

(2009) 04 MP CK 0062
In the Madhya Pradesh High Court

Indore Development Authority

APPELLANT

Vs

Shri Ram Builders and Others

RESPONDENT

Date of Decision : 24-04-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 17B

Citation : AIR 2009 MP 169 : (2009) ILR (MP) 2136 : (2009) 2 JLJ 226 : (2009) 4 MPLJ 236

Hon'ble Judges : Rajendra Menon, J; Krishn Kumar Lahoti, J; Dipak Misra, J

Bench : Full Bench

Judgement

Dipak Misra, J.

Questioning the defensibility and substantiality of the order dated 14-8-2007 passed by the learned single Judge in Writ Petition No. 14605/ 2006, the present intra-Court appeal has been preferred u/s 2(1) of the M. P. Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005. The writ appeal was heard by a Division Bench which referred to the facts in issue, the provisions contained in the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 (for short "the Act") especially Section 50 of the said enactment, the stand and stance taken by the contesting parties and the interveners, the view expressed by the learned single Judge and the interpretation placed by him on the proviso added to Sub-section (4) of Section 50 of the Act by the M.P. Nagar Tatha Gram Nivesh (Sansodhan) Adhiniyam, 2004 on 29-12-2004, the interpretation sought to be placed by the learned senior counsel appearing for the Indore Development Authority (in short "the Authority") and the proponent advanced by the learned Counsel for the respondents in support of the order of the learned single Judge and also to substantiate and justify how the Scheme No. 132 that was prepared u/s 50 of the Act had lapsed as a consequence of which the land owners acquired the right to get their plans approved for development of the land and thereafter expressed the opinion thus:

Having heard the learned Counsel for the parties and regard being had to the nature of controversy involved, we are of the considered opinion, that the determination of interpretation of the provision that has been incorporated by way of amendment will have enormous impact on many a scheme. True it is, a citizen has the right to know where he exactly stands but simultaneously he has also a statutory right. The same has to be determined on apposite interpretation of the proviso. What is warranted in this appeal is to really weigh the competing rights between a statutory authority on one hand the land owners on the other. Regard being had to the signification and importance of the matter we are disposed to think that the controversy should be authoritatively put to rest as far as this Court is concerned, and hence, we think it condign that the matter should be heard by a larger Bench. We are absolutely conscious that there is no conflicting judgment in the field but existence of earlier conflicting decisions on the same point is not a condition precedent to make a reference for a decision on question by a Larger Bench. This has been so stated by a Full Bench in *Abdul Taiyab Abbasbhai Malik and Others Vs. The Union of India (UOI) and Others, and Balkishandas v. Har Narayan* AIR 1980 MP 43.

Because of the aforesaid development, the matter has been placed before the Full Bench.

The expose" of facts are that the respondent No. 1 invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India prayed for issue of a writ of certiorari for quashment of the orders dated 5-10-2006, and Annexures P-11, P-11-A, and P. 11 -B passed by the State Government in exercise of suo motu power of revision whereby it set aside the orders dated 7-7-2006 contained in Annexures P-5, P-6 and P-7 to the writ petition passed by the third respondent therein, the joint Director, Town and Country Planning, Indore by which the said Authority approved the layout of the proposed development sought by the petitioner in respect of the land in question. It was contended in the writ petition that the petitioner, a partnership firm, is involved in construction business. He is the owner in possession of the land bearing Survey Nos. 73/4/2, 74, 75/3 admeasuring 1/237 Hectares, Survey Nos. 83/2, 84/ 2 admeasuring an area of 1.237 Hectares and Survey No. 66/2 admeasuring an area of 0.720 Hectare situated at Village Khajrana, District -- Indore. On 14-5-1993, the Authority had passed a resolution u/s 50(1) of the Act declaring its intention to prepare a Town Development Scheme which came to be numbered as Scheme No. 132, The Scheme included the lands of the petitioner. On 28-5-1993, the Authority issued a communique/announcement for publication of its declaration of intention of the Scheme as contemplated u/s 50(2) of the Act. The Authority, as set forth, took steps for publication and eventually, the Scheme was published in the Gazette on 18-6-1993. The survey of the lands comprised in the Scheme was carried out and the development of the Scheme in a draft form was prepared. The draft form of the Scheme was published in the official gazette on 26-5-1995 as envisaged u/s 50(3) of the Act inviting objections and suggestions from the public at large as regards the draft

development scheme. After considering the objections and suggestions and also hearing the objections, the Authority passed an order on 15-2-2005. There was correspondence between the Authority and the Department of Madhya Pradesh Housing and Environment and as the facts would unfold, a resolution dated 29-7-2006 was passed to the effect that no clarification was required from the Department concerned. Ultimately, a final order was passed by the Authority on 1-8-2006 regarding approval of the draft scheme which was published in the gazette dated 4-8-2006 u/s 50(7) of the Act. After the said Scheme was published, the State Government, on the basis of the request made by the Authority, issued a notification dated 8-8-2006 which was published in the Gazette dated 18-8-2006 u/s 4 of the Land Acquisition Act for acquisition of land.

When the matter has been proceeding in this manner, certain land-owners filed applications u/s 29 of the Act before the Joint Director. Town and Country Planning Department who summoned a reply from the appellant and eventually, in the case of the respondent-writ petitioner, passed an order holding that the applicants were entitled for permission for development u/s 29 of the Act as the scheme had lapsed. The respondent No. 2, the Principal Secretary, Housing and Environment Department, in exercise of suo motu power of revision conferred on him u/s 32 of the Act, suspended the permission for development and ultimately set aside the order on 7-7-2006. Being dissatisfied with the same, the writ petition was filed by the fourth respondent before the learned single Judge who quashed the order on the foundation that after insertion of the proviso to Sub-section (4) of Section 50 of the Act, the Authority was required to act fairly and within a reasonable span of time and not sit over the matter without finalizing the same, that it was not the intention of the Legislature to give unlimited time to the Authority to act as provided u/s 50 of the Act, that the intention is clear that all pending draft schemes were to be completed within a period of one year from the date of the introduction of the proviso, otherwise they would lapse, that even after the introduction of the proviso, the Authority had taken one and a half years to finalise the scheme; and that the doctrine of delay and laches would irrefragably come into play.

