

(2004) 12 BOM CK 0090

In the Bombay High Court

Case No : Writ Petition No's. 1006, 1288, 1325, 1402, 1557, 1582, 1589 to 1591, 1651, 2075, 2196, 2395, 2403, 3633 and 3997 of 2000, 729, 738 and 1376 of 2001 and 1444, 1861 and 2151 of 2003

Nagpur Land Developers Association and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 22-12-2004

Acts Referred:

Bombay Metropolitan Region Development Authority Act, 1974 — Section 1(1), 3
Bombay Town Planning Act, 1954 — Section 81, 84
Constitution (Seventh Amendment) Act, 1956 — Article 371
Constitution of India, 1950 — Article 14, 141, 19(1), 19(5), 226
Customs Act, 1962 — Section 7
Land Acquisition Act, 1894 — Section 14, 4, 4(1), 4(12), 4(2)
Maharashtra Regional and Town Planning (Amendment) Act, 1993 — Section 40(3), 43
Maharashtra Regional and Town Planning (Second Amendment) Act, 1972 — Section 40(1)
Maharashtra Regional and Town Planning Act, 1966 — Section 11, 113, 114, 115, 116
Urban Land (Ceiling and Regulation) Act, 1976 — Section 20, 21, 42

Citation : (2005) 3 MhLj 881

Hon'ble Judges : V.C. Daga, J;S.U. Kamdar, J

Bench : Division Bench

Advocate : S.P. Dharmadhikari, A.M. Parchure, R. Joshi and P.N. Shende, for the Appellant; A.C. Dharmadhikari, Kukde, Kankole and Raut for respondent Nos. 1 and 4 and M.G. Bhangde, Special Counsel and A.S. Kilore, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

S.U. Kamdar, J.—Even after expiry of more than half a century to adoption of our Constitution inter alia having a goal of social, economic and political justice, this part of the country still sees a large number of suicides by the farmers out of desperation and utter poverty. The lack of mercy of Rain God coupled with the lack of political will of our leaders to develop this part of the country has resulted in these consequences. This part of the country has remained underdeveloped

even though the World has reached in 21st Century and our country also has made overall rapid growth in various spheres.

2. Six years after adopting of Constitution i.e. by the 7th Constitutional Amendment Act of 1956 the provisions of Article 371 was introduced inter alia providing for special provisions in respect of the State of Maharashtra and Gujarat. Sub-clause (2)(a) of Article 371 provides for establishment of separate Development Board for Vidarbha Region and creation of a necessary fund for development of this part of the country. Non-development of this region has been a serious draw-back for the overall development of Maharashtra State itself. This non-development has become so unbearable with the passage of time that the sounds of a cry for a separate Vidharbha State can also be heard. Before the said cry of separate Vidarbha State turns into a serious social and political crisis, the State Government has undertaken to carry out a substantial development of this region. Towards the said aim one of the steps taken is to introduce a project what is popularly known as Meghdoot Project inter alia providing for a planned development of a new town along with an International Cargo Hub which could result in serious commercial activities resulting in development of this region.

3. As has been always been, every development has been road blocked by a controversy between private interest and public interest. This project has also not been out of the similar controversy. The Court as a last resort has always been approached to resolve such controversial disputes between the private interest of an individual vis-a-vis of the public interest of the public at large. It has always struck a fine balance to protect to the maximum both the interests. Fundamentally a sound principle has been that private interest must give way to a larger public good and public interest. At the threshold of this Meghdoot Project, this controversy has been wrecked up by the private land owners ably supported by the developers, builders and contractors. These petitioners have challenged the action on the part of the State Government of acquisition of the land under the provisions of the Land Acquisition Act and has sought that these acquisition proceedings be quashed and set aside.

4. These petitions are filed in the year 2000. Four years down the lane, the petitions are not even heard for the preliminary hearing at the admission stage. The matter has been lingering on by adjournments after adjournments and pleadings after pleadings. As observed by the Apex Court in the case of Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others, that every day's delay in starting of the project consequently results in delay in the implementation thereof. Thus, the result is the loss of exchequer because huge cost over run results in great strain on the public money and public revenue. The proceedings in Court and Court delays has been one of the causes for the same. The Courts must avoid these eventualities. Keeping in mind the aforesaid principle enunciated by the Apex Court in Raunak International Limited's case, by consent of the parties, we have undertaken to dispose of this batch of 26 writ petitions challenging the provisions of the Land Acquisition Act for establishment

of a new town for final disposal at the preliminary stage of admission itself. Thus, we issue Rule in all writ petitions and make them returnable forthwith for hearing and final disposal.

5. The factual matrix which is relevant for the purpose of the present writ petitions and for resolving the challenge posed before us by the petitioners is briefly enumerated as under :--

6. On 25-10-1996, the State Government notified the land which was 9310.36 hectares bearing part of 22 villages for the development of new town known as "Meghdoot". On the same day, CIDCO was appointed as a Special Planning Authority to undertake development of the new town. The said CIDCO was appointed as the Special Planning Authority under the provisions of Section 40 Sub-section (1) Clause (b) of the Maharashtra Regional Town Planning Act, 1966 (hereinafter referred to as the MRTP Act). Thereafter under four different notifications issued u/s 4 of the Land Acquisition Act the State Government notified four villages for the purpose of acquisition of the said land known as Khapri, Dahegaon, Kalkuhi and Telhara. The said notification was issued on 22-10-1998 in respect of the three of the villages whereas in respect of village Telhara the notification was issued on 28-1-1999. Under the said four notifications, substantial part of the land as set out hereinbelow was proposed to be acquired :

(1) Khapri 430.69 hectares, (2) Dahegaon 405.21 hectares (3) Kalkuhi 450.50 hectares (4) Telhara 180.82 hectares

7. In accordance with the requirement of Section 4 of the Land Acquisition Act, the said notification was also published in the newspapers, Government Gazette, as well as by local Chawadi. In respect of the said land individual notices were served upon the land owners in accordance with the record of rights being 7 x 12 extracts and the owners were called upon to file their 5A objections. Pursuant to the said Section 5A enquiry, the State Government received around 483 objections and subsequently the hearing was conducted u/s 5A of the Land Acquisition Act for the individual landowners on various dates. This exercise of Section 5A enquiry commenced sometime in or about March, 1999 and was continued upto June, 1999. Thereafter Section 6 notification was published as under :--

(1) Khapri 20-1-2000 (2) Dahegaon 20-1-2000 (3) Kalkuhi 10-2-2000 (4) Telhara 20-1-2000

8. These Section 6 notifications were issued consequent upon submission of the report by the SLAO for sanction on culminating of the said Section 5A enquiry. It seems that the State Government has though earlier notified 22 villages but subsequently the State Government decided to develop the said MIHAN project Phase-I and that four of the villages were proposed to be acquired for an area admeasuring about 1467.33 hectares out of much larger area which is proposed to be acquired in phased manner.

9. On 30-12-2001, the State Government also proposed a project of Multi International Cargo Hub known "MIHAN" as a part and parcel of Meghdoot Project. On 4-1-2002, "MIHAN" Project received the approval of the Government and Government Resolution dated 4-1-2002 came to be issued in that behalf. Pursuant to the said Government approval, the State Government constituted another company known as Maharashtra Airport Development Company Limited. The said company is constituted by four Corporations which are wholly controlled by Government i.e. CIDCO, NIT, MSRDS and MIDC. Each of the said four Corporations has 25% of the equity share capital of Rs. 20 crores each and it is proposed that each of the four Corporations would contribute the aforesaid amount for the purpose of constituting the said company and forming that as a part of the corpus of the said company. Consequent to the incorporation of the said company on 4-2-2003, the State Government issued a notification u/s 40 of the MRTP Act notifying MADCO as the Special Planning Authority in respect of the development of the MIHAN Project.

10. It seems that at present a small cargo hub is already in operation from Sonagaon Airport and in respect of which Government of India u/s 7 of the Customs Act, 1962 has notified Nagpur Airport for loading of Export Cargo and unloading of Import Cargo. Even Central Excise Commissioner has notified the said fact to the business houses, business federation that Nagpur Airport is being notified as the cargo hub. However, the present cargo hub operating at a very small scale and it is proposed by the State Government that huge cargo project should be built at the acquired land.

11. Pursuant to the issuance of Section 6 notification, further proceedings were in progress u/s 9 of the Land Acquisition Act. At this stage, various landowners, developers and builders joined hands and have filed these various petitions before this Court challenging the validity of acquisition proceedings on various grounds and contending that the acquisition proceedings are bad in law and should be set aside. There are in all 26 writ petitions and we propose to dispose of all the writ petitions by this common judgment.

