

HIGH COURT OF MADHYA PRADESH: JABALPUR

Writ Appeal No.23/2015

Appellant: Municipal Corporation Bhopal
Versus
Respondent: Prem Narayan Patidar

Writ Appeal No.24/2015

Appellant: Municipal Corporation Bhopal
Versus
Respondent: Subhash Patidar

Writ Appeal No.25/2015

Appellant: Municipal Corporation Bhopal
Versus
Respondent: M/s Shri Radhe Krishna Reality

Writ Appeal No.26/2015

Appellant: Municipal Corporation Bhopal
Versus
Respondent: Anupama Singh

Writ Appeal No.27/2015

Appellant: Municipal Corporation Bhopal
Versus
Respondent: Ram Swaroop Patidar

Writ Appeal No.28/2015

Appellant: Municipal Corporation Bhopal

Versus

Respondent: Manmohan Patidar

Writ Appeal No.29/2015

Appellant: Municipal Corporation Bhopal

Versus

Respondent: Smt. Sushila Sharma

Writ Appeal No.30/2015

Appellant: Municipal Corporation Bhopal

Versus

Respondent: Smt. Ganga Bai Sahu

Writ Appeal No.31/2015

Appellant: Municipal Corporation Bhopal

Versus

Respondent: Raj Kumar Kankane

Writ Appeal No.32/2015

Appellant: Municipal Corporation Bhopal

Versus

Respondent: Rakesh Kumar Agrawal

Writ Appeal No.33/2015

Appellant: Municipal Corporation Bhopal
Versus
Respondent: Chhotelal Sahu

Writ Appeal No.34/2015

Appellant: Municipal Corporation Bhopal
Versus
Respondent: Virendra Shrivastava

Writ Appeal No.35/2015

Appellant: Municipal Corporation Bhopal
Versus
Respondent: Rajendra Kumar Sogani

Writ Appeal No.36/2015

Appellant: Municipal Corporation Bhopal
Versus
Respondent: Anil Kumar Pali

Writ Appeal No.37/2015

Appellant: Municipal Corporation Bhopal
Versus
Respondent: Ankit Sharma

Writ Appeal No.38/2015

Appellant: Municipal Corporation Bhopal
Versus
Respondent: Annu LalMaithil

Writ Petition No.3764/2016

Petitioner: Anil Kumar Pali
Versus
Respondent: The State of M. P. and others

Writ Petition No.4246/2016

Petitioner: Anupama Singh
Versus
Respondent: The State of M. P. and others

Writ Petition No.5682/2016

Petitioner: Nitin Agrawal
Versus
Respondent: The State of M. P. and others

Writ Petition No.7714/2016

Petitioner: Jasbir Kaur Gorowara
Versus
Respondent: The State of M. P. and others

Writ Petition No.7753/2016

Petitioner: Virendra Shrivastava
Versus
Respondent: Municipal Corporation Bhopal
and others

Writ Petition No.7757 /2016

Petitioner: Smt. Ganga Bai Sahu
Versus
Respondent: Municipal Corporation Bhopal
and others

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Coram:

**Hon'ble Shri Justice A. M. Khanwilkar, Chief Justice
Hon'ble Shri Justice J. P. Gupta**

Whether approved for reporting : Yes.

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Shri Anshuman Singh, learned counsel for the appellants in W.A. Nos.23/2015, 24/2015, 25/2015, 26/2015, 27/2015, 28/2015, 29/2015, 30/2015, 31/2015, 32/2015, 33/2015, 34/2015, 35/2015, 36/2015, 37/2015, 38/2015 and respondents in W.P. Nos.3764/2016, 4246/2016 & 5682/2016.

Shri Siddharth Gupta, learned counsel for the petitioner in W.P.Nos.3764/2016, 4246/2016, 5682/2016, 7714/2016 and respondents in W.A.Nos.23/2015, 24/2015, 25/2015, 26/2015, 27/2015, 28/2015, 29/2015, 30/2015, 31/2015,

32/2015, 33/2015, 34/2015, 35/2015, 36/2015, 37/2015, 38/2015.

Shri Sanjay Agrawal, Advocate for the petitioners in W.P. No.7753/2016 & 7757/2016.

Shri Amit Seth, Govt. Advocate for the respondents/State.

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Reserved on : 02.05.2016

Date of Decision : 09.05.2016

J U D G M E N T

{ 09th May, 2016 }

Per: A.M. Khanwilkar, Chief Justice:

These matters can be disposed of by a common judgment, as common questions arise for consideration.

02. The respondents in writ appeals had filed writ petitions to challenge the proposed action of the Municipal Corporation, Bhopal, of allegedly taking possession of lands and buildings owned and possessed by them without acquiring the same much less absent payment of compensation. The learned Single Judge by a common decision dated 28.10.2014, allowed all the writ petitions. The

learned Single Judge was of the opinion that even though portion of land and buildings owned and possessed by the concerned writ petitioners was required for construction of road or road widening of the existing road, the Corporation was not competent to take any action in that regard without acquiring the same and including payment of compensation therefor. Learned Single Judge was of the opinion that acquisition should have proceeded as per the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the Act of 2013 for short) or under the provisions of Madhya Pradesh Municipal Corporation Act, 1956 (hereinafter referred to as the Act of 1956 for short). The Bhopal Municipal Corporation has, therefore, filed these intra Court writ appeals challenging the common decision.

03. During the pendency of these writ appeals, the writ petitioners, taking clue from the arguments canvassed by the respective parties and the observations of the Court during the hearing, initially filed two writ petitions to

challenge the validity of Section 305 of the Act of 1956. During the further hearing, as the matter progressed the writ petitioners realized that they may have to also challenge the validity of Section 306 of the Act of 1956 for grant of full, complete and effectual reliefs (as now prayed in the amended writ petitions). The writ petitioners applied for amendments because of the stand taken by the Corporation that it was open to the Corporation to proceed with the proposed action for implementation of the comprehensive mobility plan regarding Bus Rapid Transit System (BRTS) for reducing the congestion of traffic in the city of Bhopal by invoking power derived from Section 305 of the Act of 1956; and which issue has been answered in favour of the Corporation by the Supreme Court in the case of **The Municipal Corporation, Indore Vs. K.N. Palsikar**¹, and followed by the Single Judge of this Court in **Suresh Singh Kushwaha Vs. Municipal Corporation, Gwalior and another**².

04. We permitted the writ petitioners to amend the writ petitions as prayed; and to proceed with the hearing of

¹ AIR 1969 SC 579

² 2006 (3) MPLJ 412

the writ appeals and writ petitions, analogously, on the basis of denial of the respondents – as the questions to be answered are, essentially, questions of law.

05. For challenging the validity of provisions of Sections 305 and 306 of the Act of 1956, the writ petitioners would contend that the interpretation given to these provisions, if accepted would inevitably result in repugnancy with the provisions of the Central Act of 2013 and including violative of Article 300A of the Constitution of India. The writ petitioners rely on the scheme of the provisions of M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 (hereinafter referred to as the Act of 1973 for short) and also of the Act of 1956 to assert that the two enactments are independent. Thus, even after the Committee constituted under the provisions of Act 1973 were to draw up a development plan, that would not extricate the Commissioner from the obligation to notify the building line and public street/street. In absence of finalizing and determining the building line and the public street/street, in the plan to be prepared by the Corporation in exercise of power under Section 291 of the Act, no

precipitative action could be taken by the Corporation much less resort to taking over physical possession of the land and building and/or to remove or demolish the same in the guise of requirement for construction of public road (public street/street). It is also asserted by the writ petitioners that going by the scheme of provisions of the Act of 1956, possession of the land and/or removal of building obstructing the street cannot be resorted to until the affected person is paid just and fair compensation in that regard. Further, the compensation amount must be determined by following procedure prescribed in that behalf in the Act of 1956, if not under the Act of 2013; and only upon payment of such compensation, the Corporation could assume authority to proceed further. As regards compensation, it is submitted that any amount offered or determined by the Authority under the Act of 1956 would not be just and fair unless the same is determined on the basis of factors delineated in the Act of 2013. In other words, absent such specified parameters, it results in impinging upon the constitutional rights of the land owners/occupants of the building; and, therefore, Section 306 will have to be struck down being arbitrary and giving

unguided and fanciful power to the Authority to determine any amount in the name of reasonable compensation. It is also contended that the land owners/occupants of the building were to be dispossessed and paid compensation under the Act of 1956, the payment under that dispensation, will entail in discrimination. Inasmuch as, for the same purpose, namely, for construction of road or road widening of a national or state highway, the land owners/occupants of the building are paid compensation as per the defined parameters specified in the concerned Act, which, however, is not offered to the affected persons under the provisions of Act of 1956, albeit the land and building is in the same or contiguous area and is required for the same purpose i.e. public street. These are the broad contentions raised by the writ petitioners.

