Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 11307 OF 2016
[Arising out of SLP [C] No.30998 of 2010]

Ravindra Ramchandra Waghmare …. Appellant

Vs.

Indore Municipal Corporation & Ors. ….Respondents

WITH

Civil Appeal No. 11308 of 2016 (Arising out of SLP [C] No. 31541/2011),
Civil Appeal Nos.11309-11316 of 2016 (Arising out of SLP [C] Nos. 469-476/2016),
Civil Appeal Nos. 11317-11318 of 2016 (Arising out of SLP [C] Nos. 416-417/2016),
Civil Appeal Nos.11319-11324/2016(Arising out of SLP [C] Nos. 14502-14507/2016),
Civil Appeal No.11325 of 2016 (Arising out of SLP [C] No. 15380/2016),
Civil Appeal No. 11326 of 2016 (Arising out of SLP [C] No. 14531/2016),
Civil Appeal Nos.11327-330 of 2016(Arising out of SLP [C] Nos.14493-14496/2016),
Civil Appeal No. 11331 of 2016 (Arising out of SLP [C] No. 15421/2016),
Civil Appeal No. 11332 of 2016 (Arising out of SLP [C] No. 16750/2016),
Civil Appeal No. 11333 of 2016 (Arising out of SLP [C] No. 16827/2016),
Civil Appeal No. 11334 of 2016 (Arising out of SLP [C] No. 19012/2016),
Civil Appeal No. 11335 of 2016 (Arising out of SLP [C] No. 16891/2016), and
Civil Appeal No. 11336 of 2016 (Arising out of SLP [C] No. 16742/2016).

J U D G M E N T

ARUN MISHRA, J.

Leave granted.

2. The appeals arise out of judgment and order dated 9.5.2016 passed by the High Court of Madhya Pradesh at Jabalpur and as against order dated 30.9.2010 passed by the Division Bench of the High Court of Madhya Pradesh at Indore thereby affirming the judgment and order passed by the learned Single Judge.

3. The matter arises out of Bhopal Municipal Corporation and Indore Municipal Corporation. The action taken by the Municipal Corporations of Bhopal and Indore under section 305 of Madhya Pradesh Municipal Corporation Act, 1956 (hereinafter referred to as 'the Act of 1956') has been questioned. The Single Bench at Jabalpur had allowed the writ application and held that the land be acquired under the provisions of the Act of 2013. Aggrieved thereby, writ appeals were filed by Bhopal Municipal Corporation which have been allowed by the impugned judgment and order dated 9.5.2016 by a Division Bench of the High Court of M.P.

4. With respect to Bhopal the facts are being narrated from the matter in-between A.K. Pali & Ors. v. State of M.P. & Ors. The State Government through Municipal Corporation, Bhopal as a nodal agency decided to develop Bus Rapid Transit System Corridor (for short 'BRTS corridor') on the stretch of around 8 kms. As per Bhopal Development Plan, 2005 which was notified in the year 1995, the proposed width of the road is 66 mtrs. Initially, the writ petitions were filed by the appellants before a Single Bench in the year 2014 questioning the action

initiated by the Municipal Corporation on the ground that such an action was impermissible under the provisions of section 305 of the Act of 1956. At that time the width of the road was 54 mtrs. The appellants' main submission was that they had obtained the permission from the Municipal Corporation so as to raise construction. For acquisition of the land, the provisions contained in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the Act of 2013') ought to have been resorted to.

5. Under the Jawaharlal Nehru National Urban Renewal Mission, the Central Government had sanctioned the scheme called BRTS corridor for improvement of public transport system at Bhopal in order to avoid hazardous traffic. The Central Sanctioning & Monitoring Committee was constituted by the Ministry of Urban Development which had sanctioned a sum of Rs.357.20 crores for implementation of said scheme. After due sanction by the Committee, NHAI entered into an agreement with Municipal Corporation, Bhopal on 22.9.2009 and handed over particular part of land to it for the purpose of BRTS corridor. For betterment of public transport system 225 low floor buses were also sanctioned by Sanctioning and Monitoring Committee of the Central Government. For BRTS corridor survey was undertaken by the Expert Committee of the Central Government namely Urban Mass Transit Council of Bhopal City. Plan was duly approved by the State

Government and the routes were notified as per Plan by the State Transport Authority. Presently only 1.25 lakh passengers are getting the services of low floor buses. It is not in dispute that most of the BRTS corridor has been constructed and the route from Misrod to Bairagarh is under operation. Buses are plying continuously. The appellants are land-holders in-between Misroad to Ampree Chouraha. The Master Plan was prepared under the provisions of M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 (Town & Country Planning Act) hereinafter referred to as 'the Act of 1973'. The Development Plan/Master Plan was prepared as per the provisions of section 18 after inviting objections, suggestions. None of the appellants had raised objection when the development plan was prepared. It was finalized and published as per provisions contained in section 19(4).

6. The development permission was granted by the competent authority under the Act of 1973 as per the provisions contained in section 13(1)(b) and Rule 21(1) framed under the Bhopal Vikas Adhiniyam, 1984 since repealed with effect from April, 2012. The appellants have raised the construction of their building as per the conditions mentioned in the map sanctioned by the authority under the Act of 1973. They were required to keep the land for widening of road in question. Accordingly, the landowners submitted their lay-out leaving requisite land from the centre of the road for widening of road. On that basis Municipal Corporation

had granted permission to appellants. They were aware of the proposed width of the road.

7. The appellants at the stage of the final hearing of writ appeals before the High Court filed fresh writ petition/amended writ petition for questioning the vires of the provisions contained in sections 305 and 306 of the Act of 1956. It was averred that there is no provision under the Act of 1973 of vesting of land on publication of Master Plan/Development Plan, particularly the land belonging to private landowners. The acquisition has to be made under the provisions contained in sections 8, 11 and 16 of the Act of 2013. State Government has no power to reduce quantum of compensation prescribed under the Act of 2013. Sections 305 and 306 of the Act of 1956 are unconstitutional as they provide automatic vesting of land without payment of reasonable compensation. The Act of 1956 fails to provide appropriate compensation equivalent to that offered under the Act of 2013. The provisions contained in sections 305 and 306 are violative of Article 14. The provisions contained in sections 305 and 306 have become redundant due to the provisions contained in the Act of 2013. It was submitted that the Corporation is required to acquire the land for widening the streets as per the provisions contained in sections 78 and 79 of the Act of 1956. Thus recourse to section 305 of the Act of 1956 is not permissible for divesting the owner of his right to ownership and that too without payment of compensation. Adoption of onerous and oppressive

provision would be illegal and arbitrary. The provision contained in section 305 is more onerous and harsh as compared to the procedure laid down under section 56 of the Act of 1973. It was also submitted that in some of nearby areas the land is being acquired for link road under the Act of 2013 whereas appellants are being discriminated with. Two different processes of acquisition under different Acts cannot be resorted to. It was also submitted that the provision contained in section 306 fails to provide rational, reasonable principle for determination of compensation for deprivation of property of landowner. Right to property is recognized under section 300A and delayed payment of compensation leads to deprivation of property without reasonable process. Section 306 does not provide as to the time period within which compensation to be paid. Consequently, same is violative of Articles 14, 19 and 300A of the Constitution. It was submitted that the provisions contained in section 306 be read down by incorporating the provisions of the Act of 2013 in the light of principles enshrined therein while correlating it with the provisions of section 387 of the Act of 1956. It was also submitted that within the ken of section 305 of the Act of 1956, Corporation has no right to enter and remove any part of the structure falling within building line.

8. In the cases arising from the Indore Bench vires of the provisions of sections 305 and 306 of Act of 1956 have not been questioned. In Indore also BRTS corridor is being undertaken at the cost of Rs.868 crores. Same is being executed

through the nodal agency of Indore Development Authority. State Government has granted approval to the project as a Town Development Scheme under section 49(ix) of the Act of 1973. As per appellants BRTS corridor is being undertaken on a portion of Agra Bombay Road (AB Road). It was described as Major City Road in the development plan, 1991 which was prepared and notified in the year 1975. At the relevant time AB Road/MR-I was proposed to be as 40-50 mtrs. At the same time it was provided that for future the width of said road would be 60 to 75 meters. It was in conformity with the Master Plan of 1991; in the Master Plan of 2021 the width of the road is kept 60 meters. On 26.5.2007 a notice was issued for demolition of certain structure for the purpose of widening of road. On 1.1.2008 Master Plan, 2021 had been notified in which AB Road has been proposed as 60 to 75 meters. It was also pointed out that now a separate bye-pass road has been taken out for AB Road. Thus the road in question forms part of the Major City Road that is MR-I, width of which has to be 60 meters. Most of the corridor has been constructed except in some portion of the appellants. Development plan is binding upon the authorities as well as the Corporation. As such, action has been rightly taken under section 305 of the Act of 1956. Sections 305 and 306 provide for reasonable compensation and when it is not accepted, recourse can be had to the provisions contained in section 387 of the Act of 1956 which provides for determination of compensation by the arbitrators/court on the basis of procedure

laid down in the Land Acquisition Act, 1894. As soon as Master Plan/Development Plan is finalized and published there is restriction upon the owner to raise any construction in contravention of the plan and the Corporation is given the right to remove any structure which is falling within the line of the existing public street or to be constructed in future. The provisions subserve the public interest and widening of the road is necessary for development of rapid transport system. The procedure prescribed with respect to public street is contained in section 305. Same cannot be said to be illegal or arbitrary in any manner as reasonable compensation is offered which may include FAR in appropriate cases and the provisions of the Land Acquisition Act are also applicable as provided under section 387. Thus the provisions cannot be said to be violative of Articles 14, 19, 21 and 300A of the Constitution of India. The action taken falls within the purview of section 305 of the Act of 1956.

9. On behalf of the appellants it was submitted by learned senior counsel that the provisions contained in section 305 of the Act of 1956 are repugnant to the provisions contained in the Act of 2013. Compensation is not offered before taking possession. The provisions contained in section 305 of the Act of 1956 is violative of the protection conferred under Articles 14, 19, 21 and 300A of the Constitution and repugnant to the provisions contained in section 56 of the Act of 1973. It was also contended that on proper interpretation of the provisions contained in section

305, the Corporation has no right to remove greater portion of the building or material portion of the projecting part unless it has been taken down or burned down or has fallen down. On notice, it is to be voluntarily removed by the owner thereof. The Corporation can only remove the projecting part which is external to the main building as verandah, step or some other structure. The acquisition proceedings have to be necessarily resorted to under the provisions contained in sections 78 and 79 of the Act of 1956. Corporation has no right to enter forcibly to remove the structure. It was also submitted that without preparation of a town development scheme as envisaged under section 49 read with section 50 of the Act of 1973, it is not permissible to carry out the provisions contained in the development plan.

10. On the other hand it was submitted by learned senior counsel for the respondents that the action taken is in accordance with the development plan which is binding. The provisions under section 305 cannot be said to be ultra vires. The same provide for reasonable compensation. On proper interpretation of section 305 of the Act of 1956 the action of the Corporation is within its ken. It is not necessary to acquire the land. Corporation has power to remove structure which projects beyond the regular line of public street. The maxims *Generalia specialibus non derogant* and *Generalibus specialia derogant* have been pressed into service to contend that if a special provision is made on a certain matter, that

matter is excluded from the general provision. The scheme of the Act of 1973 has been pointed out so as to explain the procedure how regional plan, development plan and town development schemes are prepared. It is not necessary to have recourse to section 56 of the Act of 1973 or sections 78 and 79 of the Act of 1956 for acquisition of land.

11. Before dilating upon the rival contentions it is necessary to take note of the various statutory provisions.

In re : Provisions of the Act of 1956 :

12. Section 5(45) of the Act of 1956 defines 'private street'; section 5(49) defines 'public street'; section 5(55) defines 'street'. The provisions contained in sections 5(45), 5(49) and 5(55) are extracted below :

> "**Section 5(45)** "private street" means a street which is not a public street;
>
> **Section 5(49)** "public street" means any street –
> (a) Over which the public have a right of way; or
> (b) Which have been heretofore leveled, paved, metalled, asphalted, channeled, sewered or repaired out of municipal or other public funds; or
> (c) Which under the provisions of this 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;

> **Section 5(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 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 about 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;"

Section 330 of the Act of 1956 deals with conversion of streets into public streets. Section 330(1) requires the Commissioner to declare the same to be public streets in exigencies specified therein. Section 330(2) empowers the Commissioner to declare street or part of a street not maintained by Corporation to declare the same to be a public street. The decision has to be taken after inviting objections and appeal can be preferred against such a decision as provided in section 330(3). Section 330 is extracted hereunder :

> **"330**. **Power to declare streets, when metalled, etc. public streets** – (1) When any street has been levelled, metalled, tarred or asphalted,

paved, made good, lighted, drained, chanelled and flagged to the satisfaction of the Commissioner, he shall, if so required by the persons liable for the greater part of the expenditure on such street by notice put up in any part of such street, declare the same to be a public street. The said street shall thereupon become a public street.

(2) The Commissioner may, at any time by a notice exhibited in any street or part of a street not maintained by the Corporation, give intimation of his intention to declare the same a public street, and, unless within one month next after such notice is first exhibited the owner or the majority of owners of such street or such part of street, lodges or lodge objections thereto with the Corporation, the Commissioner may by a notice exhibited in such street or part, declare the same to be a public street vested in the Corporation.

(3) Any person aggrieved by a notice under sub-section (2) may appeal within thirty days from the date of notice is first exhibited, to the District Court who shall give a reasonable opportunity of being heard to the appellant and the Corporation.

(4) The provisions of Parts II and III of the Indian Limitation Act, 1908 relating to appeals shall apply to every appeal preferred under this section."

13. Section 78 deals with acquisition of immovable property or easement by agreement. Section 79 deals with the procedure when it is not possible to acquire property or easement by agreement. A Corporation has the power under Part V with respect to public health, safety and convenience. Chapter XIII deals with public convenience, Chapter XIV - conservancy, Chapter XV – sanitary provisions, Chapter XVI - water-supply, Chapter XVII – general provisions with reference to drainage, water supply and water and other mains, Chapter XVIII with public health and safety, Chapter XIX with markets and slaughter places, Chapter

XX – food, drink, drug and dangerous articles, Chapter XXI - restraint of infection; Chapter XXII - disposal of the dead. Part VI relates to lands, buildings and streets. Chapter XXIII deals with town planning. Section 291 mandates for town planning scheme. Section 292 contains the restriction on Corporation's power to undertake town planning scheme when any scheme under the Town Improvement Act has been formed for the area in question. Colonisation is dealt with in Chapter XXIII-A. Chapter XXIV deals with building control under the provisions of section 293. There is restriction on construction without permission. Under section 295 Commissioner has the power to refuse erection or re-erection of buildings. Section 296 contains the provision as to grounds on which site of proposed building may be disapproved. Section 297 deals with the grounds on which permission to erect or re-erect building may be refused. Section 299 confers the power upon the Commissioner to direct modification of a sanctioned plan of a building before its completion. Under section 299A State Government has the power to cancel or revise permission for construction of a building. Section 300 mandates for lapse of sanction after one year from the date of such sanction. Section 302 confers power upon the Commissioner to stop construction unlawfully commenced. Section 303 confers power upon the Commissioner to direct removal of person from a building in which works are unlawfully carried on or which are unlawfully occupied. Erection and use of temporary building is to be approved by

Commissioner as provided under section 304. Under Section 305, Corporation has the power to regulate line of buildings. Section 306 deals with compensation to be paid. With respect to dangerous and insanitary buildings, the Corporation has the power from sections 309 to 316. With respect to public streets, Corporation has the power under Chapter XXVI contained in sections 317 to 331. Section 322 prohibits all obstruction in streets. Section 323 ensures streets not to be opened or broken up. Section 318 provides for prohibition of projection upon streets. It is apparent that ample and widest power has been conferred under the Act of 1956 upon the local authorities in such matters in public interest.

