
(2008) 08 MP CK 0043
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2050 of 2008

Rajesh

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 07-08-2008

Acts Referred:

Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 — Section 38, 50, 50(2), 50(3)

Citation : (2009) 1 MPLJ 90

Hon'ble Judges : Viney Mittal, J

Bench : Single Bench

Advocate : S.R. Saraf, for the Appellant; Umesh Gajankush, Government Advocate for Respondent Nos. 1 and 3 and Manoj Dwivedi, for the Respondent

Final Decision : Allowed

Judgement

Viney Mittal, J.

Indore Development Authority, Indore (hereinafter referred to as IDA), respondent No. 2, is a "Town and Country Development Authority" within the meaning of section 38 of Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (hereinafter referred to as Act). IDA proposed a Town Development Scheme and in terms of section 50 of the Act, passed a resolution No. 71 on May 14, 1993, resolving to declare its intention to prepare a Scheme No. 133 in the city of Indore. The aforesaid scheme was to comprise of 255.509 hectares of land situated in village Pipliya Kumar, Tehsil Indore. A gazette notification declaring the intention of IDA with regard to the aforesaid scheme was published by IDA u/s 50(2) of the Act on June 18, 1993. It further appears from the record that in terms of section 50(3) of the Act, a draft of the aforesaid Town Development Scheme No. 133 was published on May 12, 1995 in the official gazette, whereby objections were also invited with regard to the said draft development scheme. Various objections were filed by the persons/land owners, who were affected by the aforesaid draft development scheme. The aforesaid

objections were duly considered by IDA and it appears that after consideration of the objections, as required under law, the proposal was forwarded to the State Government for grant of necessary approval, as required u/s 50(4) of the Act. However, through a communication dated November 1, 2002, bearing No. F-3-116/2002/Battis, addressed to IDA, the State Government declined to grant the requisite approval, by observing that the proposal for the aforesaid Scheme No. 133 was contrary to the earlier decisions taken by the State Government dated March 30, 1992 and November 18, 1999. A copy of the communication dated November 1, 2002, issued by the State Government to IDA, has been appended as Annexure P-3 with the present petition.

After issuance of the aforesaid communication, Annexure P-3, the State Government appears to have addressed two more communications dated January 1, 2003 and March 3, 2003, appended as Annexures P-4 and P-5 respectively, directing IDA that it could submit an alternative scheme, keeping in view the existing facts and circumstances at the spot. IDA was further directed not to initiate any fresh scheme without prior approval of the State Government.

On receipt of the aforesaid decision from the State Government, the matter with regard to Scheme No. 133 was taken up for consideration by IDA in a Board meeting held on March 6, 2003. It was decided to drop Scheme No. 133 and not to implement the same. It was also noticed that out of the total land measuring 285.509 hectares, for which Scheme No. 133 had been proposed, as at the spot, only 67 hectares of the land was available being vacant, and even the aforesaid land was not available in one contiguous block. It was further noticed that on 97 hectares of the land, some partially developed colonies had already come up into existence. A copy of the aforesaid resolution was forwarded to the State Government through a communication dated March 26, 2003. The aforesaid resolution, along with the forwarding letter, are appended as Annexures P-6 and P-7 with the present petition.

It is also on record that the area comprising of the proposed Scheme No. 133 was surveyed by IDA and keeping in view the partial development of a large number of colonies on the aforesaid land, through a resolution No. 341 passed on August 29, 2003, a decision was taken to construct a 100 ft. wide road by the various societies/institutions, who had developed the colonies. The estimated cost of the said 100 ft. wide road was determined as Rs. 218 lacs and the aforesaid societies were required to make the necessary deposit with IDA. The matter was even referred by IDA to the State Government for obtaining the requisite approval. On receipt of the aforesaid proposal by IDA, the State Government addressed a communication dated September 11, 2003 to the IDA that keeping in view the decision taken by the IDA on August 29, 2003, through the resolution No. 341, that Scheme No. 133 had been dropped being not economically viable, no further sanction/approval of the State Government was necessary. The aforesaid communication issued by the State Government has been appended as Annexure P-9 with the present petition.