06. Per contra, the Corporation asserts that Sections 305 and 306 of the Act of 1956, if conjointly read with the other enabling provisions such as Sections 322 and 323 of the Act of 1956; and including Sections 291 and 292 of the Act of 1956, the inevitable conclusion is that the provisions of the Act of 1956 are self-contained code. It is submitted that the

argument of the petitioners that there is repugnancy in the provisions of the Act of 1956 is fallacious. It is in ignorance of the fact that the Act of 1956 is ascribable to Entry 5 of List II in the Seventh Schedule of the Constitution, in respect of which only the State legislature is competent to enact law on the subject. Thus, the argument about repugnancy cannot be taken forward. It is also contended that even if some aspects of the State Act resemble with the machinery provisions under the Act of 2013, regarding acquisition and compensation that will be of no avail. According to the Corporation, the fact that the Act of 1973 refers to the provisions of the Act of 2013, that cannot be the basis to answer the matters in issue, in the present proceedings. In that, the Act of 1973 deals with the subject of town planning; and the Act of 1956 deals with matters referable to power and duty of the Municipal Corporation for the purpose of local self-Government or village administration. The two enactments in that sense, operate in different spheres, though may have linkage in respect of certain matters such as town planning. The Act of 1956, in no unambiguous terms recognizes that even though the Commissioner is required to

draw up a town planning scheme under Section 291 of the said Act, by virtue of Section 292 of the same Act, which opens with a non-obstante clause, the Commissioner cannot proceed to do so if the town planning scheme is already formulated by the Committee for any area of which scheme has been sanctioned under the Act of 1973. Further, the Commissioner is not required to notify the building line or for that matter, the road line, if the town planning scheme has been sanctioned by the Committee under the Act of 1973 in that regard, but by virtue of mandate of the Act of 1956, is obliged to implement the said scheme and in discharge of that obligation must proceed with the proposed action under Sections 322 and 323, in respect of public street/street referred to in that plan.

07. It is then contended on behalf of the Corporation that the plea taken by the writ petitioners that possession of the subject land can be taken by the Corporation for construction of road or road widening of public street, only after acquisition of the affected land/building and upon payment of or offering compensation to the affected persons, is untenable. That is against the scheme of the Act of 1956 as

a whole and in particular Section 305 of the Act – which predicates a legal fiction of vesting of the portion of land added to the street by setback or removal, to be deemed to be part of the public street and to have vested in the Corporation. For taking action of removal of obstructions and encroachments in respect of any street, there is no requirement to pay prior compensation. Further, once the portion of land affected by street vests in the Corporation, the Corporation is under legal obligation to remove the obstruction or encroachment thereon with dispatch by resorting to power under Sections 322 and 323 of the same Act.

08. During the argument, however, the Corporation having realised that Section 305 requires certain procedure to be observed before proceeding with the action under Section 322 and 323, in order to invoke the legal fiction, decided to issue notices to the affected persons and now intend to proceed under Sections 322 and 323 of the Act of 1956 for removal of obstruction or encroachment on such land falling within the street line.

09. As regards the issue of quantum of compensation, it is contended by the Corporation that the provision made in Section 306 of the Act of 1956, is not rigid but flexible; and gives ample scope to the Authority to determine reasonable compensation amount to be paid to the owner for the damage or loss sustained in consequence of the restriction, prohibition or for removal of the structure. Reliance is also placed on Rule 61 of the M.P. Bhumi Vikas Rules, 2012 providing for an additional floor area calculated adding twice the area of plot/land surrendered, to contend that this incentive is given in lieu of compensation.

10. As regards the grievance of the petitioners that the compensation amount to be offered to the respective petitioners would not be on the same parameters as in the Act of 2013, it is contended that it is well established position that the State Legislature is competent to enact a law on the subject; and the law so enacted will have to be interpreted on its own and not with reference to the law enacted by the Parliament on some other subject, not covered by Entry 5 of List II. The argument that the provision in Section 306 is arbitrary and irrational, is countered by the Corporation. It is

submitted that the compensation amount to be determined by the Authority under the Act of 1956 is expected to be “reasonable”, as predicated in the said provision. That provision bestows very wide power in the Authority and if the affected person is not satisfied with the said computation, is free to resort to remedy of Arbitration under Section 387 of the Act of 1956; and substantiate that the quantum of loss and damage caused to him is higher. In fact, Section 387 (3) envisages to follow procedure provided by Land Acquisition Act, 1894, for determination of compensation. Thus, enough safeguards are provided in the Act of 1956 to ensure that reasonable compensation is paid to the affected persons. Even the plea taken by the writ petitioners that the compensation offered under the Act of 1956 entails in discriminatory treatment being meted out to the land owners and occupants so affected by the action to be taken up by the Corporation, it is submitted that the scheme for determining compensation provided in the Act of 1956 is without reference to the Central enactment. It is a self-contained Code. The fact that it provides for different dispensation for determination and payment of compensation than to the

neighbouring land owners whose portion of land is acquired for National Highway or State Highway by resorting to the parameters specified in the Central enactment, that cannot be the basis to question the validity of the provisions of Act of 1956 – being independent and enacted by the State with reference to Entry 5 of List II of the Seventh Schedule of the Constitution. The argument of discrimination, therefore, is untenable. For, it is well established position that the compensation for the affected land can vary depending on the purpose for which the land is taken over, as in the present set of cases is required for municipal area development; and with the development of the road, the land owners would be eventually benefitted.

11. As a matter of fact, as per the scheme of the Act of 1956, it is a case of vesting of land and not of acquisition. The land affected by the street line is vested in the Corporation, for which the procedure for acquisition is completely irrelevant. The vesting takes place upon sanction of development plan by the Committee due to legal fiction in the Act, with requirement of mere issuance of notice in that behalf under Section 305 of the Act of 1956. Upon taking

further action under Sections 322 and 323 of the Act to remove obstruction or encroachment of such street line, the affected person, at best, may become entitled for reasonable compensation. There is nothing in the Act of 1956 that the compensation is required to be paid before taking action under Section 322 read with Section 323 of the Act of 1956. According to the Corporation, therefore, the writ petitions filed to challenge the validity of Sections 305 and 306 of the Act are also devoid of merits.

12. It was also pointed out that the writ petitioners had submitted building plan for development of their plot, which was sanctioned on clear understanding that portion of the area of the concerned plot is required to be set apart for road widening under the master road plan. The land owners acted upon the said sanctioned plan and proceeded to construct the building on that condition. Hence, the writ petitioners cannot be allowed to approbate and reprobate. Further, the master road plan is nothing but replication of the town planning scheme sanctioned by the Committee under the Act of 1973, which has had been notified as back as in the year 1995. None of the petitioners chose to challenge the

said town planning scheme in respect of the concerned area; and in particular, the land affected by the said scheme. The said scheme was prepared by following due procedure provided for that purpose in the Act of 1973. Therefore, it is too late in the day for the petitioners to make any grievance about portion of their land and building owned and possessed by them being affected by the proposed action under Section 322 and 323 of the Act of 1956, to remove obstruction and encroachment on the street and more particularly when portion of that land is vested in the Corporation on account of the deeming provision in Section 305 of the Act of 1956.