In re : Provisions of the Act of 1973 :

14. Provisions contained in the Act of 1973 are also required to be taken note of along with the provisions contained in the Town Improvement Act which has a reference in the Act of 1956 in section 292 thereof.

Under the Act of 1973, section 2(g) defines development plan includes a zoning plan. It defines 'local authority' to mean a Municipal Corporation constituted by the Act of 1956, Municipal Council or Nagar Panchayat constituted by or under the M.P. Municipalities Act, 1961 etc. Planning area, regional plan, town development scheme and zone have been defined in section 2(o), 2(q), 2(u) and 2(w) of Act of 1973 respectively. Same are extracted hereunder :

> "**Section 2(o)** "planning area" means any area declared to be a planning area under this Act and [non-planning area shall be construed accordingly];
>
> **Section 2(q)** "regional plan" means a plan for the region prepared under this Act, and approved by the State Government;
>
> **Section 2(u)** "town development scheme" means a scheme prepared for the implementation of the provisions of a development plan by the Town and Country Development Authority and includes "scheme";
>
> **Section 2(w)** "zone" means any section of a planning area for which, under the development plan, a detailed zoning plan is prepared;"

15. Regional planning is dealt with in Chapter III. State Government has the power to declare any area in the State to be a region for the purposes of the Act. Director is empowered to prepare regional plan under section 5. Section 7 provides for contents thereof. Section 8 provides for preparation of the same. Under section 8, objections and suggestions are invited then Director has to consider them as per section 8(2), afford a reasonable opportunity to all the persons affected thereby of being heard then the State Government may finalise the regional plan with or without modifications. Proviso to sub-section (2) of section 9 mandates that in case the State Government modifies the draft regional plan in that case State Government has to publish the same in the Gazette, invite objections and suggestions on the modifications proposed and after giving reasonable opportunity of being heard, has to finalise it. Section 10 of the Act of 1973 provides that as

soon as draft plan is published, no person, authority or department of the Government or any other person shall change the use of land for any purpose other than agriculture or carry out any development in respect of any land contrary to the provisions of the draft plan, without the prior approval of the Director or an officer not below the rank of a Deputy Director. Section 10(3) provides that in case any work is carried out in contravention of the provisions of the section, the Corporation or other local authority or the Collector in areas outside such local areas of the authority may cause such work to be removed or demolished at the cost of the defaulter which shall be recovered from him as an arrear of land revenue. Removal or demolition is contemplated after notice and hearing. Section 11 of the Act of 1973 deals with exclusion from claims of compensation in certain cases. If compensation in respect of such demolition has already been paid under any other law, the owner shall not be entitled to any compensation by reason of the restrictions under the Act.

16. Chapter IV of the Act of 1973 deals with the planning areas and fresh development plan. As per section 13 thereof, State Government has to issue a notification for constituting planning areas and it can alter, amalgamate or divide the area. Section 13(3) provides that once notification under section 13(1) of the Act of 1973 has been issued a Corporation under the Act of 1956 and other local authorities, as the case may be under the respective Acts ceases to exercise the

powers, perform the functions and discharge duties which the State Government or the Director is competent to exercise, perform and discharge under the Act. Section 13 is extracted hereunder :

> "**Section 13. Planning area.** – (1) The State Government may, by notification, constitute planning areas for the purposes of this Act and define the limits thereof.
>
> (2) The State Government may, by notification,
>
> (a) alter the limits of the planning area so as to include therein or exclude therefrom such area as may be specified in the notification;
>
> (b) amalgamate two or more planning areas so as to constitute one planning area;
>
> (c) divide any planning area into two or more planning areas;
>
> (d) declare that the whole or part of the area constituting the planning area shall cease to be a planning area or part thereof.
>
> (3) Notwithstanding anything contained in the Madhya Pradesh Municipal Corporation Act, 1956 (No. 23 of 1956), the Madhya Pradesh Municipalities Act, 1961 (No. 37 of 1961) or the Madhya Pradesh Panchayat Raj Adhiniyam, 1993 (No.1 of 1994), the Municipal Corporation, Municipal Council or the Nagar Panchayat or a Panchayat, as the case may be, shall, in relation to the planning areas, from the date of the notification issued under sub-section (1), cease to exercise the powers, perform the functions and discharge the duties which the State Government or the Director is competent to exercise, perform and discharge under this Act."

17. Section 14 deals with preparation of development plan. Section 15 deals with the preparation of existing land use maps and once the existing land use map has

been published under section 15, section 16 puts restriction upon the user of the land for any purpose other than that indicated without permission in writing of the Director and no local authority notwithstanding anything contained in any other law, has the power to grant permission for change in the use of land otherwise than as indicated in the existing land use map without the permission in writing of the Director.

18. Section 17 deals with the contents of the development plan. Section 18 deals with the publication of draft development plan prepared under section 14 and objections thereto and suggestions in writing have to be invited within 30 days then the Committee under section 17A(1) has to consider the objections and suggestions and after giving reasonable opportunity to all persons affected thereby, of being heard, suggest such modifications in the draft development plan as it may consider necessary then it has to be submitted to the Director who in turn, within 30 days has to submit the same to the State Government. Section 19 deals with the sanction of the development plan. State Government under section 19(1) may either approve the development plan or may approve it with such modifications as it may consider necessary or may return it to the Director to modify the same in accordance with such directions as may be deemed appropriate. In case the State Government wants to notify the development plan with modifications, objections and suggestions thereto have to be invited afresh within 30 days from the date of

publication of notice in writing as mandated by section 19(2) and after giving hearing to the persons and considering objections and suggestions the State Government may confirm the modification in the development plan as provided in section 19(3). As per section 19(4) development plan has to be published in the Gazette. As per section 19(5), development plan shall come into operation from the date of publication of the notice in the Gazette and as from such date shall be binding on all Development Authorities and local authorities functioning in the planning area. Sections 18 and 19 are extracted hereunder :

> **"18. Publication of draft development plan. –** (1) The Director shall publish the draft development plan prepared under Section 14 in such manner as may be prescribed together with a notice of the preparation of the draft development plan and the place or the places where the copies may be inspected, inviting objections and suggestions in writing from any person with respect thereto, within thirty days from the date of communication of such notice, such notice shall specify in regard to the draft development plan, the following particulars, namely,
>
> (i) the existing land use maps;
>
> (i-a) the natural hazard prone areas with the description of natural hazards;
>
> (ii) a narrative report, supported by maps and charts, explaining the provisions of the draft development plan;
> (iii) the phasing of implementation of the draft development plan as suggested by the Director;
> (iv) the provisions for enforcing the draft development plan and stating the manner in which permission for development may be obtained;

(v) approximate cost of land acquisition for public purposes and the cost of works involved in the implementation of the plan.

(2) The committee constituted under sub-section (1) of Section 17-A shall not later than ninety days after the publication of the notice under sub-section (1), consider all the objections and suggestions as may be received within the period specified in the notice under sub-section (1) and shall, after giving reasonable opportunity to all persons affected thereby of being heard, suggest such modifications in the draft development plan as it may consider necessary, and submit, not later than six months after the publication of the draft development plan, the plan as so modified, to the Director together with all connected documents plans, maps and charts.

(3) The Director shall, within 30 days of the receipt of the plan and other documents from the committee submit all the documents and plans so received alongwith his comments, to the State Government.

19. Sanction of development plans.- (1) As soon as may be after the submission of the development plan under Section 18 the State Government may either approve the development plan or may approve, it with such modifications as it may consider necessary or may return it to the Director to modify the same or to prepare a fresh plan in accordance with such directions as the State Government may deem appropriate.

(2) Where the State Government approves the development plan with modifications, the State Government shall, by a notice published in the Gazette, invite objections and suggestions in respect of such modifications within a period of not less than thirty days from the date of publication of the notice in the Gazette.

(3) After considering objections and suggestions and after giving a hearing to the persons desirous of being heard, the State Government may confirm the modification in the development plan.

(4)The State Government shall publish a public notice in the Gazette and in such other manner as may be prescribed of the approval of the development plan approved under the foregoing provisions and the

> place or places where the copies of the approved development plan may be inspected.
>
> (5) *The development plan shall come into operation from the date of publication of the said notice in the Gazette under sub-section (4) and as from such date shall be binding on all Development Authorities constituted under this Act and all local authorities functioning with the planning area.*" (emphasis added)

19. Section 25 of the Act of 1973 lays down that once Development Plan comes into force the use and development of land shall conform to the provisions of the development plan. It was also provided in section 25(2) that diversion of land shall be subject to the provisions of the Act of 1973. Section 25 is extracted below:

> "**25. Conformity with development plan** – (1) *After the coming into force of the development plan, the use and development of land shall conform to the provisions of the development plan*:
>
> Provided that the Director may, at its discretion, permit the continued use of land for the purpose for which it was being used at the time of the coming into operation of the development plan:
>
> Provided further that such permission shall not be granted for a period exceeding seven years from the date of coming into operation of the development plan.
>
> (2) Notwithstanding anything contained in Section 172 of the Madhya Pradesh Land Revenue Code, 1959 (No.20 of 1959) every permission to divert land granted under that section shall be subject to the provisions of this Act." (emphasis added)

20. It is apparent that the development plan once prepared is binding upon the development authorities in the planning area as well as on the Municipal

Corporation and other local authorities as the case may be. They cannot modify and permit the user in contravention thereof. In other words, restriction is imposed upon the owners on enjoyment of the property in violation of the development plan/regional plan, as the case may be.

21. Section 49 of the Act of 1973 deals with the town development schemes. Same has to be prepared under the umbrella of the regional plan and development plan. The town development scheme is prepared by the Town & Country Development Authority established under the provisions of section 38. The same shall be a body corporate under the provisions of section 39 and its constitution is provided in section 40. Section 49 of the Act of 1973 is extracted hereunder :

> "**49. Town Development Schemes.-** A town development scheme may make provision for any of the following matters,
> (i) acquisition, development and sale or leasing of land for the purpose of town expansion;
> (ii) acquisition, relaying out of, rebuilding, or relocating areas which have been badly laid out or which has developed or degenerated into a slum;
> (iii) acquisition and development of land for public purposes such as housing development, development of shopping centers, cultural centers, administrative centers;
> (iv) acquisition and development of areas for commercial and industrial purposes;
> (v) undertaking of such building or construction work as may be necessary to provide housing, shopping, commercial or other facilities;
> (vi) acquisition of land and its development for the purpose of laying out or remodeling of road and street patterns;
> (vii) acquisition and development of land for playgrounds, parks, recreation centres and stadium;

> (viii) reconstruction of plots for the purpose of buildings, roads, drains, sewage lines and other similar amenities;
> (ix) any other work of a nature such as would bring about environmental improvements which may be taken up by the authority with the prior approval of the State Government."

22. Section 50 of the Act of 1973 provides for method of preparation of town development schemes. The town development scheme may deal with the town expansion, badly laid out areas or slums, acquisition and development of land for housing, shopping centres, cultural centres, administrative centres, commercial and industrial purposes, remodelling of road and street patterns, reconstruction of lands for building roads, drains etc. Under section 50 draft plan has to be published, objections have to be invited, heard and decided. Thereafter scheme is finalized, same has to be published in the Gazette. Section 55 provides that the land needed for town development scheme shall be deemed to be a land required for public purpose within the meaning of Land Acquisition Act. Section 56 deals with acquisition of land for Town and Country Development Authority. Within 3 years of preparation of town development scheme under section 50, the authority may acquire the land by agreement and in case that is not possible the State Government at the request of the authority may proceed to acquire the land under the provisions of the Land Acquisition Act.

The town development scheme has to be executed by the authority within 3 years by acquiring the land in case it is necessary as per the provisions contained in section 56.

23. It is apparent from the provisions contained in the Act of 1973 the three different provisions for preparation of regional plan, development plan (master plan) and town development scheme. The regional plan is prepared by the State Government. Development plan is prepared as per the provisions contained in Chapter IV, sections 13 to 19 and once development plan has been finalized, it is binding on development authorities as well as the Municipal Corporation, Municipal Council and other local authorities functioning in the planning area. Town development scheme can be framed by the development authorities and it may declare its intention to do so with the prior approval of the State Government.

In re : Town Planning Scheme of the Act of 1956 :

24. Section 291 of the Act of 1956 enjoins upon the Municipal Corporation to prepare town planning scheme and in case the scheme has been sanctioned under the provisions of Town Improvement Act, it is provided by section 292 of the Act of 1956 that no town planning scheme shall be made by the Corporation. Sections 291 and 292 of the Act of 1956 are extracted hereunder :

> "**291. Town planning scheme.-** (1) The Corporation may, and if so required by the Government shall, within six months of the date of such requisition, direct the Commissioner

to draw up a town planning scheme, which may, among other things, provide for the following matter, namely:-

(a) a direction that in any street, portion of a street or locality specified in the scheme the elevation and construction of the frontage of all buildings thereafter erected or re-erected shall, in respect of their architectural features, be such as may be fixed for the locality;

(b) a direction that in any street, portion of a street or locality specified in the scheme, there shall be allowed the construction only detached or semi-detached buildings or both, and that the land appurtenant to each building shall be of an area not less than that specified in the scheme;

(c) a direction that in any street, portion of a street or locality specified in the scheme, the construction of more than a specified number of houses on each acre of land shall not be allowed;

(d) a direction that in any street, portion of a street or locality specified in the scheme, the construction of shops, warehouses, factories, huts or buildings of a specified architectural character or buildings designed for particular purpose shall not be allowed;

(e) a street line and a building line on either side or on both sides of any street existing or proposed;

(f) a standard plan, either for the division of land into building sites, or for the location of buildings within a building site;

(g) the amount of land which shall be transferred to the Corporation for public purposes and public streets by owners of land on payment of compensation;

(h) the prohibition of building operations permanently or temporarily when by reason of the situation or nature of the land, the erection of buildings thereon would be likely to involve danger or injury to health, or excessive expenditure of public money in the provision of roads, sewers, water supply or other public services;

(i) regulating in the interest of safety, the height and position of proposed walls, fences or hedges near the corners or bends of streets;

(j) limiting the number or prescribing the sites of new roads entering a highway maintained by the Government;

(k) regulating, in respect of the erection of any building intended to be used for purposes of business or industry, the provision of accommodation for loading, unloading or fuelling vehicles with a view to the prevention of obstruction of traffic on any highway; and
(l) a direction that in any street, portion of a street or locality specified in the scheme, the use of land for any purposes even though not involving the erection of building, shall not be inconsistent with the provisions of this section with respect of buildings.

(2) When a scheme has been drawn up under the provisions of sub-section (1), the Commissioner shall give public notice of the scheme and shall therein announce a date not less than 30 days from the date of such notice by which any person may submit to the Commissioner in writing any objection or suggestion with regard to the scheme which he may wish to make.

(3) The Commissioner shall within fifteen days of the date announced under the provisions of sub-section (2), forward to the Mayor-in-Council the notice together with the objections or suggestions, if any, and his opinion therefor.

(4) The Mayor-in-Council, shall within fifteen days of the receipt of the documents relating to the scheme, forward them to the Corporation together with the opinion of the Commissioner and any comments which the Mayor-in-Council may make.

(5) The Corporation shall consider every objection or suggestion with regard to the scheme and may modify the scheme in consequence of any such objection or suggestion and shall then forward such scheme as originally drawn up or as modified, together with the documents mentioned in sub-section (4) to the Government which may sanction the scheme or sanction it with such modification as it may think fit or may refuse to sanction it, or may return it to the Corporation for reconsideration and re-submission by a specified date.

(6) If the Corporation fails to submit a scheme within six months of being required to do so under sub-section (1) or fails to re-submit a scheme by a specified date when required to do so under sub-section (5), or re-submits a scheme which is not approved by the Government, the Government may draw up a scheme which shall be published within the limits of the Corporation together with an intimation of the date by which any person may submit in writing to the Government any objection or suggestion which he may wish to make. The Government may sanction such scheme as originally published or modified in consequence of any such objection or suggestion as the Government may think fit.

(7) Notwithstanding anything contained in the foregoing sub-sections if the Corporation in case of scheme initiated by it, decides to drop the scheme it shall intimate the Government accordingly.