It has been averred by the petitioner that in terms of the decision taken by IDA to collect the funds for construction of 100 ft. wide road from the various societies/institutions, IDA received a total amount of Rs. 2,35,48,473/-, as against the requisite amount of Rs. 2.18 Crores. On receipt of the aforesaid payment, IDA issued a list of institutions and the persons, to whom the no objection certificates had been granted and whose development plans had been approved by the Director, Town and Country Planning. The aforesaid list has been appended as Annexure P-10 with the present petition.

It appears that after having passed the resolution on August 29, 2003, and after having decided that the scheme was not economically viable, no further steps, whatsoever, were taken by IDA to take any further proceedings with regard to the finalization of Scheme No. 133 or to float any fresh scheme qua the land, which comprised of the aforesaid scheme, as was earlier directed by the State Government.

However, a Resolution No. .195 has been passed by IDA on August 14, 2007, taking a decision to revive Scheme No. 133 and to re-hear the objections from the persons, in terms of section 50(3) of the Act. The aforesaid resolution passed by IDA has been appended as Annexure P-I with the present petition. The petitioner has also pleaded that he had also applied for issuance of a no objection certificate from IDA, to seek the requisite approval from the Director, Town and Country Planning, with regard to a lay-out plan qua his own land, but on account of the resolution Annexure P-I, IDA has rejected the prayer made by the petitioner through a communication dated October 5, 2007. The aforesaid rejection issued by IDA to the petitioner refusing to issue a no objection certificate has been appended as Annexure P-I4 with the present petition.

It is in these circumstances that the petitioner has approached this Court through the present petition raising a challenge against the resolution Annexure P-I, whereby IDA has sought to revive the Scheme No. 133 and has also challenged Annexure P-14 i.e. rejection of his request for issuance of a no objection certificate.

It has been claimed by the petitioner that the Scheme No. 133, which was originally proposed in the year 1993, and qua which the objections were heard at an earlier stage in terms of section 50(3) of the Act, and qua which the State Government had refused to grant the requisite approval in terms of section 50(4) of the Act, on November 1, 2002, and when a decision had been taken by IDA in the month of March, 2003 and later on, again on August 29, 2003, could not be revived again by merely passing a fresh resolution, Annexure P-I. It has been claimed by the petitioner that for all intents and purposes, Scheme No. 133 stood lapsed and could not be revived under the provisions of the Act. On that basis, the petitioner has also claimed that IDA could not have refused to issue a no objection certificate to him for getting sanction of a lay-out plan from the Town and Country Planning Department.

The claim made by the petitioner has been contested by IDA. A reply has been filed. The facts stated by the petitioner with regard to the proposal floated by IDA for the Scheme No. 133 in the year 1993; publication of the draft scheme u/s 50(3) of the Act on May 12, 1995; and rejection of the aforesaid scheme by the State Government on November 1, 2002, have not been denied. It has also not been denied that thereafter a resolution had been passed by IDA on March 6, 2003, whereby it had been decided to drop the scheme and not implement the same. Further it has again been not denied by IDA that thereafter a decision had been also taken by it on August 29, 2003 to construct a 100 ft. wide road through the funds collected from various societies and against an estimated expenditure of Rs. 2.18 Crores, a total amount of Rs. 2,35,48,473/- was collected. IDA has also chosen to remain silent with regard to the earlier decision taken by it with regard to the Scheme No. 133, being not economically viable and only the land measuring 67 hectares, that too in not one contiguous block, out of a total 285.509 hectares, a large number of colonies having come up on the remaining land in the meantime. However, certain vague pleas have been raised by IDA that since the societies, whose lands were released vide resolution No. 64 dated March 6, 2003, had not acted "in consonance with the resolution, hence the scheme has not lapsed, but is still in force". It has been maintained by IDA that a scheme once prepared, could not be dropped by IDA at its own level and therefore, a decision had been taken by it on August 14, 2007 to re-hear the objections, qua the said Scheme No. 133, u/s 50(3) of the Act, and take further proceedings in the matter.

I have heard learned counsel for the parties at some length and with their assistance, have also gone through the record of the case.

At the outset, it may be pertinent to extract certain relevant provisions of Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 as follows.

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 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 -

(i) 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 reconstitution of the plot and reservation of portions for 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 therefore.

(7) Immediately after the Town Development Scheme is approved under sub-section (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.

