CHAIRMAN, INDORE VIKAS PRADHIKARAN

v.

M/S PURE INDUSTRIAL COCK & CHEM. LTD. AND ORS.

MAY 15, 2007

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam (No. 23 of 1973)—Section 2(f), 2(i), 2(o), 2(u), 2(v), 13, 16, 17, 17A, 18, 19, 20, 24, 38, 49, 50 & 53—Madhya Pradesh Bhumi Vikas Niyam 1984—Publication of draft development plan of a planning area by Town and Country Development Authority calling for objections and suggestions—Notification by the Authority declaring its intention to prepare a town development scheme—State Government rejecting the draft development plan—Authority declining to grant permission to property owners for construction in view of the notification—High Court allowing the Writ Petitions of property owners by striking down the notification—Correctness of—Held, words used in the Act should be given a literal meaning unless the context otherwise requires—Development plan does not include draft development plan—Notification issued by the Authority without a sanctioned development plan is wholly illegal and hence struck down—On facts, the Authority does not have jurisdiction over the lands of the property owners.

A Notification was issued initially by State Government under section 13(1) of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam (No. 23 of 1973) (for short "the Act") laying down the limits of City Planning Area constituting certain villages. Later, another notification wa issued amending the Planning Area by adding more villages including the two villages in question in which respondents' lands are situated, and deleting some villages. Thereafter, the appellant-Authority published a draft development plan of the Planning Area under Section 18 of the Act and called for any objections and suggestions in respect thereof. In anticipation of the sanction of the draft development plan by he State Government, the appellant published a declaration of intention for preparing a town planning scheme in the Planning Area in Official Gazette under section 50(2) of the Act. The draft development plan came to be ultimately not sanctioned by the State Government.

The applications made by the respondents for permission for

A construction were rejected by the appellant on the ground of the declaration made under section 50(2) of the Act. Writ Petitions preferred by the respondents challenging the rejection of their applications seeking permissions were allowed by the High Court by striking down the declaration by holding that the draft town development scheme cannot be published by the appellant without a development plan coming into force under the Act; that B such a draft scheme cannot by itself restrict the right of a person to use his property in the manner he likes; and that the appellant-Authority does not have jurisdiction over the two villages in question.

In appeal to this Court, the appellant contended that under the Act, a C development plan includes a draft development plan; that the existence of a draft development plan would authorize it to declare its intention to prepare a town development scheme at any time under section 50 of the Act; that the preparation of the draft scheme under section 50 of the Act is not subject to the sanction of final development plan and that section 50 must be read in contrast with section 20 of the Act; that section 53 would operate as soon a D declaration is made under section 50 or otherwise section 53 of the Act would become otiose; that the draft town development scheme covers the villages in question; that private interest must be waived to public interest; and that the extention of the planning area by subsequent notification would *ipso factor* enlarge the jurisdiction of the appellant in applying the purported town development scheme. E

The respondents contended that their lands are situated outside the planning area over which the appellant has jurisdiction; that the extention of the planning area by a subsequent notification would not *ipso factor* enlarge the jurisdiction of the appellant; that the definition of the 'town development F scheme' under section 2(u) of the Act presupposes an existence of a sanctioned development plan and hence the draft town development scheme is illegal; that public interest has sufficiently been safeguarded under the Act; and that a vested right had accrued in favour of them on obtaining sanction from the Gram Panchayat which cannot be taken away.

G Dismissing the appeals, the Court

HELD: 1.1. A 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, the same would not mean that the court H 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. The public authority may have general considerations, safety or general welfare in mind, but the same would become irrelevant, since 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 of a citizen to hold property on the other. [Para 47] [820-G-H; 821-A-B]

1.2. An endeavour should be made to find out as to whether the statute takes care of public interest in the matter as against 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. 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 mandatory in character. The courts should, therefore, strive to find a balance of the competing interest [Paras 48, 49 and 53] [821-C-E; 822-F-G]

T. Vijayalakshmi v. *Town Planning Member,* [2006] 8 SCC 502; *Prakash Amichand Shah* v. *State of Gujarat & Ors.,* [1986] 1 SCC 581 and *State of Gujarat* v. *Shantilal Mangaldas & Ors.,* [1969] 3 SCR 341, referred to.

1.3. The Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam (No. 23 of 1973) (Act), being regulatory in nature as by reason thereof the right of an owner of property to use and develop stands restricted, requires strict construction. 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 a statutory rules. Regulations contained in such statute must be interpreted in such a manner so as to least interfere with the right of property of the owner of such land. Restrictions are made in larger public interest. Such restrictions, indisputably must be a reasonable one. The statutory scheme contemplates that a person and owner of land should not ordinarily be deprived from the user thereof by way of reservation or designation. Expropriatory legislations must be given a strict construction

[Paras 59 and 60] [823-E-H; 824-A]

Balram Kumwat v. *Union of India & Ors.,* [2003] 7 SCC 628; *Krishi*

A *Utpadan Mandi Samiti & Ors.* v. *Pilibhit Pantnagar Beej Ltd. & Anr.*, [2004] 1 SCC 391; *Union of India & Ors.* v. *West Coast Paper Mills Ltd. & Anr.*, [2004] 2 SCC 747; *Hindustan Petroleum Corporation Ltd.* v. *Daius Shapur Chenai & Ors.*, [2005] 7 SCC 627; *State of Rajasthan & Ors.* v. *Basant Nahata*, JT [2005] 8 SC 171; *State of Uttar Pradesh* v. *Manohar*, [2005] 8 SCC 126 (CB); *Jilubhai Nanbhai Khachar & Ors.* v. *State of Gujarat & Anr.*, B [1995] Supp. 1. SCC 596; *Pt. Chet Ram Vashist (Dead) by LRs.* v. *Municipal Corporation of Delhi*, [1995] 1 SCC 47 and *Raju S. Jethmalani* v. *State of Maharashtra*, (2005) 4 SCALE 688, referred to.