(8) The cost of such scheme, or such portion of the cost as the Government may deem fit shall be paid from the Municipal Fund.

(9) When sanctioning a scheme the Government may impose the conditions for the submission of periodical reports on the progress of the scheme to the Government, and for the inspection and supervision of the scheme by the Government.

(10) No person shall erect or re-erect any building or take any other action in contravention of any such scheme or of any rule or byelaw made under the provisions of this Act.

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.*"

(emphasis added)

It is apparent that section 292 of the Act of 1956 refers to Town Improvement Act which was in vogue in different areas of erstwhile Madhya Pradesh which has ultimately consolidated the different Acts into the M.P. Town Improvement Trust Act, 1960 (hereinafter referred to as 'the Act of 1960').

25. The Act of 1960 provided for various improvement schemes under section 30. Section 31 of the Act of 1960 dealt with types of improvement schemes such as general improvement schemes, re-building, re-housing, street, deferred street schemes and development scheme. 10 types of schemes were provided under section 31. When scheme was proposed, consideration of representation was also provided. The State Government had the power to sanction, reject or return the improvement scheme as provided in section 51. In case the State Government sanctioned the scheme it was required to be notified under section 52 of the Act of 1960. The Act of 1960 has ceased to be operative in the areas, once the Act of 1973 has been made applicable by establishing the authorities under the provisions of sections 38 to 40. In our considered view, the expression 'scheme' in section 292 has to be taken to mean the regional plan, development plan and also to any scheme under section 49 framed under the Act of 1973. The provision is not confined to a scheme prepared under sections 49 and 50 of the Act of 1973. There cannot be two schemes for the same area.

In re : Scope of power of Corporation under Section 305 :

26. Before taking the question of vires of the provisions contained in sections 305 and 306 of the Act of 1956, we consider it appropriate to deal with the submissions raised on behalf of the appellants with respect to its interpretation and ken of powers conferred upon the Municipal Corporation. Section 305 of the Act of 1956 is extracted hereunder :

> "**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."

27. It was submitted on behalf of the appellants that for the exigencies contemplated in clause (a) of sub-section (1) of section 305 when projecting part is

external to the main building then notice can be issued at any time for removal of projecting part such as verandah, step or some other structure and in case projecting part is as provided in section 305(1)(b) whenever projecting part is 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 then only notice can be issued. No notice can be issued by the Corporation under the provisions of section 305(1) for its removal. The word 'or' in clause (b) in-between greater portion of such building and material portion is not disjunctive. First part of clause (b) has to be read conjunctively with the latter part. Even if greater portion of such building and material portion of such projecting part is read disjunctively, the words used taken down, burned down, fallen down qualify both the exigencies provided in clause (b). The word 'removal' used in section 305(1) has to be read for the situation in clause (a) only. For the situation covered by clause (b) notice is issued only after happening of the mentioned event and that at the same time, when building is proposed to be re-built, notice can be for "setting back" of the building. It was also submitted that in a given situation when greater or material portion of the building or projecting part has fallen down but some portion of the building which is still projecting beyond the building line, in that situation Corporation can legitimately ask the owner to remove the remaining projecting portion of the building. It was also submitted that the latter part of section 305 empowers the

Corporation to issue a notice and require the owner to act in the manner stated to remove or set back while re-building. The section does not empower the Corporation to enter and take possession. Thus, Corporation has no power to remove, enter or take possession of greater portion or material portion of the building. It was also submitted that vesting takes place only after portion of the land is added to the public street by setting back or removal. Till that exigency happens, property continues to be that of the owner. Section 305 contemplates voluntary action on the part of owner. There is conscious omission as to the power of the Corporation to remove or enter which cannot be supplied by the Court. Municipal Authorities have to act within the confine of the powers conferred upon them. They cannot commit trespass. Thus without acquisition of the land under section 278 or 279, as the case may be, of the Act of 1956 on the refusal of the owner to remove, Corporation has no right to have the land and remove the structure. Under the guise of Section 305, Corporation cannot invoke the power of acquisition of land.

28. On behalf of the respondents, it was submitted that the provision contained in section 305 authorises the Corporation to remove any part of the building. If any part of building projects beyond the regular line of building, existing or as determined for the future or beyond the front of immediately adjoining buildings, that part or some portion of the part projecting beyond the regular line or beyond

the front of the adjoining building shall be removed. The action taken is in accordance with the law hence no interference is called for.

29. In our considered opinion, it is clear that Section 305 deals with the power of Corporation to regulate line of buildings. If any part of the building falls within the regular line of a public street either existing or as determined for the future or beyond the front of immediately adjoining building, the Corporation may issue a notice either that part which is projecting or some portion of the part projecting, shall be removed or that when the building is rebuilt, the portion projecting shall be set back to and the portion of the 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. The words 'that the part or some portion of the part projecting beyond the regular line' of the public street may be :

(a) greater portion of such building which has not fallen down; or

(b) that projecting part is verandah, step or some other structure external to the main building; or

(c) whenever any material portion or such material part has been taken down, burned down or has fallen down.

All the abovesaid exigencies are covered in the ken of section 305(1). Section 305 only contemplates issuance of a notice, in the case of a public street that the part projecting is beyond the regular line of public street and is greater

portion or material portion of such building or external portion to the main building, shall be removed. It has to intimate its intention to remove the structure. In case any portion of such material part has been taken down, burned down or has fallen down, the Corporation may require by notice such portion shall be set back to.

30. We are not at all impressed by the submission that section 305 contemplates only voluntary removal by the owner of the building. Section 305 is a wholesome provision with respect to maintaining the regular line of a public street, existing or as determined for the future, it clearly empowers the Corporation to intimate its intention to remove that part of the structure projecting beyond the regular line of public street under section 305. The primary statutory mandate is on Corporation to act for removal. Obviously, it has power to remove is apparent from plain language otherwise the provision will be of no utility. The point when the notice can be issued is clearly culled out in section 305. In the case of clause (a) when the projecting part is external to the main building such as verandah, step etc. then notice can be issued at any time and two points of happening of exigencies are provided separately in clause (b) : first, whenever projecting part is not an external structure but is a greater portion of such building and it projects beyond the regular line of public street and second exigency provided in clause (b) has to be read as

"whenever any material portion of such projecting part has been taken down or burned down or has fallen down".

31. Even in clause (b) of section 305, 'removal' is contemplated and is not confined to a case under clause (a). The Legislature has used two expressions : "whenever greater portion of such building" and secondly "whenever any material portion of projecting part has been taken down or burned down or has fallen down", which means that clause (b) clearly fixes the time for action that 'whenever' projecting part of greater portion of such building is projecting beyond the regular line of public street, removal can be made or 'whenever' material portion of such projecting part has been taken down, burned down or fallen down, it has to be set back and part which has not fallen down, has to be removed. The removal is contemplated even in the latter exigency of clause (b) when material portion of such part has been taken down, burned down or fallen down, still some portion other than 'material portion' projecting in line may require removal which has not been taken down, fallen down or burned down. It is not that the expression that entire building projecting in regular line of public street has been taken down, burned down or fallen down. The expression in the latter part of clause (b) is taken down, fallen down or burned down is not related to the entire projecting part. Thus the earlier part "whenever greater portion of such building" is projecting beyond the regular line of public street, has to be read with respect to a building which has

not fallen down, taken down or burned down. The word ‘or’ in section 305(1)(b) used between greater portion of such building or whenever any material portion of such building has to be read disjunctively. Nonetheless ‘removal’ is contemplated in all the exigencies. In case it has been taken down, burned down or fallen down, it may require the material portion to be set back and remaining portion can be removed in the latter exigency of clause (b) itself.

32. In our opinion, a notice can be issued by the Corporation for removal of the existing structure also. The opening part of section 305(1) and its latter part after clause (b) make it abundantly clear that a building or a part of the portion which projects into the periphery of regular line of public street, can be removed. The interpretation suggested on behalf of the appellants that in case the building has been taken down, burned down or fallen down, only in that exigency action can be taken under section 305(b) and not otherwise, would render the provision contained in section 305 and the provision as to public street in the development plan otiose.

33. Learned counsel for the appellant/s has placed reliance on the provisions contained in sections 307(3), 309(2), 309(5), 309(6), 310 and 313 so as to contend that statutory power has been conferred under those provisions and Commissioner has been statutorily authorized on the failure of the owner to remove the construction after notice to remove the same. Therefore, it was submitted that

accordingly the provisions of section 305 should be construed by us so as to negate the power of removal with the Corporation.

34. In our opinion, the provision contained in section 307 is totally different. Where an adjudicatory process is involved, person can show sufficient cause why the building or work shall not be removed, altered or pulled down but in the cases falling within the purview of section 305, there is no such adjudicatory process or discretion provided. The expression used in section 307(2) is that show-cause has to be made why the work shall not be removed, altered or pulled down, and a person is required to show-cause and on his own failure to show "sufficient cause" why such building or work should not be removed, Commissioner is authorized to remove, alter or pull down the building or work under section 307(3). Since the notice which is contemplated under section 305 does not involve such a case showing sufficiency of cause in case building is falling within the regular line of public street, the building is necessarily to be removed. The expression used is that require by notice removal of the building, the legislative mandate for removal is addressed to the Corporation also to remove the same. As such it was not necessary to repeat it once over again in the provisions contained in section 305.

35. Section 309 deals with the provisions regarding building unfit for human habitation. In that eventuality certain procedure is specified. We find absolutely no ground to accept the submission that the procedure prescribed under section 309 or

the provisions thereof should guide the interpretation of section 305 and for similar reason the provisions contained in sections 310 and 313 relating to dangerous building and removal of building material from any places in certain cases which may be considered harming or breeding places for riot or other source of danger or nuisance to the occupier, then a notice shall be required to be issued; and on failure the Commissioner is empowered to remove; whereas the provisions of section 305 cast a mandate upon the Corporation to remove whatever is projecting beyond the regular line of public street. The intendment of the aforesaid provisions is different, hence render no help or guide so as to interpret the provisions of section 305. In fact when all the provisions are considered, the interpretation of section 305 is fortified that it primarily mandates the Corporation to take action of removal on satisfaction of exigencies specified therein.

In re : Possession/deemed to be part of public street and vesting under section 305 of the Act of 1956:

36. Coming to question as to when vesting takes place. As soon as the building or the projecting part has been removed or when the Corporation has issued a notice when such re-building shall be set back or to the front line, the line added by such action by setting back or removal, shall henceforth without any further formalities, be deemed to be a part of public street and shall vest in the Corporation. Vesting does not depend upon the volition of the owner. Otherwise no

public street can ever be brought in regular line. The Corporation has the power to remove, as discussed hereinabove. As deemed vesting is provided under Section 305, as such there is no requirement of separate provision for taking possession. For removal there is specific provision and adequate safeguards have been provided for fixing the regular line of a public street while preparing the development plan or the town development scheme, as the case may be.

37. In *The Municipal Corporation, Indore v. K.N. Palsikar* AIR 1969 SC 579, a question arose whether it was open to the Corporation to withdraw from the acquisition. This Court has laid down that there is automatic vesting of land in the Corporation under section 305 once the requisite conditions are satisfied. This Court has observed as under :

> "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)

As to the third question framed by this Court in *Palsikar*'s case (supra) to the effect that when the Act provides only for compensation and not any solatium whether it could be paid. This Court laid down that once the Land Acquisition Act is applicable under section 387 solatium can be claimed.

38. It was also submitted that possession can be taken only after compensation has been paid as held in *State of Uttar Pradesh v. Hari Ram* (2013) 4 SCC 280. It

was submitted that there is a difference between de jure possession and de facto possession. It was also submitted that mere vesting in the absence of specific substantive provision providing for taking over of possession forcibly, does not authorize any authority to take over the physical possession of any property. The decision in *State of U.P. v. Hari Ram* (supra) is quite distinguishable and is based upon the provisions contained in section 10 of the Urban Land (Ceiling and Regulation) Act, 1976 (in short, "the Act of 1976"). Section 10(5) whereof provides after the land has vested to take possession by a notice. On failure to comply with the notice to hand-over possession Competent Authority may take possession under section 10(6) of the Act of 1976. Legal fiction of vesting has been taken into consideration and discussed by this Court in the said decision. This Court has laid down that while the meaning of the legal fiction has to be ascertained for what purpose it is created and should be carried as far as necessary to achieve the legislative purpose, the word 'vest' in a statute has different meaning in different contexts. This Court has also held that "vest/vested" therefore may or may not include transfer of possession, the meaning of which depends on the context in which it has been used and the interpretation of various other related provisions. This Court in *Hari Ram* (supra) has discussed the meaning of such legal fiction thus :

> **"18.** The legislature is competent to create a legal fiction, for the purpose of assuming existence of a fact which does not really

exist. Sub-section (3) of Section 10 contained two deeming provisions such as "deemed to have been acquired" and "deemed to have been vested absolutely". Let us first examine the legal consequences of a "deeming provision". In interpreting the provision creating a legal fiction, the court is to ascertain for what purpose the fiction is created and after ascertaining this, the court is to assume all those facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction. This Court in *Delhi Cloth and General Mills Co. Ltd.* v. *State of Rajasthan* (1996) 2 SCC 449 held that what can be deemed to exist under a legal fiction are facts and not legal consequences which do not flow from the law as it stands.

19. James, L.J. in *Levy, In re, ex p Walton* (1881) 17 Ch D 746 speaks on deeming fiction as: (Ch D p. 756)

"… When a statute enacts that something shall be deemed to have been done, which in fact and [in] truth was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to."

24. The expression "deemed to have been acquired" used as a deeming fiction under sub-section (3) of Section 10 can only mean acquisition of title or acquisition of interests because till that time the land may be either in the ownership of the person who held that vacant land or to possess such land as owner or as a tenant or as mortgagee and so on as defined under Section 2(1) of the Act. The word "vested" has not been defined in the Act, so also the word "absolutely". What is vested absolutely is only the land which is deemed to have acquired and nothing more. The word "vest" has different meaning in different context; especially when we examine the meaning of "vesting" on the basis of a statutory hypothesis of a deeming provision which Lord Hoffmann in *Customs and Excise Commissioners* v. *Zielinski Baker and Partners Ltd.* (2004) 2 All ER 141 (HL) at para 11 described as "heroic piece of deeming".

28. "Vest"/"vested", therefore, may or may not include "transfer of possession", the meaning of which depends on the context in which it has been placed and the interpretation of various other related provisions."

Though in the context of section 10 of the Urban Ceiling Act and provision of taking possession, this Court in *Hari Ram* (supra) has laid down that "vesting" under section 10 takes in every interest in the property including de jure possession and not de facto but it is always open to a person to voluntarily surrender and give possession under section 10(3) of the Act, which is not the position in the instant case as held by us in removal of the building under section 305 of the Act of 1956, it is implicit that once removal is made, vesting follows and possession stands transferred as part of public street. When we consider the deeming fiction in section 305 and vesting provision, *de jure* and *de facto* possession automatically vested in the Corporation on the happening of the exigencies as provided in section 305.

39. It was submitted on behalf of appellants that there is a conscious omission in the provision contained in section 305 with respect to the power of entry, removal or to take possession. The appellants have relied upon the decision of this Court in *The Commissioner of Sales Tax, U.P. Lucknow v. M/s. Parson Tools & Plants, Kanpur* (1975) 4 SCC 22, thus :

> **"16.** If the legislature wilfully omits to incorporate something of an analogous law in a subsequent statute, or even if there is a *casus omissus* in a statute, the language of which is otherwise plain and unambiguous, the Court is not competent to supply the omission by engrafting on it or introducing in it, under the guise of interpretation, by analogy or implication, something what it thinks to be a general principle of justice and equity. To do so "would be entrenching upon

> the preserves of Legislature", the primary function of a court of law being *jus dicere* and not *jus dare."*

40. It was also submitted on behalf of the appellant/s that even if there is some mistake or *casus omissus* or defect in the phraseology used by the Legislature, the court cannot aid the Legislature's defective phrasing of an Act or add and amend or, by construction, make up the deficiencies which are left in the Act, placing reliance on the decisions in *Nalinakhya Bysack v. Shyam Sunder Haldar & Ors.* (1953) SCR 533; *Punjab Land Development & Reclamation Corporation Ltd. v. Presiding Officer, Labour Court, Chandigarh* (1990) 3 SCC 682; *Union of India & Anr. v. Deoki Nandan Aggarwal* (1992) Supp. 1 SCC 323; and *Padma Sundara Rao (Dead) & Ors. v. State of T. N. & Ors.* (2002) 3 SCC 533.