12. The battery of senior lawyers on either side have placed before us for consideration challenge to the said notifications under different facets, some legal and some factual. We have been privileged to have the able assistance of these senior lawyers who have placed before us plethora of authorities dealing with different propositions of law. As always is the case that the Court in such circumstances is called upon to answer every nicety of law and legal proposition. We have in our judgment tried to answer to the best of our ability some of the propositions of law advanced by the learned counsel.

13. Serious question of law was framed by Mr. Dharmadhikari appearing for the petitioners in Writ Petition No. 1590 of 2000 and Writ Petition No. 1591 of 2000. The question of law which has been placed before us is : whether the State Government being acquiring body is entitled to invoke simultaneously the power of acquisition conferred under the provisions of the MRTP Act, 1966 and/or the

provisions of the Land Acquisition Act. Alternatively, it has been contended that once having initiated the acquisition proceedings and/or proposal for new town under the provisions of the MRTP Act, 1966, it must necessarily follow the provisions of the said MRTP Act, 1966 and culminate the acquisition proceedings under the provisions of the said Act. It has been urged by the learned counsel for the petitioner that resorting to the provisions of the Land Acquisition Act for acquisition of the land in the midst makes the proceedings illegal and unlawful. The learned counsel for the petitioner on the basis of the aforesaid contention urged before us that we should quash and set aside the notifications initiating the proceedings u/s 4 of the Land Acquisition Act. It is, therefore, urged that the power of acquisition conferred on the State must be used in the manner prescribed under a statute or not at all. It was contended that the provisions of the MRTP Act, 1966 for the purpose of acquisition of the land for the new town u/s 40 of the MRTP Act, 1966 incorporates the provisions of Sections 113 to 116 of the MRTP Act, 1966 with certain modifications which inter alia requires a detailed proposal to be forwarded for the new development of the town and it is only thereafter the acquisition proceedings must continue by resorting to the provisions of Section 126 (2) of the MRTP Act. It has been urged that the State Government in place of doing so by issuing a notification u/s 4 of the Land Acquisition Act has sought to circumvent the provisions of the MRTP Act, 1966 and, therefore, the same is totally illegal and unlawful and is liable to be quashed and set aside.

14. In support of the aforesaid contention, the learned counsel for the petitioner has relied upon a judgment in the case of Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others, . We shall consider the aforesaid provisions of law as well as the judgment relied upon by the learned counsel at the appropriate place.

15. In Writ Petition No. 1006 of 2000, the learned counsel Mr. Parchure for the petitioner supporting the aforesaid arguments of Mr. Dharmadhikari has placed before us additional contentions to quash and set aside the said notification initiated u/s 4 of the Land Acquisition Act. It has been contended that the notifications under Sections 4 and 6 were not published by three modes as is required under the provisions of the said Act and, therefore, the acquisition proceedings are bad in law. The second contention raised by the learned counsel for the petitioner is that the declaration u/s 6 is not within one year from the date of notification u/s 4 as contemplated under proviso (ii) of Section 6(1) of the Land Acquisition Act and, therefore, also, the issuance of the notification u/s 6 is bad in law. The third contention raised by the learned counsel for the petitioner is that the acquisition proceedings are bad in law because there was no appropriate enquiry as required u/s 5A of the Land Acquisition Act and the enquiry conducted by the SLAO was a farce. He has further contended that the act on the part of the State Government to conduct such an enquiry u/s 5A of the Land Acquisition Act is contrary to and in breach of the principles of natural justice and, therefore, also, the acquisition proceedings are liable to be quashed

and set aside. It has been also contended by the learned counsel for the respondent that since the State Government abandoned the acquisition proceedings under the MRTP Act, 1966, the villagers did not get appropriate opportunity to raise objection to the Cargo Hub Project and, therefore, also, the acquisition proceedings for cargo hub project is bad in law. Lastly, it has been contended that the entire acquisition proceedings are bad in law because a substantial part of the land has been declared as surplus land under the provisions of the Urban Land Ceiling Act and that the said land is released under the scheme formulated under Sections 20 and 21 of the said Act and by virtue of the provisions of Section 42 of the Urban Land Ceiling Act which has an overriding effect on other Acts the acquisition under the provisions of the MRTP Act and the Land Acquisition Act must consequently fail and cannot be acquired.

16. The last contention which is raised by the writ petitioners is that the whole project of Meghdoot as well as establishment of International Cargo Hub is not viable and no such acquisition should be permitted for a project which is ex facie unviable. It was also contended that the said project is only in air and there is no concrete proposal. It has been contended that there has been no environmental clearance obtained for the said project which is required for establishing of a project of such a magnitude. It has been also contended that even a location selected for the International Cargo Hub is not at an appropriate location. The learned counsel for the petitioner has further contended that the report of L and T RAMBOLL sets out major risk involved in setting up of the said project and, therefore, also this Court should set aside the said acquisition proceedings. It has been contended that the State Government being the custodian of the public money cannot be permitted to spend a huge amount of Rs. 2581 crores for such a project which is not viable and in concrete form. Further contention has been raised that out of the said sum of Rs. 2581 crores till date only 40 crores are made available which is not even sufficient for the purpose of acquiring the entire land and, therefore, also this Court should not permit the respondent No. 1 for proceeding with the said acquisition proceedings for the said project. On the basis of the aforesaid contentions, it has been urged by the learned counsels appearing for the petitioners that there are large number of objections to the acquisition proceedings some of them are based on the law as well as some are factual and this Court in exercise of writ jurisdiction must consider each aspect and facet of the said acquisition proceeding and quash and set aside the land acquisition proceedings initiated by the State Government for the aforesaid project. It has also been contended by the learned counsel for the petitioner that in fact the Court must consider that various developers who have entered into agreements for development of the land with the landowners must be permitted to develop their own land rather than the said land being developed by the State or the State appointed authority. It is contended in that manner the State Government can be saved from spending large amount of public money and the Exchequer could be saved.

17. The learned counsel for the respondents 1, 2 and 3 have controverted the

aforesaid submissions by relying upon the various facets of the matter as well as by relying upon the large number of authorities which are cited before us. In so far as the main issue which has been raised pertaining to the provisions of the Town Planning Act is that once a acquisition proceeding is commenced thereafter a power under the Land Acquisition Act cannot be exercised, the learned counsel for the respondent Corporation has submitted that neither the provisions of Section 40 of the MRTP Act, 1966 nor the amended provisions of Section 115 which are incorporated therein contain any prohibition for acquisition of the land for the public purpose under the Land Acquisition Act. It has been thereafter contended that in any event, the provisions of Section 126 of the MRTP Act, 1966 is definitely clear to indicate that even when the land is sought to be acquired under the MRTP Act, 1966 the same is required to be acquired by resorting to the provisions of Section 6 onwards of the Land Acquisition Act, 1894. Insofar as the contention that the procedure contemplated u/s 15 read with the MRTP Act, 1966 should be complied with it has been contended that the acquisition of the land for the planned development is permissible both under the MRTP Act, 1966 as well as under the Land Acquisition Act. It has also been contended that it is permissible that the State Government can acquire any property under the Land Acquisition Act and later develop the same in accordance with the requirements of the provisions of the MRTP Act, 1966. It has been contended by the learned counsel for the respondent that the provisions of Section 116 as amended by virtue of provisions of Section 40 of the MRTP Act, 1966 in fact permit expressly the acquisition of the land under the Land Acquisition Act and it is left to the authorities i.e. Special Planning Authority to decide whether to resort to the provisions of the Land Acquisition Act, 1894 or not. In respect of the other contentions which are raised by the learned counsel for the parties, the respondent has submitted that insofar as the question of appropriate publication is concerned, details are furnished to indicate that there has been a publication by all the three modes on respective dates and details of publication both in respect of Section 4 and Section 6 notification are also furnished. Insofar as the enquiry u/s 4 is concerned, the learned counsel for the respondent submitted that they received in total 483 objections and the enquiry has taken almost four months to complete. It has been contended that every factual objection raised by the petitioners and/or the landowners have been considered by the Special Land Acquisition Officer before making report for acquisition of the said land to the State Government. The learned counsel for the respondent has further submitted that under the writ jurisdiction under Article 226 of the Constitution of India it is not permissible for this Court to go into the various factual objections raised by the petitioners as the need and viability of the project are in fact part of policy decisions of the government and unless they are shown to be arbitrary or mala fide Court has no jurisdiction under Article 226 of the Constitution of India to interfere with. What is required to be considered in writ petition under Article 226 is to see whether there is a meaningful compliance of the provisions of Section 5A of the Land Acquisition Act. The learned counsel for the respondent has further submitted that some of the factual issues raised by the petitioner are

based on incorrect information and belief and have no factual basis whatsoever.