Sri Krishnapur Mutt, Udupi v. *N. Vijayendra Shetty & Anr.*, (1992) 3 C Kar.L.J. 326, referred to.

1.4. A draft development plan which has not attained finality cannot be held to be determinative of the rights and obligations of the parties and, thus, it can never be implemented. Section 50 of the Act explicitly states that the authority may declare its intention to prepare a town development scheme D **which having regard to Section 2(u) of the Act must be read to mean declaration of its implementation to prepare a scheme for the implementation of the provisions of a development plan. Had the legislature thought of implementation of a draft development plan, they could have also provided for an interim development plan which *ipso facto* would have been enforceable. A development plan can be implemented only when it is final and not when it is** E **at the draft stage, i.e., susceptible to changes.**

[Paras 73, 74 and 75] [829-E-H; 830-A-B]

1.5. A meaning assigned to a term as defined in the interpretation clause unless the context otherwise requires should be given the same meaning. In F **the absence of any context indicating a contrary intention, the same meaning would be attached to the word used in the latter as is given to them in the earlier statute. The words or expression used in a statute before and after amendment should be given the same meaning. [Paras 75 and 76] [830-B-C]**

Venkata Subamma & Anr. v. *Ramayya and Ors.*, AIR (1932) PC 92, G referred to.

Lehnon v. *Gobson & Howes Ltd.*, (1919) AC 709, refereed to.

Craies on Statute Law, Seventh Edition; G. P. Singh's Principles of Statutory Interpretation, Tenth edition, referred to.

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1.6. Land use, development plan and zonal plan provided for the plan at macro level whereas the town planning scheme is at a micro level and, thus, would be subject to development plan. A purpose which is otherwise not contemplated under Chapter IV would be brought in by side door in Chapter VII of the Act. That which cannot be done directly cannot be permitted to be done indirectly. [Paras 78 and 80] [830-F; 831-A-B]

1.7. The purpose of declaring the intent under Section 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 of the Act, 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 under Section 16 of the Act. If the declaration of intent to formulate a town development scheme is to get over Section 16 and freeze development activities under Section 53, it would amount to exercise of power for a collateral purpose. [Para 81] [831-B-D]

1.8. A bare perusal of Sections 17 and 49 of the Act would show that it is 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. [Para 82] [831-E-F]

1.9. 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 under Section 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

A includes within it the right to use the property in accordance with the law as it stands at such time. [Para 83] [831-F-H]

1.10. The essence of planning in the Act is the existence of a development plan. It is a development plan, which under Section 17 of the Act will indicate the areas and zones, the users, the open spaces, the institutions B and offences, 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 development scheme be framed. [Para 84] [832-C-D]

1.11. The words "at any time" under section 50(1) of the Act do not confer upon any statutory authority an unfettered discretion to frame the town C development scheme whenever it is 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 D 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 E plan and the outer limit for the authority to frame such a scheme upon lapsing of the plan. Unless such a construction is to be given to the words "at any time" appearing in section 50(1) of the Act, 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 F read in the context of other provisions of the statute. The rule of purposive construction has to be applied.

[Paras 86, 87, 85 and 88] [832-F, G, H; 833-A-C-D]

State of H.P. & Ors. v. *Rajkumar Brijender Singh & Ors.*, [2004] 10 SCC 585; *Bombay Dyeing and Mft. Co. Ltd.* v. *Bombay Environmental Action Group* G *& Ors.*, [2006] 3 SCC 434; *National Insuracne Co. Ltd.* v. *Laxmi Narain Dhut*, [2007] 4 SCALE 36; *Maruti Udyog Ltd.* v. *Ram Lal & Ors.*, [2005] 2 SCC 638; *Reserve Bank of India* v. *Peerless General Finance and Investment Co. Ltd.*, [1987] 1 SCC 424; *High Court of Gujarat* v. *Gujarat Kishan Mazdoor Panchayat*, [2003] 4 SCC 712; *Indian Handicrafts Emporium & Ors.* v. *Union of India & Ors.*, [2003] 7 SCC 589 and *Deepal Girishbhai Soni & Ors.* v. H

United India Insurance Co. Ltd. Baroda, **[2004] 5 SCC 385, referred to.** A

Francis Bennion's Statutory Interpretation; Interpretation and Application of Statutes' by Reed Dickerson, **referred to.**

1.12. The appellant-authority was created for a definite purpose. Its jurisdiction was limited to the area notified. When so creating, although the B **earlier notification was referred to, the same was only for the purpose of limiting the area of operation of the appellant-authority. The principle of legislation by incorporation was applied and not the principle of legislation by reference. A delegatee must exercise its jurisdiction within the four-corners of its delegation. If it could not exercise its delegated power for the** C **purpose of creation of the appellant authority or extention its jurisdiction it cannot be done by amendment of a notification issued under Section 13(1) of the Act. Admittedly, the villages in question had been included by the State by a subsequent notification. Prior thereto, the said villages having not been included within the area of operation of the appellant authority, any action taken either by way of its intention to frame a town planning scheme or** D **otherwise shall by wholly illegal and without jurisdiction. It would render its act in relation to the said villages a nullity.**