13. Counsel appearing for the State supported the plea taken by the Corporation in toto.

14. Counsel appearing for the respective parties in support of their arguments made on the above lines have relied on decisions, to which, we shall make reference at the appropriate place.

15. Having considered the rival submissions, the principal issue raised in the writ petitions is about the validity of sections 305 and 306 of the Act of 1956 on the ground of

repugnancy with the Central Act of 2013. The argument proceeds that the Act of 1956 also pertains to subject acquisition in respect of which the Parliament has enacted Act of 2013. The dispensation provided in the Act of 2013 is very different and requires the Authority to objectively assess the amount of compensation towards the loss and damage caused to the affected person; and including that without payment of compensation, the land owner cannot be dispossessed from the acquired land which hitherto was owned and possessed by him. Therefore, on the interpretation given by the Corporation to these provisions, it would not only entail in discrimination regarding compensation – being without any parameters or guidelines specified therefor and bestowing unbridled discretion in the Authority; but, also giving power to the Corporation to dispossess the affected person even without payment of compensation.

16. To analyze this contention, we must dissect the sweep and purport of the Act of 1956 as a whole and in particular, Sections 305 and 306 read with Sections 322 and 323 of that Act. The preamble of the Act 1956 leaves no manner of doubt that it is an Act to provide for establishment

of the Municipal Corporation for the cities in the State of Madhya Pradesh. Part-I of the Act deals with preliminary matters, consisting of Chapter I. Part-II of the Act deals with the Constitution and Government. It consists of Chapter-II to VI. Chapter-II deals with the Municipal Authorities; Chapter-III with the conduct of business and transaction of business of the Corporation; Chapter-IV Municipal Officers and Servants – Commissioner; Chapter-V regarding powers, duties and functions of the Municipal Authorities – obligatory and discretionary duties of the Corporation; and Chapter-VI Municipal property and liabilities. Part-III of the Act deals with matters regarding finance. It consists of Chapter-VII to X. Chapter-VII deals with Municipal Funds; Chapter-VIII with budget estimate and Chapter-IX with Loans. Chapter-X with audit and accounts. Part-IV of the Act consists of Chapter-XI and XII. Chapter-XI pertains to Taxation and Chapter-XII with Recovery of Corporation's claim. Part-V of the Act deals with subject of public health, safety and convenience. It consists of Chapter-XIII to Chapter XXII. Chapter-XIII deals with subject of public convenience; Chapter-XIV with conservancy; Chapter-XV

with sanitary provisions; Chapter-XVI with water supply, Chapter-XVII with general provisions with reference to drainage, water supply, water and other mains; Chapter-XVIII with public health and safety Chapter-XIX with market and slaughter places; Chapter-XX with food, drink, drugs and dangerous articles; Chapter-XXI with on restraint of infection; Chapter-XXII with disposal of the dead. Part-VI of the Act consists of Chapter-XXIII to XXVII. Chapter-XXIII deals with town planning; Chapter-XXII-A with colonization; Chapter-XXIV with building control; Chapter-XXV with dangerous insanitary building; Chapter-XXVI with streets; and Chapter-XXVII with general provisions as to street and public nuisance. Part-VII of the Act consists of Chapter-XXVIII to XXXIII. Chapter-XXVIII deals with co-operation of police; Chapter-XXIX with prevention of extinction of fire; Chapter-XXX with dangerous animals; Chapter-XXXI with beggars; Chapter-XXXII with disorderly houses; and Chapter-XXXIV with weights and measures. Part-VIII of the Act consists of Chapter XXXIV and XXXV. Chapter-XXIV deals with general provisions for the carrying of municipal administration procedure; and Chapter-XXXV

with supplemental provisions. Part-IX of the Act consists of Chapter-XXXVI dealing with control. Part-X consists of Chapter-XXXVII dealing with byelaws. Part-XI consists of Chapter-XXXVIII dealing with punishment of offences. Part-XII consists of Chapter-XXXIX dealing with election petitions; and lastly Part-XIII consists of Chapter-XL and XLI. Chapter-XL deals with transitory provisions and Chapter-XLI with subject of Industrial Township.

17. From the gamut of these provisions in the Act of 1956, there is hardly any doubt that this Act of 1956 has been enacted by the State Legislature with reference to Entry No.5 of List-II – State List, dealing with the subject of local government; that is to say, constitution and powers of Municipal Corporation for the purpose of local self-government or village administration. The provisions such as sections 305 and 306 are incidental thereto and in the nature of enabling provisions to effectuate the objective of the enactment. These two provisions if read in isolation may give an impression of interfering with the rights over the properties, but, by no stretch of imagination, it can be considered as a law enacted on the subject of acquisition of

land as such, ascribable to entries in List-III. On this finding, on applying the dictum of the Supreme Court in the case of **Bondu Ramaswamy and others Vs. Bangalore Development Authority and others**³, pressed into service by the respondents, the argument of repugnancy is unavailable and cannot be countenanced. Paragraph 91 of the said decision reads thus :

“91. The question of repugnancy can arise only where the State law and the existing Central law are with reference to any one of the matters enumerated in the Concurrent List. The question of repugnancy arises only when both the legislatures are competent to legislate in the same field, that is, when both the Union and State laws relate to a subject in List III. Article 254 has no application except where the two laws relate to subjects in List III (see *Hoechst Pharmaceuticals Ltd. v. State of Bihar*, (1983) 4 SCC 45 : 1983 SCC (Tax) 248). But if the law made by the State Legislature, covered by an entry in the State List, incidentally touches upon any of the matters in the Concurrent List, it is well settled that it will not be considered to be repugnant to an existing Central law with respect to such a matter enumerated in the Concurrent List. In such cases of overlapping between mutually exclusive lists, the doctrine of pith and substance would apply. Article 254(1) will have no application if the State law in pith and substance relates to a matter in List II, even if it may incidentally trench upon some item in List III. (see *Hoechst, Megh Raj v. Allah Rakhia*, (1946-47) 74 IA 12 : AIR 1947 PC 72 and *Lakhi Narayan Das v. Province of Bihar*, AIR 1950 FC 59).”

(emphasis supplied)

³ (2010) 7 SCC 129

It may be useful to also advert to paragraph No.92 of the same decision, which has restated the legal principle expounded in **Munithimmaiah Vs. State of Karnataka**⁴, that the Development Authority Act (such as the Act of 1956), is intended to provide for the establishment of a Development or a local Authority to facilitate and ensure planned growth and development of the city and areas adjacent thereto, and that acquisition of any lands, for such development, is merely incidental to the main object of the Act, that is, development of Municipal area. The Court noted that in pith and substance, such enactments would squarely fall under Entry 5 of List II of the Seventh Schedule and is not a law regarding acquisition of land like the Land Acquisition Act, traceable to Entry 42 of List III of the Seventh Schedule, the field in respect of which is already occupied by the Central Act, as amended from time to time. It was held that for developmental activities, in substance and effect will constitute a “special law” providing for acquisition for the “special purposes of the Corporation or the local area”

⁴ (2002) 4 SCC 326

and same will not be considered to be part of the Land Acquisition Act. Thus, the argument of repugnancy with the provisions of the Central Act was negated, as that would not arise at all in the case of an enactment ascribable to Entry 5 of List-II. In the case of **State of A.P. and others Vs. Mcdowell & Co. and others**⁵, the abovesaid legal position has been restated as can be discerned from paragraph 36 of the decision. Hence, the argument of repugnancy is rejected.

18. Significantly, the provisions of the Act of 1973, which is a Code in itself, *inter alia*, also deal with the subject of acquisition of land for town and country development and use of land in the local area. Some of the machinery provisions of the Land Acquisition Act (Central enactment) are telescoped into this Act of 1973, by reference. Thus understood, if the “acquisition of land” is resorted to in respect of matters covered by the Act of 1973, the procedure specified therefor in the Act of 1973 read with Central enactment dealing with determination of compensation amount, will have to be observed. This legal position is well

⁵ (1996) 3 SCC 709

established and restated in the case of **Girnar Traders (3) Vs. State of Maharashtra and others**⁶.