18. In respect of the contention of the petitioners that the declaration u/s 6 is not within the period of one year, the learned counsel for the respondent has submitted that the period of one year is required to be taken into account from the last date of publication and when it is done so, the publication is within the period of one year. In respect of the contention that the petitioners and/or developers should be permitted to develop their own land and the State Government should not develop the new town, it is submitted by the learned counsel for the respondent that it is permissible for the State Government to establish a planned development of a new model township. The learned counsel for the respondent has contended that one of the objects of the MRTP Act, 1966 is to carry out early development of the project. It has been contended by the learned counsel for the respondent that the project of International Cargo Hub being very prestigious and important to the country, it is necessary that the same should be developed by the State Government and not by the private individuals. It was further contended that the entire project of new town development does not take into consideration only the development of individual land which the developer is seeking to develop but it also takes into consideration the various other facilities and provisions of infrastructure like power and street lighting, water supply, drainage system, sewerage, solid waste disposal system, roads and footpath, earthworks and soft landscaping, greenbelts, open space, sites for school, colleges, sport facilities, etc., and such an elaborate development cannot be carried out by permitting the individual developers to develop the said land. Thus, the learned counsel for the respondent has submitted that the contentions raised by the petitioners in that behalf has no merit of whatsoever nature.

19. The learned counsel for the respondent further submitted that the aforesaid argument pertaining to applicability of U.L.C. Act has no substance. Merely because the land is declared surplus and/or in respect of a plot a scheme is sanctioned under Sections 20, 21, it would override the larger general public interest pertaining to the acquisition of the land under the provisions of the Land Acquisition Act and/or MRTP Act, 1966. It has been, therefore, contended that the sanction of the scheme do not give any vested right in favour of the petitioners so as to contend that the land cannot be acquired for the new town under the provisions of the MRTP Act, 1966 and/or under the provisions of the Land Acquisition Act. It has been contended that the purpose to be achieved by both the legislations being different, the question of overriding effect u/s 42 of the Act does not arise. The question of overriding effect only arises if there is conflict between the provisions of the Urban Land Ceiling Act and/or the provisions of the other Act. The respondents have in the aforesaid circumstances, contended that the present batch of writ petitions has no merit and lacks in substance and, therefore, the same should be quashed and/or set aside.

20. In light of the aforesaid diverse arguments of both the parties, we are

required to consider the issues raised before us. Before we do so, we feel it necessary that the relevant provisions of the Acts so far they are necessary should be reproduced. The same reads as under :

40. Special Planning Authority for developing certain (notified areas).--

(1) The State Government may by notification in the Official Gazette (for any undeveloped area specified in the notification in this Act referred to as "the notified area") either

(a) constitute an authority consisting of a Chairman, a Vice Chairman, a member of the Maharashtra Legislative Assembly representing the notified area one member representing the municipal area if any included in the notified area, the Deputy Director of Town Planning and the Executive Engineer, Public Health Works Division each having jurisdiction over the notified area and an officer not below the rank of an Assistant Collector ; or (aa) appoint the Authority constituted under the Maharashtra Housing and Area Development Act, 1976 (Mah XXVII of 1976) or

(b) appoint any Development Authority declared under Sub-section (3-A) of Section 113, or

(c) appoint the Bombay Metropolitan Region Development Authority established under the Bombay Metropolitan Region Development Authority Act, 1974 (Mah IV of 1975) to be the Special Planning Authority for developing the notified area).

(1-A) Notwithstanding anything contained in sub-section any area where Chapter VI of the Maharashtra Industrial Development Act, 1961 (hereinafter in this section referred to as the said Act, applies shall be deemed to be the notified area" and the Maharashtra Development Corporation established u/s 3 of the said Act shall be the Special Planning Authority in respect of such notified area and shall be deemed to have been appointed as such under this section for the purposes of this Act.

Provided that at any time as provided in the first proviso to Sub-section (1) of Section 1 of the said Act where the State Government by notification in the Official Gazettee, directs that the said Chapter VI shall cease to be in force in that area or any part thereof from the date specified in such notification then from such date the said area or part thereof as the case may be shall cease to be notified area and the Maharashtra Industrial Development Corporation shall cease to be the Special Planning Authority for the purpose of this Act for such area or part thereof.

Provided further that the provisions of Clauses (e) and (f) of Sub-section (3) or of Sections 116, 126, 127 and Chapter VII shall not be applicable to such Special Planning Authority.

(2) The Chairman and Vice Chairman of the Special Planning Authority constituted under Clause (a) of Sub-section (1) shall be appointed by the State

Government but if any municipal area forms part of any notified area then the President of the Municipal Council of such municipal area shall be the Vice Chairman. The Officer not below the rank of an Assistant Collector shall be the Secretary and the Chief Executive Officer.

(3) The provisions of Chapter VI of this Act shall subject to the provisions of this section and Section 41 apply mutatis mutandis to the Special Planning Authority as they apply in relation to a Development Authority as if the notified area were a new town subject to the following modification namely --

(a) in Section 113 :

(i) in Sub-section (6) after the words "Regional Board" the words and figure "with the modification that section shall not apply in relation to notified area" shall be added;

(ii) to Sub-section (8) the following proviso shall be added namely

"Provided that it shall not be necessary for a Special Planning Authority to make any development plan or town planning scheme for any notified area for the purpose of carrying out its objects under this Act. It may submit its proposals for the development of the land in the notified area (being land either vesting in it or land which has been acquired or is proposed to be acquired u/s 116) as provided in Section 115."

(b) Section 113-A shall be omitted;

(c) in Section 114

(1) in sub Section (1) :

(i) the words figures and letter "subject to the provisions of Section 113-A" shall be omitted;

(ii) in the proviso, for the words brackets and figures "constituted under Sub-section (2) of Section 113" the words "unless empowered by the State Government so to do" shall be substituted;

(2) in Sub-section (2) in the proviso, in Clause (a) for the portion beginning with the words "constituted" and ending with the words "such Authority" the following shall be substituted namely;

"and if both the Chairman and Vice Chairman are not available with such officer or officers as may be authorised by such authority"

(d) for Section 115 the following shall be substituted namely :

"115. Planning and control in notified area :

(1) A Special Planning Authority shall from time to time submit to the State Government its proposals for the development of land (being land either belonging to or vesting in it or acquired or proposed to be acquired u/s 116) and

the State Government may after consultation with the Director of Town Planning approve such proposals either with or without modification.

(2) Before submitting the proposals to the State Government the Special Planning Authority shall carry out a survey and prepare an existing land use map of the area and prepare and publish the draft proposals for the lands within its jurisdiction together with a notice in the Official Gazette and local newspapers in such manner as the Special Planning Authority may determine inviting objections and suggestions from the public within a period of not more than 30 days from the date of notice in the Official Gazette. The Special Planning Authority may if it thinks fit give individual notices to persons affected by the draft proposals.

(3) The Special Planning Authority may after duly considering the objections or suggestions received by it if any and after giving an opportunity to persons affected by such draft proposals of being heard modify its proposals if necessary and then submit them to the State Government for its approval. The orders of the State Government approving such proposals shall be published in the Official Gazette."

(e) for Section 116 the following shall be substituted namely :--

"116. Power of Special Planning Authority to acquire land in notified area. Every Special Planning Authority shall have all the powers of a planning Authority under this Act as provided in Chapter VII for the special purposes of acquisition of such land in the notified area as it considers to be necessary for the purpose of development in that either by agreement or under the Land Acquisition Act, 1894 (1 of 1894) or any land adjacent to such area which is required for the development of the notified area and land whether adjacent to that area or not which is required for provision for services or amenities for the purposes of the notified area."

(f) For Section 117, the following shall be substituted namely,

"117. Obligation to purchase land in notified area. Where any land has not been acquired within a period of ten years from the date of notification under Sub-section (1) of Section 40 any owner of the land may by notice in writing served on the Special Planning Authority require it to acquire his interest therein and thereupon the provisions of Section 127 providing for lapsing of reservations shall apply in relation to such land as they apply in relation to land reserved under any plan under this Act."

(g) In Section 122, in Sub-section (1) the words, brackets and figures "constituted under Sub-section (2) of Section 113" shall be omitted.

(4) In preparing and submitting its proposals for developing any land u/s 115 and in approving them under that section, the Special Planning Authority and the State Government shall take particular care to take into consideration the provisions of any draft or final Regional Plan draft or final development plan or any draft or final town planning scheme; or any building bye-laws or regulations

which may already be in force in the notified area or in any part thereof.