[Paras 102, 105 and 107] [838-B-C; G; 839-C-D]

State of Orissa & Ors. **v.** *Commissioner of Land Records and Settlement, Cuttack & Ors.,* **[1998] 7 SCC 162;** *Rakesh Vij* **v.** *Dr. Raminder Pal Singh Sethi & Ors.,* **AIR (2005) SC 3593;** *Howrah Municipal Corpn.* **v.** *Ganges Rope Co. Ltd.,* **[2004] 1 SCC 663;** *Union of India* **v.** *Indian Charge Chrome,* **[1999] 7 SCC 314;** *S.B. International Ltd.* **v.** *Asstt. Director General of Foreign Trade,* **[1996] 2 SCC 439 and** *Kuldeep Singh* **v.** *Govt. NCT of Delhi,* **[2006] 5 SCC 702, referred to.** E F

Laxshmi Amma **v.** *Devassy,* **(1970) KLT 204, referred to.**

Director of Public Works **v.** *Ho Po Sang,* **(1961) AC 901: [1961] 2 All ER 721, referred to.**

G

G. P. Singh's 'Principles of Statutory Interpretation, 10th Edn., **referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2530 of 2007.

From the Final Judgment and Order dated 06.03.2007 of the High Court H of Judicature at Madhya Pradesh, Jabalpur in Writ Appeal No. 462 of 2006.

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Civil Appeal Nos. 2531 and 2007.

K.K. Venugopal and S.K. Gambhir, Sanjay Kapur, Sbuhra Kapur, Rajiv Kapur and Arti Singh for the Appellant.

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C.A. Sundaram, Arun Jaitely and Ravindra Srivastava, Nidhesh Gupta, Rohini Musa, Saboo and Binu Tamta for the Respondents.

The Judgment of the Court was delivered by

C **S.B. SINHA, J.** 1. Leave granted.

2. Interpretation of the provisions of Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, (No. 23 of 1973) (for short, 'the Act') is in question in these appeals which arise out of the judgments and orders dated 06.03.2007 passed by a Division Bench of the High Court of Madhya Pradesh in Writ D Petition No. 9396 of 2006 and Writ Appeal No. 462 of 2006.

3. Before we advert to the said question, we may notice the admitted fact of the matter.

4. The said Act was enacted to make provisions for planning and E development and use of land; to make better provision of the preparation of the development plans and zoning plans with a view to ensuring that town planning schemes are made in a proper manner and their execution is made effective; to constitute a Town & Country Planning Authority for proper implementation of town and country development plan; to provide for the development and administration of special areas through a Special Area Development Authority; to make provision for the compulsory acquisition of land required for the purposes connected with the said matters. The said Act came into force with effect from 16.04.1973.

Statutory Provisions :

5. The terms "development", "existing land use map", "planning area", "Town Development Scheme" and "Town and Country Development Authority", which are relevant for the purpose of this case, have been defined in Section 2(f), 2(i), 2(o), 2(u) and 2(v) of the Act respectively in the following terms :

"2(f) "development" with its grammatical variations means the carrying out of a building, engineering, mining or other operation in, on over or under land, or the making of any material change in any building or land or in the use of either, and includes sub-division of any land;" A

"2(i) "existing land use map" means a map indicating the use to which lands in any specified area are put at the time of preparing the map, and includes the register prepared, with the map giving details of land-use." B

"2(o)"planning area" means any area declared to be a planning area under this Act: Non-Planning area shall be construed accordingly." C

"2(u)"Town Development Scheme" means a scheme prepared for the implementation of the provisions of a development plan by the Town and Country Development Authority and includes "Scheme"" D

"2(v)"Town and Country Development Authority" means an authority established under Section 38."

6. Chapter IV of the Act deals with planning areas and development plans. Section 13(1) empowers the State Government to constitute planning areas for the purposes of the said Act and define the limits thereof. Sub-section (2) of Section 13 empowers the State Government by notification, *inter alia*, to alter the limits of the planning area so as to include therein or exclude therefrom such areas, as may be specified in the notification; to amalgamate two or more planning areas so as to constitute one planning area; to divide any planning area into two more planning areas; and to declare that the whole or part of the area constituting the planning area shall cease to be a planning area or part thereof. Sub-section (3) of Section 13 of the Act provides for a non-obstante clause, in terms whereof, the local authority mentioned therein shall in relation to the planning areas from the date of the notification issued under sub-section (1) cease to exercise the powers, perform the functions and discharge the duties which the State Government or the Director is competent to exercise. Section 14 of the Act enables the Director to prepare an existing land use map and development plan. Section 15 enables the Director to carry out the survey and prepare an existing land use map and forthwith publish the same in the manner laid down therein. Once such a plan is published, no person is authorised to institute or change the use of any E F G H

land or carry out any development of land for any purpose other than that indicated in the existing land use map without the permission in writing of the Director.