The learned single Judge also opined that no opportunity of hearing was afforded to the writ petitioner before passing of the impugned order contained in Annexure P-11, P-11A and P-11B despite the proviso to Section 32 which clearly stipulates that the State Government is required to pass an order after giving a reasonable opportunity of hearing to the persons affected. The learned single Judge, analyzing the material brought on record, came to hold that the writ petitioner was not extended the opportunity of hearing in total disregard of the proviso to Section 32 of the Act and, therefore, the same is vulnerable in law. Be it noted, the learned single Judge scanned the order passed by the State Government which had pointed out certain irregularities committed by the Joint Director, the fourth , respondent herein, and enumerated the irregularities and expressed the opinion that the application for approval of the development plan of the writ petitioner was placed before the competent authority in June, 2006

and notices were issued to the Authority which, in its reply, stated that since the lands had already been included in the Scheme No. 132, no permission could be granted. The said objection was rejected on 22-6-2006 by the fourth respondent holding that the said Scheme had already lapsed on 29-12-2005 in view of the proviso to Sub-section (4) of Section 50 of the Act. The learned single Judge opined that the approval of the development plan was done in utter haste and without examining the matter. As is demonstrable from the order of the learned single Judge, he has adverted to the facts in detail which also related to the Authority and Jurisdiction of the respondent No. 3 (the fourth respondent herein) and concluded that he had not committed any illegality, Being of this view, he allowed the writ petition and quashed the orders passed by the State Government and as a sequitur, he also quashed the Gazette Notification dated 18-8-2006 contained in Annexure P-21 issued by the State Government.

We have heard Mr. A.M. Mathur, learned senior counsel along with Mr. Ashutosh Upadhyay and Mr. Sanjay Agrawal for the petitioner, Mr. S.C. Bagadiya, learned senior counsel, along with Mr. Satish Agrawal for the respondent No. 1, Mr. P. N. Dubey, learned Deputy Adv. General for the respondent Nos. 2 to 4 and Mrs. Meena Chapekar, Mr. Vishal Verma and Mr. Praveen Chouhan, learned Counsel for the Interveners.

Mr. A.M. Mathur, learned senior counsel appearing for the Authority, questioning the sustainability of the order of the learned single Judge, has raised the following contentions:

(a) The learned single Judge has failed to appreciate the objects and reasons for introduction of the proviso to Section 50(4) since the principal and primary purpose was to enable the Authority to deal with the objections and suggestions in an appropriate manner.

(b) The learned single Judge has totally flawed by holding that the proviso was added to obviate the difficulties faced by the citizens by requiring the Authority to make the final publication of the Scheme within a period of one year from the date of publication of the draft scheme and hence, the proviso is retrospective in nature.

(c) The language employed in the proviso has to be given prospective effect and would not destroy the right of the Authority to get the Scheme published under Sub-section (7) of Section 50 inasmuch as its right cannot be curtailed, the same being a vested right.

(d) The proviso is a substantive provision and, therefore, it should be prospective in nature and cannot mar or destroy action that has commenced u/s 50 of the Act prior to incorporation of the said proviso in the statute book and, therefore, the period of limitation provided therein would not be attracted to a progressive scheme as Section 50 is a complete code in itself and it has to have full play from the beginning to the end and cannot be conditioned by imposition of new conditions.

(e) The learned single Judge has completely erred by expressing the view that the doctrine of delay and laches would come into play in a case of this nature inasmuch as the land-owners have their expectations and the Authority cannot act in an unreasonable or arbitrary manner.

(f) As the Scheme relates to town development, even assuming that the proviso is attracted, the writ Court should not have quashed the gazette notification since the entire procedure u/s 50 of the Act had been completed, and it serves a larger public interest which has to be kept on a higher platform than larger public interest or individual interest.

(g) The order passed by the State Government in exercise of suo motu power cannot be found fault with as number of factors were taken into consideration.

The learned Counsel for the respondents as well as the interveners in support of the order passed by the learned single Judge has raised the following contentions:

(i) The construction on Section 50 which is sought to be placed by the learned Counsel for the appellant to the effect that the proviso added to Section 50(4) with effect from 29-12-2004 is totally prospective and does not affect action which has been initiated at earlier point of time is absolutely fallacious inasmuch as the language of the said proviso is clear and unambiguous, so there is nothing like a vested right in a case of this nature.

(ii) The finding recorded by the learned single Judge that the proviso was introduced to ameliorate the difficulty of the citizens is in consonance with the object and reason as well as the language employed in the statute and hence, no fault can be found with it.

(iii) The period under the proviso providing a definite period for publication of the draft scheme with a condition that it would lapse, by no stretch of imagination, can save the action taken under the Town Development Scheme solely on the foundation that it had already commenced as such an interpretation would lead to an absurd result which is neither the warrant of the provision nor does common sense give consent to it. If the said action is saved, the Authority can take its own time and engage in preparing the scheme till eternity by which the rights of the citizens are destroyed beyond repairs which would lead to an irretrievable situation.

(iv) The analysis made by the learned single Judge applying the doctrine of delay and laches cannot be treated to be faulty and, in fact, it is in accord with the scheme of things and also in consonance with the decided authorities.

(v) The proponement that larger public interest should be given priority over individual or citizenry rights has no legs to stand upon and is bound to founder. To get the said doctrine attracted, there has to be sanction and support of law but in the case at hand, the so-called larger public interest is sans legality and, therefore, has to pale into insignificance.

To appreciate the rivalised submissions, it is apropos to reproduce Section 50 of the Act:

50. Preparation of town development schemes.-- (1) The Town and Country Development Authority may, at any time, declare its intention to prepare a town development scheme.

(2) Not later than thirty days from the date of such declaration of intention to make a scheme, the Town and Country Development Authority shall publish the declaration in the Gazette and in such other manner as may be prescribed.

(3) Not later than two years from the date of publication of the declaration under Sub-section (2) the Town and Country Development Authority shall prepare a town development scheme in draft form and publish It in such form and manner as may be prescribed together with a notice inviting objections and suggestions from any person with respect to the said draft development scheme before such date as may be specified therein, such date being not earlier than thirty days from the date of publication of such notice.

(4) The Town and Country Development Authority shall consider all the objections and suggestions as may be received within the period specified in the notice under Sub-section (3) and shall, after giving a reasonable opportunity to such persons affected thereby as are desirous of being heard, or after considering the report of the committee constituted under Sub-section (5) approve the draft scheme as published or make such modifications therein as it may deem fit.