19. In the case of Act of 1956, however, it is not a matter of “acquisition of land” or for that matter acquisition under the provisions of the Act of 1973, but, of vesting in the Corporation under Section 305, for specified use i.e., street. Consequent to vesting, the Corporation is obliged to remove all the obstructions and encroachments falling within the street, by invoking power under Sections 322 and 323 of the same Act. If any loss or damage is caused to any person due to such action of removal of obstruction or encroachment, the owner is entitled for compensation specified under Section 306 of the Act; and if dissatisfied with determination of compensation, he can take recourse to statutory remedy of Arbitration under Section 387 of the same Act. In those proceedings, the forum (District Court) so made available is expected to decide the claim by following as far as may be the procedure provided by the Land Acquisition Act, 1894 for determination of the compensation amount. It does not envisage initiation of action for acquisition of the portion of

⁶ (2011) 3 SCC 1

the land/building falling within the street before its removal as such. Thus, the dispensation provided in the Act of 1956 in this regard, is a self-contained Code.

20. That takes us to the argument pressed into service by the writ petitioners that absent Town Planning Scheme drawn up by the Commissioner and, in particular, regarding street line and building line on either side or on both sides of any street existing or proposed, it is not open to the Corporation to take any further action much less invoke power under Section 305 of the Act of 1956. This argument is founded on Section 291 of the Act of 1956, which predicates that the Commissioner is required to draw up a Town Planning Scheme, if so directed by the Corporation or by the Government. This argument has been countered by the Corporation by relying on the provisions of the Act of 1973 as also of the Act of 1956 and in particular, Section 292 thereof.

21. Indeed, the Act of 1973 is a special enactment to make provision for planning and development and use of land; to make better provision for the preparation of development plans and zoning plans with a view to ensuring

town planning schemes are made in a proper manner and their execution is made effective; to provide for the development and administration of special areas through Special Area Development Authority; to make provision for the compulsory acquisition of land required for the purpose of the development plans and for purposes connected with the matters thereto. For that purpose, a broad based Committee is required to be constituted as per Section 17A of that Act. That committee, amongst others, is expected to ensure that the development plan must consist of matters referred to in Section 17 of that Act, to wit, the land use to be proposed within the planning area the development plan is to lay down the pattern of National and State Highways connecting the planning area with the rest of the region, ring roads, arterial roads and the major roads within the planning area; and also to lay down the broad-based traffic circulation patterns in a city. In the process, the development plan so finalized and published after following procedure prescribed in the Act of 1973, not only results in prohibition of land use contrary to such plan but in freezing the land use referred to therein. The procedure for finalization of development plan

within the planning area, predicates inviting public objections. The Development Town Planning Scheme must be in conformity with the development plan so finalized. The land affected by Town Planning Scheme finalized under the Act of 1973, if required by the local Authority for the State's use (other than for street), must be acquired as per the procedure prescribed in Section 56 of the Act of 1973. In relation to land/building affected by street, however, a completely different regime of vesting of the property in the Corporation is stipulated in the Act of 1956. That is a "special provision", not mandating acquisition procedure. The affected person is entitled only for compensation for the loss or damage caused because of removal of obstruction or encroachment within the street, in terms of Sections 306 and 387 of the Act of 1956.

22. Indubitably, the area earmarked for streets or arterial roads for following traffic circulation pattern in the city as specified in the Town Planning Scheme published under the Act of 1973, is required to be developed by the local Authority – be it a case of construction of a new road or of road widening of the existing road – the former scheme

prevails and it is the obligation of the local Authority to implement the same.

23. Section 292 of the Act of 1956, which opens with a non-obstante clause, stipulates that the local Authority cannot formulate fresh Town Planning Scheme of its own for that purpose by resorting to Section 291 of the Act of 1956. In other words, absent such a Town Planning Scheme under the Act of 1973, the local Authority (Corporation) can and is required to undertake drawing up of a Town Planning Scheme referred to in Section 291 of the Act of 1956. That is the mandate of Section 292 of the Act which reads thus :-

“292. Restriction on Corporation’s power to undertake town planning scheme.- Notwithstanding anything contained in section 291, no town planning scheme shall be made by the Corporation for any area for which a scheme has been sanctioned under the provisions of Town Improvement Act.”

24. Suffice it to observe that the argument of the writ petitioners based on Section 291, of absence of Town Planning Scheme drawn up by the Commissioner to define a street line or a building line on either side or on both sides of any street existing or proposed the Corporation cannot proceed with the action of removal of obstruction or

encroachment, is fallacious. As aforesaid, the need to draw up Town Planning Scheme under the Act of 1956 would arise only in absence of Scheme propounded under the Act of 1973. Once such a Scheme exists, the Commissioner has no power to sit over the said Scheme. The Corporation is bound by the said Scheme in all respects, for all purposes. In that, the Town Planning Scheme formulated by the Committee in terms of provisions of Act of 1973 is final and binding on the local Authority, who is under statutory obligation to implement and execute the same in its letter and spirit albeit by invoking power under the provisions of Act of 1956. In pursuit of that duty, the Commissioner is under obligation to remove all the encroachments and obstructions within the street line delineated in such a Scheme. Action to be taken under section 305 of the Act is, therefore, conditionally linked to Section 291 of the Act of 1956, only if the Town Planning Scheme is drawn up by the Commissioner thereunder in absence of a Scheme prepared under the Act of 1973. This position is reinforced by the plain language of section 292 of the Act of 1956.

25. It is not the case of the writ petitioners that no Town Planning Scheme has been finalized under the Act of 1973 or is in vogue in respect of Bhopal Corporation limits. Therefore, the writ petitioners can make grievance only if the Corporation intends to proceed in deviation of the Scheme published by the Authority under the Act of 1973, for removal of obstruction and encroachments on the streets so specified. That grievance can certainly be examined by the Commissioner or other appropriate Authority notified for that purpose by the Corporation, on case to case basis. However, the proposed action of removal of encroachments and obstructions within the street line in conformity with that scheme cannot be questioned on the argument of absence of Town Planning Scheme drawn up under Section 291 of the Act of 1956.

26. Reverting to the common decision of the learned Single Judge impugned in the intra Court writ appeals, we have no hesitation in taking the view that the learned Single Judge has completely glossed over the Scheme of the Act of 1956, which is a self-contained Code. The Scheme of the Act of 1956 predicates that the land or building affected by the

regular line of a public street and the building or projection thereon in terms of the final Town Planning Scheme prepared under the Act of 1973, by virtue of Section 305 of the Act of 1956 is “deemed to be part of the public street” and vest in the Corporation. Being a case of deeming provision, by legal fiction, nothing more is required to be done by the Corporation, except to issue a notice under Section 305 expressing its intention to remove all the obstructions and encroachments on portion of the land which are projecting beyond the regular line or beyond the front of the immediate adjoining building. On issuance of such notice, the portion of land added to the street by setting back or obstruction and encroachment thereon removed, shall thereafter be deemed to be part of the public street and vest in the Corporation. If such notice has not been issued, it is open to the affected persons to raise that issue before the appropriate Authority of the Corporation. In the present matters before us, admittedly, the Corporation has since issued such notices to the concerned party. Similarly, if there is deviation or variation in the area specified in the notice issued under Section 305 of the Act of 1956, as not being in conformity with the Town

Planning Scheme, it is always open to the noticee to raise that issue before the appropriate Authority of the Corporation in that regard. The appropriate Authority before proceeding with the action of removal of obstructions and encroachments on the street by taking recourse to the power conferred under sections 322 and 323 of the Act of 1956 in that behalf, is obliged to consider such representation and deal with the same by recording a speaking order, so that the person concerned, if aggrieved, can take up the matter further before the competent forum and including by assailing the same before the High Court by way of writ petition.