41. In *The Commissioner of Sales Tax, U.P., Lucknow v. M/s. Parson Tools & Plants, Kanpur* (supra), this Court has laid down that if the Legislature wilfully omits to incorporate something of an analogous law in a subsequent statute, or even if there is a *casus omissus* in a statute, the language of which is otherwise plain and unambiguous, the Court is not competent to supply the omission by engrafting on it or introducing in it, under the guise of interpretation, by analogy or implication, something what it thinks to be a general principle of justice and equity.

42. In *Punjab Land Development and Reclamation Corpn. Ltd., Chandigarh v. Presiding Officer, Labour Court* (supra), this Court has laid down that when there

is gap in the provision, it should be remedied by the legislature by amendment. Court has only to interpret a statute and apply it to the facts. This Court has laid down thus :

> **"79.** The court has to interpret a statute and apply it to the facts. Hans Kelsen in his *Pure Theory of Law* (p. 355) makes a distinction between interpretation by the science of law or jurisprudence on the one hand and interpretation by a law-applying organ (especially the court) on the other. According to him "jurisprudential interpretation is purely cognitive ascertainment of the meaning of legal norms. In contradistinction to the interpretation by legal organs, jurisprudential interpretation does not create law". "The purely cognitive interpretation by jurisprudence is therefore unable to fill alleged gaps in the law. The filling of a so-called gap in the law is a law-creating function that can only be performed by a law-applying organ; and the function of creating law is not performed by jurisprudence interpreting law. Jurisprudential interpretation can do no more than exhibit all possible meanings of a legal norm. Jurisprudence as cognition of law cannot decide between the possibilities exhibited by it, but must leave the decision to the legal organ who, according to the legal order, is authorised to apply the law". According to the author if law is to be applied by a legal organ, he must determine the meaning of the norms to be applied: he must 'interpret' those norms (p. 348). Interpretation therefore is an intellectual activity which accompanies the process of law application in its advance from a higher level to a lower level. According to him, the law to be applied is a frame. "There are cases of intended or unintended indefiniteness at the lower level and several possibilities are open to the application of law". The traditional theory believes that the statute, applied to a concrete case, can always supply only one correct decision and that the positive-legal 'correctness' of this decision is based on the statute itself. This theory describes the interpretive procedure as if it consisted merely in an intellectual act of clarifying or understanding; as if the law-applying organ had to use only his reason but not his will, and as if by a purely intellectual activity, among the various existing possibilities only one correct choice could be made in accordance with positive law. According to the author: "The legal act applying a legal norm may be performed in such a way that it conforms (*a*) with the one or the other

> of the different meanings of the legal norm, (*b*) with the will of the norm creating authority that is to be determined somehow, (*c*) with the expression which the norm-creating authority has chosen, (*d*) with the one or the other of the contradictory norms; or (*e*) the concrete case to which the two contradictory norms refer may be decided under the assumption that the two contradictory norms annul each other. In all these cases, the law to be applied constitutes only a frame within which several applications are possible, whereby every act is legal that stays within the frame".

In *Union of India & Anr. v. Deoki Nandan Aggarwal* (supra), this Court has laid down that courts cannot supply omissions to a statute and a court cannot invoke the principle of affirmative action to avoid discrimination so as to modify the legislative policy. In *Padma Sundara Rao (dead) & Ors. v. State of T.N. & Ors*. (supra), this Court held when *casus omissus* cannot be supplied by the Court. Reliance has also been placed upon the decisions in *Jones v. Wrotham Park Settled Estates & Anr.* (1979) 1 AER 286; *Inco Europe Ltd & Ors. v. First Choice Distribution (a firm) & Ors.* (2000) 2 AER 109; and *Singareni Collieries Co. Ltd. v. Vemuganti Ramakrishan Rao & Ors.* (2013) 8 SCC 789 which are the cases in which the court has supplied omissions, the same is based upon the principle of true intent of the Legislature and in order to give effect to the said intent, the courts can supply words which appear to be accidentally omitted or if the literal construction would in fact do violence to the legislative objective. For that, three conditions must be satisfied before this course can be adopted : (i) that the intended purpose of the statute is not being achieved by literal construction of the statute;

(ii) that by inadvertence the draftsmen and Parliament failed to give effect to that purpose in the provision; and (iii) the substance of the provision Parliament would have made an be known with precision, though not in exact language, had the error in the bill been noticed.

43. There is no dispute with the principles laid down by this Court in the aforesaid dictums. However the language of section 305 is plain, simple and clear. In our opinion there is no defect in the phraseology used. The exigencies when the notice can be issued including the vesting part and deeming fiction are very clear. In view of aforesaid discussion, we do not find any deficiency in the phraseology used in section 305 of the Act of 1956, as such we do not venture to add, substract, amend or by construction make up the deficiencies. We find that there is no omission or lacunae, much less *casus omissus* as submitted, in the provisions contained in section 305 of the Act of 1956.

44. In the case of Municipal Corporation, Bhopal, the action has been taken as per the development plan/master plan, 2005 notified in the year 1995. With respect to Indore, action has been taken as per the Master Plan of 1991 notified in the year 1975 and Master Plan of 2021 has also been notified. Both are the cases of BRTS corridor project. As such action has been taken under section 305 and in case of Indore, it is also admitted that there was a scheme framed under section 49 read with section 50 of the Act of 1973. In the case of Bhopal, the appellants have not

pleaded that the scheme under sections 49 and 50 has not been prepared. Nonetheless the fact remains that Bhopal Municipal Corporation has initiated action under section 305 pursuant to the permission given by the High Court by its interim order to enforce the provisions of Development Plan, 2005 notified in the year 1995 in which the width of the corridor has been so provided.

45. Gauged in the aforesaid perspective various provisions and in particular restrictive provisions contained in the Act of 1973, restrictions put on the user of the land by the owner on erection, re-erection under the Act of 1956 etc., it is apparent that the power conferred under section 305 has to be exercised with respect to regular line of a public street, either existing or as determined for future, when hearing has already been afforded while laying down regular line under section 18/19 of the Act of 1973 and the power is conferred by notice to remove the building under section 305 of the Act of 1956 which includes all the powers and steps which are necessary for removal of such building. The vesting takes place, as soon as the building is removed or notice is served for the building to be set back, land is deemed to be part of the street and shall vest in the Corporation. Thus, by deeming fiction vesting takes place, as such there was no necessity of specific provision for taking over of the possession that is implicit in the deeming part and vesting of the property by legal fiction.

In re : Section 78/79 of the Act of 1956 and Section 56 of the Act of 1973 :

46. It was also submitted that when the provisions of the statute are plain and unambiguous, court shall not interpret the same in a different manner only because harsh consequences arise therefrom and the authority should be asked to acquire the land as per the provisions contained in section 79 of the Act of 1956. Section 305 is required to be harmoniously construed along with other provisions within the constitutional limitations. Reliance has been placed on a decision of this Court in *Nasiruddin v. Sita Ram Agarwal* (2003) 2 SCC 577.

47. It was also submitted on behalf of the appellants that when under section 56 of the Act of 1973 land has been acquired for town development scheme by development authorities, the power cannot be treated to be with the Corporation to vest the property in the public street without its acquisition under the provisions of section 305 of the Act of 1956 without acquisition under section 79 thereof. It is necessary to notice the provisions contained in sections 78 and 79 of the Act of 1956 and section 56 of the Act of 1973. The provisions contained in sections 78 and 79 of the Act of 1956 are extracted hereunder :

> "**78. Acquisition of immovable property or easement by agreement.-**
> (1) Whenever it is provided by this Act that the Commissioner may acquire or whenever it is necessary or expedient for any purpose of this Act that the Commissioner shall acquire, any

immovable property, such property may be acquired by the Commissioner on behalf of the Corporation by agreement on such terms and at such rates or prices, or at rates or prices not exceeding such maxima, as shall be approved by the Mayor-in-Council either generally for any class of cases or specially in particular case.

(2) Whenever, under any provision of this Act the Commissioner is authorized to agree to pay the whole or any portion of the expenses of acquiring any immovable property, he shall do so on such terms, and at such rates or prices, or at rates or prices not exceeding such maxima, as shall have been approved by the Mayor-in-Council:

Provided that no agreement for the acquisition of any immovable property under sub-section (1) or (2) at a price exceeding one thousand rupees shall be valid until such agreement has been approved by the Corporation.

(3) The Commissioner may, on behalf of the Corporation acquire by agreement any easement affecting any immovable property vested in the Corporation and the provisions of sub –sections (1) and (2) shall apply to such acquisition.

79. Procedure when immovable property or easement can not be acquired by agreement.-

(1) Whenever the Commissioner is unable under Section 78 to acquire by agreement any immovable property or any easement affecting any immovable property or whenever any immovable property or any easement affecting any immovable property vested in the Corporation is required for the purposes of this Act, the Government may in its discretion upon the application of the Commissioner made with the approval of the Mayor-in-Council order proceedings to be taken for acquiring the same on behalf of the Corporation as if such property or easement were land needed for a public purpose within the meaning of the Land Acquisition Act, 1894.

(2) The amount of the compensation awarded and all other charges incurred in the acquisition of any such property or easement shall, subject to all other provisions of this Act, be forthwith paid by the Commissioner and thereupon the said property or easement shall vest in the Corporation.

(3) When any land is required for a new street or for the widening or improving of an existing street, the Commissioner may proceed to acquire, in addition to the land to be occupied by the street, the land necessary for the sites of the building to be erected on both sides of the streets, and such land shall be deemed to be required for the purposes of this Act."

Section 56 of the Act of 1973 is extracted hereunder :

"**56. Acquisition of land for Town and Country Development Authority.-** The Town and Country Development Authority may at any time after the date of publication of the final town development scheme under Section 50 but not later than three years therefrom, proceed to acquire by agreement the land required for the implementation of the scheme and, on its failure so to acquire, the State Government may, at the request of the Town and Country Development Authority proceed to acquire such land under the provisions of the Land Acquisition Act, 1894 (No. 1 of 1894) and on the payment of compensation awarded under that Act and any other charges incurred by the State Government in connection with the acquisition, the land shall vest in the Town and Country Development Authority subject to such terms and conditions as may be prescribed.

Provided that the said agreement may contain such conditions and executed in such manner as may be prescribed."

48. In order to understand the procedure of compensation prescribed under section 305, we have to take note of the provisions contained in sections 306 and 387 of the Act of 1956 also. The provisions are extracted hereunder :

"**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."

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 cases, 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."

49. We have extracted the definitions of 'private street', 'public street' and 'street' as defined in sections 5(45), 5(49) and 5(55) of the Act of 1956. Private street means a street which is not a public street. Public street means any street over which the public have a right of way or which have been leveled, paved, metalled, asphatled, channeled, sewered or repaired out of municipal or other

public funds or which under the provisions of the Act, becomes a public street as provided in section 330 and which includes the roadway over any public bridge or causeway, footway attached to any such street, public bridge or causeway; and the drains attached thereto. Street means any road, footway, square, court alley or passage, accessible whether permanently or temporarily to the public. Public street and private street are separately defined – though the public street may also include any street provided in section 5(49) but every street is not a public street and private street is a street which is not a public street. Any street may be declared to be public street under the provisions of section 330. In the exigencies as provided in sub-section (1) thereof and Commissioner may also after inviting objections, declare a street or part of the same to be public street, and an appeal is provided against the decision. Under Section 305 the power is conferred on the Municipal Corporation to remove building or any part of the building beyond the regular line of a "public street"; whereas the provisions contained in section 79(3) is with respect to a new street or for widening or improving an existing street. There is difference when there is a public street line, the special provision contained in section 305 is attracted. The recourse to the provisions of acquisition under sections 78 and 79 is clearly ousted by the special provision contained in Section 305 of the Act of 1956. Being a special provision with respect to maintaining a regular line of a public street which has been carved out by the Legislature under

section 305 of the Act of 1956, would prevail upon the general provisions with respect to acquisition of land as provided in sections 78 and 79 thereof.

50. In "The Principles of Statutory Interpretation" by G.P. Singh, 13th Edn. 2012, Chapter 2 in which it has been laid down that inconsistency and repugnancy to be avoided and provisions should be harmoniously construed, the author has observed thus :

> "It has already been seen that a statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute. Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between a section and other parts of the stature. It is the duty of the courts to avoid "a head on clash" between two sections of the same Act and, "whenever it is possible to do so, to construe provisions which appear to conflict so that they harmonise". It should not be lightly assumed that "Parliament had given with one hand what it took away with the other". The provisions of one section of a statute cannot be used to defeat those of another "unless it is impossible to effect reconciliation between them". The same rule applies in regard to sub-sections of a section. In the words of GAJENDRAGADKAR, J.: "The sub-sections must be read as parts of an integral whole and as being interdependent; an attempt should be made in construing them to reconcile them if it is reasonably possible to do so, and to avoid repugnancy". As stated by VENKATARAMA AIYAR, J. : "The rule of construction is well settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is what is known as the rule of harmonious construction". That, effect should be given to both, is the very essence of the rule. Thus a construction that reduces one of the provisions to a "useless lumber" or "dead letter" is not harmonious construction. To harmonise is not to destroy. *A familiar approach in all such cases is to find out which of the two apparently conflicting provisions is more general and which is more specific and to*

construe the more general one as to exclude the more specific. [South India Corporation (P) Ltd. v. Secretary, Board of Revenue, Trivandrum, AIR 1964 SC 207, p. 215 : 1964 (4) SCR 280; Weverly Jute Mills Co. Ltd. v. Raymon & Co. (India) (Pvt.) Ltd, AIR 1963 SC 90 p.95: (1963) 3 SCR 209; J.K. Cotton Spinning & Weaving Mills v. State of U.P., AIR 1961 SC 1170 p.1194: (1962) 1 SCJ 417: (1961) 3 SCR 185; Paradip Port Trust v. Their Workmen, AIR 1977 SC 36, p.44: 1977 SCC (L&S) 253; U.P. State Electricity Board v. Harishanker, AIR 1979 SC 65; (1978) 4 SCC 16: 1978 SCC (Lab) 481; Life Insurance Corporation of India v. D.J. Bahadur, AIR 1980 SC 2181, pp.2202, 2208; State of U.P. v. Renusagar Power Co., AIR 1988 SC 1737, p.1751: 1988 (4) SCC 59; State of Rajasthan v. Gopikishan, supra, p.1756. See further Life Insurance Corporation of India v. S.V. Oak, AIR 1965 SC 975, p.980: 1965 (1) SCR 403 (Compulsive provision will control a discretionary provision]. The question as to the relative nature of the provisions general or special has to be determined with reference to the area and extent of their application either generally or specially in particular situations. [Collector of Central Excise Jaipur v. Raghuvar (India) Ltd. JT 2000 (7) SC 99, p.111; (2000) 5 SCC 299: AIR 2000 SC 2027] The principle is expressed in the maxims Generalia specialibus non derogant, [General things do not derogate from special things. Osborn's Law Dictionary] and Generalibus specialia derogant [Special things derogate from general things. Osborn's Law Dictionary]. If a special provision is made on a certain matter, that matter is excluded from the general provision.[Venkateshwar Rao v. Govt. of Andhra Pradesh, AIR 1966 SC 828: (1966) 2 SCR 172; CIT, Patiala v. Shahzada Nand & Sons, AIR 1966 SC 1342, p. 1347: (1966) 3 SCR 379; State of Gujarat v. Patel Ramajibhai Danabhai, AIR 1979 SC 1098, p.1103; 1979 (3) SCC 347; State of Bihar v. Yogendra Singh, AIR 1982 SC 882, p.886: (1982) 1 SCC 664; Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupesh Kumar Sheth, (1984) 4 SCC 27, p.47: AIR 1984 SC 1543; State of Rajasthan v. Gopikishan, supra, p.1756]. Apart from resolving conflict between two provisions in the Act, the principle can also be used for resolving a conflict between a provision in the Act and a rule made under the Act. Further, these principles have also been applied in resolving a conflict between two different Acts and two provisions in the Constitution added by two different Constitution Amendment Acts. and in the construction of

> statutory rules and statutory orders. But the principle, that a special provision on a matter excludes the application of a general provision on that matter, has not been applied when the two provisions deal with remedies, for validity of plural remedies cannot be doubted. Even if the two remedies happen to be inconsistent, they continue for the person concerned to choose from, until he elects one of them."
>
> (emphasis supplied)

It is apparent that the maxims *Generalia specialibus non derogant* and *Generalibus specialia derogant* have to be applied in particular situations. If a particular provision is made on a certain matter, that matter is excluded from the general provision. Author has referred to the law as laid down by this Court, *inter alia*, in *Venkateshwar Rao v. Government of Andhra Pradesh* AIR 1966 SC 828; *C.I.T. Patiala v. Shahzada Nand & Sons* AIR 1966 SC 1342; *State of Gujarat v. Patel Ramajibhai Danabhai* (1979) 3 SCC 347; *State of Bihar v. Yogendra Singh* (1982) 1 SCC 664; and *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupesh Kumar Sheth* (1984) 4 SCC 27.