(5) Where any proposals for development of any land are approved by the State Government u/s 115, the provisions of the proposals approved by the State Government shall be final and shall prevail and be deemed to be in force in such notified area and to that extent the provisions of any such plan or scheme applicable to and in force in the notified area or any part thereof shall stand notified by the proposals approved by the State Government."

125. Compulsory acquisition of land needed for purposes of Regional plan, Development plan or Town planning scheme, etc.-- Any land required, reserved or designated in a Regional Plan, Development Plan or town planning scheme for a public purpose or purposes including plans for any area of comprehensive development or for any new town shall be deemed to be land needed for a public purpose within the meaning of the Land Acquisition Act, 1894 (I of 1894).

126. Acquisition of land required for public purposes specified in plans.-- (1) When after the publication of a draft Regional plan a Development or any other plan or town planning scheme, any land is required or reserved for any of the public purposes specified in any plan or scheme under this Act at any time the Planning Authority, Development Authority, or as the case may be, any appropriate authority may, except as otherwise provided in Section 113-A, [acquire the land --

(a) by an agreement by paying an amount agreed to or,

(b) in lieu of any such amount, by granting the land-owner or the lessee, subject, however, to the lessee paying the lessor or depositing with the Planning Authority, Development Authority or Appropriate Authority, as the case may be, for payment to the lessor, an amount equivalent to the value of the lessor's interest to be determined by any of the said Authorities concerned on the basis of the principles laid down in the Land Acquisition Act, 1894 Floor Space Index (FSI) or Transferable Development Rights (TDR) against the area of land surrendered free of cost and free from all encumbrances, and also further additional Floor Space Index or Transferable Development Rights against the development or construction of the amenity on the surrendered land at his cost, as the Final Development Control Regulations prepared in this behalf provide, or

(c) by making an application to the State Government for acquiring such land under the Land Acquisition Act, 1894, and the land (together with the amenity, if any, so developed or constructed so acquired by agreement or by grant of Floor Space Index or additional Floor Space Index or Transferable Development Rights under this section or under the Land Acquisition Act, 1894, as the case may be, shall vest in the Planning Authority, Development Authority, or as the case may be, any Appellate Authority.

(2) On receipt of such application, if the State Government is satisfied that the land specified in the application is needed for the public purpose therein

specified, or [if the State Government (except in cases falling u/s 49 [and except as provided Section 113-A)] itself is of opinion that any land in any such plan is needed for any public purpose, it may make a declaration to that effect in the Official Gazette, in the manner provided in Section 6 of the Land Acquisition Act, 1894, (I of 1894), in respect of the said land. The declaration so published shall, notwithstanding anything contained in the said Act, be deemed to be a declaration duly made under the said section;

[Provided that, subject to the provisions of Sub-section (4), no such declaration shall be made after the expiry of one year from the date of publication of the draft Regional Plan, Development Plan or any other Plan, or Scheme, as the case may be.]

(3) On publication of a declaration under the said Section 6, the Collector shall proceed to take order for the acquisition of the land under the said Act, and the provisions of that Act shall apply to the acquisition of the said land, with the modification that the market value of the land shall be --

(i) where the land is acquired for the purposes of a new town, the market value prevailing on the date of publication of the notification constituting or declaring the Development Authority for such town;

(ii) where the land is acquired for the purposes of a Special Planning Authority, the market value prevailing on the date of publication of the notification of the area as an undeveloped area; and

(iii) in any other case the market value on the date of publication of the interim development plan, the draft development plan, or the plan for the area or areas for comprehensive development, whichever is earlier, or as the case may be, the date of publication of the draft town planning scheme;

Provided that, nothing in this sub-section shall affect the date for the purposes of determining the market value of land in respect of which proceedings for acquisition commenced before the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972 (Mah. XI of 1973); Provided further that for the purpose Clause (ii) of this sub-section, the market value in respect of land included in any undeveloped area notified under Sub-section (1) of Section 40 prior to the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972 (Mah. XI of 1973) shall be the market value prevailing on the date of such commencement.

(4) [Notwithstanding anything contained in the proviso to Sub-section (2) and in Sub-section (3), if a declaration] is not made within the period referred to in Sub-section (2) or having been made, the aforesaid period expired at the commencement of the Maharashtra Regional Town Planning (Amendment) Act, 1993, (Mah. X of 1994)] the State Government may make a fresh declaration for acquiring the land under the Land Acquisition Act, 1894, (I of 1894) in the manner provided by Sub-sections (2) and (3) of this section, subject to the

modification that the market value of the land shall be the market value at the date of declaration in the Official Gazette made for acquiring the land afresh.] Provisions of Land Acquisition Act, 1894 as amended by 1984 Amendment Act:--

4. Publication of preliminary notification and powers of Officers thereupon.-- (1) Whenever it appears to the (appropriate Government) that land in any locality (is needed or) is likely to be needed for any public purpose (or for a company) a notification to that effect shall be published in the Official Gazettee (and in two daily newspapers circulating in that locality of which at least one shall be in the regional language) and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice being hereinafter referred to as the date of publication of the notification).

(2) Thereupon it shall be lawful for any officer either, generally or specially authorised such Government in this behalf and for his servants and workmen --

to enter upon and survey and take levels of any land in such locality : to dig or bore in the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose.

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon; to mark such levels, boundaries and line by placing marks and cutting trenches;

and where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked to cut down and clear away any part of any standing crop fence or jungle. Provided that no person shall enter into any building or upon any enclosed Court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days" notice in writing of his intention to do so.

5A. Hearing of objections.-- (1) Any person interested in any land which has been notified u/s 4, Sub-section (2) as being needed or likely to be needed for a public purpose or for a company may (within thirty days from the date of the publication of the notification) object to the acquisition of the land or of any land in the locality as the case may be.

(2) Every objection under Sub-section (1) shall be made to the Collector in writing and the Collector shall give the objector an opportunity of being heard (in person or by any person authorised by him in this behalf) or by pleader and shall after hearing all such objections and after making such further inquiry if any as he thinks necessary either make a report in respect of the land which has been notified u/s 4, Sub-section (12) or make different reports in respect of different parcels of such land, to the appropriate Government containing his recommendations on the objections, together with the record of the proceedings held by him for the decision of that Government. The decision of the (appropriate

Government) on the objections shall be final.

(3) For the purposes of this section a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act. "6. Declaration that land is required for a public purpose.

(1) Subject to the provisions of Part VII of this Act (when the) (appropriate Government) is satisfied after considering the report, if any, made u/s 5A, Sub-section (2), that any particular land is needed for a public purpose or for a company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders (and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification u/s 4, Sub-section (1) irrespective of whether one report or different reports has or have been made (wherever required) u/s 5A Sub-section (2). Provided that no declaration in respect of any particular land covered by a notification u/s 4, Sub-section (1) --,

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance 1967 (1 of 1967) but before the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984) shall be made after the expiry of three years from the date of the publication of the notification; or

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984 shall be made after the expiry of one year from the date of publication of the notification.

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company or wholly or partly out of public revenues or some fund controlled or managed by a locality.

Explanation 1.-- In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued u/s 4, Sub-section (1), is stayed by an order of a Court shall be excluded.

Explanation 2.-- Where the compensations to be awarded for such property is to be paid out of the funds of a Corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues.

(2) Every declaration shall be published in the Official Gazettee (and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of publication of the declaration) and such declaration shall state) the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company as the case may be; and after making such declaration, the (appropriate Government) may acquire the land in a manner hereinafter appearing."