Restrictions on land use and land development.- As from the date of publication of the declaration to prepare a Town Development Scheme, no person shall, within the area included in the scheme, institute or change the use of any land or building or carry out any development, save in accordance with the development authorised by the Director in accordance with the provisions of this Act prior to the publication of such declaration.

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 u/s 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.

Before advertng any further to the controversy in question and analysis of the various provisions of the Act, it would also be relevant to notice that under the provisions of sections 17,18 and 19 of the Act, a Development Plan with regard to the land use in the planning area, an allocation broadly of the areas or zones of land into residential, industrial, commercial or agricultural purposes etc., and for providing open spaces, parks and other institutions areas, is required to be sanctioned by the State Government. u/s 26 of the Act, after coming into operation of the Development Plan, no person is authorized to change the use of any land or carry out any development of land without the permission in writing of the. Director. To carry out effectively the Development Plan prepared for the area/zone, section 49 provides for framing of a Town Development Scheme by an authority u/s 38 of the Act. The detailed procedure for preparation of the aforesaid Town Development Scheme is laid down in section 50 of the Act.

From the perusal of section 50 of the Act, it is apparent that once a Town Development Scheme, as envisaged u/s 49 of the Act, is proposed by a Town and Country Development Authority (such as IDA), then in terms of sub-section (1), the said authority has to declare its intention to prepare a Town Development Scheme, under sub-section (2), not later than 30 days from the date of such declaration of intention, the said declaration has to be published in the Government Gazette and in such other manner as may be prescribed. After publication of the declaration under sub-section (2), under the provisions of subsection (3), the said authority has to prepare a draft of the Town Development Scheme and publish the same and invite objections/suggestions. The objections/suggestions received by such an Authority would require to be considered in terms of sub-section (4), after giving a reasonable opportunity to such persons, who may desire to be heard, and thereafter to take a decision to approve the draft scheme, either as originally framed or with such modifications, as may be deemed fit. Under sub-section (7), after the draft scheme is

approved, . under sub-section (4), with or without modifications, the said Authority is required to publish in the gazette and in such other manner, as may be prescribed, a final Town Development Scheme and is also required to specify the date on which the scheme is to come into operation.

It is thus, clear that unless and until, the objections received against the draft scheme have been considered and adjudicated by a Development Authority and the draft scheme, as originally prepared or modified, is ordered to be published under sub-section (7), the scheme cannot be treated to have been finalized. However, even such a final scheme can only become operative from a date, which is so specified by the Development Authority.

It may also be relevant to mention here that proviso to sub-section 4 of section 50 of the Act has been inserted through an Amendment Act being M.P. Act No. 21 of 2004 and has become operative w.e.f. December 29, 2004.

In the present case, a declaration of intention was resolved through resolution No. 71 passed on May 14, 1993, when Scheme No. 133 was proposed by IDA. The said resolution was in conformity with the requirements of section 50(1) of the Act. A gazette notification u/s 50(2) of the Act followed on June 18, 1993. The draft scheme was prepared and published in the Government Gazette in terms of section 50(3) of the Act on May 12, 1995, when objections were invited from various persons/land owners. Such objections were filed and were processed by IDA. Thereafter, the matter was forwarded to the State Government in terms of section 50(4) of the Act for obtaining the requisite approval. However, the State Government chose not to grant the requisite approval, when it issued the communication dated November 1, 2002 (Annexure P-3). In consonance with the rejection of the proposal by the State Government, even IDA resolved in its meeting held on March 6, 2003, to drop the Scheme No. 133 and not to implement the same any further. The non-availability of a major portion of the land required for the scheme was also noticed. It was also noticed that only 67 hectares of the land, and that too in not one contiguous block, was only available and on 97 hectares of the land required for the scheme, partially developed colonies had come into existence. IDA even chose to write a letter on March 26, 2003, Annexure P-6, when the said decision of IDA was communicated for dropping the scheme, being, not financially viable also. Thereafter, on August 30, 2003, IDA sought sanction from the State Government for constructing a 100 ft. wide road by collecting funds from various societies/institutions. The funds were also collected. However, the State Government, on September 11, 2003, rightly communicated to IDA that no sanction of the government was required for approval for constructing the road, in as much as, there was no sanctioned scheme in existence.