51. Even assuming that public street is also a street, considering the special provisions contained in section 305, recourse can be had to the provision without having adverting to the procedure prescribed under sections 78 and 79 of the Act and the compensation in the case of action is taken under section 305 is provided under proviso to section 305 and section 306 read with section 387 to which the provisions of the Land Acquisition Act, 1894 have been made applicable for determination. Section 387 provides for procedure in case compensation

determined under section 306 is not acceptable, dissatisfied claimants can have resort to section 387 which require determination of dispute by Panchayat/arbitration, and in case arbitration fails, parties can approach the District Court which shall follow the procedure provided in Land Acquisition Act, 1894. The provision of section 387 is very wide and covers all the cases in which an agreement is not arrived at with respect to compensation or damages which are under the Act directed to be paid. Section 387 would cover the provisions of compensation payable under sections 305 and 306 of the Act of 1956. Sections 305 and 306 use the expression 'reasonable compensation has to be paid' which would mean, reasonable on the principle acceptable in accordance with law. It cannot be fanciful or arbitrary one as suggested by the appellants.

52. The submission raised by the appellants that for acquisition of land, sections 78 and 79 should be resorted to for the purposes mentioned in section 305 cannot be accepted for yet another reason, if the provision as to public street is made dependent upon the acquisition of land, the very purpose behind the provisions of section 305 would be frustrated as well as the public interest, there is already a regular line of public street fixed under development plan and is binding under section 19(5) and section 25 of the Act of 1973. Various rights of ownership which ordinarily vest in an owner, are restricted by the regional plan, development plan or the town development scheme, as the case may be. User of the owner's land,

property cannot be in derogation to any of them. Development plan is binding upon the Corporation and local authorities and all concerned including the owners. Though they can transfer the property but subject to such restrictions which the property will carry with it. If the land falls in a regular line of public street, no construction can be raised, no projection can be made by owner whereas it can be removed or set back, as the case may be. In case acquisition is resorted to under sections 78 and 79, public street can never be widened and the entire purpose of preparation of Development Plan shall stand defeated.

53. What can be achieved by procedural safeguards in case the property is acquired under the provisions of the Land Acquisition Act, 1894 or the Act of 2013 by way of holding inquiry, such exercise has already been taken care of while preparing regional plan, development plan or the town improvement scheme. The widening of the public street cannot brook any delay. The provisions contained in section 387(5) which empower the Corporation to take possession after determination of compensation by arbitration or by District Court, would be applicable only to the acquisition resorted to under sections 78 and 79, particularly under the provisions of section 79 and not to a case which is covered by the special provisions contained in section 305 where the vesting is deemed to be by operation of law as soon as there is deemed vesting, the area shall vest in the Corporation and it shall be deemed to be a part of public street. Thus the provision of section 387(5)

is not attracted when it is deemed to be part of the public street on vesting in the Corporation. The process under section 305 read with sections 306 and 387 is just, fair and reasonable. The FAR is offered by the Corporation as well as compensation and if it is not acceptable, recourse can be had to the provisions contained in section 387 of the Act of 1956. It is not for this Court to adjudicate upon the issue in which case FAR would be suitable as part of compensation and what would be the impact of conversion of FAR into TDR i.e. Transferable Development Right. Compensation in monetary terms is claimable under sections 305, 306 and 387. Thus, when recourse to section 305 is made by the Corporation, it is not necessary to make acquisition under section 78 or 79 of the Act of 1956.

54. Provision of section 56 of the Act of 1973 has also been pressed into service to contend that the authorities under the Act of 1973 are also required to acquire the land by agreement or under the provisions of the Land Acquisition Act for carrying out the purpose of development plan as such, this Court should record a conclusion that the provisions of section 78/79 of the Act of 1956 should be resorted to. Reliance has been placed on *Afjal Imam v. State of Bihar & Ors.* (2011) 5 SCC 729 wherein this Court has considered the basic rule of harmonious construction, when cross reference of relevant provisions should be made and in order to reconcile two apparently inconsistent provisions, one can be read as

"subject to" the other and if necessary reading down of the provisions has to be made.

We do not find any substance in the submission as for building line with respect to public street, a specific provision is contained in section 305 which will prevail over the general provisions as held by us. Thus the submission is rejected.

55. It was also submitted that when the law requires a thing to be done in a particular manner, that thing can be done in that manner only and other modes of doing it are excluded. For this reliance has been placed on the decisions in *Bhavnagar University vs. Palitana Sugar Mill (P) Ltd. & Ors.* (2003) 2 SCC 111 on the following passage :

> **"40.** The statutory interdict of use and enjoyment of the property must be strictly construed. It is well settled that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authorities while acting under the said Act are only creature of statute. They must act within the four corners thereof."

56. This Court's decision in *Laxmi Devi v. State of Bihar & Ors.* (2015) 10 SCC 241 has been relied in which it has been laid down thus :

> **"16.** The salient concomitants of Section 17(1) deserve enumeration.
>
> **16.1.** *Firstly*, the section is attracted even though an award has not been made which, it appears to us, clearly indicates that the completion of this exercise has not been obliterated or dispensed with but has been merely deferred. An unambiguous and unequivocal statement could have been made excluding the requirement of publishing an award.

16.2. *Secondly*, it is available only on the expiration of fifteen days from the issuance of Section 9 notice. This hiatus of fifteen days must be honoured as its purpose appears to be to enable the affected or aggrieved parties to seek appropriate remedy before they are divested of the possession and the title over their land. The Government shall perforce have to invite and then consider objections preferred under Section 5-A, which procedure, as painstakingly and steadfastly observed by this Court, constitutes the constitutional right to property of every citizen; inasmuch as Section 17(4) enables the obliteration of this valuable right, this Court has repeatedly restated that valid and pressing reasons must be present to justify the invocation of these provisions by the Government.

16.3. *Thirdly*, possession of the land can be taken only if it is needed for public purpose, which term stands defined in the preceding Section 3(*f*). A conjoint reading of Sections 17 and 3(*f*) makes it apparent to us that urgency provisions cannot be pressed into service or resorted to if the acquisition of land is for companies; however, we must be quick to add that this question does not arise before us.

16.4. *Fourthly*, possession of such lands would vest in the Government only when the foregoing factors have been formally and strictly complied with. This section enables the curtailment of a citizen's constitutional right to property and can be resorted to only if the provisions and preconditions are punctiliously and meticulously adhered to, lest the vesting be struck down and set aside by the court in its writ jurisdiction, on the application of *Taylor* v. *Taylor* (1875) LR 1 Ch D 426 and several judgments of this Court which has followed this decision (supra)."

There is no dispute with the aforesaid propositions but in the instant cases the specific procedure prescribed for widening of the public street to remove the projection in the regular line of public street has been adopted which is a wholesome procedure. Thus there is no violation of law as the prescribed mode is being followed.

<u>In re : Development Plan and Town Planning Scheme :</u>

57. It was also submitted that there is difference between acquisition and reservation. A development plan merely creates a restriction on user of the property and the land does not vest in the State or the development authority on publication of the master plan/development plan. Reliance has been placed on the decision of this Court in *Girnar Traders (3) v. State of Maharashtra & Ors.* (2011) 3 SCC 1. Reference has been made to para 155 and the same is extracted hereunder:

> **"155.** The Court has to keep in mind the clearly stated legal distinction between reservation and designation on one hand and acquisition on the other. These are well-defined terms used by the legislature in both the enactments and they do not admit of any synonymity or interchangeability. The reservation under the MRTP Act necessarily may not mean and include acquisition. The acquisition under the Land Acquisition Act may not necessarily mean and include reservation. They are well-explained concepts within the legislative scheme of the respective Acts. It may not be necessary at all for an appropriate authority to always acquire the entire or part of the land included in the planned development, while there may be cases where the land is acquired for the purpose of completing planned development. With this distinction in mind, let us, again, refer to some of the relevant provisions of both the enactments."

The aforesaid submission is too tenuous to be accepted. There is restriction put on the ownership rights and in the area no construction can be raised derogatory to the development plan/master plan. When the property vests is clearly culled out in section 305, however the property is held by owner once a development plan is prepared, subject to that use and it is not necessary to acquire the land as already discussed by us for the purposes mentioned under section 305. Section 305 is otherwise also a reasonable method of acquisition of the property

and it follows a detailed procedure for preparation of development plan/master plan or a town improvement scheme, as the case may be, which involves adjudicatory process and once action is taken under section 305, reasonable compensation follows, special procedure as prescribed, is a complete Code in itself and even if a person is not satisfied, he can claim adjudication under section 387 where the procedure of the Land Acquisition Act, 1894 is applicable.

58. It was submitted in Bhopal Municipality matters that in the absence of a scheme having been framed under section 50 of the Act of 1973, the provisions of section 305 of the Act of 1956 could not be invoked, prior statutory exercise under section 291 thereof is necessary which has also not been done. Attention has also been drawn to paragraphs 5.17, 5.18 and 5.19 of W.P. No.5682 of 2016. In para 5.17 it has been pleaded that if it is held that any existing street will be treated as building line by the Commissioner, Municipal Corporation or for that matter that the building line determined by the Commissioner shall be the final building line for the purpose of section 305 then on that ground also section 305 would become arbitrary, discriminatory and violative of Article 14 of the Constitution. It is reiterated in para 5.17 that there has to be the building line determined only after following the procedure and rigors of section 291. Again in para 5.18 non-compliance with the provisions of section 291 has been pleaded. In para 5.19 it has been pleaded that until the Corporation undertakes a statutory exercise of

acquisition as mandated under the Act of 2013, they are not legally entitled to take physical possession of the land. In our considered opinion the pleadings in paras 5.16, 5.17, 5.18 and 5.19 do not at all amount on fact or on legal aspect that there was no scheme under the provisions of sections 49 and 50 framed by the Bhopal Development Authority under the Act of 1973. Thus the respondent-Corporation was not required to reply in the matter of Bhopal what has not been averred by the appellants with respect to framing of the scheme under sections 49 and 50 in the aforesaid writ petitions.

59. The interpretation suggested upon section 292, as to the expression scheme under section 291 of the Act of 1956 or only to a scheme under section 49/50 of the Act of 1973 cannot be accepted. We have also discussed the provisions of the Act of 1973 and the provisions of section 292 of the Act of 1956. Under the Act of 1973, there is a regional plan, development plan or town development scheme they have to be understood included in expresssion ‘scheme’ under the provisions of section 292.

60. On merits also, submission based upon sections 49 and 50 of the Act of 1973 is found to be untenable. Development plan itself is binding and has to be implemented by the Corporation not only under the provisions of section 292 but also under the provisions of section 66(1)(y) of the Act of 1956 which mandates a duty upon the Corporation for fulfilling any obligation imposed by the Act or under

any other law for the time being in force. Provision of section 66(1) is extracted hereunder :

> "**66. Matters to be provided for by Corporation**.- (1) The Corporation shall make adequate provision, by any means or measures which it may lawfully use or take, for each of the following matters, namely:-
> xxx xxx xxx
> (y) fulfilling any obligation imposed by this Act or any other law for the time being in force;"

Thus Corporation while taking action, is simply carrying out the mandate of sections 19(5), 25 and other provisions of the Act of 1973. Framing of the scheme under section 291 as already held, is precluded by virtue of the provisions of section 292, in view of the existence of development plan which is final as to width of road or town development scheme, as the case may be.

61. It was also submitted that Town Planning and Municipal Institutes are regulating and restricting the use of private property under the aforesaid Acts. They are "expropriatory legislation". Thus they are liable to be construed strictly as laid down in *Chairman, Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemicals Ltd. & Ors.* (2007) 8 SCC 705. In the said case the decision in *Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai & Ors*. (2005) 7 SCC 627 has been referred to, wherein this Court has considered the question and laid down thus :

"59. In *Hindustan Petroleum Corpn. Ltd.* v. *Darius Shapur Chenai (2005) 7 SCC 627* construing Section 5-A of the Land Acquisition Act, this Court observed: (SCC pp. 634-35, para 6-7)

> "*6*. It is not in dispute that Section 5-A of the Act confers a valuable right in favour of a person whose lands are sought to be acquired. Having regard to the provisions contained in Article 300-A of the Constitution, the State in exercise of its power of 'eminent domain' may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor must be paid.
>
> *7*. Indisputably, the definition of public purpose is of wide amplitude and takes within its sweep the acquisition of land for a corporation owned or controlled by the State, as envisaged under sub-clause (*iv*) of Clause (*f*) of Section 3 of the Act. But the same would not mean that the State is the sole judge therefor and no judicial review shall lie. (See *Jilubhai Nanbhai Khachar* v. *State of Gujarat* (1995) supp (1) SCC 596)"

It was further stated: (SCC p. 640, para 29)

> "*29*. The Act is an expropriatory legislation. This Court in *State of M.P.* v. *Vishnu Prasad Sharma* AIR 1966 SC 1593 observed that in such a case the provisions of the statute should be strictly construed as it deprives a person of his land without consent. [See also *Khub Chand* v. *State of* Rajasthan AIR 1967 SC 1074 and *CCE* v. *Orient Fabrics (P) Ltd.* (2004) 1 SCC 597]

There cannot, therefore, be any doubt that in a case of this nature due application of mind on the part of the statutory authority was imperative."

In *State of Rajasthan* v. *Basant Nahata* (2005) 12 SCC 77 it was opined: (SCC p. 102, para 59)

> "In absence of any substantive provisions contained in a parliamentary or legislative act, he cannot be refrained from dealing with his property in any manner he likes. Such statutory interdict would be opposed to one's right of property as envisaged under Article 300-A of the Constitution."

In *State of U.P.* v. *Manohar* (2005) 2 SCC 126 a Constitution Bench of this Court held: (SCC p. 129, paras 7-8)

> "*7*. Ours is a constitutional democracy and the rights available to the citizens are declared by the Constitution. Although Article 19(1)(*f*) was deleted by the Forty-fourth Amendment to the Constitution, Article 300-A has been placed in the Constitution, which reads as follows:
>
> '300-A. *Persons not to be deprived of property save by authority of law*.—No person shall be deprived of his property save by authority of law.'
>
> *8*. This is a case where we find utter lack of legal authority for deprivation of the respondent's property by the appellants who are State authorities."