27. Reverting to the sweep of Section 305 of the Act, it is apposite to reproduce the same. Section 305, reads thus :-

“305. Power to regulate line of buildings.- (1) If any part of a building projects beyond the regular line of a public street, either as existing or as determined for the future or beyond the front of immediately adjoining buildings the Corporation may -

(a) if the projecting part is a verandah, step or some other structure external to the main building, then at any time, or

(b) if the projecting part is not such external structure as aforesaid, then whenever the greater portion of such building or whenever any material portion of such projecting part has been taken down or burned down or has fallen down,

require by notice either that the part of some portion of the part projecting beyond the regular line or beyond the front of the immediate adjoining building, shall be

removed, or that such building when being rebuilt shall be set back to or towards the said line or front; and the portion of land added to the street by such setting back or removal shall henceforth be deemed to be part of the public street and shall vest in the Corporation.

Provided that the Corporation shall make reasonable compensation to the owner for any damage or loss he may sustain in consequence of his building or any part thereof being set back.

(2) The Corporation may, on such terms as it thinks fit, allow any building to be set forward for the improvement of the line of the street.”

(emphasis supplied)

28. In furtherance of notice, the Corporation is required to initiate action under Sections 322 and 323 of the

Act of 1956. The said Sections 322 and 323, read thus:-

“322. Prohibition of obstruction in streets - (1) No person shall, except with the written permission of the Commissioner granted in this behalf and in accordance with such conditions including the payment of rent or fee, as he may impose either generally or specially in this behalf :-

(a) erect or setup any wall, fence, rail, post, step, booth or other structure whether fixed or movable or whether of a permanent or temporary nature, or any fixture in or upon any street so as to form an obstruction to, or an encroachment upon, or a projection over, or to occupy any portion of such street, channel, drain, well or tank.

(b) deposit upon any street or upon any channel, drain or well in any street or upon any public place, any stall, chair, bench box, ladder, bale or other thing whatsoever, so as to form an obstruction there to or encroachment thereon.

(2) Whoever contravenes any provision of sub-section (1) shall be punished with imprisonment for a term which may extend to six months or with fine which

may extend to five thousand rupees or with both and with further fine which may extend to one hundred rupees for every day on which such contravention continues after the date of first conviction for such offence.

(3) Without prejudice to the action under sub-section (2), the Commissioner notwithstanding anything contained in this Act, may after giving such notice as may be prescribed, cause to be removed any obstruction or encroachment as described in clause (a) and (b) of sub-section (1).

(4) Any of the things caused to be removed by the Commissioner under sub-section (3), shall, unless the owner thereof turns up to take back such things and pays to the Commissioner the charges for the removal and storage of such things, be disposed of by the Commissioner by public auction or in such other manner and within such time as the Commissioner thinks fit.

(5) The Police Officer shall not investigate into the offence under this Section except on a report made in writing in this behalf by the Commissioner.”

(emphasis supplied)

Section 323 :

“Streets not to be opened or broken up and building materials not to be deposited there in without permission.- (1) Except in such cases as the Government may by general or special order exempt from the operation of this Section, no person shall, except with the permission of the Commissioner and in accordance with such terms and conditions, including payment of rent or otherwise, as the Commissioner may impose either generally or in each special case-

- (a) open, break up, displace, take up or make any alteration in or cause any injury to, the soil or pavement, or any wall, fence, post, chain or other material or thing forming part of any street or in any open space vested in the Corporation; or
- (b) deposit any building material in any street or in any person space vested in the Corporation; or

(c) set up in any street or in any open space vested in the Corporation any scaffold or any temporary erection for the purpose of any work whatever, or any posts, bars, rails, boards or other things by way of enclosure, for the purpose of making mortar or depositing bricks, lime, rubbish or other materials.

(2) Any permission granted under clause (b) or (c) of sub-section (1) shall be terminable at the discretion of the Commissioner on his giving not less than twenty four hours' written notice of the termination thereof to the person to whom such permission was granted.

(3) The Commissioner may without notice—

(a) cause the soil or pavement or any wall, fence, post, channel or other material forming part of the street to be restored to the condition it was in before any opening or breaking up or displacement, or alteration or damage made or done without the permission of the authority specified in sub-section (1);

(b) cause to be removed any building materials, any scaffold or any temporary erection, or any posts, bars, rails, boards or other things by way of enclosure, which have been deposited or set up in any street or in any open space vested in the Corporation without any permission of the authority specified in sub-section (1) or which, having been deposited or set up with such permission, have not been removed within the period specified in the notice issued under sub-section (2) and recover the costs of such restoration or removal from the offender.”

29. The purport of Section 305 has been considered by the Supreme Court in the case of **K. N. Palsikar** (supra).

In paragraph 14 the Supreme Court observed thus:-

“14. Regarding point No. 1, we agree with the High Court that there is no provision in the Act for

enabling the Corporation to withdraw from the acquisition proceedings. In fact, it seems to us that there is automatic vesting of the land in the Corporation under Sec. 305 once the requisite conditions are satisfied.

(emphasis supplied)

In paragraph 15 of the same judgment the Supreme Court has left the question open as to when the land affected by a notice vests in the Corporation. It noted, does it vest upon giving of notice or when the part or some portion of the part projecting beyond the regular line or beyond the front of the immediately adjoining building is removed, or when the building being rebuilt is set back ? Notably, this observation has been made in the context of the question about the date of vesting to be reckoned for determination of compensation.

30. This decision is also an authority on the proposition about the method of determining compensation. The Court upheld the principle expounded in the case of **The Borough Municipality of Ahmedabad Vs. Javendra Vajubhai Divatia**⁷, in which compensation was determined

⁷ AIR 1937 Bom. 432

on the principles underlying Sections 23, 24 and 25 of the Land Acquisition Act, to be “reasonable compensation”.

31. The Single Judge of this Court in the case of **Jaswani Bhai Doshi Vs. Indore Municipal Corporation and others**⁸ took almost the same view as taken by the learned Single Judge in the present common judgment under appeal – that no person can be deprived by the Corporation of his right to property without acquiring land affected because of the removal of obstructions or encroachments within the street line. This decision relies on the exposition of the Supreme Court in the case of **Chairman Indore Vikas Pradhikaran Vs. Pure Industrial Coke and Chemicals Ltd. and others**⁹. However, on close scrutiny of the judgment in **Jaswani Bhai Doshi** (supra), it is noticed that the scheme of the Act of 1956 has not been analyzed at all, which, as noted by us is a self-contained Code. In our view, no acquisition procedure is necessary for taking action for removal of obstructions or encroachments within the street line delineated in the Town Planning Scheme in vogue. All

⁸ 2008 (III) MPWN 88

⁹ (2007) 8 SCC 705

that the Corporation is expected to do is to express its intention by issuance of notice under Section 305; and thereafter proceed to give notice for invoking action under Sections 322 or 323 of the Act of 1956. The land and building falling within the street line vest in the Corporation after removal of obstruction or encroachment resulting in portion of land added to the street by such setting back, by a legal fiction created in that regard. The person likely to be affected by such action is entitled only for reasonable compensation payable under Section 306 of the Act of 1956, in the event of removal of obstruction or encroachment within the street line.

32. In our opinion, considering the scheme of the Act of 1956 as a whole, determination of compensation required to be paid under section 306 does not mean that the Corporation is obliged to follow the procedure for acquisition of land to be affected by street line and a building line on either side or on both sides of any street existing or proposed as a precondition, as is contended. For, the portion of the land so earmarked for a street line and a building line in the Town

Planning Scheme as per the Scheme of the Act of 1956, automatically vest in the Corporation consequent to removal of obstructions or encroachments on such portion of the land for the stated purpose. The procedure for acquisition of portion of land affected by a street line or a building line on either side or on both sides of any street existing or proposed, is not envisaged in the Act of 1956.