On the basis of the aforesaid facts, the only questions, which arise for consideration are as to whether in the light of the said facts, it could be said that the Scheme No. 133 had in fact lapsed and as to whether the said scheme could be revived, by merely passing the impugned resolution on August 14, 2003,

Annexure P-I. The effect of the insertion of the proviso to section 50(4) of the Act, also needs to be examined.

A bare perusal of the aforesaid proviso, having been inserted w.e.f. December 29, 2004, would show that it specifically lays down that the final publication of such draft scheme is required to 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.

The learned counsel for IDA has vehemently argued that the aforesaid proviso had been inserted through an Amendment Act in the year 2004 w.e.f. December 29, 2004 and as such could not be treated retrospective in nature. The learned counsel maintains that Scheme No. 133 was originally proposed in the year 1993 and therefore, the aforesaid amended provisions would not be attracted to the aforesaid scheme and as such the scheme in question could not be treated to have lapsed under the said proviso.

The arguments of the learned counsel for IDA, although appear to be attractive on the first impressions, but on deeper consideration, are wholly misconceived.

It is not in dispute that at the time of insertion of the proviso in question, Scheme No. 133 had never been finally approved. As a matter of fact, the said scheme had been rejected by the State Government in the year 2002, and abandoned by IDA in the year 2003.

In these circumstances, the foremost question, which arises for the consideration of the Court is as to whether a scheme, which had been rejected by the State Government, requisite approval having not been granted u/s 50(4) of the Act, and having been abandoned by IDA, could be again revived merely by passing a fresh resolution from the stage of section 50(3) of the Act. Looking to the mandatory provisions of section 50 of the Act, the answer has to be in negative. Once, the State Government had declined to grant the requisite approval in terms of section 50(4) of the Act, then the only option available to IDA was to float a fresh scheme and follow the entire procedure right from the stage of section 50(1) of the Act onwards. It would not be permissible to IDA to short-circuit the procedure, and merely by passing the impugned resolution on August 14, 2007, attempt to revive the scheme from the stage of section 50(3) of the Act. The course adopted by IDA is wholly impermissible in law.

Even otherwise, it is a well settled principle of law that merely because a part of the requisites for the statutory action is sought to be drawn from a time antecedent to its past would not make the provision retrospective in nature. [See *Darshan Singh v. Rampal Singh*, 1992 Supp.(I) SCC 191].

Although the scheme in question stood rejected by the State Government and abandoned by IDA, but even if for the sake of arguments, it may be taken that the said scheme was still alive, it cannot be disputed at all that no approval having been granted by the State Government, and no notification u/s 50(7) of

the Act having been issued so far, on December 29, 2004 (the date of coming into force of the proviso), the scheme in question was still, at the best, at draft stage only. Therefore, in view of the enactment of the proviso and coming into force of the same w.e.f. December 29, 2004, the said proviso applied on all fours to the aforesaid draft scheme, in any case, after its enactment, and therefore, even when the said proviso is to be construed as being prospective in nature, for all intents and purposes, the provisions of the said proviso are fully attracted to the aforesaid draft Scheme No. 133, as well, and no action having been taken for final publication of such draft scheme, even within one year from the date of the proviso, the said draft scheme would be deemed to have lapsed.

Section 17B of the Industrial Disputes Act had been inserted through an amendment and had become operative w.e.f. August 21, 1984. A question had arisen before the Apex Court in the case of *Bharat Singh Vs. Management of New Delhi Tuberculosis center, New Delhi and Others*, , as to whether the aforesaid amended provision was applicable to the awards, which had been passed prior to the aforesaid enactment. It was held by the Supreme Court that a purposive interpretation was to be given to a welfare legislation and the intention of the legislature had to be inferred and therefore, it was held that the awards of the Labour Court or Tribunal passed prior to coming into force of the said section 17B, which had not become final, were also governed by the aforesaid amended provisions.