In *Jilubhai Nanbhai Khachar* v. *State of Gujarat* (supra) the law is stated in the following terms: (SCC p. 622, para 34)

> "*34*. The right of eminent domain is the right of the sovereign State, through its regular agencies, to reassert, either temporarily or permanently, its dominion over any portion of the soil of the State including private property without its owner's consent on account of public exigency and for the public good. Eminent domain is the highest and most exact idea of property remaining in the Government, or in the aggregate body of the people in their sovereign capacity. It gives the right to resume possession of the property in the manner directed by the Constitution and the laws of the State, whenever the public interest requires it. The term 'expropriation' is practically synonymous with the term 'eminent domain'."

It was further observed: (SCC p. 627, para 48)

> "*48*. The word 'property' used in Article 300-A must be understood in the context in which the sovereign power of eminent domain is exercised by the State and property expropriated. No abstract principles could be laid. Each case must be considered in the light of its own facts and setting. The phrase 'deprivation of the property of a person' must equally be considered in the fact situation of a case. Deprivation connotes different concepts. Article 300-A gets attracted to an acquisition or taking possession of private property, by necessary implication for public purpose, in accordance with the law made by Parliament or a State Legislature, a rule or a statutory

> order having force of law. It is inherent in every sovereign State by exercising its power of eminent domain to expropriate private property without owner's consent. Prima facie, State would be the judge to decide whether a purpose is a public purpose. But it is not the sole judge. This will be subject to judicial review and it is the duty of the court to determine whether a particular purpose is a public purpose or not. Public interest has always been considered to be an essential ingredient of public purpose. But every public purpose does not fall under Article 300-A nor every exercise of eminent domain an acquisition or taking possession under Article 300-A. Generally speaking preservation of public health or prevention of damage to life and property are considered to be public purposes. Yet deprivation of property for any such purpose would not amount to acquisition or possession taken under Article 300-A. It would be by exercise of the police power of the State. In other words, Article 300-A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There has to be no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation. Acquisition of mines, minerals and quarries is deprivation under Article 300-A."

Rajendra Babu, J. (as the learned Chief Justice then was) in *Sri Krishnapur Mutt* v. *N. Vijayendra Shetty* (1992) 3 Kar LJ 326 observed: (Kar LJ p. 329, para 8)

> "*8*. The restrictions imposed in the planning law though in public interest should be strictly interpreted because they make an inroad into the rights of a private person to carry on his business by construction of a suitable building for the purpose and incidentally may affect his fundamental right if too widely interpreted."

We have applied the rule of strict construction and found the action is permissible under the provisions of section 305 as the Corporation has implemented the provisions of development plan, it is bound to implement the

development plan prepared after following the exhaustive procedure consistent with the principles of natural justice, and is in the larger public interest.

62. Learned counsel has also referred to the decision of this Court in *Chairman, Indore Vikas Pradhikaran* (supra) wherein a question arose with respect to the declaration made under section 50(2) of the Act on the ground that unless a development plan for an area is published and comes into operation, a draft development scheme cannot be published by the Development Authority under section 50(2) of the Act of 1973. This Court observed that the area in question with respect to which the scheme had been framed under section 50 had not been properly included in the area of operation of the development authority under the Act of 1973 as such the action taken by way of its intention to frame a town planning scheme or otherwise was wholly illegal, without jurisdiction and a nullity. This Court also held that a draft development plan which has not attained finality cannot be held to be determinative of the rights and obligations of the parties and can never be implemented and end use of the land is not frozen until a final sanction plan comes into force. This Court also held that the power to freeze the land use under section 50(1) read with section 53 of the Act of 1973 can only be validly exercised for implementing a final sanctioned development plan. In the instant cases it is not in dispute that there is a final sanctioned development plan for Bhopal as well as for Indore and pursuant thereto action has been taken under

section 305. In Indore the town development scheme exists and for Bhopal, absence of town development scheme under sections 49 and 50 has not been pleaded by the appellants. This Court in *Chairman, Indore Vikas Pradhikaran* (supra) has laid down thus :

> **"33.** The Act envisages the following steps which are required to be complied with:
> (*a*) Constitution of a planning area by notification under Section 13.
> (*b*) Compliance with the detailed procedure set out under Sections 14 to 19, leading to sanction of the development plan under Section 19. The said procedure envisages compliance with principles of natural justice.
> (*c*) Section 38 provides for establishment of a town and country development authority, by notification "for such areas as may be specified in the notification". Under sub-section (2) thereof, duties of implementation of the development plan and preparation of the town development scheme have been cast on the town and country development authority.
> (*d*) The town development scheme is to be prepared upon following the procedure set out under Section 50. The said scheme can be prepared only when there exists a development plan, prepared in accordance with the procedure prescribed under the Act as envisaged under Sections 14 to 19 and after notification under Section 38(1). In this regard, reference may also be made to Section 2(*u*) of the Act, which describes a town development scheme to mean a scheme prepared for implementation of the provisions of the development plan.
>
> **41.** When a draft development plan is prepared, the same is subject to grant of approval and/or modification thereof. We will deal with the matter in some detail a little later but at this stage, we may notice that end use of the land is not frozen until a final sanction plan comes into being. A town planning scheme, as would appear from its definition contained in Section 2(4) of the Act, is prepared only for the purpose of implementation of a development plan. Yet again, we would deal with the question as to whether the same would bring within its sweep

the draft development plan or only final development plan a little later, but it may be noticed that once a valid town planning scheme comes into force, indisputably, there may be freezing of land use as also freezing of development and, thus, a total embargo is placed except in such cases where the Director had granted permission. Section 53 of the Act, however, in the event a valid town planning scheme is made, places a total embargo both on land use as also the development. Even the Director is denuded of its power to issue any further permission. Existing land use, draft development plan and final development plan envisage two-stage exercise. In drafting or finalising a zonal plan, a similar exercise is undertaken. In making a town development scheme, however, the process undertaken is a three-stage one inasmuch as an intention therefor is declared which entails serious consequences and, as noticed hereinbefore, by reason thereof, a total embargo is imposed both on land use as also the development. For the said purpose, a time-limit within which a draft town planning scheme has to be finalised is provided but the same can be subject to modification by the State which ordinarily should be with a view to deal with the same in line with the final development plan.

72. Land use, development plan and zonal plan provided for the plan at macro-level whereas the town planning scheme is at a micro-level and, thus, would be subject to development plan. It is, therefore, difficult to comprehend that broad based macro-level planning may not at all be in place when a town planning scheme is prepared.

73. Once a final plan comes into force, steps inter alia are taken for acquisition of the property. Section 34 of the Act takes care of such a contingency. The town development scheme, as envisaged under Section 49 of the Act, specifically does it. Out of nine clauses contained in Section 49, six relate to acquisition of land for different purposes. Clauses (*v*), (*viii*) and (*ix*) only refer to undertaking of such buildings or construction of work by the authority itself, reconstructions for the purpose of buildings, roads, drains, sewage lines and the similar amenities and any other work of a nature such as would bring about environmental improvements.

> **76.** A bare perusal of Sections 17 and 49 would show that it is the development plan which determines the manner of usage of the land and the town development scheme enumerates the manner in which such proposed usage can be implemented. It would follow that until the usage is determined through a development plan, the stage of manner of implementation of such proposed usage cannot be brought about. It would also therefore follow that what is contemplated is the final development plan and not a draft development plan, since until the development plan is finalised it would have no statutory or legal force and the land use as existing prior thereto with the rights of usage of the land arising therefrom would continue.
>
> **78.** The essence of planning in the Act is the existence of a development plan. It is a development plan, which under Section 17 will indicate the areas and zones, the users, the open spaces, the institutions and offices, the special purposes, etc. Town planning would be based on the contents of the development plan. It is only when the development plan is in existence, can a town planning scheme be framed. In fact, unless it is known as to what the contents of a possible town planning scheme would be, or alternatively, whether in terms of the development plan such a scheme at all is required, the intention to frame the scheme cannot be notified."

This Court has emphasized that it is the development plan which determines the manner of usage of the land at the micro level. This Court has also emphasized that development plan to be implemented should be final development plan. The very scheme of the Act postulates that in case development plan has been prepared, may require for such development plan micro planning wherever it is necessary and there may be certain areas where no micro planning is contemplated in view of the specific provisions contained in the development plan such as width of the road etc. which has been determined finally. Once the final development plan does not require micro exercise and is in force, it is not open to the development authority to

redo that exercise under section 49/50 while preparing the scheme at micro level as it is not authorized to alter/modify the said provision of the development plan as it has no power to alter or modify the width of the road or building line as fixed in the development plan and is bound to carry out the same. For such matters which do not require micro-planning, it would not be necessary to undertake exercise of section 49 read with section 50, publish a draft plan, under section 50(3) invite objections and suggestions and to decide the same issue of development plan once over again which is final, conclusive and binding and requires no further planning. If any modification of development plan is permitted, it would defeat the mandate of sections 19(5) and 25 of the Act of 1973, and in case the authorities cannot alter the width of the road or modify development plan, it would be a futile exercise and exercise in futility is not envisaged by law. The decision of this Court in *Indore Vikas Pradhikaran* (supra) reinforces and buttresses our conclusion that it is a development plan which has to prevail.

63. The appellants have also placed reliance on *Rajendra Shankar Shukla & Ors. v. State of Chhattisgarh & Ors.* (2015) 10 SCC 400 to contend that the Act of 1973 provides for arrangement, the development plan is an umbrella which encompasses within its fold a zonal plan which is implemented through Town Development Scheme. This Court has laid down thus :

> **"65.** As per the factual averments of this case, Respondent 2 RDA, without any resolution of the Board, on its own motion,

addressed a Letter dated 31-7-2006 and approached the State Government for change of land use because it had to propose the township in Tikrapara, Devpuri and Boriakhurd Villages. Thereafter, KVTDS was also proposed, published, finalised and approved before the land use was changed by the State Government. Under the provisions of the 1973 Act, the development plan/Raipur Master Plan (Revised) 2021 that is prevailing, Respondent 2 RDA as well as the State Government gave primacy to KVTDS and sought changes in the master plan to suit KVTDS. This is impermissible in law. The finding recorded by the High Court of Chhattisgarh, Bilaspur, in its judgment in this regard that no finality can be attached to the master plan is an erroneous finding. Accordingly, we are of the opinion that the town development scheme which is KVTDS in the present case, was not prepared in accordance with Section 50 of the 1973 Act and we hold that KVTDS is ultra vires the 1973 Act.

Answer to Point (iii)

66. Though we have answered Point (*ii*) in favour of the appellant, we intend to mention other grounds too, which render KVTDS as illegal. The learned Senior Counsel on behalf of the appellants contended that in the absence of a zonal plan, a town development scheme cannot be framed by Respondent 2 RDA, and therefore, the acquisition proceedings of the land of the appellants cannot be allowed to sustain.

67. *The town development scheme is always subservient to the master plan as well as the zonal plan, as provided under Section 17 of the 1973 Act*, which reads as under:

> "**17.** ***Contents of development plan***.—A development plan shall take into account any draft five year and annual development plan of the district prepared under the Madhya Pradesh Zila Yojana Samiti Adhiniyam, 1995 (19 of 1995) in which the planning area is situated…."

68. Master plan falls within the category of broad development plans and is prepared only after taking into account the Annual Development Reports prepared by constitutionally elected bodies of local panchayats and municipalities, etc. A zonal plan is mandated to be prepared only after the publication of the development plan. Section 20 of the Act reads thus:

> "**20.** ***Preparation of zonal plans***.—The local authority may on its own motion at any time after the publication of the

development plan, or thereafter if so required by the State Government shall, within the next six months of such requisition, prepare a zoning plan."

Further, Section 21 of the Act reads thus:

"**21.** ***Contents of zoning plan***.—The zoning plan shall enlarge the details of the land use *as indicated in the development plan*…."

(emphasis supplied)

Thus, it is evident from the language of Sections 20 and 21 of the Act, that a zonal plan can be prepared only in adherence to the development plan which in the present case is the Raipur Master Plan of 2021.

69. Next, Section 49 of the Act which provides for the provisions for which a town development scheme can be prepared, has to be read along with Section 21 of the Act, which clearly mentions that the land required for acquisition by the Town and Country Development Authority for the purpose of any development scheme has to be laid down in the zonal plan.

70. Therefore, *a combined reading of Sections 17, 21 and 49 lays down that the development plan is the umbrella under which a zonal plan is made for the city*. The zonal plan in turn allocates the land which could be acquired for town development schemes.

74. In the case in hand, KVTDS has been prepared in the absence of a zonal plan. It is not possible to define the utilisation of land under the town development scheme unless the zonal plan formulated by the local authority describes with sufficient particularity the details for which the broadly indicated use of land in the development plan may be put. Respondent 2 RDA is not permitted to either usurp or bypass the power vested with the local authorities for preparing town development scheme in the absence of zoning plan merely on the ground that the local authority did not exercise its constitutional power in preparing the zonal plan following the direction of Respondent 1 State Government under Section 20 of the 1973 Act. A mere glance at the master plan would clearly go to show that it does not set out the detailed land use with sufficient particulars. Therefore, the framing of a zonal plan by local authority in laying out a detailed plan of land use with sufficient particulars is a sine qua non under the provisions of the Act.

> **75.** The legal contention urged on behalf of the respondents that a town development scheme can be framed pursuant to the development plan without there being a zonal plan, is not sustainable. The learned Senior Counsel, Ms Pinky Anand and Mr Prashant Desai on behalf of the respondents relied upon the Act pari materia for the State of Gujarat where the Town Planning Act does not contemplate a zonal plan, and which contemplates "DP-TP".

There is no dispute with the law laid down by this Court and town planning scheme has to be subservient to development plan/zonal plan. Development plan which does not require micro planning is binding and can be implemented.

In re : Vires of sections 305 and 306 of the Act of 1956 :

64. It was submitted that exercising the power for acquiring land by following the procedure under sections 305 and 306 suffers from arbitrariness and thus violative of Articles 14 and 19 of the Constitution of India. Reliance has been placed on the decision in *Suraj Mall Mohta & Co. v. A.V. Visvanatha Sastri & Anr.* AIR 1954 SC 545. In the said case the provision of section 5(4) of the Taxation on Income (Investigation Commission) Act, 1947 was struck down on the ground of being violative of Article 14. Submission advanced was that it gave arbitrary power to the Commission to pick and choose and the clause was highly discriminatory in character inasmuch as any evasion whether substantial or insignificant came within its ambit as well as within the purview of section 34 of the Indian Income Tax Act. This Court has observed that it is open to the State to make the classification to determine who should be regarded as a class for the purpose of legislation and in

relation to a law enacted on a particular subject but the classification to be permissible must be based on some real and substantial distinction bearing a just and reasonable relation to the objects sought to be attained and it cannot be made arbitrarily and without any substantial basis. In our opinion, the provision of section 305 when it deals with the public streets and removal of building falling in regular line is a wholesome one and being a special provision, based on classification made for the purpose of section 305 as to public street cannot be said to be suffering from vice or discrimination and violative of Article 14. The procedure under section 305 of the Act of 1956 cannot be said to be onerous or harsh and it cannot be tested on the anvil of provisions of section 78/78 of the Act of 1956 or section 56 of the Act of 1973.

65. Reliance has also been placed on the decision in *Nagpur Improvement Trust & Anr. v. Vithal Rao & Ors.* (1973) 1 SCC 500. To contend on the strength of the averment made in amendment application filed before the High Court in W.P. No.5682/2016 that another agency is acquiring the land within 1 km. periphery of the site of the BRTS corridor by following the procedure under the provisions of the Act of 2013. Thus the appellants are being discriminated. Para 5.22 of the amendment application, Annexure P-17 of SLP [C] Nos.14493-96/2016, has been relied on by the learned counsel. What has been stated is extracted hereunder from the aforesaid pleadings :

> "5.22 That from the above, therefore the public notice dated 22.04.2016 (received on 24.04.2016) by the petitioners is also bad in law and deserves to be quashed by this Hon'ble Court. It is further stated on affidavit that within a 1 kilometer periphery of the lands of the petitioner, the Capital Project Administration (CPA) is constructing a coordination link road from the area **Bawariakala, E-8 extension to Hoshangabad Road**, which area is also falling within the municipal limits of Bhopal Municipal Corporation. There the land owners would be entitled to compensation as per the new regime under the newly enacted **Right To Fair Compensation And Land Acquisition Act 2013**. However in the case of the petitioners, they would be grossly prejudiced, as there is no indication as to how much compensation they would receive u/s 305, 306 of the Act of 1956. Therefore the regime of Act of 1956 is completely discriminatory in nature."