7. Clause (b) of sub-section (1) of Section 16, however, provides :

"(b) no local authority or any officer or other authority shall, notwithstanding anything contained in any other law for the time being in force, grant permission for the change in use of land otherwise than as indicated in the existing land use map without the permission in writing of the Director."

8. Section 17 provides as to what should be the contents of the development plan. Section 17A(1) provides for constitution of a committee; sub-sections (2) and (3) whereof read as under :

"(2) The Committee constituted under sub-section (1), shall :

(a) consider and suggest modifications and alterations in the draft development plan prepared by the Director under section 14;

(b) hear the objections after the publication of the draft development plan under section 18 and suggest modifications or alterations if any; to the Director.

(3) The Convenor of the Committee shall record in writing all the suggestions, modifications and alterations recommended by the committee under sub-section (2) and thereafter forward his report to the Director."

9. Section 18 of the Act provides for publication of a development plan; in terms whereof the objections and suggestions in writing are invited with respect thereto. The notice in terms of the said provision is to specify in regard to the draft development plan, *inter alia*, the following particulars:

"(i) the existing land use maps;

xxx xxx xxx

(iv) the provisions for enforcing the draft development plan and stating the manner in which permission for development may be

obtained." A

10. Section 19 provides for sanction of development plans, sub-section (2) whereof reads as under :

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

11. Preparation of zoning plan is envisaged under Chapter V thereof. Section 20 reads as under : C

> "20. The Local Authority may on its own motion at any time after the publication of the development plan, or thereafter if so required by the State Government shall, within six months of such requisition, prepare a zoning plan."

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12. In the zoning plan more details of land use as indicated in the development plan are to be indicated and, *inter alia*, shall :

> "(c) allocate in detail areas or zones for residential, commercial, industrial, agricultural, and other purposes;

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13. Chapter VI of the Act deals with control of development and use of land, provided that the overall control of development and use of land in the State shall vest in the State Government; sub-section (2) of Section 24 reads as under :

> "(2) Subject to the provision of sub-section (1) and the rules made F under this Act, the overall control of development and use of land in the planning area shall vest in the Director with effect from such date as the State Government may by notification, appoint in this behalf."

14. Section 25 envisages that the use and development of land shall conform to the provisions of the development plan. Section 38 occurring in G Chapter VII provides for establishment of a Town and Country Development Authorityy, sub-sections (1) and (2) whereof read as under :

> "38(1).-The State Government may, by notification, establish a Town and Country Development Authority by such name and for such area as may be specified in the notification. H

A (2) The duty of implementing the proposal in the development plan, preparing one or more town development schemes and acquisition and development of land for the purpose of expansion or improvement of the area specified in the notification under sub-section (1) shall, subject to the provisions of this Act vest in the Town & Country Development Authority established for the said area."

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15. Section 49 of the Act envisages that a town development scheme may make provision for the matters specified therein including acquisition of land for the purposes mentioned therein as also any other work of such a nature as would bring about environmental improvements which may be taken up by the authority with the prior approval of the State Government.

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16. Sub-sections (1), (2), (3) and (4) of Section 50 of the Act, which are material for our purpose, read as under:

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

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(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.

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(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.

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(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."

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H 17. A proviso has been added thereafter to sub-section (4) by Act of

2004 in terms whereof a draft scheme must be approved within the period of one year from the publication thereof. Section 51 provides for revision of the draft scheme. Section 53 imposes restrictions on land use and land development in the following terms :

> "53. 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."

18. Section 55 provides that land needed for the purpose of town development scheme shall be deemed to be land needed for public purpose. Section 72 empowers the State Government to supervise and control the acts and proceedings of the officers appointed under Section 3 and the authorities constituted under the said Act. The State can issue directions in terms of Section 73 of the Act. Section 75 Section provides for delegation of powers.

Notifications :

19. On or about 13.02.1974, the State Government issued a notification under sub-section (1) of Section 13 of the Act constituting Indore Planning Area, the limits whereof were defined in the schedule appended thereto. Indisputably, it constituted only 37 villages. The villages Bicholi and Kanadia, with which we are concerned herein, were not included therein.

20. The State Government in exercise of power conferred upon it under Section 38 of the Act issued a notification establishing the Appellant-Authority, namely, 'Indore Vikas Pradhikaran' from 13.05.1977 in respect of the area specified in the notification dated 13.02.1974.

21. On or about 30.03.1999, the State Government delegated its power under Sections 13 and 47A of the Act in favour of the District Planning Committee and it in exercise of said delegated power by a notification dated 13.11.2000 amended the planning area by adding 115 villages therein which included the said villages Bicholi and Kanadia. By a notification dated 28.06.2002, it, however, further amended the extent of planning area by deleting 62 villages therefrom. Bicholi and Kanadia villages were, however, retained in the said amended notification.

22. Upon compliance of the usual statutory formalities, the appellant

A published a draft development plan on 27.06.2003. The said plan was in respect of Urban Development Scheme No.164. Objections and suggestions in respect thereof were called for. Allegedly, objections and suggestions having been filed; they were heard by the Development Planning Committee during the period between 25.08.2003 and 03.09.2003. By a resolution adopted in a meeting held on 20.08.2004 a decision in anticipation of approval of the B Government under Section 50(1) of the Act was proposed, which included the lands of villages Bicholi and Kanadia, *inter alia*, for construction of a bye-pass road of 60 metres width. A declaration of intention to prepare a town development scheme in terms of sub-section (2) of Section 50 was issued on 24.08.2004. Indisputably, in terms of sub-section (3) of Section 50 of the Act, C the draft town development scheme was to be prepared within a period of two years therefrom. On or about 02.12.2004, Respondent applied for sanction of development plans under Section 29(1) of the Act. We may, however, notice that on 04.01.2005, the said draft development plans were returned by the State of Madhya Pradesh in terms of Section 19(1) of the Act with a direction that the plans be prepared for the projected population as in the year 2021 D and the same be placed before the Government for approval as soon as possible.