A similar situation had again arisen before the Apex Court in the case of *Addl. Commissioner (Legal) and Another Vs. Jyoti Traders and Another*, . The provisions of UP Sales Tax Act were extensively amended in the year 1991. Through the aforesaid amendment a period of eight years was prescribed for reassessment of an assessee. On the strength of the aforesaid power, the assessment order for the year 1985-86 was sought to be re-opened. A challenge was raised by the assessee that the aforesaid Amendment Act having come into force w.e.f. February 1991, could not operate retrospectively. The Supreme Court rejected the aforesaid contention of the assessee, by observing that since the amended Act provided for a period of eight years for opening of an earlier assessment, therefore, by prospective operation of the Amendment Act also the earlier assessment for the year 1985-86 could be re-opened up to March 31, 2004, and the aforesaid re-opening of the assessment could not be treated to be retrospective operation of the Amendment Act. It was observed by the Apex Court that the commencement of the Act can be different from operation of the Act, though sometimes both can be same.

Again in the case of *Ramji Purshotam (D) by Lrs. and Others Vs. Laxmanbhai D., Kurlawala (D) by Lrs. and Another*, , the Supreme Court held that a law coming into force during pendency of the proceedings, being applied on the date of judgment to pre-existing facts for the purpose of giving the benefit of the said law which had come into force, to the party concerned, in the pending proceedings, is not retroactivity.

Once again, in the case of *Zile Singh Vs. State of Haryana and Others*, it was held by the Apex Court that merely because a disqualification is imposed by a reference to certain facts which are referable to a date prior to the enactment of disqualification, the Act does not become retrospective in operation. That was a case where a disqualification for seeking election under the provisions of Haryana Municipal Act was enacted, effective from October 10, 1994, that a person having more than two children on or after the expiry of one year would stand disqualified. The Supreme Court held that the aforesaid amendment could not be treated to be retrospective in operation merely because certain facts existing prior to the date of enactment were to be taken into consideration.

In the case of *Dharappa Vs. Bijapur Co-operative Milk Producers Societies Union Ltd.*, it was held by the Apex Court that the legislative intent should be ascertained by keeping in view the position before the amendment, the nature of remedy provided, and the need therefore. It is also necessary to keep in view the general provisions relating to limitation. Statutes relating to limitation are said to be retrospective in nature in the sense that they apply to all the proceedings brought after coming into force, even for enforcing causes of action which had accrued prior to the date when such statute came into force. But they are prospective in sense that they do not have the effect of reviving a right of action which was already barred on the date of its coming into operation.

Lastly, it may also be relevant to refer to certain observations made by the Supreme Court in the case of *Union of India Vs. Harnam Singh*. In controversy before the Supreme Court in the said case, the question was with regard to the right of a government employee to get change in his date of birth in the service record. Note 5 to FR-56 (m) was incorporated in 1979 providing for a request to be made by an employee, for correction of date of birth within five years from the date of entry into service. Interpreting the effect of the said amendment, it was held by the Apex Court that with a view to avoid any artificial classification, it would be appropriate to interpret the said rule as providing for a period of five years of limitation for seeking correction of the date of birth for even such a government servant who had entered the service prior to the said enactment. Para 11 of the judgment may be noticed with some advantage as follows :

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 year 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.

(emphasis supplied)

In view of the various pronouncements of the Apex Court, as noticed above, it can very well be inferred that even if the proviso to section 50(4) of the Act is to be treated as prospective in its operation, still although the Scheme No 133 stood rejected and abandoned, but even if the same were to be treated as alive, but having never been finally approved by the State Government and having never been notified u/s 50(7) of the Act, it was still to be treated nothing better than a draft scheme on the date of coming into force of the proviso and therefore, even by prospective operation, the provisions of the proviso would be attracted.

It may also be relevant to notice that under the provisions of section 54 of the Act, if a Town and Country Planning Authority (such as IDA) fails to commence implementation of 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 u/s 50, the scheme would be treated to have lapsed. Thus, section 54 of the Act also makes the legislative intent as clear that all the procedure for finalization of the scheme, so as to restrict and regulate the

ownership rights of the land owners, is to be completed within a reasonable period, so as to avoid unnecessary hardship. The enactment of proviso to section 50(4) of the Act is merely a step in the aforesaid direction by the legislature.