From the aforesaid pleadings it cannot be made out that the other area where acquisition is made, is a case of public street under sections 305 and 306, it relates to construction of link road by the Capital Project Administration where acquisition will be required. It is not pleaded in the aforesaid paragraph that the other area is falling in the regular line of public street as per development plan, in the absence of such pleadings, it is not open to the appellant to raise the plea of discrimination at all. Even otherwise we have found provisions of section 305/306 to be fair, just and reasonable and merely because for other places some other procedure has been resorted to, cannot be a ground to urge discrimination. Hence, the submission based upon the dictum of this Court in *Nagpur Improvement Trust* (supra) has no legs to stand.

66. Reliance has also been placed on the decision in *P. Vajravelu Mudaliar v. The Special Deputy Collector, West Madras* AIR 1965 SC 1017. In the said decision this Court came to the conclusion that on a comparative study of Land Acquisition Act, 1894 and Land Acquisition (Madras Amendment) Act, it was clear that if it becomes clear that if a land is acquired for a housing scheme under the Amending Act, the claimant gets a lesser value than he would get for the same land or a similar land if it is acquired for a public purpose like hospital under the Principal Act. The classification thus sought to be made by the Land Acquisition (Madras Amendment) Act between persons whose lands are acquired for other public purposes has no reasonable relation to the object sought to be achieved. Thus this Court has held that under the Amending Act, discrimination cannot be sustained on the principle of reasonable classification. The ratio has no application to the instant cases as the classification is found to be quite appropriate. Apart from that after the abolition of 'the right to property' as a fundamental right, the provisions are quite consistent with section 300A and reasonable compensation is paid under sections 305 and 306 which if not acceptable, the remedy of arbitration and approaching the District Court under section 387 is available to seek the compensation which has to be on the basis of procedure prescribed in the Land Acquisition Act. No such impermissible classification is made in the instant case as made by the Madras Amendment Act which was struck down by this Court.

67. It was further submitted that sections 305 and 306 of the Act of 1956 fail to provide any rational, reasonable, relevant principle for determination of compensation for deprivation of property of the landowner and therefore violative of Articles 14, 19, 21 and 300-A of the Constitution of India and they are liable to be struck down. Reliance has been placed on a Constitution Bench decision of this Court in *K.T. Plantation Pvt. Ltd. & Anr. v. State of Karnataka* (2011) 9 SCC 1. This Court has considered the various questions and interpreted the provisions of Articles 300-A, 14, 19, 21, 30(1-A) and other provisions and laid down the judicial scope of interference of a statute depriving a person of his property. It has been laid down that though right to compensation is inbuilt in Article 300A of the Constitution of India, the obligation to pay compensation would depend upon the terms of the statute and the legislative policy. Statute providing for no compensation, nil compensation or illusory compensation must be just, fair and reasonable in terms of Articles 14, 19(1)(g), 21, 26(b), 30(1-A) and other provisions of the Constitution. This Court also considered distinction between no compensation and nil compensation and pointed out onus to establish validity of law in such cases lies on the State. Court cannot however based merely on its own opinion, strike down such a law or statutory provision. It was further held that the right to compensation cannot be read into Schedule VII List III, Entry 42 which is not ambiguous at all. The statutes depriving a person of his property are subject to

judicial review by constitutional courts on the grounds laid down by this Court. It was held that the concerned Karnataka State Act having received the Presidential assent under Article 31-A was immune from challenge under Articles 14 and 19. This Court also laid down that when the validity of acquisition of property is questioned, grounds for challenge to a statute enacted to acquire property but the statute is not protected by Articles 31-A, 31-B and 31-C of the Constitution of India, after deletion of Article 19(1)(f), such statutes can be challenged for violation of Article 14, violation of basic structure of Constitution, violation of Rule of Law which amounts to violation of basic structure or for lack of legislative competence. This Court has also laid down that when validity of acquisition of property is under a statute which is guarded by protective umbrella of Articles 31A, 31B and 31C, such statutes can still be challenged under Article 32 or 226 for violation of rule of law if the violation is of serious nature which undermines basic structure of the Constitution, violation of the basic structure of the Constitution or for lack of legislative competence. In *I.R. Coelho (Dead) by LRs. V. State of T.N.* (2007) 2 SCC 1, this Court laid down that statutes protected by Articles 31A, 31B and 31C would be as part of basic structure though not Article 14 or Article 19 simpliciter. In *K.T. Plantation (P) Ltd*. (supra), this Court has considered the question thus :

> **"189.** 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 State on judicially justiciable standards. 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. In other words, the right to claim compensation or the obligation to pay, though not expressly included in Article 300-A, it can be inferred in that article and 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.

190. Article 300-A would be equally violated if the provisions of law authorising deprivation of property have not been complied with. While enacting Article 300-A Parliament has only borrowed Article 31(1) (the "Rule of Law" doctrine) and not Article 31(2) (which had embodied the doctrine of eminent domain). Article 300-A enables the State to put restrictions on the right to property by *law*. That law has to be reasonable. It must comply with other provisions of the Constitution. The limitation or restriction should not be arbitrary or excessive or what is beyond what is required in public interest. The limitation or restriction must not be disproportionate to the situation or excessive.

191. The legislation providing for deprivation of property under Article 300-A must be "just, fair and reasonable" as understood in terms of Articles 14, 19(1)(*g*), 26(*b*), 301, etc. Thus in each case, courts will have to examine the scheme of the impugned Act, its object, purpose as also the question whether payment of nil compensation or nominal compensation would make the impugned law unjust, unfair or unreasonable in terms of other provisions of the Constitution as indicated above.

193. Right to property no more remains an overarching guarantee in our Constitution, then is it the law, that such a legislation enacted under the authority of law as provided in Article 300-A is immune from challenge before a constitutional court for violation of Articles 14, 21 or the overarching principle of the rule of law, a basic feature of our Constitution, especially when such a right is not specifically incorporated in Article 300-A, unlike Article 30(1-A) and the second proviso to Article 31-A(1).

194[*]. Article 31-A was inserted by the First Amendment Act, 1951 to protect the zamindari abolition laws and also the other types

> of social, welfare and regulatory legislations affecting private property. The right to challenge laws enacted in respect of subject-matter enumerated under Article 31-A(1)(*a*) to (*g*) on the ground of violation of Article 14 was also constitutionally excluded.
>
> **198.** Article 300-A, unlike Articles 31-A(1) and 31-C, has not made the legislation depriving a person of his property immune from challenge on the ground of violation of Article 14 or Article 21 of the Constitution of India, but let us first examine whether Article 21 as such is available to challenge a statute providing for no or illusory compensation and, hence, expropriatory.
>
> **200.** The question of applicability of Article 21 to the laws protected under Article 31-C also came up for consideration before this Court in *State of Maharashtra* v. *Basantibai Mohanlal Khetan* (1986) 2 SCC 516, wherein this Court held that Article 21 essentially deals with personal liberty and has little to do with the right to own property as such. Of course, the Court in that case was not concerned with the question whether the deprivation of property would lead to deprivation of life or liberty or livelihood, but was dealing with a case, where land was acquired for improving living conditions of a large number of people. The Court held that the land ceiling laws, laws providing for acquisition of land for providing housing accommodation, laws imposing ceiling on urban property, etc. cannot be struck down by invoking Article 21 of the Constitution."

It is apparent from the aforesaid dictum that Article 300A enables the State to put restrictions on the right by law but the same should not be arbitrary or excessive or beyond what is required in public interest. The imposition of restriction must not be disproportionate to a situation or statute. Legislation providing for deprivation of property under Article 300A must be just, fair and reasonable. Thus, it cannot be said that illusory compensation is provided under section 306 read with section 387. The decision renders no help to the cause

espoused on behalf of the appellants and on a closer scrutiny, rather counters it. Based on the aforesaid principles we find no malady in the provisions in question which may be required to be cured.

68. Reliance has also been placed on the decision of this Court in *Rajiv Sarin & Anr. v. State of Uttarakhand & Ors.* (2011) 8 SCC 708 in which this Court has laid down that adequacy of compensation cannot be questioned before a court of law but at the same time compensation cannot be illusory and that there cannot be a situation of no compensation to a person who is deprived of his property. The Court held that awarding no compensation attracts the vice of illegal deprivation of property. This Court has laid down that when the State exercises power of acquisition of private property it can take possession of the private property for public purpose. It does not require payment of market value or indemnification to the owner of the property expropriated. Payment of market value in lieu of acquired property is not a condition precedent or *sine qua non* for acquisition. Adequacy of compensation cannot be questioned in a court of law but at the same time compensation cannot be illusory. In *Rajiv Sarin* (supra), this Court has laid down thus :

> **"78.** When the State exercises the power of acquisition of a private property thereby depriving the private person of the property, provision is generally made in the statute to pay compensation to be fixed or determined according to the criteria laid down in the statute itself. It must be understood in this context that the acquisition of property by the State in furtherance of the directive principles of State

> policy is to distribute the material resources of the community including acquisition and taking possession of private property for public purpose. It does not require payment of market value or indemnification to the owner of the property expropriated. Payment of market value in lieu of acquired property is not a condition precedent or sine qua non for acquisition. It must be clearly understood that the acquisition and payment of amount are part of the same scheme and they cannot be separated. It is true that the adequacy of compensation cannot be questioned in a court of law, but at the same time the compensation cannot be illusory.
>
> **82.** A distinction and difference has been drawn between the concept of "no compensation" and the concept of "nil compensation". As mandated by Article 300-A, a person can be deprived of his property but in a just, fair and reasonable manner. In an appropriate case the court may find "nil compensation" also justified and fair if it is found that the State has undertaken to take over the liability and also has assured to compensate in a just and fair manner. But the situation would be totally different if it is a case of "no compensation" at all."

Instant is not a case of no compensation. It cannot be said to be a case of illusory compensation. In distinction to these terms the phrase used in sections 305 and 306 is 'reasonable compensation'. This Court has laid down in *Rajendra Shankar Shukla* (supra) itself that the Land Acquisition Act envisages payment of just and reasonable compensation and qualifies the test of Article 300A.

69. Reliance has also been placed on *Rustom Cavasjee Cooper v. Union of India* (1970) 1 SCC 248 to contend that the law must specifically either fix the amount of compensation payable or must lay down the principle/s regarding the same. The Legislature cannot be treated as conclusive and its objective can always be tested

on such principle. The principal must award to the owner the equivalent of the property he is deprived for with its existing advantages and potentialities, including its benefit in the present as well as in future. The money value on the date of expropriation of property must be considered while judging the validity of the concerned enactment. The relevant provisions contained in sections 305, 306 and 387 of the Act of 1956 cannot be said to be violative of the aforesaid principles laid down by this Court in the said decision as the amount of compensation payable has been specified and the principles regarding the same have been fairly culled out.

70. The provisions of the Act of 1956 cannot be said to be violative of the principles or dictum laid down by this Court in the aforesaid decisions rather qualify to them and cannot be said to be violative of Articles 14 and 19. The provisions of sections 305 and 306 cannot be read in isolation. It has to be read with wholesome provision of section 387 and what is contemplated under section 387 has to be taken to be the principle of reasonable compensation even in sections 305 and 306. Monetary value has to be worked out and it can be balanced with FAR in appropriate cases which is quite reasonable method of arriving at compensation as discussed hereafter.

71. It was submitted by the respondents that with respect to the principle of determination of compensation, a Constitution Bench of this Court has considered more or less similar provision contained in sections 212 and 216 of the Bombay

Provincial Municipal Corporation Act, 1949. It was found to have qualified to section 299 of the Government of India Act in *Municipal Corporation of the City of Ahmedabad & Ors. v. State of Gujarat & Ors*. (1972) 1 SCC 802. The question of payment of compensation for acquiring the land lying within line of public street came up for consideration. A question arose whether Corporation is liable to provide compensation. First proviso to section 216(1) which provided for increase or decrease in value in the case of set-back and adjustment of compensation accordingly. Question also came up for consideration whether principle of willing seller and willing buyer is applicable in such a situation, and what is the meaning of full indemnity in accordance with the norms, and to what extent such provisions are justiciable ? Section 210 of the said Act contains a similar provision with respect to removal of project in the regular line of a public street. For the loss caused to the owner provision was made for compensation under section 216 of the Bombay Provincial Municipal Corporation Act, 1949, same is extracted hereunder:

> **"7.** For the loss thus caused to the owner by the action of the Commissioner, provision was made for payment of compensation under Section 216 which is as follows:
>
> "216.(1) Compensation shall be paid by the Commissioner to the owner of any building or land required for a public street under Sections 211, 212, 213 or 214 for any loss which such owner may sustain in consequence of his building or land being so acquired and for any expense incurred by such owner in consequence of the order made by the Commissioner:
>
> Provided that —

(*i*) any increase or decrease in the value of the remainder of the property of which the building or land so acquired formed part likely to accrue from the set-back to the regular line of the street shall be taken into consideration and allowed for in determining the amount of such compensation;

(*ii*) if any such increase in value exceeds the amount of loss sustained or expenses incurred by the said owner, the Commissioner may recover from such owner half the amount of such excess as a betterment charge."

Other provisions of sections 389, 390 and 391 of the Bombay Provincial Municipal Corporation Act, 1949 also came up for consideration which are contained in para 8 of the report, same are extracted hereunder :

"**8.** Chapter XXIV of the Act deals with the subject of compensation generally. Section 389(1) provides as follows:

"389. (1) In the exercise of the powers under the following provisions of this Act by the Commissioner or any other municipal officer or servant or any other person authorised by or under this Act to execute any work, as little damage as can be shall be done and compensation assessed in the manner prescribed by or under this Act shall be paid to any person who sustains damage in consequence of the exercise of such powers, namely,.…

(*f*) acquiring any building or land required for a public street — under Section 216."

Section 390 is as follows:

"Subject to the provisions of this Act, the Commissioner or such other officer as may be authorised by him in this behalf shall, after holding such inquiry as he thinks fit, determine the amount of compensation to be paid under Section 389."

This determination, however, is not final because two appeals are provided. Under Section 391 it is provided as under:

"Any person aggrieved by the decision of the Commissioner or other officer under Section 390 may within a period of one month, appeal to the Judge in accordance with the provisions of Chapter XXVI."

> "The Judge" means under Section 2, clause (29) the Judge of the Court of Small Causes in the City of Ahmedabad. Section 411 provides for a second appeal to the District Court. It says "An appeal shall lie to the District Court (*aa*) from a decision of the Judge in an appeal under Section 391 against an assessment of compensation under clause (*f*) of sub-section (1) of Section 389". As regards the procedure to be followed in respect of these appeals, provision is made in Section 434 sub-section (1) whereof is "Save as expressly provided by this Chapter (Chapter XXVI) the provisions of the Code of Civil Procedure, 1908, relating to appeals from original decrees shall apply to appeals to the Judge from the orders of the Commissioner and relating to appeals from appellate decrees shall apply to appeals to the District Court".