23. The State of Madhya Pradesh, however, issued a notification in terms of sub-section (1) of Section 38 of the Act, *inter alia*, in respect of the villages in question, namely, Bicholi and Kanadia only on 28.10.2005. Appellant E issued a notification on 18.05.2006 inviting objections in respect of the said scheme. A Draft Development Plan-2021 was published on 13.07.2006.

Contentions of the writ petitioner-respondents :

F 24. Respondents' lands situated in villages Bicholi and Kanadia were within the respective jurisdictions of the Gram Panchayats constituted under the provisions of the Madhya Pradesh Gram Panchayat Act. The said panchayats in terms of the provisions of the Act were 'local authorities'. They submitted applications for grant of building plan in the year 1990 and the same was sanctioned on or about 05.04.1991.

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25. Respondents, as noticed hereinbefore, applied for and obtained sanction in terms of the building bye-laws framed by the respective gram panchayats in 1991 for grant of development plans under Section 29(1) on 02.12.2004. The said applications were rejected by the Joint Director, Town and Country Planning in view of the purported publication of the plan under

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sub-section (2) of Section 50 of the Act. Respondents filed a writ petition against the said order, *inter alia*, praying for issuance of a writ or order in the nature of mandamus directing the said authority to sanction the site plan which had been submitted. The said writ petitions were dismissed by a learned Single Judge by an order dated 17.05.2006. Writ appeals were preferred thereagainst, which have been allowed by the Division Bench of the High Court by its judgment dated 06.03.2007.

High Court Judgment :

26. By reason of the impugned judgment, the High Court struck down the declaration made under Section (2) of Section 50 of the Act, opining :

(i) Unless a development plan for an area is published and comes into operation, a draft development scheme cannot be published by the Town and Country Development Authority under sub-section (2) of Section 50 of the Act.

(ii) Such a town development scheme cannot by itself without a development plan for the area restrict the right of a person to use his property in the manner he likes.

(iii) Although the notification issued by the Appellant-Authority had been constituted by the State Government only in respect of the area which was covered by the notification dated 13.02.1974, the draft development scheme prepared by it was ultra vires, so far as the said two villages are concerned, being beyond its territorial jurisdiction.

Submissions :

27. Mr. K.K. Venugopal, and Mr. S.K. Gambhir, learned Senior Counsel appearing on behalf of the appellant, submitted :

(i) The High Court committed a serious error in interpreting the provisions of Section 50 of the Act, inasmuch : (i) Under the Act an existing land use map has to be published which would indicate broadly the land use proposed in the planning area and the areas or zones of land allocated for the purposes mentioned therein; and (ii) As the scheme covers the villages in question, the same could not have been ignored.

(ii) Having regard to the fact that the scheme provides for construction of a bypass road of 70 feet width, any construction

A by the builders would lead to haphazard development and, thus, would completely destroy the purpose for which the land was to be reserved for planned development of the residential area.

(iii) Undertaking of haphazard and unplanned development would carry with it a statutory injunction provided for under Section B 53 of the Act, in terms whereof, if an existing land use map or a draft development plan or a town development scheme is published, no person is permitted to obtain any permission for carrying out any development contrary thereto or inconsistent therewith.

C (iv) The materials on records established that a large number of permissions were obtained by the private developers which if allowed to be implemented shall result in haphazard development of colonies and buildings and, thus, defeat the purpose of the Act.

D (v) As Section 50 is not subject to the publication of a final development plan, as would be evident from the words used therein, namely, 'at any time', Section 53 would operate as soon as an intention is expressed by issuance of a notification in terms thereof.

E (vi) Section 50 of the Act must be read in the contrast with Section 20 thereof. So read, a town development scheme must be consistent with the provisions of the existing land use map as well as a draft development plan; as otherwise the purport and object for which Section 53 has been enacted would become otiose.

F (vii) The Authority constituted under Section 38 being statutorily obligated to implement the development plan, as would appear from Sections 38(2) and 49 of the Act, the power/duty to prevent haphazard by declaring the town development scheme must be held to be vested in the Appellant-Authority.

G (viii) The State of Madhya Pradesh having framed rules known as 'Madhya Pradesh Bhumi Vikas Niyam, 1984', (Rules) which are parts of the town development scheme, keeping in view the fact that the scheme provided for 10,000 houses for the low income group wherefor three major roads were required to be built up H having a width of 75 metres, 60 metres and 36 metres respectively

as also parks, roads, colleges, gardens, playgrounds and green belts, the purposes for which such scheme had been framed would not be subserved, if permissions are granted for haphazard and unplanned development. A

(ix) In any event, private interest must be waived to public interest.