Provided that the final publication of such draft scheme shall be notified not later than one year from the date of publication of the draft scheme failing which the draft scheme shall be deemed to have lapsed.

(5) Where the town development scheme relates to reconstitution of plots, the Town and Country Development Authority shall, notwithstanding anything contained in Sub-section (4), constitute a committee consisting of the Chief Executive Officer of the said Authority and two other members of whom one shall be representative of the Madhya Pradesh Housing Board and the other shall be an officer of the Public Works Department not below the rank of an Executive Engineer nominated by the Chief Engineer, Public Works Department for the purpose of hearing of objections and suggestions received under Sub-section (3).

(6) The Committee constituted under Sub-section (5) shall consider the objections and suggestions and give hearing to such persons as are desirous of being heard and shall submit its report to the Town and Country Development Authority within such time, as it may fix along with proposals to -

(1) define and demarcate the areas allotted to or reserved for public purpose.

(ii) demarcate the reconstituted plots;

(iii) evaluate the value of the original and the reconstituted plots;

(iv) determine whether the areas reserved for public purpose are wholly or partially beneficial to the residents within the area of the scheme;

(v) estimate and apportion the compensation to or contribution from the beneficiaries of the scheme on account of the re-constitution of the plot and reservation of portions of public purpose;

(vi) evaluate the increment in value of each reconstituted plot and assess the development contribution leviable on the plot holder:

Provided that the contribution shall not exceed half the accrued increment in value;

(vii) evaluate the reduction in value of any reconstituted plot and assess the compensation payable therefor.

(7) Immediately after the town and development scheme is approved under subsection (4) with or without modifications the Town and Country Development Authority shall publish in the Gazette and in such other manner as may be prescribed a final town development scheme and specify the date on which it shall come into operation.

(Emphasis supplied)

As is evident from the said provision, the proviso was added by way of amendment. Immense emphasis has been laid on the said proviso. The learned Counsel for both the sides while laying emphasis on the same have invited our attention to the objects and reasons for introduction of the proviso to buttress their respective stand. To understand the purport of the amendment, we think it appropriate to reproduce the objects and reasons of the aforesaid amendment:

In Sub-section (4) of Section 50 of the aforesaid Act, no time limit prescribed to consider objections and suggestions received in respect of town development scheme in draft terms and for its final publication. This is causing great hardship to persons whose lands come under the purview of the scheme. In order to obviate these difficulties, it is proposed to amend the aforesaid Act suitably.

Keeping in view the provision, it is apposite on our part to address how the objects and reasons are to be understood for the purpose of understanding the statutory provisions. In *Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and Others*, , the Apex Court has expressed the view as follows:

The dominant purpose in construing a statute is to ascertain the intention of the Parliament. One of the well recognized canons of construction is that the legislature speaks its mind by use of correct expression and unless there is any ambiguity in the language of the provision the Court should adopt literal construction if it does not lead to an absurdity. The first question to be posed is whether there is any ambiguity in the language used in Rule 40. If there is none, it would mean the language used speaks the mind of Parliament and there is no need to look somewhere else to discover the intention or meaning. If the literal

construction leads to an absurdity, external aids to construction can be resorted to. To ascertain the literal meaning it is equally necessary first to ascertain the juxtaposition in which the rule is placed, the purpose for which it is enacted and the objection which it is required to subserve and the authority by which the rule is framed. This necessitates examination of the broad features of the Act.

In *Bharat Singh Vs. Management of New Delhi Tuberculosis center, New Delhi and Others*, the Apex Court while dealing with the applicability of Section 17-B of the Industrial Disputes Act, 1947 discussed how the objects and reasons are to be appreciated. In that context, their Lordships expressed thus:

10. The Objects and Reasons give an insight into the background why this Section was introduced. Though Objects and Reasons cannot be the ultimate guide in interpretation of statutes, it often times aids in finding out what really persuaded the legislature to enact a particular provisions. The Objects and Reasons here clearly spell out that delay in the implementation of the awards is due to the contests by the employer which consequently cause hardship to the workmen. If this is the object, then would it be in keeping with this object and consistent with the progressive social philosophy of our laws to deny to the workmen the benefits of this Section simply because the award was passed, for example just a day before the Section came into force. In our view it would be not only defeating the rights of the workman, but going against the spirit of the enactment. A rigid interpretation of this Section as is attempted by the learned Counsel for the respondents would be rendering the workman worse off after the coming into force of this Section. This section has in effect only codified the rights of the workmen to get their wages which they could not get in time because of the long drawn out process caused by the methods employed by the Management. This Section, in other words, gives a mandate to the Courts to award wages if the conditions in the Section are satisfied.

In interpretation of statutes, Courts have steered clear of the rigid stand of looking into the words of the Section alone but have attempted to make the object of the enactment effective and to render its benefits into the person in whose favour it is made. The legislators are entrusted with the task of only making laws. Interpretation has to come from the Courts.

In this regard, we may refer with profit to the decision rendered in *Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others*, wherein it has been held as follows:

Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statue is looked at, in the context of its

enactment, with the glasses of the statute-maker, provided by such context, its schemes, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place....

In *Bhaiji Vs. Sub Divisional Officer, Thandla and Others*, , it has been laid down as under:

11. Reference to the Statement of Objects and Reasons is permissible for understanding the background, the antecedent state of affairs, the surrounding circumstances in relation to the statute, and the evil which the statute sought to remedy. The weight of Judicial authority leans in favour of the view that Statement of Objects and Reasons cannot be utilized for the purpose of restricting and controlling the plain meaning of the language employed by the Legislature in drafting statute and excluding from its operation such transactions which it plainly covers. (See *Principles of Statutory Interpretation* by Justice G. P. Singh, Eighth Edition 2001, pp. 206-209).

The submission of Mr. Mathur, learned senior counsel, is that if the object and reasons of the amendment are appreciated, it would convey that the evil that was really sought to be remedied was that no time limit was prescribed to consider the suggestion received in respect of the draft scheme. On a reading of the unamended provision, we find that no time limit was prescribed to consider the objections and suggestions received in respect of the town development scheme in draft terms and also for its final publication. This has been causing great hardship to persons whose lands come under the purview of the scheme. In order to obviate these difficulties, it was proposed to amend the aforesaid Act suitably.

