However, on considering the part plan of sanctioned Development Plan of Nagpur City sanctioned by Notification dated 10.09.2001 (upon which the reliance has been placed by the original writ petitioners), the aforesaid cannot be accepted. As rightly contended on behalf of the NIT, the punctuated lines are described as Mouza Boundary/NIT Scheme Boundary. It is to be noted that even the High Court noted that there is a conflict between the DP Plan and the Scheme sanctioned under Section 45 of the NIT Act.

11.13 Even the findings recorded by the High Court that the action of the NIT in sanctioning the layout plan and granting building permit is mischief of law, cannot be accepted. The layout plans are sanctioned and the building permit has been granted absolutely in consonance with the DP sanctioned under the MRTP Act. The demolition notices were received pursuant to and in furtherance of the building permit and so as to enable the original land owners/developers to put up the construction as per the layout plan sanctioned and the building permit granted. Therefore, the High Court has erred in holding that the action of the NIT was mischief in law.

11.14 It is required to be noted that, on one hand, the High Court has specifically observed in paragraph 86 that the High Court has not set aside and it is also not necessary for the High Court to set aside the layout plan and the building permit granted by the NIT, the observations made by the High Court in paragraph 89(2) would tantamount to virtually quashing and setting aside the

sanctioned layout plan in the building permit. The sum and substance and the resultant effect of the observations made by the High Court in paragraph 89(2), the observation made by the High Court in earlier part of the judgment virtually restrains the original land owners/developers not to put up any construction on the building layout plan and the building permit granted under the MRTP Act. Therefore, it appears that though not specifically quashing and setting aside the sanctioned layout plan and the building permit granted under the MRTP Act, the High Court has nullified the sanctioned layout plan and the building permit granted under the MRTP Act. 11.15 It is also required to be noted that the dispute is pending since many years. The land owners/developers entered into compromise with other similarly situated tenants. Now, only 18 tenants are opposing the development, though the land owners/developers have agreed and are ready and willing to give similar treatment to them also which would be given to other tenants as agreed before this Court. It appears that for some reasons and/or to pressurize the land owners/ developers to give them some more benefits, the original writ petitioners are opposing the development/construction. Though the original land owners/developers are having the building permission and have got their plans sanctioned under the provisions of MRTP Act and even after incurring huge expenses, they are not in a position to put up any further construction because of the pending litigation. Therefore, the equity would also be in favour of the appellants as land owners/developers. As, at this stage, it is required to be noted that even those tenants with whom the original land owners/developers have entered into a compromise before this Court have appeared through the Advocate and have stated that they are out of possession since last more than ten years and therefore, they all have requested to quash and set aside the impugned judgment and order passed by the High Court and permit the land owners/developers to complete the construction. 11.16 Insofar as the submission made by the learned counsel appearing on behalf of the original writ petitioners that after the impugned judgment and order passed by the High Court, the NIT has modified the Scheme as permitted by the High Court and, therefore, the impugned judgment and order passed by the High Court is acted upon and, therefore, the impugned judgment and order passed by the High Court may not be permitted to be challenged by the NIT and/or the developer is concerned, the same has no substance. Merely because to avoid any further legal complication, if the NIT has modified the Scheme that would not preclude the NIT and/or the original land owners/developers to challenge the impugned judgment and order.

11.17 In view of the above submissions and for the reasons stated hereinabove, the impugned judgment and order passed by the High Court deserves to be quashed and set aside.

TRANSFERRED CASE © No.23/2018:

12. Now, so far as the Transferred Case © No.23/2018 is concerned, the Writ Petition filed by the original writ petitioners being Writ Petition No.5005 of 2017 has been transferred to this Court pursuant to the order passed by this Court dated 03.11.2017. In the petition, the original writ petitioner have prayed to quash and set aside the Notification dated 21.04.2017 issued by the NIT and the NIT Resolution No.27/1167 dated 07.03.2017 and Resolution No.17/1165 dated 03.01.2017 by which the original Scheme of 1964 sanctioned under Section 45 of the NIT Act has been modified in exercise of power under Section 45 of the NIT Act and the 15 metres internal road has been deleted.

12.1 It is vehemently submitted on behalf of the original writ petitioners that the Notification modifying the Scheme and deleting 15 metres internal road is without following any procedure as required under the Act and without inviting any objections and even the approval of the State Government has not been obtained. However, considering the contents of the counter affidavit filed on behalf of the NIT in which it is specifically stated that after considering the objections sent by the 15 writ petitioners in Petition No.2017, the Authority unanimously passed a Board Resolution in exercise of power under Section 46 of the Act. Therefore, it cannot be said that no opportunity at all was given to the petitioners. The decision to modify the Scheme by deleting 15 metres internal road has been taken after considering the objections raised by the writ petitioners. It is required to be noted that Section 39 of the MRTP Act mandates the Planning Authority to vary the Scheme in line with the Development Plan sanctioned under the MRTP Act. It is required to be noted that when the DP was sanctioned, without any proposal for the 15 metres internal road, first in the year 1976 and thereafter in the years 1989 and 2001, the same was after following the due procedure and the same was approved and sanctioned by the State Government. Therefore, thereafter, when the Scheme to the extent in conflict with the DP Plan has been modified as mandated under Section 39 of the MRTP Act, after considering the objections raised by the original writ petitioners, thereafter, the same cannot be said to be illegal. Therefore, reading Section 39 of the MRTP Act and the provisions of the NIT Act harmoniously, the impugned Notification modifying the Scheme and/or Board Resolution modifying the Scheme deleting 15 metres wide road, which would now be in line with the Development Plan sanctioned under the MRTP Act, the same cannot be said to be illegal warranting interference of this Court. Therefore, challenge to the Notification dated 21.04.2017 issued by the NIT and the respective NIT Resolution modifying the Scheme deleting 15 metres internal road fails.

13. In view of the above and for the further reasons stated above, all the respective Civil Appeals are hereby allowed and the impugned judgment and order dated 15.09.2016 passed by the High Court of Bombay, Bench of Nagpur passed in Writ Petition No.2695 of 2015 is hereby quashed and set aside.

13.1 The Transferred Case © No.23/2018 stands dismissed for the reasons stated hereinabove.

However, it is observed that to the respective original writ petitioners shall also be given the same treatment as would be available/given to other tenants as agreed before this Court and/or as per the settlement entered into with other tenants.

14. All these appeals are allowed accordingly with the above observations and the Transferred Case stands dismissed. There shall be no order as to costs.

.....J. (A.K. SIKRI)J. (ASHOK BHUSHAN)
.....J. (M. R. SHAH) New Delhi, JANUARY 22, 2019.