Concededly, no steps, whatsoever, were ever taken by IDA after the refusal of the approval by the State Government in the year 2002, nor within one year after the enactment of the proviso to section 50(4), nor, in any case, within a reasonable time after the aforesaid enactment, to notify the final publication of the draft scheme and therefore, merely by passing the resolution Annexure P-I on August 14, 2007, the attempt made by IDA to try to revive the said scheme 133, from the stage of section 50(3) of the Act, cannot be legally sustained.

At this stage, certain observations made by the Apex Court in the case of *Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Cock and Chem. Ltd. and Others*, wherein the Supreme Court was examining the validity of the Scheme No. 164 framed by IDA, may be noticed with advantage as follows.

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 restrictions, 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 *T. Vijayalakshmi and Others Vs. Town Planning Member and Another*, this Court held: (SCC p.506, para 15)

The law in this behalf is explicit. Right of a person to construct residential houses in the residential area is a valuable right. The said right can only be regulated in terms of a regulatory statute but unless there exists a clear provision the same cannot be taken away. It is also a trite law that the building plans are required to be dealt with in terms of the existing law. Determination of such a question cannot be postponed far less taken away. Doctrine of legitimate expectation in a case of this nature would have a role to play. It was further observed: (SCC p.507, para 18)

18. It is, thus, now well-settled law that an application for grant of permission for construction of a building is required to be decided in accordance with law applicable on the day on which such permission is granted. However, a statutory authority must exercise its jurisdiction within a reasonable time,

(emphasis supplied)

It was further noticed by the Apex Court in the aforesaid case that although the right to property had ceased to be a fundamental right but was to be treated not only as a constitutional right but also a human right. The Court observed that the provisions of the Act being regulatory in nature, as by reason thereof the right of an owner of property to use and develop his own land stands restricted, requires strict construction and an owner of land ordinarily would be entitled to use or develop the same for any purpose, unless there exists certain regulation in a statute or under a statutory rules. Regulations contained in such statute must be interpreted in such a manner so as to least interfere with the right to property of the owner of such land. It was further observed by the Court in the said case as follows :

The purpose of declaring the intent u/s 50(1) of the Act is to implement a development plan. Section 53 of the Act freezing any other development is an incidence arising consequent to the purpose, which purpose is to implement a development plan. If the purpose of declaring such an intention is merely to bring into play section 53, and thereby freeze all development, it would amount to exercise of the power of section 50(1) for a collateral purpose i.e. freezing of development rather than implementation of a development plan. The collateral purpose also will be to indirectly get over the fact that an owner of land pending finalization of a development plan has all attendant rights of ownership subject to the restraints u/s 16. If the declaration of intent to formulate a Town Development Scheme is to get over section 16 and freeze development activities u/s 53, it would amount to exercise of power for a collateral purpose.

A bare perusal of sections 17 and 49 would show that it is the development plan which determines the manner of usage of the land and the Town Development

Scheme enumerates the manner in which such proposed usage can be implemented. It would follow that until the usage is determined through a development plan, the stage of manner of implementation of such proposed usage cannot be brought about. It would also therefore follow that what is contemplated is the final development plan and not a draft development plan, since until the development plan is finalized it would have no statutory or legal force and the land use as existing prior thereto with the rights of usage of the land arising therefrom would continue.

To accept that it is open to the town development authority to declare an intention to formulate a Town Development Scheme even without a development plan and ipso facto bring into play a freeze on usage of the land u/s 53 would lead to complete misuse of powers and arbitrary exercise thereof depriving the citizen of his right to use the land subject to the permitted land use and laws relating to the manner of usage thereof. This would be an unlawful deprivation of the citizen's right to property which right includes within it the right to use the property in accordance with the law as it stands at such time. To illustrate the absurdity to which such an interpretation could lead it would then become open to the town development authority to notify an intent to formulate a Town Development Scheme even in the absence of a development plan, freeze all usage of the property by an owner thereof by virtue of section 53 of the Act, and no development plan should be finalized within 3 years, such scheme would lapse and the authority thereupon would merely notify a fresh intent to formulate a Town Development Scheme and once again freeze the usage of the land for another three years and continue the same ad infinitum thereby in effect completely depriving the citizen of the right to use his property which was in a manner otherwise permitted under law as it stands.