33. The meaning of expression “public street” has been specified in Section 5 (49) of the Act of 1956, which reads thus :-

“5 (49) — “**public street**” means any street -
 (a) over which the public have a sight of way; or
 (b) which have been heretofore leveled, paved, metalled, asphalted, channeled, severed or repaired out of municipal or other public funds; or
 (c) which under the provisions of the Act becomes a public street, and includes-
 (i) the roadway over any public bridge or causeway;
 (ii) the footway attached to any such street;
 (iii) public bridge or causeway, and the drains attached to any such street, public bridge or causeway;”

It may be useful to advert to the definition of the “street” given in Section 5 (55) of the Act of 1956 which reads thus :-

“(55) “**street**” means any road, foot-way, square, court alley or passage, accessible, whether permanently or temporarily to the public, whether a thoroughfare or not;

and shall not include every vacant space, notwithstanding that it may be private property and partly or wholly obstructed by any gate, post chain or other barrier, if houses, shops or other buildings abut thereon, and if it is used by any persons as means of access to or from any public place or thoroughfare, whether such persons be occupiers of such buildings or not;

but shall not include any part of such space which the occupier of any such building has a right at all hours to prevent all other persons from using as aforesaid;

and shall include also the drains on either side and the land whether covered or not by any pavement, verandah or other erection, which lies on either side of the roadway up to the boundaries of the adjacent property, whether that property be private property or property reserved by Government or by the Corporation for any purpose other than a street;

The expression “street line” has been defined in Section

5 (56) which reads thus :-

“(56) **“street line”** means a line dividing the land comprised in and forming part of a street from the adjoining land;”

34. Thus, Section 305 is a provision to invest power in the Corporation to regulate line of building; coupled with a duty to remove the obstruction or encroachment within the street in terms of Section 322 of the Act. Indeed, if the Corporation intends to remove obstructions or encroachments within the street, is obliged to follow the procedure prescribed in Section 322 – of issuing notice in that behalf. Significantly, Section 322 (3) contains a “non-obstante

clause”, giving full power to the Commissioner to cause to remove any obstruction or encroachment on any part of the street, after giving notice to the person concerned. The person affected by removal of such obstruction or encroachment within the street line as aforesaid may be entitled for compensation, as specified in Section 306 of the Act, which reads thus :-

“306. Compensation – (1) No compensation shall be claimable by an owner for any damage which he may sustain in consequence of the prohibition of the erection of any building.

(2) The Corporation shall make reasonable compensation to the owner for damage or loss which he may sustain in consequence of the prohibition of the re-erection of any building or part of a building except in so far as the prohibition is necessary under any rule or byelaw:

Provided that the Corporation shall make full compensation to the owner for any damage he may sustain in consequence of his building or any part thereof being set back unless for a period of three years or more immediately preceding such notice the building has by reason of its being in a ruinous or dangerous condition become unfit for human habitation or unless an order of prohibition issued under section 286 has been and still is in force in respect of such building.

(3) The Corporation shall make reasonable compensation to the owner for any damage or loss which he may sustain consequence of the inclusion of his land in a public street but in assessing such compensation, regard shall be had to the benefits accruing to that owner from the development of the land belonging to him and affected by such street.”

35. At this stage itself, it will be useful to advert to

Section 387 of the Act of 1956, which reads thus :-

“387. Arbitration in cases of compensation, etc.- (1)

If an agreement is not arrived at with respect to any compensation or damages which are by this Act directed to be paid, the amount and if necessary the apportionment of the same shall be ascertained and determined by a Panchayat of three persons of whom one shall be appointed by the Corporation, one by the party, to or from whom such compensation or damages may be payable or recoverable, and one, who shall be Sarpanch, shall be selected by the members already appointed as above.

(2) If either party or both parties fail to appoint members within one month from the date of either party receiving written notice from the other of claim to such compensation or damages, or if the members fail to select a Sarpanch, such members as may be necessary to constitute the Panchayat shall be appointed, at the instance of either party, by the District Court.

(3) In the event of the Panchayat not giving a decision within one month or such other longer period as may be agreed to by both the parties from the date of the selection of the Sarpanch or of the appointment by the District Court of such members as may be necessary to constitute the Panchayat, the matter shall, on application by either party be determined by the District Court which shall, in which the compensation is claimed in respect of land, follow as far as may be the procedure provided by the Land Acquisition Act, 1894, for proceedings in matters referred for the determination of the Court:

Provided that-

- (a) no application to the Collector for a reference shall be necessary, and
- (b) the court shall have full power to give and apportion the costs of all proceedings in manner it thinks fit.

(4) In any case where the compensation is claimed

in respect of land and the Panchayat has given a decision, either party, if dissatisfied with the decision, may within a month of the date thereof apply to the District Court and the matter shall be determined by the District Court in accordance with the provisions of sub-section (3).

(5) In any case where the compensation is claimed in respect of any land or building, the Corporation may after the award has been made by the Panchayat or the District Court, as the case may be, take possession of the land or building after paying the amount of the compensation determined by the Panchayat or the District Court to the party to whom such compensation, may be payable. If such party refuses to accept such compensation, or if there is no person competent to alienate the land or building, or if there is any dispute as to the title to the compensation or as to the appointment of it, the Corporation shall deposit the amount of the compensation in the District Court, and take possession of such property.”

(emphasis supplied)

Section 307 is a general provision empowering the Commissioner to pull down or remove the work not in conformity with the bye-laws or scheme or any other requirement. In our opinion, the dispensation provided in the Act of 1956, to ensure clearance of all the obstructions or encroachments within the street line, is a self-contained Code; and not linked either to the provisions of the Act of 1973 or the Central enactment such as Land Acquisition Act or Act of 2013. The dispensation mandates the Commissioner to remove all the encroachments and obstructions on any part within the street line.

36. The moot question is : whether before initiating any action with reference to section 305 of the Act, is it necessary to first acquire the affected portion of the land or building obstructing or encroaching upon the street line delineated in the Scheme ? From the Scheme of the Act of 1956 and the setting in which Section 305 is placed, it is obvious that the regime of acquisition is not applicable for initiating action under Section 305. Nothing more is required to be done for that purposes. The regime of acquisition is applicable in respect of acquisition of the land for effectuating the other land uses specified in the Scheme, in relation to the concerned land with reference to provisions of Act of 1956 read with Act of 1973. However, when it is a case of requirement of portion of land falling within the street line, the Corporation is free to proceed to remove the obstructions or encroachments thereon, by simply invoking its power under Sections 305 and 322, by expressing its intention to do so by issuance of notice in that behalf. Hence, there is no requirement, in law, to follow procedure of acquisition as is relevant for other uses specified in the Town

Planning Scheme in respect of which provision of vesting is absent.

37. Because of the special dispensation envisaged for development and maintenance of streets in the municipal or planning area, this power cannot be unbridled or unguided. It is required to be exercised on the basis of a Scheme which has been finalized by following stipulated procedure under the Act of 1973, by inviting public objections thereto. That exercise having been completed, the provisions of the Act such as Section 305 of the Act of 1956, cast duty on the Corporation to implement that Scheme by construction of street after removing the obstructions and encroachments within the street line in conformity with the Scheme. The Scheme of the provisions of Act of 1956 regarding development and maintenance of streets by its very nature, is a self-contained Code.

38. Reliance was placed by the counsel for the writ petitioners on the decision of the Supreme Court in the case of **State of Uttar Pradesh Vs. Hari Ram**¹⁰ to buttress the

¹⁰ (2013) 4 SCC 280

argument about the effect of deeming provision in Section 305 of vesting of the property in the Corporation. The Court has observed that in interpreting the provision of legal fiction, the Court is required to ascertain the purpose for which the fiction is created and after ascertaining the same, assume all those facts and consequences which are incidental or inevitable corollaries to be given effect to the fiction. The meaning of expression “vest” given in the different dictionaries has been referred to in this decision. In paragraph 30, the Court noted as under :-

“30. Vacant land, it may be noted, is not actually acquired but deemed to have been acquired, in that deeming things to be what they are not. Acquisition, therefore, does not take possession unless there is an indication to the contrary. It is trite law that in construing a deeming provision, it is necessary to bear in mind the legislative purpose. The purpose of the Act is to impose ceiling on vacant land, for the acquisition of land in excess of the ceiling limit thereby to regulate construction on such lands, to prevent concentration of urban lands in the hands of a few persons, so as to bring about equitable distribution. For achieving that object, various procedures have to be followed for acquisition and vesting. When we look at those words in the above setting and the provisions to follow such as subsection (5) and (6) of Section 10, the words “acquired” and “vested” have different meaning and content. Under Section 10 (3), what is vested is de jure possession not de facto, for more reasons that one because we are testing the expression on a statutory hypothesis and such an hypothesis can be carried only to the extent necessary to achieve the legislative intent.”