(x) The High Court committed a manifest error insofar it failed to take into consideration that the planning area having been extended by a notification issued by the District Planning Committee, the same would subserve the purpose of the notification dated 28.10.2005 issued under sub-section (1) of Section 38 of the Act. B C

28. Mr. Banthia, the learned counsel appearing on behalf of the State had not made any separate submission before us.

29. Mr. C.A. Sundaram and Mr. Arun Jaitley, learned Senior Counsel appearing on behalf of the respondents in these appeals, on the other hand, would submit : D

(i) The land of the respondents being outside the planning area, as notified by the State of Madhya Pradesh constituting the Appellant-Authority, the purported town development scheme would not be applicable in relation thereto. Only because the planning area has been extended by the District Planning Committee, the same would not ipso fact enlarge the territorial jurisdiction of the Appellant-Authority. E

(ii) Safeguard of public interest has sufficiently been taken care of in terms of the Act., as upon issuance of a notification under Section 13 of the Act, the Director only is authorised to sanction a plan for development and carry out other functions as laid down under Sections 15, 16 and 17 of the Act. F

(iii) The committee constituted under Section 17-A of the Act is the only authority which can consider and suggest modifications in the draft development plan prepared by the Director under Section 14, whereafter only a draft development plan can be published in terms of Section 18; sub-section (2) whereof in turn envisages consideration of objections, suggestions, etc. G

(iv) Only upon completion of the procedures laid down in the said H

provisions development plan can be sanctioned by the State under Section 19 and, thus, in the event the State Government has power to make modification in the development plan, the same would come into operation only from the date of publication of the notification in the gazette issued under sub-section (4) thereof.

(v) Procedure laid down in the provisions of the Act having not been fulfilled, the impugned action had resulted in breach of law and, thus, the same had rightly been struck down.

(vi) Chapter V of the Act provides for preparation of zoning plans and the contents thereof having been prescribed, the safeguards envisaged under Sections 18 and 19 of the Act would take care of public interest involved, inasmuch the overall control and development as also land use is vested in the Director and in that view of the matter unless a final development plan comes into being, the Appellant-Authority cannot be held to have any jurisdiction thereover in view of Section 38 of the Act.

(vii) The definition of the 'town development scheme' as contained in Section 2(u) of the Act presupposes existence of a sanctioned development plan prepared as per law, and, thus, in absence thereof a town development scheme under Section 50 cannot be made.

(viii) In view of the fact that the State Government has issued a notification on 28.10.2005 extending the area of operation of the Appellant-Authority, the scheme illegally notified by it would not be invalidated.

(ix) Gram Panchayat of the village being the competent authority at the relevant time having sanctioned the building plan, a vested right had accrued in favour of the first respondent and such a power having been acknowledged and accepted under the provisions of the Act, the same cannot be taken away.

Analysis of the statutory provisions :

30. The Act is divided into several chapters. It proceeds on the basis that steps are required to be taken before a town planning scheme is given effect to. The State Government is in overall control of the matter relating to town and country planning.

31. The Director of Town and Country Planning, however, subject to the control and supervision of the State, exercises such statutory powers which are conferred upon him. A State is divided into several regions. A regional plan is finalised whereupon restrictions on use of land or development thereof can be imposed. Such regional plan is subject to review.

32. Chapter IV of the Act provides for carving out planning areas and preparation of development plans. Development plans are required to be prepared and finalised only in relation to the planning areas. An area, however, which is notified can be sub-divided into planning areas and non-planning areas.

33. Chapter V of the Act deals with the preparation, finalization, review and modifications of the zonal plan wherewith we are not concerned much in these appeals. Chapter VI of the Act provides for control of development and use of land. In terms of Section 24 of the Act, the Director is to control land use. Preparation of development plan, prohibition of development without permission and matters connected therewith and incidental thereto are also dealt with in Chapter VI. Chapter VII of the Act, however, provides for shift of control in respect of land use and development for the hands of the Director and, consequently of the State to the Town and Country Development Authority. Section 38 provides for establishment of Town and Country Development Authority.

34. The Act envisages the following steps which are required to be complied with :

(a) Constitution of a planning area by notification under Section 13.

(b) Compliance of the detailed procedure set out under Sections 14 to 19, leading to sanction of the development plan under Section 19. The said procedure envisages compliance of principles of natural justice.

(c) Section 38 provides for establishment of a Town and Country Development Authority, by notification "for such areas as may be specified in the notification". Under sub-section (2) thereof, duties of implementation of the development plan and preparation of the town development scheme have been cast on the Town and Country Development Authority.

(d) The town development scheme is to be prepared upon following

A the procedure set out under Section 50. The said scheme can be prepared only when there exists a development plan, prepared in accordance with the procedure prescribed under the Act as envisaged under Sections 14 to 19 and after notification under Section 38(1). In this regard, reference may be also be made to Section 2(u) of the Act, which describes a town development B scheme to mean a scheme prepared for implementation of the provisions of the development plan.

35. Before the procedure referred to hereinbefore is applied to the case at hand, it would appear that the notification dated 13.02.1974 issued under Section 13 of the Act extending the planning area would not include the land C of the respondents being outside its territorial jurisdiction. By reason of 1977 Notification the villages in question in which the lands of the respondents are situated, Indore Development Plan, 1991 would not have any application thereover. The notification issued under Section 38(1) of the Act on 09.05.1977, would, thus, be limited to the area specified under the notification dated D 13.02.1974.