The essence of planning in the Act is the existence of a development plan. It is a development plan, which u/s 17 will indicate the areas and zones, the users, the open spaces, the institutions and offices, the special purposes, etc. Town planning would be based on the contents of the development plan. It is only when the development plan is in existence, can a town planning scheme be framed. In fact, unless it is known as to what the contents of a possible town planning scheme would be, or alternatively, whether in terms of the development plan such a scheme at all is required, the intention to frame the scheme cannot be notified.

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 clauses which we have notice 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 citizens' rights 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 point of the declaration of the intention has to be upon the notification of development plan and the 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 50(1) of the Act.

(emphasis again supplied)

At this stage, it may be noticed that there is nothing on the record to show that any sanctioned Development Plan had existed at the time of publication of the proposal qua Scheme No. 133 u/s 50(1) of the Act on May 14, 1993. As a matter of fact, a judicial notice can be taken that there was only a Draft Development Plan in existence and no sanctioned or approved Plan, in terms of the provisions of the Act existed. In fact a Development Plan, known as Indore Master Plan 2021, has come into operation in the year 2007 only. Therefore, not only on account of the provisions of the proviso to section 50(4), but also in the light of the provisions of section 54 of the Act, and further keeping in view the law laid down by the Apex Court in the case of *Chairman Indore Vikas Pradhikaran v. Pure Industrial Coke and Chemicals Ltd.* 's case (supra), it must be held that neither the proposal with regard to the Scheme No. 133, which was floated in the year 1993 was legally proposed in the absence of a duly sanctioned/approved Development Plan, and in any case, having been rejected by the State Government u/s 50(4) of the Act and having been abandoned by IDA by passing a specific resolution, the said scheme could not be revived from the stage of section 50(3) of the Act, as has been sought to be done by IDA, by passing the resolution, Annexure P-I. In any case, in the light of the mandatory requirement of the proviso to section 50(4) of the Act and also keeping in view the mandatory provisions of section 54 of the Act, the proposal with regard to said Scheme No. 133 stood lapsed and could not be revived. As a consequence, it has to be held that IDA was duty bound in law to issue a no objection certificate (NOC) for a plan, as requested by any landowner, such as the petitioner, to further enable

him to seek due sanction for his lay-out/ construction plans from the Town and Country Planning Department. In these circumstances, the order Annexure P-14 passed by IDA, rejecting the prayer made by the petitioner is also illegal and liable to be set aside.

At this stage, it may be noticed that it has been specifically pleaded by the petitioner that after the refusal of the State Government in granting approval to the scheme in the year 2002 and after passing of the resolution by IDA on March 6, 2003, IDA itself had issued no objection certificates to a large number of societies, institutions and individuals for carrying out development works and for layout plans. A list of the aforesaid persons has been appended as Annexure P-10 to the petition. The said fact has not been denied by IDA. Therefore, refusal to issue NOCs to persons, such as the petitioner, who now apply for the same, without there being any fresh scheme ever formulated by EDA, would actually amount to a hostile discrimination against such applicants. This also cannot be permitted by the Court.

As a result of the aforesaid discussion, the present petition is allowed. The Resolution No. 195, dated August 14, 2007, Annexure P-I, passed by EDA is set aside. The communication Annexure P-14 dated October 5, 2007 issued by IDA, rejecting the request made by the petitioner is also quashed and directions are issued to EDA to issue the requisite no objection certificate to all the applicants (such as the petitioner) qua their land to enable them to seek the requisite sanction for their construction/lay out plans from respondent No. 3, Director, Town and Country Planning. Further directions are also issued to the Director, Town and Country Planning, respondent No. 3, that if a land owner, so applies for obtaining the requisite approval/sanction to the lay-out plan qua his ownership land, then the application filed by him shall be processed, in accordance with law, for grant of the aforesaid sanction.

The EDA shall issue the necessary no objection certificate within a period of four weeks from the date a certified copy of this order is received to the present petitioner. Thereafter, the petitioner may apply to respondent No. 3 for obtaining the necessary sanction for development works/layout plan on the land in question. On such application being filed, respondent No. 3 shall process the aforesaid application, in accordance with law within a period of two months from the date of his application.

La order to avoid any unnecessary litigation, it is directed that these directions shall be treated by the respondents as of general application and shall not be treated to be confined to present petitioner alone.

There shall, however, be no order as to costs. C.C. as per rules.