This Court on due consideration of the aforesaid provisions has held that the Commissioner is required to determine the compensation first, thereafter if the owner is satisfied he can approach the Court of Small Causes or the District Judge. The provisions of section 212 were questioned on the ground that they were violative of section 299 of the Government of India Act, 1935. This Court has laid down that sections 216 and 389 provide for indemnification for the loss caused to be made to the owner of the property or other interests affected by the exercise of power under section 212. This Court has laid down thus :

> **"13.** We are in agreement with the view of the High Court that the Corporations Act does provide for the payment of compensation for the property acquired. We have only to refer to Section 216 and Section 389 of the Act for this purpose. Section 216(1) clearly lays down that compensation shall be paid by the Commissioner to the owner of any building or land required for public street under Sections 211, 212, 213 and 214 for any loss which such owner may sustain in consequence of his building or land being so acquired, and for any expense incurred by such owner in consequence of the order made by

the Commissioner. Then Section 389(1) provides that compensation assessed in the manner prescribed by or under the Act shall be paid to any person who sustains damage in consequence of the exercise of such power, namely, "(*f*) acquiring any building or land required for a public street under Section 216". The two sections read together make it clear that full indemnification in terms of money for the loss caused is to be made to the owner of the property or other interests affected by reason of the exercise of power under Section 212. Under the latter section what is acquired for the purposes of the street is the land of the owner which falls within the regular line of the street. Several provisions are made in Chapter XIV for the widening of streets within the limits of the Corporation. With the enormous increase in traffic in the more congested parts of a growing City, Municipal authorities are constantly under pressure to widen the streets and one of the several methods prescribed in Chapter XIV is contained in Section 212. The regular line of the street as prescribed under Section 210 often passes through the properties of owners abutting on the streets and it is impossible to widen the streets unless parts of lands belonging to the owners are acquired. Sometimes a building or a structure or part of it stands on such land and unless that portion of the building which falls within the line is removed the acquisition of the land for the purpose of the street is not possible. Therefore, in the first instance the section requires that the Commissioner shall issue a show-cause notice why the building or a part of the building which falls within the line of street should not be pulled down with a view to release the land underneath for the purposes of the street. If after hearing the owner the Commissioner is of the opinion that the building or part thereof should be pulled down, he must obtain the approval of the Standing Committee and then serve a notice on the owner to pull down the offending building or part of building within a certain time. If the owner cooperates, he will himself remove the offending structure and release the land underneath it for being absorbed in the street. If he does not, the Commissioner is empowered to pull down the offending structure at the cost of the owner. Then sub-section (4) of Section 212 provides that the Commissioner shall at once take possession on behalf of the Corporation of the portion of the land within the said line (line of the public street) theretofore occupied by the said building, and such land shall thenceforward be deemed a part of the public street and shall vest as such in the Corporation. The provisions of Section 212, therefore, clearly declare that what is acquired under that

section is the land lying within the line of the public street. The technical question as to whether there is acquisition of the building when the owner himself does not pull down the offending part of the structure but the Commissioner does it at the owner's expense is not necessary for the disposal of the question whether the Act provides for the payment of compensation. Since every kind of loss is required to be compensated as a consequence of the order passed by the Commissioner under Section 216 of the Act, the question whether the Act need have provided for compensation as on the acquisition of the building or a part of the building which is pulled down under Section 212, does not survive. The owner has to be compensated for every deprivation or loss and, therefore, prima facie it must be held that the Corporations Act provides for the payment of compensation for the property acquired.

14. It was, however, argued that the two provisos to sub-section (1) of Section 216 when given effect to may not only nullify the direction given in sub-section (1) for payment of compensation but also in certain contingencies compel the owner to pay the Corporation something out of his own pocket. When sub-section (1) provides for payment of compensation for the loss suffered it provides for adequate indemnification or compensation. When such compensation is reduced in the contingencies visualized in the two provisos the compensation, it was submitted, may turn out to be illusory and the provision for the payment of compensation an empty assurance. Proviso (1) prescribes that "any increase or decrease in the value of the remainder of the property of which the building or land so acquired formed part likely to accrue from the set-back to the regular line of the street shall be taken into consideration and allowed for in determining the amount of such compensation". Proviso (*ii*) states that "if any such increase in the value exceeds the amount of loss sustained or expenses incurred by the said owner, the Commissioner may recover from such owner half the amount of such excess as a betterment charge". Proviso (*i*) implies that the compensation payable under sub-section (1) is liable to be increased or reduced after the set-back. It envisages that by reason of the set-back or the widening of the street the property which still remained with the owner is likely, on account of the new situation, either to increase or decrease in value. If that happens, that is to be taken into consideration and the amount determined under sub-section (1) will have to be adjusted

accordingly. The High Court is of the view that proviso (1) is unobjectionable as it is a principle governing the determination of compensation and can be rightly employed in determining the compensation for the property acquired. The High Court, however, was not inclined to hold that proviso (*ii*) lays down any principle for determination of compensation payable for the property acquired. It held, nevertheless, that the proviso was severable from the main part of the section and did not affect the provisions of sub-section (1) for payment of compensation. It is obvious that it is only in very rare contingencies that proviso (*ii*) may become operative. But in considering the question as to whether the Act provides for compensation for acquisition or not, there can be little doubt that it does so in sub-section (1) of Section 216. That it may in some rare contingencies be very much reduced after taking into account the value of the benefit conferred on the owner by reason of the widening of the street is no adequate reason to hold that the Act does not provide for payment of compensation. As a matter of fact in an actual enquiry for determining the amount of compensation to be paid the authority charged with the duty will have to assess, in the first instance, the value of the total loss or deprivation actually suffered. The provisos may in some rare contingencies go to reduce the amount so determined. Proviso (*ii*) envisages a situation where the widening of the street has so much benefited the owner that the value of the benefit even exceeds the actual loss suffered by him. In such a case instead of getting any compensation for the loss the owner might have to pay out of his own pocket. As to whether proviso (*ii*) prescribes any principle for determination of compensation or not is not relevant for our present purpose. Both the provisos come into play only after the compensation for loss is determined under sub-section (1) of Section 216 and since that sub-section declares that full compensation must be paid for the loss or deprivation suffered by the owner it will be incorrect to say that the Act does not make provision for the payment of compensation for the property acquired. We have, therefore, no hesitation in agreeing with the High Court that the Corporations Act provides for the payment of compensation for the property acquired under Section 212.

15. The next question is whether the Act specifies the principles on which and the manner in which compensation is to be determined. The High Court has been of the view that neither principles for

determination of compensation nor the manner of its determination has been specified and that is the ground on which it has held that the provisions of Section 212 are unconstitutional. We are unable to agree with that view. What is meant by specification of principles for determining compensation? In *State of Gujarat* v. *Shri Shantilal Mangaldas and Ors.* (1969) 1 SCC 509, this Court observed:

> "Specification of principles means laying down general guiding rules applicable to all persons or transactions governed thereby. Under the Land Acquisition Act compensation is determined on the basis of 'market-value' of the land on the date of the notification under Section 4(1) of that Act. That is a specification of principle."

At a later stage the Court again observed at p. 362:

> "Rules enunciated by the courts for determining compensation for compulsory acquisition under the Land Acquisition Act vary according to the nature of the land acquired. For properties which are not marketable commodities, such as lands, buildings and incorporeal rights, valuation has to be made on the application of different rules. Principle of capitalisation of not rent at the current market rate on guilt-edged securities, principle of reinstatement, principle of determination of original value less depreciation, determination of break-up value in certain types of property which have out-grown their utility, and a host of other so-called principles are employed for determination of compensation payable for acquisition of lands, houses, incorporeal rights, etc."

The Land Acquisition Act makes market-value at a certain date the basis for the determination of compensation. But there is no one sure way of applying the principle. As is well known when set-back is imposed by the line of the street, the land actually acquired by the Corporation may be in some cases a few square yards or even a few square inches. Then again the land acquired may be of no significant use to anybody except to the Corporation as a part of the street. The land acquired may be wedge-shaped, sometimes irregular in contour and often shapeless. If the principle of a willing seller and a willing buyer is applied there can possibly be no market at all for the property acquired. It is not suggested that in every case of acquisition of land for the street this principle will break down. But having regard to the fact that in the course of widening the street the Corporation may have

to acquire very irregular, shapeless and small pieces of land for the purposes of the street, a host of principles may have to be employed to determine the compensation. We asked learned counsel for the respondents what one general principle of determination of compensation in such cases could have been appropriately specified. We did not get any satisfactory reply. It appears to us that this very difficulty in specifying any known rule of compensation is responsible for the wording of Section 216 and Section 389 of the Act which, in our opinion, gets over the difficulty by providing full indemnification for the loss or deprivation suffered by the owner of the building or other interests in the property. We have referred to the provisions with regard to appeals. The first appeal lies to the Judge of the Small Causes Courts and a second appeal to the District Judge. The involvement of civil courts in finally determining compensation imports judicial norms. Since full indemnification in accordance with .judicial norms is the goal set by the Act it is implicit in such a provision that the rules for determination of compensation shall be appropriate to the property acquired and such as will achieve the goal of full indemnity against loss. In other words, the Act provides for compensation to be determined in accordance with judicial principles by the employment of appropriate methods of valuation so that the person who is deprived of property is fully indemnified against the loss. This, by itself, in our opinion, is a specification of a principle for the determination of compensation.

16. As regards the manner of determination of compensation, it is provided in Section 390 of the Corporations Act. Under that section the Commissioner or such other officer as may be authorised by him shall hold such enquiry as he thinks fit and determine the amount of compensation to be paid. Either the Commissioner or an Officer authorised by him has to hold an appropriate enquiry before determining the amount of compensation. Since, as already seen, there is an appeal from such determination to the Judge of the Small Causes Court under Section 391 and a second appeal to the District Court under Section 411 it is clear that the enquiry must be made on broad judicial lines. Any arbitrary determination is bound to be set aside in appeal because the Judges in appeal will be chiefly concerned to see whether the enquiry is made in accordance with normal judicial procedures for evaluating the loss by the application of methods of valuation appropriate to the particular acquisition before them. Since no limitations are placed on the powers of the Appellate Judges in

> determining the loss in a just and appropriate manner, it is expected that the Commissioner or his authorised officer, who holds the enquiry in the first instance, will be guided by principles which meet with the approval of the Appellate authorities. In our opinion, therefore, the manner of the determination of compensation is also specified by the Act.
>
> **17.** It is conceded before us that if this Court holds that the Corporations Act has provided for the payment of compensation and also specified the principle on which and the manner in which compensation is to be determined, it would not be possible to say that the Act is either in violation of the provisions of Section 299 of the Government of India Act, 1935 or Article 31 of the Constitution."

Thus with respect to the compensation, considering more or less similar provisions, a Constitution Bench of this Court has clearly laid down that as a matter of fact actual compensation has to be determined in the first instance, the value of the total loss or deprivation actually suffered. It has to be balanced with the other relevant aspects for compensation. The Act provides for payment of compensation. The view of the High Court that the principle for determination of compensation has not been specified under section 212 was also not agreed to by this Court. This Court has also held that the Land Acquisition Act makes market value at a certain date the basis for determination of compensation. But there is no one sure way of applying the principle. As is well known when set back is imposed by the line of the street, the land actually acquired by the Corporation may be in some cases a few square yards or even a few square inches. Then again the land acquired may be of no significant use to anybody except for the Corporation as a part of the street. The land acquired may be of different shapes, irregular in contour

and often shapeless. If the principle of willing buyer and willing seller is applied there can possibly be no market at all for the property acquired. This Court opined that the owner gets full indemnification for the loss or deprivation suffered to the building or other interests in the property. Involvement of civil courts in finally determining compensation imports judicial norms. There is no limitation on the power of the appellate Judge. Thus this Court held that the provisions contained in sections 212, 216 and 389 were not violative of the provisions of section 299 of the Government of India Act, 1935 or Article 31 of the Constitution. The case was remanded by this Court to the High Court for examining infringement of Articles 14 and 19 after laying down the aforesaid propositions. We have on merits found no violation of Articles 14 and 19 also in the instant cases.

72. It was also submitted that the provisions of sections 305 and 306 are required to be read down by incorporating the requirement of computation of compensation in the light of the principles laid down under the Act of 2013 while correlating it with the provisions of section 387 of the Act of 1956. In view of the aforesaid dictum of this Court in *Municipal Corporation of City of Ahmedabad* (supra), we find no scope to entertain the submission and the reliance by the appellants on *Yogendra Kumar Jaiswal v. State of Bihar & Ors*. (2016) 3 SCC 183 is of no avail.

73. We find the principles laid down in sections 305, 306 and 387 are quite reasonable. Reasonable compensation is payable by the Corporation for building or part thereof excluding the land under proviso to section 305(1) and compensation for inclusion of land in public street is payable under section 306(3) of the Act. We do not find any ground so as to read down the provisions. We refrain to comment upon the submission with respect to the granting additional FAR is not acceptable to some appellants, as it is not the stage of dealing with compensation how the total indemnification is to be made, whether FAR is acceptable to the appellants or not, cannot be decided at this stage. It need not be decided at this stage whether they have a right to leave the FAR and claim monetary compensation alone which is to be adjudged by the concerned authorities within the pale of the provisions contained in sections 305, 306 read with section 387 of the Act of 1956. How the compensation is to be worked out at the appropriate stage, is the outcome of the authorities concerned and the job of the arbitrator/District Court, as the case may be. The appellants are at liberty to raise the question with respect to the adequacy of compensation and how the provision of section 387 has to be interpreted and what would be the just compensation at the appropriate stage of determination of compensation.

74. Reliance has been placed on *Laxmi Devi v. State of Bihar & Ors.* (supra) and *Rajendra Shankar Shukla & Ors. v. State of Chhattisgarh & Ors.* (supra). The

decision in *Laxmi Devi* (supra) is based on the specific provision contained in section 10A of the Land Acquisition Act which requires compensation to be paid in a case where emergency clause has been invoked. Collector is required to tender payment of 80% of compensation before taking possession of the land. The said provision is not at all attracted to the Act of 1956. As compensation is offered after vesting, is quite reasonable procedure as envisaged by Article 300A of the Constitution of India, at which point of time it is offered would not make the provision confiscatory or repugnant. The compensation under section 305 or 306 read with section 387 is on the happening of certain exigency, and various factors are taken into consideration for determination of compensation is a quite valid procedure. The Corporation cannot be compelled as per the special scheme of sections 305, 306 and 387 to offer the compensation before removal and vesting. Reliance on the decision in *K.N. Palsikar* (supra) so as to contend that the possession should be taken after payment of compensation is totally misplaced. This Court has simply narrated in para 11 what was held by the High Court and the points which were decided were capsualised by this Court in para 12 of the report. The aforesaid question was neither raised nor decided by this Court. This Court has not laid down any such proposition in *K.N. Palsikar* (supra), as canvassed.

75. Reliance has also been placed on a decision of this Court in *Bhusawal Municipal Council v. Nivrutti Ramchandra Phalak & Ors.* (2015) 14 SCC 327 in

which this Court has considered right to property under Article 300-A and held that such right is a human right and delayed payment of compensation leads to alienation of section of society against the system, further public purpose that is setting up of school, is no justification for delaying/denying compensation in the garb of undertaking developmental projects, without paying the compensation to the concerned landowner as per the statutory provisions. It was also submitted that the time period was not prescribed within which compensation was to be paid. In our opinion, the appellants have questioned the very notice, initiation of action and when no time limit is fixed for payment of compensation, it goes without saying that it has to be awarded within a 'reasonable time'. Law envisages speedy action without unreasonable delay and that is what is expected of the concerned authorities, in respect of the obligation imposed on them to be discharged. Due to this, the provision cannot be struck down as arbitrary nor it can be said to be confiscatory in nature. We expect that the concerned Corporations would do well while offering the compensation to the appellants as expeditiously as possible that is sufficient to take care of their unfounded fear.

76. In the case of *Bhuwan Bhandari v. Indore Municipal Corporation* (SLP (C) No.31541/2011) it was submitted that building is a heritage building and there is bar on any kind of construction. The boundary wall has been demolished by the Corporation and possession has been taken of that part without compensation. The

fact has been denied by the respondents that the building has been declared as heritage one. It was also pointed out that the Corporation for the purpose of widening of the road required removal of part of the boundary wall which is quite external to the main building and is falling within the set back. It is clear that the main building is not being demolished. The submission is thus untenable.

77. In view of the aforesaid discussion, the appeals being devoid of merits are hereby dismissed. Parties to bear their respective costs as incurred.

……..J.
(Jagdish Singh Khehar)

New Delhi; ……..J.
November 29, 2016. (Arun Mishra)