21. The learned counsel for the petitioner has raised an interesting question of law vis-a-vis the acquisition power of the State Government under the provisions of the MRTP Act, 1966 and the Land Acquisition Act, 1894. The sole judgment which was relied upon by the learned counsel for the petitioner in support of the aforesaid contention is the judgment of the Apex Court in the case of *Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others*, . Before we deal with the said judgment, in our view, the contention is fundamentally erroneous. It ignores the fact that there are two parallel modes available to the State Government for acquisition of the land (i) under the Town Planning Act and (ii) under the Land Acquisition Act. It is by now well settled that the power of acquiring the land is the power in the nature of eminent domain of the State Government. This power of eminent domain can be exercised by the State Government in diverse mode and methods. There are large number of Acts which provide for acquisition of land for public purpose, it is possible that a public purpose can be overlapping under various statute's under which the acquisition of land is provided. It is also equally settled law that it is for the State Government to determine and decide in the facts and circumstances of the case under which of the provisions of the statute the power has to be exercised for acquiring the said land. This mode and method of acquiring the land is essentially the sovereign power of the State Government and it is the exclusive domain of the State Government to decide and determine. In our view, similar argument was advanced as far back as in 1970 when it was contended that the provisions of the MRTP Act, 1966 which provide for acquisition of the land is violative of the fundamental rights of the petitioners because this provision insofar provision of compensation are concerned, are not in pari materia with the provisions of the Land Acquisition Act, 1894. It was contended before the Apex Court that the power of the State Government to choose to acquire the land under the Land Acquisition Act and the MRTP Act, 1966 is unguided and unbridled power and results in arbitrary and discriminatory action and, therefore, the provisions of the said Act are ultra vires. This very argument was based on the similar principle of law which has been canvassed before us that having resorted to the provisions of one Act the State is not permitted to resort to the provisions of other Act. The Apex Court in the case of *State of Gujarat Vs. Shantilal Mangaldas and Others*, while repelling the argument has answered by observing that the power of the State to acquire the land being in the nature of eminent domain and if more than one mode is provided then it is the State Government to decide and determine which mode is to be applied. The Apex Court has repelled the challenge which is somewhat similar to the challenge raised in the present petition in the following words.

53. It was urged that in any event the statute which permits the property of an

owner to be compulsorily acquired by payment of market-place at a date which is many years before the date on which the title of the owner is extinguished is unreasonable. This Court has, however, held in *Smt. Sitabai Debi and Anr. v. State of West Bengal* that a law made under Clause (2) of Article 31 is not liable to be challenged on the ground that it imposes unreasonable restrictions upon the right to hold or dispose of property within the meaning of Article 19(1)(f) of the Constitution. In *Smt. Sitabai Debi's* case an owner of land whose property was requisitioned under the West Bengal Land (Requisition and Acquisition) Act, 1948, questioned the validity of the Act by a writ petition filed in the High Court of Calcutta on the plea that it offended Article 19(1)(f) of the Constitution. This Court unanimously held that the validity of the Act relating to acquisition and requisition cannot be questioned on the ground that it offended Article 19(1)(f) and cannot be decided by the criterion under Article 19(5). Again the validity of the statute cannot depend upon whether in a given case it operates harshly. If the scheme came into force within a reasonable distance of time from the date on which the declaration of intention to make a scheme was notified, it could not be contended that fixation of compensation according to the scheme of Section 67 per se made the scheme invalid. The fact that considerable time has elapsed since the declaration of intention to make a scheme, cannot be a ground for declaring the section ultra vires. It is also contended that in cases where no reconstituted plot is allotted to a person and his land is wholly appropriated for a public purpose in a scheme, the owner would be entitled to the value of the land as prevailing many years before the extinction of interest without the benefit of the steep rise in prices which has taken place all over the country. But if Section 71, read with Section 67 lays down a principle of valuation, it cannot, be struck down on the ground that because of the exigencies of the scheme, it is not possible to allot a reconstituted plot to an owner of land covered by the scheme.

54. Our attention was invited to Sections 81 and 84 of the Bombay Town Planning Act, 1955. Section 81 merely provides that the land needed for the purpose of a Town Planning scheme or development plan shall be deemed to be land needed for a public purpose within a meaning of the Land Acquisition Act, 1894. This provision only declares what is implicit in the scheme of the Act. Section 84 only contemplates a special class of cases in which the land which is included in a town planning scheme is needed by the State Government for a public purpose other than that for which it is included in the scheme. In such a case the State Government may make a declaration to that effect and the provisions of the Land Acquisition Act, 1894 as modified by the Schedule apply. We are not concerned in this case with any such notification issued by the Government, nor has it any relevance to the question in issue.

55. One more contention which was apparently not raised on behalf of the first respondent before the High Court may be briefly referred to. Counsel contends that Sections 53 and 67 in any event infringe Article 14 of the Constitution and were on that account void. Counsel relies principally upon that part of the judgment in *P. Vajravelu Mudaliar's* case (*supra*) which deals with the

infringement of the equality clause of the Constitution by the impugned Madras Act. Counsel submits that it is always open to the State Government to acquire lands for a public purpose of a local authority and after acquiring the lands to vest them in the local authority. If that be done, compensation will be payable under the Land Acquisition Act, 1894, but says counsel, when land is acquired for a public purpose of a local authority under the provisions of the Bombay Town Planning Act the compensation which is payable is determined at a rate prevailing many years before the date on which the notification u/s 4 of the Land Acquisition Act is issued. The argument is based on no solid foundation. The method of determining compensation in respect of lands which are subject to the town-planning scheme is prescribed in the Town Planning Act. There is no option under that Act to acquire the land either under the Land Acquisition Act or under the Town Planning Act. Once the draft town-planning scheme is sanctioned, the land becomes subject to the provisions of the Town Planning Act, and on the final town-planning scheme being sanctioned, by statutory operation the title of the various owners is readjusted and the lands needed for a public purpose vest in the local authority. Land required for any of the purposes of a town planning scheme cannot be acquired otherwise than under the Act, for it is a settled rule of interpretation of statutes that when power is given under a statute to do a certain thing in a certain way the thing must be done in that way or not at all : Taylor v. Taylor. Again it cannot be said that because it is possible for the State, if so minded, to acquire lands for a public purpose of a local authority, the statutory effect given to a town planning scheme results in discrimination between persons similarly circumstanced. In P. Vajravelu Mudaliar's case (supra) the Court struck down the acquisition on the ground that when the lands are acquired by the State Government for a housing scheme under the Madras Amending Act, the claimant gets much smaller compensation than the compensation he would get if the land or similar lands were acquired for the same public purpose under the Land Acquisition Act, 1894. It was held that the discrimination between persons whose lands were acquired for housing schemes and those whose lands were acquired for other public purposes could not be sustained on any principle of reasonable classification founded on intelligible differentia which had a rational relation to the object sought to be achieved. One broad ground of distinction between P. Vajravelu Mudaliar's case (supra) and this case is clear : the acquisition was struck down in P. Vajravelu Mudaliar's case (supra) because the State Government could resort to one of the two methods of acquisition-- the Land Acquisition Act, 1894, and the Land Acquisition (Madras Amendment) Act, 1961-- and no guidance was given by the Legislature about the statute which should be resorted to in a given case of acquisition for a housing scheme. Power to choose could, therefore, be exercised arbitrarily. Under the Bombay Town Planning Act, 1956, there is no acquisition by the State Government of land needed for a town planning scheme. When the Town Planning Scheme comes into operation the land needed by a local authority vests by virtue of Section 53 (a) and that vesting for purposes of the guarantee under Article 31 (2) is deemed compulsory acquisition for a public purpose. To lands

which are subject to the scheme, the provisions of Sections 53 and 67 apply, and the compensation is determined only in the manner prescribed under the Act. There are therefore two separate provisions one for acquisition by the State Government, and the other in which the statutory vesting of land operates as acquisition for the purpose of town planning by the local authority. The State Government can acquire the land under the Land Acquisition Act, and the local authority only under the Bombay Town Planning Act. There is no option to the local authority to resort to one or the other of the alternative methods which result in acquisition. The contention that the provisions of Sections 53 and 67 are invalid on the ground that they deny the equal protection of the laws or equality before the laws must, therefore, stand rejected."

22. Fifteen years down the line, similar issue was raised again before the Supreme Court in the case of Prakash Amichand Shah Vs. State of Gujarat and Others, . At that point of time also, the issue was raised that the method of compensation prescribed under the provisions of the Town Planning Act and the Land Acquisition Act being totally different, it is not permissible for the State Government to pick and choose one of the provisions of the Act for the purposes of carrying on acquisition of the land. The Court has held that it is for the State Government to determine the manner and method under which the said acquisition should be carried out. Thus, the Court held that the power of acquisition vested in the State Government under the Town Planning Act and the Land Acquisition Act being independent to each other, the said acquisition proceedings can be maintained for public purpose under either of the said statutes. The Apex Court has held in the aforesaid judgment as under :--

18. "The first contention urged by the learned counsel for the appellant is that it being possible in this instant case to acquire the land of the appellant either under the Land Acquisition Act, 1894 which is more favourable to the owner of the land both from the point of view of the procedural safeguards and from the point of view of the quantum of compensation payable for the land which includes solatium payable u/s 23(2) thereof than the Act which does not provide for appeals against many of the orders passed by the Town Planning Officer u/s 32 of the Act and does not authorise payment of solatium in addition to the market value of the land, the acquisition of the land under the Town Planning Scheme u/s 53 of the Act is discriminating and violative of Article 14 of the Constitution which guarantees equality before law and equal protection of the laws. This question is no longer res integra. In Zandu Pharmaceutical Works Ltd. v. G.J. Desai, Civil Appeal No. 1034 of 1967 decided on 28th August, 1969 (reported in 1969 UJ (SC) 575) dealing with the very provisions of the Act this Court observed thus :

"When the Town Planning Scheme comes into operation the land needed by a local authority vests by virtue of Section 53(a) and that vesting for purposes of the guarantee under Article 31(2) is deemed compulsory acquisition for a public purpose. To lands which are subject to the scheme, the provisions of Sections 53

and 67 apply, and the compensation is determined only in the manner prescribed by the Act. There are therefore two separate provisions one for acquisition by the State Government, and the other in which the statutory vesting of land operates as acquisition for the purpose of town planning by the local authority. The State Government can acquire the land under the Land Acquisition Act, and the local authority to resort to one or the other of the alternative methods which result in acquisition. Hence the provisions of Sections 53 and 67 are not invalid on the ground that they deny equal protection of the laws or equality before the laws."