39. This decision is also an authority on the proposition that possession does not follow with the vesting of the property due to legal fiction. That aspect has been considered in paragraphs 31 to 39 of the decision. By considering the provisions of the Act under consideration, the Supreme Court opined that vesting is only *de jure* possession and not *de facto* possession. There can be no difficulty in applying this principle to the provisions such as Section 305 of the Act of 1956. However, it is not the case of the Corporation that it wants to take forcible possession of the property so vested in it. The Corporation will have to and must resort to statutory option of additionally issuing notice under Sections 322 or 323 as the case may be, of the Act of 1956, before proceeding with the action of removal of the obstructions and encroachments falling within the street line. That will be permissible, irrespective of the willingness or unwillingness of the person likely to be affected to surrender possession of such property, being procedure established by law – to dispossess or taking over the possession of the property for construction of road or widening of the existing

road for development of the area, as per the Town Planning Scheme.

40. The fact that the Corporation has been empowered to remove obstructions and encroachments within the street line without doing anything more in terms of Section 305, does not mean that the person affected by such action can be deprived of his property without payment of any compensation for the damage or loss to his property. That is required to be done in terms of proviso below sub-section (1) of section 305 read with and subject to Section 306 of the Act of 1956. This is the procedure established by law enacted by the State Legislature, who is competent to enact such a law with reference to Entry No.5 of List-II in Schedule-VII of the Constitution. If the procedure prescribed by the provisions of section 305 and 306 of the Act of 1956 for payment of compensation is followed, the person affected by such action cannot complain about deprivation of his property having been done without authority of law, within the meaning of Article 300-A of the Constitution of India.

41. The provisions, such as Sections 305 and 306 of the Act of 1956, are required to be invoked in larger public interest and for implementation of the final Scheme propounded under the Act of 1973. That is the obligation of the Corporation. The purpose for enacting such provisions is to ensure that the streets which are the life line of the City are indispensable for holistic development of the area and including for free traffic movement. All that the Corporation is expected to do is to offer “reasonable compensation” for any damage or loss caused to the owner of the affected land or building, as per Section 306 of the Act of 1956. Further, if the affected person is not satisfied with the grant/non-grant of compensation or being insufficient, is free to resort to remedy of Arbitration under Section 387 of the Act of 1956.

42. The grievance of the writ petitioners, is that, the persons likely to be affected cannot be uprooted at a short notice and that too without offering them a just and fair compensation for the likely damage or loss caused to them because of the proposed action. The question whether compensation amount must be paid to the affected person

before commencing the action under Section 305 read with Section 322 of the Act of 1956, to remove obstructions and encroachments within the street line, is no more *res integra*. In a recent decision of the Division Bench of our High Court in W.A. No.397/2010 dated 30.9.2010, Indore Bench following another decision of the Division Bench dated 29.9.2010, in the Case of **Ravi Kumar Son of Shanti Lal Jain and another Vs. Indore Municipal Corporation and others** in Writ Appeal No.388 of 2010, it has been held that the language of the relevant provision does not suggest or make out that Corporation is obliged to first pay reasonable compensation to the owner for any damage or loss that he may sustain in consequence of the setback and vesting of any portion of the property in the Corporation as observed by the learned Single Judge in **Suresh Singh Kushwaha** (supra). Following the aforesaid decisions, recently, learned Single Judge of our High Court in the case of **Manohar Saraf Vs. Indore Municipal Corporation and others**¹¹, has answered this proposition against the writ petitioners. We are in agreement with this view.

¹¹2014 SCC Online MP 7755

43. A priori, it is not open to the writ petitioners to raise that argument to question the proposed action of the Corporation on the argument under consideration. Hence, this contention is rejected. For the same reason, the argument of the writ petitioners that the possession is linked to the obligation to pay reasonable compensation, is rejected.

44. It was argued that forcible possession cannot be taken from the owner of the land which is affected or falling within the street line. Action to be taken under Section 305 read with Section 322 of the Act may appear to be a coercive action, but, in law, after issuance of notice expressing intention to invoke powers under Section 305 of the Act of 1956 in relation to the obstruction and encroachment found within the street line, such land and property vest in the Corporation upon removal of obstructions and encroachments found within the street, for implementation of the Town Planning Scheme and to construct public road or for road widening of the existing public road, by taking recourse to Section 322 of the same Act. Issuance of notice for that purpose will be compliance of the procedure established by law.

45. The provisions of the Act of 1956 in no way stipulate that forced action should not be resorted to and the implementation of the Town Planning Scheme regarding construction of road or road widening of the existing road can be done only after the land owner decides to voluntarily surrender possession of portion of the land affected by such street. The law, however, empowers the Corporation coupled with a public duty to proceed to remove all the obstructions and encroachments found within the street line for construction of new road or widening of the existing road, as the case may be.

46. The procedure for removing obstruction within the street is explicitly stipulated in Sections 322 and 323 of the Act of 1956. The writ petitioners have not challenged the said provisions being invalid as such. The Corporation is, therefore, free to resort to that procedure to regulate line of building; and the affected persons at best will become entitled for compensation due to damage or loss caused to him, as per Section 306 of the Act of 1956 with further option to resort to remedy of Arbitration for compensation

under section 387 of the same Act. If the argument of the writ petitioners that possession of the vested property can be taken by the Corporation only if the owner voluntarily surrenders the portion of land and building affected by street line is accepted, it would inevitably result in rewriting of the procedure prescribed in section 322/323 of the Act of 1956. That cannot be countenanced.

47. On conjoint reading of Sections 305, 322 and 323 of the Act of 1956, it would mean that if the land within the street line, if is a private property as per the final Town Planning Scheme under the Act of 1973 or section 291 of the Act of 1956 is formulated and adopted, upon issuance of notice in exercise of power under Section 305 of the Act of 1956 by the Corporation expressing intention to remove obstructions and encroachments falling with such street line and if the owner of the land or occupant of the building fails to remove such obstruction or encroachment, it is the bounden duty of the Corporation under Sections 322 and 323 of the Act of 1956 to remove such obstruction or encroachment on expiry of notice period with utmost dispatch for implementation of the Town Planning Scheme,

to pave way for construction of new road or widening of the existing road, as the case may be, in larger public interest.

48. The other ground raised by the writ petitioners, is about the provision regarding compensation. In that, Section 306 does not provide for any method or procedure to be adopted by the Corporation “for determination of reasonable compensation”. The argument in this behalf is as follows. Firstly, the Act of 1956 invests unguided and arbitrary power in the officer(s) of the Corporation to determine any fanciful amount to be paid as compensation, in the name of offering reasonable compensation to the affected person. Further, assuming that the power cannot be questioned, the provision of reasonable compensation is not in conformity with the spirit of Article 21 and 300-A of the Constitution.

49. In our view, if a person is to be deprived of his property and also inevitably his right to life, because of forced dispossession, in exercise of power under Sections 322 or 323 of the Act of 1956, his Constitutional right under Article 300-A nor under Article 21 will be abridged. That right is not an absolute right. It can be regulated and modulated by a law made by the Legislature or Parliament.

That law must stand the test of legislative competence and of being rational and in larger public interest.

50. As the Act of 1956 not only obligates the Corporation to pay “reasonable compensation”, but, also provides for remedy regarding redressal of grievance about its inadequacy, by way of Arbitration, under Section 387 of the same Act. It is thus a complete code in itself to safeguard the interest of right of the affected person.