On a careful and purposive reading of the said proviso, it is clear as crystal that the amendment was sought to be introduced to remove the hardship caused to the citizens and to provide time limit to consider the objections and suggestions and to provide a deeming clause so that the Authority would act in quite promptitude. That being the simple pure reason, the same tilts in favour of the respondents and not in favour of the Authority. Hence, we repel the submission of Mr. Mathur on this score.

The next plank of submission of Mr. Mathur, learned senior counsel, is that if the anatomy of Section 50 is scrutinised in a proper perspective, it would be luminescent that the said Section is a complete Code in itself and the preparation of the final development scheme is an integral process as is evincible from Sub-section (7) of Section 50 and no amendment in mid way would affect the preparation as well as the completion. In essentiality, the submission is that the said amendment should not affect the right that has accrued in favour of the

Authority. The learned Counsel, to bolster his submissions, has placed reliance on the decision in A.A. Calton Vs. Director of Education and Another, wherein it has been held as under:

The process of selection u/s 16-F of the Act commencing from stage of calling applications for post up to date on which the Director should make a section u/s 16-F(4) (as it stood then) is an integrated one. Section 16-F of the Act cannot therefore be construed as a merely procedural provision.

As regards the retrospective applicability of the amendment to the pending proceeding, the learned senior counsel has placed reliance on the decision rendered in State of U.P. v. Atique Begam AIR 1941 PC 110 wherein it has been held thus:

Courts have undoubtedly lean very strongly against applying a new Act to pending actions, when language of the statute does not compel them to do so.

The learned senior counsel has also placed reliance on the decision in Garikapatti Veeraya Vs. N. Subbiah Choudhury, wherein it has been held as under:

(23) From the decisions cited above the following principles clearly emerge:

(i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.

(ii) The right of appeal is not a mere matter of procedure but is a substantive right.

(iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.

(iv) The right of appeal is a vested right and such a right to enter the superior Court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

(v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.

Emphasis has also been laid on the decision rendered in K.S. Paripoornan Vs. State of Kerala and Others, wherein the majority has expressed the view that the Amending Act 68 of 1984, the payment of additional amount u/s 23(1-A) would be restricted to matters referred to in Clauses (a) and (b) of Sub-section (1) of Section 30 of the said Act. In the said case, it was further held that u/s 23(1-A), an obligation has been imposed to pay an additional amount which did not exist

prior to the Amending Act. If the said provision is applied to the acquisition proceedings which commenced prior to its enactment and an additional obligation in the matter of payment of compensation is imposed for such acquisition, the effect would be that the said provision would be operating retrospectively in respect of transaction already past. The Parliament has given a clear indication of its intention in Section 30(1) of the Amending Act regarding the extent of retrospective operation that Section 23(1A) will have since express provision is contained in Section 30(1) of the Amending Act indicating the intention of the Parliament as to the extent to which the provision of Section 23(1-A) would apply to pending proceedings and thus, there is no scope for speculating about the said intention of the Parliament by reading Section 23(1-A) in isolation without reference to Section 30(1) of the Amending Act.

In *S.L. Srinivasa Jute Twine Mills P. Ltd. Vs. Union of India (UOI) and Another*, a two-Judge Bench of the Apex Court referred to the decision rendered in *Amireddi Rajagopala Rao and Others Vs. Amireddi Sitharamamma and Others*, wherein the Apex Court had quoted the observations made by Lopes, L.J., which reads as under:

which takes away or impairs vested rights acquired under existing laws, or creates a new obligation or imposes a new duty, or attaches a new disability in respect of transactions already past, must be presumed to be intended not to have a retrospective effect.

Thereafter, their Lordships expressed the view that close attention must be paid to the language of the statutory provisions for determining the scope of retrospectivity intended by the Parliament.

The learned senior counsel has laid emphasis on the aforesaid decisions to pervert the proposition that by incorporation of an amendment of this nature, the vested right does not get affected. It is also urged by him that when the provision is procedural, it has to have prospective application and would not affect the vested right unless it has been expressly made retrospective.

In this context, the learned Counsel for the respondents and interveners have commended us to certain decisions. We think it apt to note a few. It is canvassed by them that the provisions apply to pending cases and the question of any kind of retrospective application does not arise. It is their submission that the concept of vested right as has been laid down by the Apex Court has no application to the present scheme of things. In this regard, they have invited our attention to the decision rendered in *State of Madras Vs. Lateef Hamid and Co.*, wherein it has been held thus:

13. ...No assessee has any vested right in the procedure prescribed under the 1939 Act. So long as the new procedure laid down in the 1959 Act does not interfere with any of his vested rights, an assessee has no right to claim that his case must be dealt with under the provisions of the repealed Act. It is well settled that the new procedure prescribed by law governs all pending cases. As

seen earlier, the assessee filed its appeal u/s 31 of the 1959 Act and not u/s 11 of the 1939 Act. But that is a minor aspect. What is of the essence is that his right of appeal under the 1959 Act does not take away in any manner any of his vested rights under the 1939 Act.

In *Bharat Singh Vs. Management of New Delhi Tuberculosis center, New Delhi and Others*, , while dealing with the concept of Section 17B of the Industrial Disputes Act, 1947 to pending cases, after referring to the objects and reasons, the Apex Court held thus:

...Section 17B on its terms does not say that it would bind awards passed before the date when it came into force. The respondents' contention is that a Section which imposes an obligation for the first time cannot be made retrospective. Such sections should always be considered prospective. In our view, if this submission is accepted, we will be defeating the very purpose for which this section has been enacted. It is here that the Court has to evolve the concept of purposive interpretation which has found acceptance whenever a progressive social beneficial legislation is under review. We share the view that where the words of a statute are plain and unambiguous effect must be given to them. Plain words have to be accepted as such but where the intention of the legislature is not clear from the words or where two constructions are possible, it is the Court's duty to discern the intention in the context of the background in which a particular Section is enacted. Once such an intention is ascertained the Courts have necessarily to give the statute a purposeful or a functional interpretation. Now, it is trite to say that acts aimed at social amelioration giving benefits for the have-nots should receive liberal construction. It is always the duty of the Court to give such a construction to a statute as would promote the purpose or object of the Act. A construction that promotes the purpose of the legislation should be preferred to a literal construction. A construction which would defeat the rights of the have-nots and the underdog and which would lead to injustice should always be avoided. This section was intended to benefit the workmen in certain cases. It would be doing injustice to the section if we were to say that it would not apply to awards passed a day or two before it came into force.