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

20. "The divesting of title takes place statutorily, Section 71 of the Act provides for payment of compensation to the owner of an original plot who is not provided with a plot in the final scheme, or if the contribution to be levied from him u/s 66 of the Act is less than the total amount to be deducted therefrom under any of the provisions of the Act. Section 73 of the Act provides for payment due to be made to any person by the local authority by adjustment of account as provided in the Act. Section 32 of the Act lays down the various duties and powers of the

Town Planning Officer which he has to discharge and exercise for the benefit of the whole community. All his functions are parts of the social and economic planning undertaken and executed for the benefit of the community at large and they cannot be done in isolation. When such functions happen to be integral parts of a single plan which in this case happens to be an urban development plan, they have to be viewed in their totality and not as individual acts directed against a single person or a few persons. It is quite possible that when statutory provisions are made for that purpose, there would be some difference between their impact on rights of individuals at one stage and their impact at another stage. As we have seen in this very Act there are three types of taking over of lands --first u/s 11, secondly u/s 53 and thirdly u/s 84 of the Act, each being a part of a single scheme but each one having a specific object and public purpose to be achieved. While as regards the determination of compensation it may be possible to apply the provisions of the Land Acquisition Act, 1894 with some modification as provided in the Schedule to the Act in the case of lands acquired

either u/s 11 or u/s 84 of the Act, in the case of lands which are needed for the local authority under the Town Planning Scheme which authorises allotment of reconstituted plots to persons from whom original plots are taken, it is difficult to apply the provisions of Land Acquisition Act, 1894. The provisions of Section 32 and the other financial provisions of the Act provide for the determination of the cost of the scheme, the development charges to be levied and contribution to be made by the local authority etc. It is only after all that exercise is done the money will be paid to or demanded from the owners of the original plots depending on the circumstances governing each case. If in the above context the Act has made special provisions under Sections 67 to 71 of the Act for determining compensation payable to the owners of original plots who do not get the reconstituted plots it cannot be said that there has been any violation of Article 14 of the Constitution. It is seen that even there the market value of the land taken is not lost sight of. The effect of the provisions in Sections 67 to 71 of the Act has been explained by this Court in *Maneklal Chhotlal and Others Vs. M.G. Makwana and Others*, and in *State of Gujarat v. Shri Shantilal Mangaldas (supra)*."

23. A somewhat similar issue was agitated before the Apex Court in the case of *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, . The issue raised therein was that for the purpose of planned development of Delhi, a notification is necessary u/s 4 of the Delhi Development Act, 1957. In the said case it was argued that for a planned development of Delhi the provisions of Section 4 of the Land Acquisition Act could not be invoked and the notification has to be issued under the provisions of Section 12 of the Delhi Development Act, 1957. While considering the aforesaid contention in paragraph 22 and 23 of the said judgment the Apex Court has held as under :--

"22. Counsel contended that on the date when the notification u/s 4 was published, the Government had not declared any area in Delhi as a development area u/s 12(1) of the Delhi Development Act, nor was there a master plan drawn up in accordance with Section 7 of that Act and so the acquisition of the property for planned development of Delhi was illegal. u/s 12(3) of the Delhi Development Act, no development of land can be undertaken or carried out except as provided in that clause. Section 2(d) states : "development" with its grammatical variations means the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in any building or land and includes redevelopment. Section 2(e) states "development area" means any area declared to be a development area under Sub-section (1) of Section 12.

23. The planned development of Delhi had been decided upon by the Government before 1959, viz., even before the Delhi Development Act came into force. It is true that there could be no planned development of Delhi except in accordance with the provisions of Delhi Development Act after that Act came into force, but there was no inhibition in acquiring land for planning development of

Delhi under the Act before the Master Plan was ready (see the decision in *Patna Improvement Trust v. Smt. Lakshmi Devi*). In other words, the fact that actual development is permissible in an area other than a development area with the approval or sanction of the local authority did not preclude the Central Government from acquiring the land for planned development under the Act. Section 12 is concerned only with the planned development. It has nothing to do with acquisition of property; acquisition generally precedes development. For planned development in an area other than a development area, it is only necessary to obtain the sanction or approval of the local authority as provided in Section 12(3). The Central Government could acquire any property under the Act and develop it after obtaining the approval of the local authority. We do not think it necessary to go into the question whether the power to acquire the land u/s 15 was delegated by the Central Government to the Chief Commissioner of Delhi. We have already held that the appellants and the writ petitioners cannot be allowed to challenge the validity of the notification u/s 4 on the ground of laches and acquiescence. The plea that the Chief Commissioner of Delhi had no authority to initiate the proceeding for acquisition by issuing the notification u/s 4 of the Act as Section 15 of the Delhi Development Act gives that power only to the Central Government relates primarily to the validity of the notification. Even assuming that the Chief Commissioner of Delhi was not authorised by the Central Government to issue the notification u/s 4 of the Land Acquisition Act, since the appellants and the writ petitioners are precluded by their laches and acquiescence from questioning the notification, the contention must, in any event, be negated and we do so."

24. In our view on the basis of the principle that the land can be acquired under different statute and, it is open for the State Government to acquire the land under either of the statutes, the argument of the petitioner must fail. It is not the correct proposition of law that once the land acquisition proceeding is commenced for acquisition under the provisions of the MRTP Act, 1966, it is not open to the State Government to resort to the acquisition under the provisions of the Land Acquisition Act. However, in the present case, such a broad proposition of law does not arise for two basic reasons. Firstly, because the land even if acquired under the MRTP Act, 1966 pursuant to the provisions of Section 40 of the said Act still for the purpose of acquisition u/s 126 (2), the resort has to be to the provisions of the Land Acquisition Act because the MRTP Act, 1966 does not contemplate a detailed procedure for the purpose of acquisition of the said land. The second reason, in our view, is that Section 40 amends the provisions of Section 113 of the MRTP Act, 1966. Section 113 itself contemplates that with reference to the Special Planning Authority notification u/s 40 can be issued and u/s 115 of the Act as modified by Section 40 of the MRTP Act, 1966 it provides that the land can be acquired by the State Government by resorting to the provisions of the Land Acquisition Act. For both the aforesaid reasons also, the contention raised by the learned counsel for the petitioner must fail because even if the argument of the petitioners counsel is accepted that once having