36. A Town and Country Development Authority although may have something to do with the preparation of the draft development plan. It exercises complete control, subject of course to the power of the State Government, to give directions, exercises revisional power, etc. over implementation of the E development plan by making town development schemes.

37. Chapter VIII of the Act deals with special areas. Chapter IX, however, envisages power of the State Government of supervision and control as also to issue necessary directions. The State has also the power to review plans for ensuring conformity. It may also delegate its power from time to time. F Dissolution of authority at the hands of the State is envisaged under Section 76 of the Act.

38. When a planning area is defined, the same envisages preparation of development plan and the manner in which the existing land use is to be G implemented. A development plan in some statutes is also known as a master plan. It lays down the broad objectives and parameters wherewith the development plan is to deal with. It also lays down the geographical splitting giving rise to preparation and finalization of zonal plans. The zonal plans contain more detailed and specific matters than the master plan or the development plan. Town planning scheme or lay-out plan contains further H details on plot-wise basis. It may provide for the manner in which each plot

shall be dealt with as also the matter relating to regulations of development. A

39. Once, however, the existing land use is in place, subject to certain restrictions contained in the Act, the Director would permit land use in the same manner as is found to be existing.

40. The old laws, in relation thereto, as also the permissions granted by B the local authorities which includes a gram panchayat are permitted to operate till new laws are framed and/ or till new building regulations are made.

41. When existing land use is in place, use thereof for purposes other than the existing land use is frozen. However, subject to permission granted by the Director, the development of land is not frozen. C

42. When a draft development plan is prepared, the same is subject to grant of approval and/ or modification thereof. We will deal with the matter at some details a little later but at this stage, we may notice that end use of the land is not frozen until a final sanction plan comes into being. A town planning scheme, as would appear from its definition contained in Section 2(4) D of the Act, is prepared only for the purpose of implementation of a development plan. Yet again, we would deal with the question as to whether the same would bring within its sweep the draft development plan or only final development plan a little later, but it may be noticed that once a valid town planning scheme comes into force, indisputably, there may be freezing of land E use as also freezing of development and, thus, a total embargo is placed except in such cases where the Director had granted permission. Section 53 of the Act, however, in the event a valid town planning scheme is made, places a total embargo both on land use as also the development. Even the Director is denuded of its power to issue any further permission. Existing land use, draft development plan and final development plan envisage two-stage F exercise. In drafting or finalizing a zonal plan, a similar exercise is undertaken. In making a town development scheme, however, the process undertaken is a three-stage one inasmuch as an intention therefor is declared which entails serious consequences and, as noticed hereinbefore, by reason thereof, a total embargo is imposed both on land use as also the development. For the said G purpose, a time limit within which a draft town planning scheme has to be finalized is provided but the same can be subject to modification by the State which ordinarily should be with a view to deal with the same in line with the final development plan.

H

A *Principal questions :*

43. In these appeals, principally, we are beset with two questions:

(i) Whether having regard to notification dated 13.02.1974 vis-à-vis the expansion of the Indore Development Plan, the District
B Committee in exercise of its delegated power can automatically extend the area of operation of the appellant despite the notification constituting it by the State whereby and whereunder its area of operation was limited to the one covered by the notification dated 13.02.1974 ?

C (ii) Whether the appellant-authority can declare its intention in terms of Section 50 of the Act before the development attained finality.

Competing Interest :

44. There are two competing interests, viz., one, the interest of the
D State vis-à-vis the general public and, two, to have better living conditions and the right of property of an individual which although is not a fundamental right but is a constitutional and human right.

45. Before we embark upon the questions involved in these appeals, we would like to make some general observations.

E

46. Town and country planning involving land development of the cities which are sought to be achieved through the process of land use, zoning plan and regulating building activities must receive due attention of all concerned. We are furthermore not oblivious of the fact that such planning involving highly complex cities depends upon scientific research, study and experience
F and, thus, deserves due reverence.

47. 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
G 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.
H 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.

48. 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-à-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.

49. 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 therefor it would be construed to be mandatory in character.

50. In *T. Vijayalakshmi* v. *Town Planning Member,* [2006] 8 SCC 502, this Court held:

> "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:

> "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

A is granted. However, a statutory authority must exercise its jurisdiction within a reasonable time. (See *Kuldeep Singh* v. *Govt. of NCT of Delhi*)"

51. What would be a public purpose in such a matter has been stated in *Prakash Amichand Shah* v. *State of Gujarat & Ors.*, [1986] 1 SCC 581, B whereupon the State itself relied upon, in the following terms :

"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 here or a bit of land there for some public purpose. It consists of several C 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 D coming into force under Section 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."

E

The impugned provision does not subserve such purpose.

52. It is also not a case like *State of Gujarat* v. *Shantilal Mangaldas & Ors.*, [1969] 3 SCR 341, that when a development is made, the owner of the property not only gets much more than what he would have got, if the same F remained undeveloped in the process but also get the benefit of living in a developed town having good town planning.

53. The courts should, therefore, strive to find a balance of the competing interest.

G *Human Right Issue :*

54. The right of property is now considered to be not only a constitutional right but also a human right.

55. The Declaration of Human Rights (1789) enunciates under Article 17 H "since the right to property is inviolable and sacred, no-one may be deprived

thereof, unless public necessity, legally ascertained, obviously requires it and just and prior indemnity has been paid". Further under Article 217 (IIII) of 10th December, 1948, adopted in the General Assembly Resolution it is stated that : (i) Everyone has the right to own property alone as well as in association with others. (ii) No-one shall be arbitrarily deprived of his property.