In *Allied Motors (P.) Ltd. Vs. Commissioner of Income Tax, Delhi*, it has been ruled thus:

8. Section 43-B was, therefore, clearly aimed at curbing the activities of those tax payers who did not discharge their statutory liability of payment of excise duty, employer's contribution to provident fund etc. for long periods of time but claimed deductions in that regard from their income on the ground that the liability to pay these amounts had been incurred by them in the relevant previous year. It was to stop this mischief that Section 43-B was inserted. It was clearly not realised that the language in which Section 43-B was worded would cause hardship to those tax payers who had paid sales tax within the statutory period prescribed for this payment, although the payment so made by them did not fall

in the relevant previous year. This was because the sales tax collected pertained to the last quarter of the relevant accounting year. It could be paid only in the next quarter which fell in the next accounting year. Therefore, even when the sales tax had in fact been paid by the assessee within the statutory period prescribed for its payment and prior to the filing of the Income Tax return, these assesseees were unwittingly prevented from claiming a legitimate deduction in respect of the tax paid by them. This was not intended by Section 43-B. Hence the first proviso was inserted in Section 43-B. The Amendment which was made by the Finance Act of 1987 in Section 43-B by inserting, inter alia, the first proviso, was remedial in nature, designed to eliminate unintended consequences which may cause undue hardship to the assessee and which made the provision unworkable or unjust in a specific situation.

In *Howrah Municipal Corpn. and Others Vs. Ganges Rope Co. Ltd. and Others*, , it has been held as follows:

This Court, thus, has taken a view that the Building Rules or Regulations prevailing at the time of sanction would govern the subject of sanction and not the Rules and Regulations existing on the date of application for sanction. This Court has envisaged a reverse situation that is subsequent to the making of the application for sanction, Building Rules, on the date of sanction, have been amended more favourably in favour of the person or party seeking sanction, would it then be possible for the Corporation to say that because the more favourable Rules containing conditions came into force subsequent to the submission of application for sanction, it would not be available to the person or party applying.

In *Zile Singh Vs. State of Haryana and Others*, a three-Judge Bench of the Apex Court expressed the view as under:

13. It is a cardinal principle of construction that every statute is *prima facie* prospective unless it is expressly or by necessary implication made to have a retrospective operation. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only -- "*nova constitutio futuris formam imponere debet, non praeteritis*" -- a new law ought to regulate what is to follow, not the past. (See *Principles of Statutory Interpretation* by Justice G.P. Singh, 9th Edn., 2004 at p. 438.) It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole.

In *Ramji Purshotam (D) by Lrs. and Others Vs. Laxmanbhai D., Kurlawala (D) by Lrs. and Another*, the Apex Court addressed itself with regard to the retrospective application of the Bombay Rents, Hotel and Lodging House Rates Control Act,

1947. In that context, their Lordships expressed the view as under:

13. Strictly speaking, in the present case, the application of the amendment brought in by the statute to the pending proceedings does not have the effect of retrospectivity. The rent is alleged to have fallen in arrears for the period 1-6-1969 to 31-10-1970. Some payment of water charges is said to have been made referable to the same period. Thus, both the events are referable to a period anterior to the coming into force of Act No. 51 of 1975. The law coming into force during the pendency of the proceedings is being applied on the date of judgment to the pre-existing facts for the purpose of giving benefit to the tenant in the pending proceedings. This is not retroactivity.

Justice G. P. Singh states in Principles of Statutory Interpretation (Ninth Edition, 2004, at page 462) -- "the fact that a prospective benefit under a statutory provision is in certain Cases to be measured by or depends on antecedent facts does not necessarily make the provision retrospective. The rule against retrospective construction is not always applicable to a statute merely because a part of the requisites for its, action is drawn from time antecedent to its passing." In *Shah Bhojraj Kuverji Oil Mills and Ginning Factory Vs. Subbash Chandra Yograj Sinha*, the Constitution Bench held that the Bombay Act No. 57 of 1947 is a piece of legislation passed to protect the tenants, against the evil of eviction. And the benefit-of the provisions of the Act ought to be extended to the tenants against whom the proceedings are pending oft the date of coming into force of the legislation.

In *Dharappa Vs. Bijapur Co-operative Milk Producers Societies Union Ltd.*, the Apex Court ruled that the legislative intendment should be ascertained keeping in view the provisions of the amendment, the nature of the remedy provided and the need for the same. In this context, their Lordships have stated thus:

The legislative intent should be ascertained by keeping in view the position before the amendment, the nature of remedy provided, and the need therefor. It is also necessary to keep in view the general principles relating to limitation. Statutes relating to limitation are said to be retrospective in nature in the sense that they apply to all proceedings brought after they came into force, even for enforcing causes of action which had accrued prior to the date when such statutes came into force. But they are also prospective in the sense that do not have the effect of reviving a right of action which was already barred on the date of its coming into operation. Therefore, where the right to file an action had come to an end on expiry of period of limitation prescribed under law relating to limitation and thus becomes barred by limitation, the right is not revived by a later limitation Act, even if it provides a longer period of limitation.

The respondents have also invited our attention to *Union of India Vs. Harnam Singh*, wherein the Apex Court was dealing with the controversy wherein a question was put with regard to the rights of a Government employee to get change in his date of birth in the service record. Note 5 of FR-56(m) was

incorporated in the year 1979 providing for a request to be made by an employee for correction of the date of birth within five years from the date of entry into service. Their Lordships expressed the view that it was done with a view to avoid any artificial classification and it would be appropriate to interpret the said rule as providing of the date of birth for even such a Government servant who had entered the service prior to the said enactment. We think it apt to reproduce a relevant paragraph from the said judgment:

11. The approach of the Tribunal does not commend to us as it tends to create an invidious discrimination, unsustainable in law, by creating two artificial classes of Government Servants between those who joined service before and after 1979. It is a too simplistic way of looking at the issue, by ignoring the ground realities and the intention of the rule making authority to discourage stale claims and non-suit such Government servants who seek the alteration of their recorded date of birth belatedly and mostly on the eve of their superannuation. To say that the respondent, even though he signed the service book at a number of places at different times and saw the seniority lists, may not have still come to know as to what his recorded date of birth was, is to ignore the normal human conduct and put premium on negligence. The observations of CAT quoted above are neither logical nor sound. Of course, Note 5 to FR 56 (m) was incorporated only in 1979 and it provides for request to be made for correction of date of birth within five years from the date of entry into service but what is necessary to be examined is the intention of the rule making authority in providing the period of limitation for seeking the correction of the date of birth of the Government Servant viz. to discourage stale claims and belated applications for alteration of date of birth recorded in the service book at the time of initial entry. It is the duty of the Courts and Tribunals to promote that intention by an intelligible and harmonious interpretation of the rule rather than choke its operation. The interpretation has to be the one which advances the intention and not the one which frustrates it. It could not be the intention of the rule making authority to give unlimited time to seek correction of date of birth, after 1979, to those Government servants who had joined the service prior to 1979 but restrict it to the five years period for those who enter service after 1979. Indeed, if a Government servant, already in service for a long time, had applied for correction of date of birth before 1979, it would not be permissible to non-suit him on the ground that he had not applied for correction within five years of his entry into service, but the case of Government servant who applied for correction of date of birth only after 1979 stands on a different footing. It would be appropriate and in tune with harmonious construction of the provision to hold that in the case of those Government servants who were already in service before 1979, for a period of more than five years, and who intended to have their date of birth corrected after 1979, may seek the correction of date of birth within a reasonable time after 1979 but in any event not later than five years after the coming into force of the amendment in 1979. This view would be in consonance with the intention of the rule making authority.

In view of the aforesaid enunciations of law and keeping in view the objects and reasons of the enactment and the hardship sought to be remedied, it is difficult to accept the submission of Mr. Mathur that once the process of preparation of the scheme had commenced, it is a vested right in favour of the Authority and could not have been impaired by introducing the proviso.

The submission of the learned Counsel for the respondents is that if the provision is accepted as prospective, it would still have its own impact as the Scheme No. 132 had never been notified u/s 50(7) of the Act and framed as a draft scheme on the date of coming into force of the proviso. It is urged that the edifice which has been sought to be built by the appellant Authority that the right has accrued in favour of the Authority as it had commenced the preparation of the scheme is sans substratum as the provision has been introduced with a purpose and the said purpose cannot be allowed to be frustrated. In our considered opinion, the proviso is not retrospective, that is to say, if the scheme has been already finalised, it would not lapse and if it is in process, the proviso would have applicability in full force and it has to be completed within the time span provided therein. In the present case, the same has not been done and hence, the proviso comes into play.

In this context, we may refer with profit to Section 54 of the Act:

54. Lapse of Scheme.-- If the Town and Country Development Authority fails to commence implementation of the Town Development Scheme within a period of two years or complete its implementation within a period of five years from the date of notification of the final scheme under, Section 50, it shall, on expiration of the said period of two years or five years, as the case may be, lapse:

Provided that, if a dispute, between the authority and parties, if any, aggrieved by such scheme, is brought before a Court or tribunal of competent jurisdiction, for consideration, the period for which such dispute pending before such Court or tribunal shall not be reckoned for determination of the lapse of the scheme.

We have referred to the same as it has been pressed into service to highlight by the learned Counsel for the respondents that the scheme is not a scheme in perpetuity. The legislative intendment is quite clear that the scheme, if it does not commence implementation within two years and complete within five years from the date of the notification of the final scheme, would be treated to have been lapsed. Since the provision was made to avoid hardship to the land owners, therefore, it is to be construed that the proviso added to Section 50(4) is in furtherance of the scheme of the Act.

At this juncture, it would not be inapposite to understand the proviso in another manner. It is worth noting that the proviso uses the term "shall be deemed to have lapsed". A deeming proviso has its own purpose. In *St. Aubyn v. Attorney General* 1952 AC 15 at Page 53, Lord Radcliffe stated that the term is used a great deal in modern legislation in different senses. In various authorities, it is noticed that it is used to impose for the purposes of a statute an artificial

construction. Sometimes, it is used to put a particular construction that might otherwise be uncertain. Sometimes, it is used to give a comprehensive description that includes what is obvious.

Lord Justice James had observed in *Ex Parte Salton, In re, Levy* 1881 (17) Ch D 746 as follows:

When a statute enacts that something shall be deemed to have been done, which, in fact and truth was not done, the Court is entitled and bound to ascertain for what purpose and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion.

Lord Asquith, in *East End Dwellings Co. Ltd. v. Finsbury Borough Council* 1952 AC 109 had expressed his opinions as follows:

If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and instances, which, if the putative state of affairs had in fact existed, must inevitably have followed from or accompanied it... The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit or imagine to boggle when it comes to the inevitable corollaries of that state of affairs.

In view of the aforesaid pronouncement of law, there can be no scientilla of doubt that the term "shall be deemed" does convey that the scheme gets automatically lapsed and it makes the same obvious and clear and avoids any kind of uncertainty.

Mr. Mathur, learned senior counsel, further submitted that the proviso is full of anomaly, confusion and suffers from un-workability. It is contended by him that there is no provision that the draft scheme is no longer in existence after the approved scheme and hence, there is no question of its lapsing and what can lapse will be the approved scheme and not the draft scheme. It is contended by him that the proviso should have been worded differently. The learned Counsel has put forth how the proviso should have been worded. We quote from the written note of submissions:

Development Authority shall consider the objections and suggestions within a period of 1 year from the publication of notice under Sub-section (3) of Section 50 and approve the scheme for final publication under Sub-section (7) of Section 50.

The learned senior counsel further submitted that the aforesaid proposed amendment should have been placed/added as Sub-section (8) after Sub-section (7) as a substantive provision. In this regard, he has commended us to the decision rendered in *U.P. State Road Transport Corporation and another Vs. Mohd. Ismail and others*, .

In this context, we may refer with profit to the decision rendered in Municipal Committee, Patiala Vs. Model Town Residents Assn. and Others, . In paragraph 20, His Lordship, S.H. Kapadia, J. has expressed thus:

20. Before concluding, we have serious objections to the manner in which direction has been given by the Division Bench of the High Court to the legislature. In this connection, we quote the last paragraph of the impugned judgment, which is as follows:

...Sections 3(1)(b) and 3(8-aa) of the Act are declared unconstitutional and struck down.... The State shall be free to suitably amend Section 3(1) to provide for levy of house tax by adopting a uniform criteria for determination of annual value of similarly situated properties. The State shall also be free to amend Section 3(1) and lay down a uniform criteria for determination of annual value of properties occupied by the tenants as well as the owners in the light of the Judgment of the Supreme Court in Sachchida-nand Kishore Prasad Sinha case and observations made in this order. It is, however, made clear that any such enactment shall not affect the assessments made prior to the amendment of Section 3 by Punjab Act 11 of 1994 and the old cases, if any pending shall be decided in accordance with the unamended provision....