commenced the acquisition proceedings u/s 40 it must follow the same statute still in view of the fact that the statute itself prescribes the provisions for resorting to the Land Acquisition Act; it is permissible for the State Government to acquire the land under Land Acquisition Act. However, the learned counsel for the petitioner has vehemently contended by relying upon the judgment of the Apex Court in the case of *Municipal Corporation of Greater Bombay v. Industrial Development Investment Company (supra)* that the State is not entitled to resort to the Land Acquisition Act once a notification is issued u/s 40 of MRTP Act, 1966. Firstly, the contention of the learned counsel for the petitioner must be rejected because that is the judgment which is of two judges Bench. Both the Judges have differed on the principal issue which was canvassed before the Apex Court. In view of the differing judgment of both the judges, it is not permissible to accept the contention of the learned counsel for the petitioner by relying upon the view of one of the two judges as a binding precedent under Article 141 of the Constitution of India. Secondly, the other Judge concurred only on the point of delay and thus the said appeal was allowed and writ petition filed by the petitioner in that case before the High Court was dismissed. In our view the predominant contention raised by the petitioners is not even supported by the observation of the Apex Court even in the opinion of K. Ramaswamy, J. on the principal question of law. It is because in that case, the principle question of law was whether it is permissible for the State Government to change a public purpose in the mid-stream of the acquisition proceeding. It was not the case where the acquisition was resorted under the provisions of one Act was subsequently continued under the different Act. The facts of that case set out in paragraph 8 of the judgment indicate that originally a sewage treatment plant was proposed to be located in 35 acres of land reserved under Block "A" and the final proposal was filed u/s 41 of the MRTP Act, 1966. However, the said proposal was changed and the reservation was shifted from City Survey No. 503 in Block A to the new proposal in Block H of the very same proposal. Consequently the argument advanced was that the reservation of the land being shifted, the original public purpose prescribed is abandoned and the substituted public purpose which was to utilise the land for residential, commercial, Para commercial and social facilities purpose cannot permit an acquisition to be continued for Dharavi Sewage Purification Plan being the original public purpose. It was the contention before the Apex Court that the shifting of the reservation has released the land of the petitioner from reservation and therefore the consequently acquisition proceedings which had in that case almost reached upto the stage of passing of the award must fail. Thus, in our view, the judgment of the Apex Court is not an authority for proposition of law advanced by the petitioners that the land having sought to be acquired under the provisions of the MRTP Act, 1966, cannot be thereafter acquired under the provisions of the Land Acquisition Act, 1894. Even on this principal point, another Judge of the Apex Court, namely, Majmudar, J. has totally differed. In the dissenting judgment, the learned Judge (Majmudar, J.) has expressly stated as under :--

32. However, I may mention at this stage that observations made by my learned brother J. K. Ramaswamy in connection with utilisation of land acquired under the Maharashtra Regional Town Planning Act (hereinafter referred to as the "MRTP Act") for one public purpose to be used for another public purpose are with great respect not found by me to be apposite, I therefore record my reasons for the said view.

33. Even though the proposal u/s 126(1) is for acquisition of land for a specified public purpose if the planning authority wants to acquire the land subsequently for any other public purpose earmarked in the modified scheme as has happened in the present case that is if the appellant Corporation which had initially proposed to acquire the land for extension of sewerage treatment plant wanted subsequently to acquire the same land for its staff quarters then such a purpose must be specifically indicated in the plan meaning thereby that the land must be shown to be reserved for the staff quarters of the Corporation and then the Special Planning Authority which had become the appropriate planning authority i.e. BMRDA would be required to issue afresh proposal u/s 126(1) read with Section 40(3) and Section 116 of the MRTP Act and follow the gamut thereafter. So long as that was not done the earlier proposal u/s 126(1) and the consequential notification by the State Government u/s 126(2) which had lost their efficacy could not be revitalised. I also do not subscribe to the general observation that a sitting tenant of the land which comes to be subjected to acquisition proceedings under Sections 4 and 6 of the Land Acquisition Act, in no case can challenge the said acquisition proceedings. In appropriate cases such a challenge can be levelled by the tenant concerned having sufficient subsisting interest in the land. In my view therefore on merits the learned Single Judge as well as the Division Bench had rightly held that the respondent's writ petition had good case on merits.

25. It is by now a settled law and if there is a Two Judge Bench and if both the Judges differ on a particular point of law, then it cannot be accepted as the binding precedent under Article 141 of the Constitution of India unless it is resolved either by the Three Judges Bench or by a larger Bench of the Apex Court. No other judgment is cited in support of the aforesaid contention by the learned counsel for the petitioner.

26. Apart from the aforesaid position, in our view the judgment cited by the learned counsel for the petitioner in the case of Bombay Municipal Corporation for Greater Bombay v. Industrial Development Investment Company (supra) is not an authority on the proposition of law that it is not permissible to start an acquisition proceedings under the Land Acquisition Act once a notification is issued under the provisions of the MRTP Act, 1966. In view thereof, we do not find any merit in the contention of the learned counsel for the petitioner that the acquisition is bad in law by virtue of the fact that the original notification was u/s 40 of the MRTP Act, 1966 and, thereafter a notification is issued u/s 4 of the Land Acquisition Act.

27. Though we are of the opinion that the power of acquisition vested in the State Government is an independent power both under the Town Planning Act, 1966 and the Land Acquisition Act still power to acquire can be exercised independently even on an interpretation of the provisions of the MRTP Act, 1966, thus the argument of the learned counsel for the petitioner will have to be rejected. The provisions of Section 40 inter alia prescribes an appointment of a Special Planning Authority for certain undeveloped area. The original notification which has been issued in the present case is issued u/s 40 of the MRTP Act, 1966 inter alia notifying CIDCO as the Special Planning Authority. Once the Special Planning Authority is constituted under the provisions of Sub-section (3) of Section 40, the provisions of Sections 113, 113A, 114, 115, 116 and 117 of the MRTP Act, 1966 shall apply with necessary modification and/or alteration as stipulated u/s 40 of the MRTP Act, 1966. The provisions of Section 116 in terms as amended provide that the Special Planning Authority shall have all powers of the Planning Authority under this Act as provided in Chapter VII for the special purposes of acquisition of such land in the notified area as it considers to be necessary for the purpose of development in that area either by agreement or under the Land Acquisition Act, 1894 (I of 1894), or any land adjacent to such area which is required for the development of the notified area and land whether adjacent to that area or not which is required for provision for services or amenities for the purposes of the notified Area. The provisions of said Section 116 as amended by Sub-section (3)(e) of Section 40 of the MRTP Act, 1966 reads as under :--

(e) for Section 116 the following shall be substituted, namely :--

"116. Power of Planning Authority to acquire in a notified area.-- Every Special Planning Authority shall have all the powers of Planning Authority under this Act as provided in Chapter VII for the special purpose of acquisition of such land in the notified area as it considers to be necessary for the purpose of development in that area either by agreement or under the Land Acquisition Act, 1894 (I of 1984), or any land adjacent to such area which is required for the development of the notified area and land whether adjacent to that area or not which is required for provision for services or amenities for the purpose of the notified area."

(emphasis supplied)

28. Thus, even in cases where the notification is issued u/s 40 of the Town Planning Act, 1966, a power to acquire the land under the provisions of the Land Acquisition Act, 1894 is specially saved and conferred on the Special Planning Authority under the provisions of Section 116 as amended by Section 40(3)(e) of the MRTP Act, 1966. In our view in view of express provision contained under the said amended provisions of Section 116 of the MRTP Act, 1966, the argument of the learned counsel for the petitioner must fail that the power exercised of issuing notification u/s 4 of the Act is without jurisdiction or bad in law or illegal and that the only provisions of Section 126 (2) could have been invoked after

providing for the proposal in the draft development plan. In our view, the submission of the learned counsel for the petitioners runs contrary to the express provision of law and, therefore, must be rejected.

29. The next contention raised by the learned counsel for the petitioner is that the acquisition of the land can be made only in accordance with the proposal for development prepared after following the procedure contemplated u/s 115 as amended and incorporated in Section 40(3)(d) of the MRTP Act, 1966 is concerned, the provisions of the said Section 115 (1) makes it clear that the land can be acquired even in respect of the proposal which is yet not finalised. Section 115 (1) provides that a proposal can be submitted by the Special Planning Authority both in case of land proposed to be acquired and in respect of the land already acquired. Once that is so, then it is permissible for the State Government to acquire the land and thereafter put forward a detailed proposal for development of that particular area. In view thereof, the incidental issue raised by the learned counsel or the petitioner is also required to be rejected as without any substance and of no merits.

30. Having crossed the hurdle of the main contention which is raised by all the petitioners in the present case, there are certain petitioners who have raised the additional issues and the same are required to be dealt with by us. The contentions which are raised by the learned counsel for the petitioner in Writ Petition No. 1006 of 2000 is that the notifications under Sections 4 and 6 were not published by three modes as is required under the provisions of the said Act and, therefore, the acquisition is bad in law, is factually incorrect. The respondents have filed the details about the notification and/or publication of all three modes and their respective dates. The learned counsel for the petitioners after considering the said dates is not in a position to dispute the same and, therefore, the said contention is liable to be rejected.

31. The next contention raised by the learned counsel for the petitioner is that the declaration which is made u/s 6 is not within a period of one year from the date of notification u/s 4. The learned counsel for the respondent has put forth the following details.

Details of Section 4 notification are as under.

Date of issuance of Section 4 notification.

Name of Village	Newspaper	Gazette	Local	Chawadi	Khapri	Safalkranti
22-10-1998	10-2-1999	23-10-1998	Mahasagar	2-1-1999	Dahegaon	Desh
22-10-1998	10-2-1999	22-10-1998	Udghosh	22-10-1998	Kalkuhi	
Sandhyakiran	22-10-1998	29-1-1999	22-10-1998	Lokmat	Samachar	
23-10-1998	Telhara	Vidarbha	Pukar	284-1999	3-4-1999	24-1-1999
Shramik	Sangharsh	29-10-1999				

Details of Section 6 notification are as under :--

Date of issuance of Section 6 notification.