51. In the case of **K. T. Plantation Private Limited and another Vs. State of Karnataka**¹², the Constitution Bench after analyzing the gamut of decisions on the question of payment of compensation in Paragraph No. 183 has noted that constitutional obligation to pay compensation to a person who is deprived of his property primarily depends upon the terms of the statute and the legislative policy. In Paragraph No.189 the Court noted that requirement of public purpose, for deprivation of a person of his property under Article 300-A, is a precondition, but no compensation or nil compensation or its illusiveness has to be justified by the

¹² (2011) 9 SCC 1

State on judicially justiciable standards. Further, measures designed to achieve greater social justice, may call for lesser compensation and such a limitation by itself will not make legislation invalid or unconstitutional or confiscatory. It is for the State to justify its stand on justifiable grounds which may depend upon the legislative policy, object and purpose of the statute and host of other factors. In Paragraph No.205 the Court observed thus :-

“205 – Plea of unreasonableness, arbitrariness, proportionality, etc. always raises an element of subjectivity on which a court cannot strike down a statute or a statutory provision, especially when the right to property is no more a fundamental right. Otherwise the court will be substituting its wisdom to that of the legislature, which is impermissible in our constitutional democracy.”

Similarly, in Paragraphs No.217 and 218 the Court observed thus :-

“217 – Rule of law as a principle contains no explicit substantive component like eminent domain but has many shades and colours. Violation of principle of natural justice may undermine rule of law so also at times arbitrariness, unreasonableness etc., but such violations may not undermine rule of law so as to invalidate a statute. Violation must be of such a serious nature which undermines the very basic structure of our Constitution and our democratic principles. But once the Court finds, a Statute, undermines the rule of law which has the status of a constitutional principle like the basic structure, the above grounds are also available and not vice versa.

Any law which, in the opinion of the court, is not just, fair and reasonable, is not a ground to strike down a statute because such an approach would always be subjective, not the will of the people, because there is always a presumption of constitutionality for a statute.

218 – “The rule of law as a principle, it may be mentioned, is not an absolute means of achieving the equality, human rights, justice, freedom and even democracy and it all depends upon the nature of the legislation and the seriousness of the violation. The rule of law as an overarching principle can be applied by the constitutional courts, in the rarest of rare cases, in situations, we have referred to earlier and can undo laws which are tyrannical, violate the basic structure of our Constitution, and our cherished norms of law and justice.”

(emphasis supplied)

52. In the context of Act of 1956 and more so in view of the opinion reached by us that the expression of reasonable compensation used in Section 306 is flexible one with remedy of Arbitration under Section 387 and can also encompass the factors delineated in the Central Act of 2013, the dispensation provided in the Act of 1956 cannot be treated as unconstitutional by any standards.

53. It is then contended that the expression “reasonable compensation” has not been defined in the Act of 1956. Further, the Act of 1956 does not delineate the factors to be reckoned for determining compensation amount, as is

predicated in the Act of 2013. Even this argument does not commend to us. The fact that expression “reasonable compensation” has not been defined in the Act does not and cannot permit the Corporation to offer any fanciful amount towards damages. The expression “reasonable compensation” encompasses within its sweep, amount which is realistic and any prudent man would accept it as being in accordance with sound reason – which would mean to be just and proper. The Authority can certainly reckon the factors delineated in the Act of 2013 and also the incentive of additional FAR given in Rule 61 of the M.P. Bhumi Vikas Rules of 2012, for determination of reasonable compensation to be paid to the affected eligible land owner on case to case basis. If the Authority fails to do so, there is statutory remedy provided to the concerned person by way of Arbitration under section 387 of the Act of 1956, in which all issues relevant in that behalf can be analyzed and adjudicated.

54. The writ petitioners heavily relied on the dictum of the Supreme Court in the case of **Nagpur Improvement**

Trust and another Vs. Vithal Rao and others¹³ to contend that the dispensation in Section 306 for determination of compensation is unconstitutional being arbitrary as it invests unguided power in the Authority to determine amount of reasonable compensation. Even this decision, in our opinion, will be of no avail to the writ petitioners for the view that we have already taken, that enough safeguards have been provided in the Act of 1956 to ensure that reasonable compensation is paid to the affected persons for the damage or loss caused to him as a consequence of action taken by the Corporation in furtherance of its obligation to remove all the obstructions or encroachments within the street line. As already noted, if the person is not satisfied with the quantum of compensation determined by the appropriate Authority of the Corporation is free to take recourse to statutory remedy of arbitration under Section 387 of the Act and substantiate the fact that the quantum of compensation should be higher than the one determined by the Authority.

¹³ (1973) 1 SCC 500

55. Merely because section 306, *per se*, does not refer to factors as are mentioned in the Act of 2013, the provision cannot be labelled as unconstitutional. For, there is inbuilt mechanism to compensate the eligible owner affected on those factors under Section 305 read with Section 306; and with additional option of invoking statutory remedy of Arbitration under section 387 of the Act sub-Section (3) refer to those factors. Considering the above the challenge to the validity of section 306 cannot be taken forward.

56. It is well settled that the validity of the Act cannot be doubted merely by recording a finding that the Legislature should have opted for further option or should have drafted the provision in a different manner so as to provide other matters.

57. That takes us to the last ground urged by the writ petitioners about discriminatory treatment meted out to affected persons within the same locality and whose land is affected for the same purpose of road construction or for widening of the existing road. In that, in the neighbourhood of the writ petitioners, portion of the land is acquired for the

purpose of a National or State Highway project and the land affected by the implementation of Town Planning Scheme with reference to the provisions of the Act of 1956 in particular, for construction of road or new road or widening of the existing road, the compensation amount to be received would vary and be different. This argument, in our opinion, is completely misplaced. In the first place, for the view taken hitherto, in the preceding paragraph, the argument becomes unavailable. In any case, the argument is in ignorance of the fact that the two sets of persons are governed by two sets of legislations. The purpose underlying the two legislations is markedly different. Understood thus, the two situations are incomparable and, therefore, the argument of discriminatory treatment is fallacious.

58. Counsel for the writ petitioners, no doubt wanted us to examine other issues which, however, are case specific. In our opinion, those issues can be answered by the Competent Authority of the Corporation in the first place, if representation is made by the writ petitioners in that behalf within one week from today. The representation so made be decided by recording reasons for the conclusion arrived at by

the concerned Authority expeditiously; and if the decision is adverse to the writ petitioners, they would be free to take recourse to appropriate remedy within one week from the date of communication of the decision of the Competent Authority. This time schedule must be adhered to in the light of the submission made on behalf of appellant Corporation that the proposed work will have to be substantially completed before the onset of the ensuing monsoon.

59. We make it clear that the writ petitioners have raised specific grounds in respect of facts of the respective cases to contend that the land or the area of the land referred to in the notices received by them under Section 305 do not come within the notified street line. These are all matters which need to be examined by the Competent Authority in the first place. All questions in that behalf are left open.

60. The fact that the Court permitted the writ petitioners to pursue that option may not be construed as any direction given by the Court to the Competent Authority to decide the proposed representation in favour of the writ petitioners. Instead, all aspects of the matter may be

examined by the Commissioner or any person authorized by the Commissioner competent to answer that grievance. All questions in that behalf are left open.

61. While parting, we wish to place on record about the ill-advised applications taken out by the writ petitioners (filed along with the writ petitions), without waiting for the decision in these writ petitions. By these applications, the writ petitioners have requested the Court to grant leave to appeal to approach the Supreme Court, under Article 134 of the Constitution. To observe sobriety, we merely record our displeasure – that the writ petitioners have been ill-advised to take out such applications along with the writ petitions itself. Filing of such applications, is reflection on the High Court – that the Court is bound to dismiss the writ petitions. Further, even if the writ petitioners were to file these applications after the pronouncement of the judgment, in our opinion, the grounds urged before us having been found to be fallacious and founded on complete misunderstanding of the settled legal position, deserve to be rejected.

62. Accordingly, we **allow** the writ appeals filed by the Corporation and **dispose of** the writ petitions filed by the owners and occupants of the land and building in relation to which follow up action is likely to be initiated by the Corporation for removal of obstructions or encroachments on the streets, on the above terms, with no orders as to costs.

63. In view of the disposal of writ petitions, companion applications are also **disposed of**.

(A.M. Khanwilkar)
Chief Justice

(J. P. Gupta)
Judge