In the above judgment, the High Court directs the State Legislature to amend the law relating to determination of annual value by clarifying that any such amendment shall not be retrospective. We have serious reservations regarding such a direction. It is not open to the High Court under Article 226 of the Constitution, particularly in the matter of taxation directing it not to amend the law retrospectively. Such a direction is unsustainable, particularly in a taxing statute. It is always open to the State Legislature, particularly in tax matters, to enact validation laws which apply retrospectively. The High Court cannot take away the power of the State Legislature to amend the tax law retrospectively. The basis of the law can always be altered retrospectively.

In the said case, Hon''ble B. Sudershan Reddy, J., in his concurring opinion, has opined thus:

The Constitution is filled with provisions that grant Parliament or to the State Legislatures specific power to legislate in certain areas. These granted powers are of course subject to constitutional limitations that they may not be exercised in a way that violates other specific provisions of the Constitution. Nothing in the text, history or structure of the Constitution remotely suggests that the High Court's jurisdiction under Article 226 of the Constitution should differ in this respect -- that invocation of such power should magically give the High Court a free ride through the rest of the constitutional document. If such magic were available the High Court could structure, restructure legislative enactments. The possibilities are endless. The Constitution-makers cannot be charged with having left open a path to such total obliteration of constitutional enterprise.

His Lordship, in paragraph 28, has referred to the decision rendered in State of

Himachal Pradesh Vs. A Parent of a Student of Medical College, Simla and Others, wherein it has been held as under:

But at the same time the Court cannot usurp the functions assigned to the executive and the legislature under the Constitution and it cannot even indirectly require the executive to introduce a particular legislation or the legislature to pass it or assume to itself a supervisory role over the law-making activities of the executive and the legislature.

In this context, we may refer with profit to the decision rendered in State of Jammu and Kashmir Vs. A.R. Zakki and others, wherein their Lordships have held that writ of mandamus under Article 226 of the Constitution of India cannot be issued to the Legislature or Executive to exercise rule making power or to make rules or to incorporate any kind of amendment.

In the case of Common Cause Vs. Union of India (UOI) and Others, , it has been held that no mandamus can be issued to the Central Government to notify the date to bring an enactment into force. Similar view was expressed in Union of India (UOI) Vs. Shree Gajanan Maharaj Sansthan, .

In Networking of Rivers : In re (2004) 11 SCC 360, their Lordships have expressed the view that it was not open to the Supreme Court to issue any direction to the Parliament to legislate.

In Saurabh Chaudri and Others Vs. Union of India (UOI) and Others, it has been ruled that writ of mandamus is not normally issued to the Government for making law.

In view of the aforesaid pronouncement of law, the aforesaid submission of Mr. Mathur is sans any substance and accordingly, we repel the same without any hesitation.

We would be failing in our duty if we do not refer to a decision cited by Mr. Mathur to bolster the proposition that Section 50 has its own sacrosanctity and the Authority is required to act with objectivity and responsibility having due care for the interest of the collective at large and cannot act in hurry and objectivity has to be given due regard and if it is done in a hurried manner, the concept of justice would be buried. To bolster the aforesaid submission, he has commended us to the decision rendered in Indore Development Authority Vs. Madan Lal and others etc., . We think it apposite to reproduce paragraphs 8 and 9 of the said decision:

8. Section 50(2) provides for preparation of the draft Scheme and Section 50(3) provides for its publication inviting objections and suggestions from persons who are likely to be affected thereby. Section 50(4) requires the Development Authority to consider all the objections and suggestions as may be received within the specified period. After giving a reasonable opportunity to the objectors who are desirous of being heard or after considering the report of the Committee constituted for that purpose, the Development Authority could approve the draft

scheme with such modifications as it may deem fit. Section 50(7) provides for publication of the approved scheme in the Gazette specifying the date on which it shall come into force. Any development scheme thus prepared and published u/s 50(7) shall be in conformity with the Master Plan covering the area in question.

It is not in dispute that the Development Authority did not follow the procedure prescribed u/s 50 of the Adhiniyam for preparation of scheme No. 72. A note dated 24 August, 1977 prepared by the officers of the Development Authority indicates that the Scheme No. 72 was approved u/s 50(4) of the Adhiniyam without inviting objections and without considering the same. It was, however, argued for the appellant that the Development Authority need not have invited fresh objections and objections for consideration since that procedure has already been followed by the Improvement Trust under the Trust Act. The provisions of Section 87(1)(c)(ii) of the Adhiniyam were also relied upon to salvage the scheme.

On a careful perusal of the decision and the observations made by their Lordships, there is no shadow of doubt in our mind that the said decision was rendered in a different context and is not remotely applicable to the case at hand.

The learned senior counsel has submitted that the hardship which is caused to the Authority has to be taken note of. The learned senior counsel has commended us to a passage from Principles of Statutory Interpretation, 11th Edn. pg. 128. It reads as under:

If the language used is capable of bearing more than one construction, in selecting the true meaning regard must be had to the consequences resulting from adopting the alternative constructions. A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such results.

The said passage, as we are disposed to think, cannot have any applicability inasmuch as the learned author commenced the passage with "If the language used is capable of bearing more than one construction", but, a pregnant one, the provision at hand being unequivocal, categorical and unambiguous, does not permit any other kind of construction but a singular one. Thus, the aforesaid submission of Mr. Mathur does not deserve acceptance and is hereby rejected.