Name of Village Newspaper Gazettee Local Chawadi Khapri Janvad 20-1-2000
 29-1-2000 13-1-2000 Dahegaon Loksatta 20-1-2000 29-1-2000 13-1-2000
 Safalkranti 14-1-2000 Kalkuhi Maha vidarbha 10-2-2000 14-2-2000
 9-2-2000 Yugdharma 9-2-2000 Telhara Nav Prabhat 10-1-2000 29-1-2000
 19-1-2000 Nayakhun 19-1-2000

32. The learned counsel for the petitioner does not dispute the aforesaid position and hence the aforesaid contention raised by him is also required to be rejected.

33. If the aforesaid dates which are not disputed; are taken into consideration, it is very clear that Section 6 notification is issued within the period of one year itself as contemplated and as provided in proviso (ii) to Section 6(1) of the Land Acquisition Act, 1894. In view thereof, we do not find any substance in the aforesaid argument also.

34. This leads us to the issue of breach of the principles of natural justice and an enquiry u/s 5A of the Land Acquisition Act. It has been contended by Mr. Parchure, the learned counsel for the petitioner in Writ Petition No. 1006 of 2000 that the enquiry u/s 5A was in breach of the principles of natural justice. According to him the details pertaining to the proposal for Meghdoot Project and/or putting up of an International Cargo Hub was not provided for and, therefore, the petitioners could not file effective objections and as such there is a breach of principles of natural justice and that the enquiry u/s 5A of the Land Acquisition Act is mere farce. We are unable to accept the contention. It is well settled law that public purpose stipulated u/s 4 of the notification need not give detail particulars of the project to be established. In any event, the record indicates that large number of objections were filed u/s 5A of the Land Acquisition Act which were considered for almost a period of four months by the Collector and, thereafter the Collector has made the report. There is nothing to indicate on record that the petitioner disputed any details and particulars which are furnished by the respondent. Thus, the contention of the learned counsel for the petitioners cannot be accepted.

35. One of the additional contentions raised by the learned counsel appearing for the petitioners was that there is a change in the public purpose from "Meghdoot Township" by adding the public purpose of "international cargo hub". It is the contention of the petitioners that by virtue of the addition of the international cargo hub the purpose of acquisition is sought to be changed. The learned counsel for the respondent has contended that it is factually incorrect. It is contended that the decision to implement international cargo hub has been taken by the State Government as far back as in 1997 and the matter was at different stages of discussion. The subsequent cabinet decision in the matter is only ratification of the original decision taken by the State Government in 1997. It has been further contended by the learned counsel for the respondents that the international cargo hub is in fact an integral part of the project of MIHAN and it is not an independent separate project. In any event the learned counsel for the respondent has submitted by relying upon large number of judgments that it is

open to the State Government to change one public purpose to another public purpose. The aforesaid proposition of law is supported by the following judgments of the Apex Court:--

(1) Collectors of 24 Parganas and Others Vs. Lalit Mohan Mullick and Others, , (2) State of Maharashtra Vs. Mahadeo Deoman Rai alias Kalal and Others, , (3) Union of India and Others Vs. Jaswant Rai Kochhar and Others, , (4) Chandragauda Ramgonda Patil and Another Vs. State of Maharashtra and Others, , (5) Rudradhar R. Trivedi Vs. State of Maharashtra and another, ;

In that view of the matter, we are of the opinion that the contention raised by the petitioner is in this behalf has also no force and thus requires to be rejected.

36. Next it was contended that the project of Meghdoot as well as International Cargo Hub which is sought to be established is not viable. In support of the aforesaid contention reliance has been placed on the report of L and T Ramboll, particularly para pertaining to the risk factors enumerated by the said report have been highlighted. The respondent State Government has produced before us the executive summary of the entire final report. The conclusions and recommendations which are set out in paragraph 0.8 inter alia indicates that the project is a very interesting concept for the rapid development of Nagpur and Vidarbha Region. It also indicates that it will benefit the country immensely since it will be the international cargo hub of its kind. It has been further stated therein that if it is properly promoted then, it can be a renowned cargo hub in the entire South Asian Region. One of the recommendations is that this project must be expeditiously promoted. In the light of the expert opinion in the conclusions and recommendations of the said project, it is impossible for us to accept the contention of the learned counsel for the petitioner that the said project is unviable or that the risk factor should be so overtaken that even final recommendations of the said project consultant L and T Ramboll should be rejected. In our view, this issue is essentially within the domain of the administration i.e. the State Government. If the State Government is of the opinion that the said project is necessary for the general interest of the public then, we in the writ jurisdiction are not equipped to come to a different conclusion and therefore, we are not inclined to accept the said contention.

37. This leads us to the last contention raised by the learned counsel for the petitioner that in view of the fact that the scheme is sanctioned under Sections 20 and 21 of the Urban Land Ceiling Act in respect of various individual plots by virtue of its overriding effect of Section 42 the present acquisition must fail. We are not at all impressed by the said argument. Firstly, the acquisition proposed under the M.R.T.P. Act, 1966 is not in respect of an individual plot and it is for the entire planned development of the new town. Secondly, the scheme u/s 21 has nothing to do whatsoever with the development under the MRTP Act, 1966. The MRTP Act, 1966 is an Act for an overall development of the property and has nothing to do with the individual plot of land. Thirdly, the acquisition under the Land Acquisition Act, and consequent thereupon the exercise of power under the

MRTP Act, 1966 if allowed to be overridden or disregarded by merely obtaining a sanction of a scheme for an individual plot under the Urban Land Ceiling Act, then the object and purpose of MRTP Act, 1966 will be defeated. Thus reliance as placed on Section 42 of the Urban Land Ceiling Act has no merits whatsoever. The provisions of Section 42 shall apply only when there is a direct conflict between the scheme or order passed under that Act or the provisions of the said Act with that of any other provisions of law. In our view, there is no conflict as the object of both the Urban Land Ceiling Act and the MRTP Act, 1966 is totally diverse and different and thus it cannot be said that by virtue of provisions of Section 42 the scheme sanctioned u/s 42 of the Urban Land Ceiling Act takes precedence over and above the acquisition of land for a planned development of new town u/s 40 of the MRTP Act, 1966 as contended by the learned counsel for the petitioners herein. We are not impressed by the aforesaid argument advanced by the learned counsel for the petitioner and, therefore, reject the same.

38. In our view, the challenge for the acquisition proceedings by the learned counsel lacks bona fides. It is because if the notification issued u/s 40 notifying CIDCO as the special Planning Authority is taken into consideration and the argument of the learned counsel for the petitioners is accepted that thereafter the acquisition must take place pursuant to the provisions of Section 126 (2) of the MRTP Act, 1966 and not u/s 4 of the Land Acquisition Act, then in that event the compensation payable to the petitioners would be of a market value of much earlier date than otherwise compensation payable in the present case by taking into consideration Section 4 notification. However, the learned counsel for the petitioners contended that by virtue of the subsequent notification the whole acquisition has lapsed and/or proceedings has become invalid. In our opinion, the contention lacks bona fides because, it is not only the owners who are challenging the said proceedings but, it is the builders and contractors who are supporting the owners having an interest in contesting the present litigation. In fact, in our view the landowners are going to be benefited by virtue of a subsequent notification u/s 4 of the Land Acquisition Act because the date of market value being in subsequent point of time they will get a better compensation. However, the contractors and builders are not interested in compensation of the acquired land but, they are interested in developing the land by themselves and selling the same to various third parties. In our view, for such an object the whole development project of Meghdoot new Town as well as establishment of international standard of cargo hub cannot be scuttled. In view thereof, we are of the opinion that none of the present petitions has any merit therein and the same are liable to be dismissed.

39. After considering all the aforesaid submissions we are of the considered opinion that the present batch of writ petitions have no merits and they are thus required to be dismissed. Accordingly, we dismiss all these writ petitions. However, there shall be no order as to costs.

40. We will be failing in our duty, if we do not place on record our appreciation to the able and detailed legal submissions and contentions advanced to by a large number of advocates before us. But, for their able assistance it would not have been possible for us to resolve the controversy raised in the present petitions. We are also equally appreciative of the fact that though the large number of contentions were raised, but they were put succinctly which has made us possible to dispose of the present group of writ petitions within a very short period of time than would have normally taken in such a type of litigation.