A contention has been advanced that the Authority being a statutory one and the notification having been published, it should be saved as that subserves the public interest. There may be cases and instances where a larger public interest may override the lesser public interest or individual interest. But, a significant one, such a public interest must have legal sanction. In the case at hand, the Act has been amended, specially to save the interest of the citizens. The learned single Judge has applied the doctrine of delay and laches. A statutory authority is required to act in quite promptitude. At this juncture, we may refer to the

decision in *Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Cock and Chem. Ltd. and Others*, wherein it has been held as under:

46. Where, however, a scheme comes into force, although it may cause hardship to the individual owners as they may be prevented from making the most profitable use of their rights over property, having regard to the drastic consequences envisaged thereunder, the statute should be considered in such a manner as a result whereof greater hardship is not caused to the citizens than actually contemplated thereby. Whereas an attempt should be made to prevent unplanned and haphazard development but the same would not mean that the Court would close its eyes to the blatant illegalities committed by the State and/or the statutory authorities in implementation thereof. Implementation of such land development as also building laws should be in consonance with public welfare and convenience. In United States of America zoning ordinances are enacted pursuant to the police power delegated by the State. Although in India the source of such power is not police power but if a zoning classification imposes unreasonable restriction, it cannot be sustained. The public authority may have general considerations, safety or general welfare in mind, but the same would become irrelevant, as thereby statutory rights of a party cannot be taken away. The Courts must make an endeavour to strike a balance between public interest on the one hand and protection of a constitutional right to hold property, on the other.

For the aforementioned purpose, an endeavour should be made to find out as to whether the statute takes care of public interest in the matter vis-a-vis the private interest, on the one hand, and the effect of lapse and/or positive inaction on the part of the State and other planning authorities, on the other.

The Courts cannot also be oblivious of the fact that the owners who are subject to the embargos placed under the statute are deprived of their valuable rightful use of the property for a long time. Although ordinarily when a public authority is asked to perform statutory duties within the time stipulated it is directory in nature but when it involves valuable rights of the citizens and provides for the consequences therefore it would be construed to be mandatory in character.

In the said case, their Lordships in paragraphs 79 to 81 proceeded to hold as under:

79. Section 50 of the Act no doubt uses the word "at any time". The question, however, is what that would imply. The town planning scheme, it would bear repetition to state, is made for the purpose of implementation of a development plan. Ordinarily, therefore, it would envisage the time period for coming into force of the development plan and the expiry thereof. Unless such a construction is to be given to the words "at any time", it would lead to manifest injustice and absurdity which is not contemplated by the statute. For giving an effective meaning to the provisions of Section 50 of the Act, the same is required to be read in the context of other provisions of the statute and in particular the

interpretation clause which we have noticed hereinbefore.

Section 50(1) of the Act provide for declaration of this intention to prepare town development scheme "at any time". The words "at any time" do not confer upon any statutory authority an unfettered discretion to frame the town development scheme whenever it so pleases. The words "at any time" are not charter for the exercise of an arbitrary decision as and when a scheme has to be framed. The words "at any time" have no exemption from all forms of limitation for unexplained and undue delay. Such an interpretation would not only result in the destruction of citizen's right but would also go contrary to the entire context in which the power has been given to the authority.

The words "at any time" have to be interpreted in the context in which they are used. Since a town development scheme in the context of the Act is intended to implement the development plan, the declaration of intention to prepare a scheme can only be in the context of a development plan. The starting of the declaration of the intention has to be upon the notification of the development plan and outer limit for the authority to frame such a scheme upon lapsing of the plan. That is the plausible interpretation of the words "at any time" used in Section 51 of the Act.

In view of the aforesaid, we are unable to accept the submission of Mr. Mathur, learned senior counsel for the appellant, which leans on the concept of larger public interest as last straw.

Though we have not accepted the submission of Mr. Mathur and we have concurred with the learned single Judge as far as the interpretation of the proviso and upholding of the order passed by the State of Madhya Pradesh as really there is no fault or error in the same and concurred with the view as regards the applicability of the doctrine of delay and laches, yet we are disposed to modify the order to a certain extent. The learned senior counsel has submitted that the scheme is for the progression of the city of Indore. It involves a large chunk of land and if the scheme is not implemented, the development of the city would be immensely jeopardized. In view of the aforesaid, we grant liberty to the Authority to float a fresh scheme if so, advised, within a period of three months within the parameters of Section 50 from today and thereafter proceed accordingly. Needless to emphasise that once a fresh scheme comes into play, all other statutory requirements and the provisions relating to compensation and such ancillary factors would come into play. In praesenti, the orders passed by the State Government granting permission to the respondents shall be kept in abeyance for a period of three months.

In view of our foregoing analysis, we proceed to enumerate our conclusions in seriatim:

(i) The objects and reasons for introducing the proviso to Section 50(4) was, in actuality, incorporated to remove the hardship caused to the citizens and individual landowners.

(ii) The submission of the learned Counsel for the appellant that once the process of preparation of the scheme had commenced, it would not be affected by the introduction of the proviso is sans substance.

(iii) The proviso applies to pending action and hence, its applicability to the action in continuum shall be in full force.

(iv) In the scheme of the Act, inclusive of Section 54, there is conception of lapsing of the scheme and, therefore, the scheme cannot be in perpetuity and it can lapse if the action is not completed as provided in the proviso.

(v) The deeming provision has its own purpose and plays its complete role, avoids uncertainty and, therefore, the proviso has to be allowed to have full play.

(vi) The contention that the drafting of the proviso is faulty and it has to be placed as the substantive provision as Sub-section (8) to Section 50 is without substratum as this Court in exercise of power under Article 226 of the Constitution cannot legislate or give a direction to legislate or to make a particular rule and incorporate any kind of amendment in any manner. The said argument is fundamentally fallacious and does not come even remotely within the ambit of ironing of creases.

(vii) The decision rendered in Indore Development Authority Vs. Madan Lal and others etc., , which was a decision rendered before the proviso came into force, is distinguishable and further, the said decision was rendered, in substance, in favour of the land owners.

(viii) The doctrine of delay and laches gets attracted in view of the law laid down by the Apex Court-in Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Cock and Chem. Ltd. and Others, and the doctrine of subserving larger public interest has no room whatsoever.

(ix) The Authority can proceed to take appropriate action u/s 50 of the Act afresh within a period of three months to float a fresh scheme and once a fresh scheme comes into play, all other statutory requirement and the provisions relating to compensation and such ancillary factors would come into play.

(x) As liberty has been granted to take fresh steps u/s 50 of the Act, the orders passed in favour of the respondents by the State Government shall be kept in abeyance for a period of three months.

Consequently, the writ appeal is disposed of with the above modifications in the order passed by the learned single Judge. There shall be no order as to costs.