56. Earlier human rights were existed to the claim of individuals right to health, right to livelihood, right to shelter and employment etc. but now human rights have started gaining a multifacet approach. Now property rights are also incorporated within the definition of human rights. Even claim of adverse possession has to be read in consonance with human rights.

57. As President John Adams (1797-1801) put it, :

> "Property is surely a right of mankind as real as liberty." Adding, "The moment the idea is admitted into society that property is not as sacred as the laws of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence".

58. Property, while ceasing to be a fundamental right would, however, be given express recognition as a legal right, provisions being made that no person shall be deprived of his property save in accordance with law.

Interpretation of the Act :

59. The Act being regulatory in nature as by reason thereof the right of an owner of property to use and develop stands restricted, requires strict construction. 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 a statutory rules. Regulations contained in such statute must be interpreted in such a manner so as to least interfere with the right of property of the owner of such land. Restrictions are made in larger public interest. Such restrictions, indisputably must be reasonable one. [See *Balram Kumwat* v. *Union of India & Ors.*, [2003] 7 SCC 628; *Krishi Utpadan Mandi Samiti & Ors.* v. *Pilibhit Pantnagar Beej Ltd. & Anr.*, [2004] 1 SCC 391 and *Union of India & Ors.* v. *West Coast Paper Mills Ltd. & Anr.*, [2004] 2 SCC 747. The statutory scheme contemplates that a person and owner of land should not ordinarily be deprived from the user thereof by way of reservation or designation.

60. Expropriatory legislation, as is well-known, must be given a strict

A construction.

61. In *Hindustan Petroleum Corporation Ltd.* v. *Daius Shapur Chenai & Ors.*, [2005] 7 SCC 627, construing Section 5A of the Land Acquisition Act, this Court observed :

B "6. It is not in dispute that Section 5-A of the Act confers a valuable right in favour of a person whose lands are sought to be acquired. Having regard to the provisions contained in Article 300-A of the Constitution, the State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and C reasonable compensation therefor must be paid.

7. Indisputably, the definition of public purpose is of wide amplitude and takes within its sweep the acquisition of land for a corporation owned or controlled by the State, as envisaged under sub-clause (iv) of clause (f) of Section 3 of the Act. But the same D would not mean that the State is the sole judge therefor and no judicial review shall lie. (See *Jilubhai Nanbhai Khachar* v. *State of Gujarat.*)"

It was further stated :

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

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

62. In *State of Rajasthan & Ors.* v. *Basant Nahata,* JT (2005) 8 SC 171, G it was opined :

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

63. In *State of Uttar Pradesh* v. *Manohar*, [2005] 2 SCC 126, a Constitution Bench of this Court held :

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

64. In *Jilubhai Nanbhai Khachar & Ors.* v. *State of Gujarat and Anr.*, [1995] Supp. 1 SCC 596, the law is stated in the following terms :

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

It was further observed :

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

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

65. Rajendra Babu, J (as the learned Chief Justice then was) in *Sri Krishnapur Mutt, Udupi* v. *N. Vijayendra Shetty and Anr.*, (1992) 3 Kar.L.J. 326 observed :

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

66. The question has also been addressed by a decision of the Division Bench of this Court in *Pt. Chet Ram Vashist (Dead) by LRs.* v. *Municipal Corporatiopn of Delhi,* [1995] 1 SCC 47, wherein R.M. Sahai, J., speaking for the Bench opined :

> "6. Reserving any site for any street, open space, park, school etc. in a layout plan is normally a public purpose as it is inherent in such

reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. It may be true as held by the High Court that the interest which is left in the owner is a residuary interest which may be nothing more than a right to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned layout plan. But the question is, does it entitle the Corporation to claim that the land so specified should be transferred to the authority free of cost. That is not made out from any provision in the Act or on any principle of law. The Corporation by virtue of the land specified as open space may get a right as a custodian of public interest to manage it in the interest of the society in general. But the right to manage as a local body is not the same thing as to claim transfer of the property to itself. The effect of transfer of the property is that the transferor ceases to be owner of it and the ownership stands transferred to the person in whose favour it is transferred. The resolution of the Committee to transfer land in the colony for park and school was an order for transfer without there being any sanction for the same in law."

[See also *Raju S. Jethmalani* v. *State of Maharashtra,* (2005) 4 SCALE 688].

Application of the Act :

67. While determining the questions involved in these appeals, we are not unmindful that the purpose and object of the town development scheme is a laudable one insofar as it purports to allocate areas covered by Scheme No. 164 for residential purposes and a bypass road of 70 feet wide is to be built along the eastern periphery of the area covered by the Scheme. The question, however, would be as to whether the development can be said to be a haphazard one or would completely destroy the purpose for which the land was to be reserved for planned development of the residential area.

68. The process started in the year 1974. Only 37 villages were included within the planning area. It may be that with the passage of time the requirements for a better planned city were felt, but it is difficult to conceive that the State of Madhya Pradesh while constituting the appellant - authority in terms of Section 38(1) of the Act by reason of its notification dated

A 09.05.1977 was wholly oblivious thereto. When the Act came into force the existing land use was determined. The area for which, thus, land could be put to use was fixed. No land could be used for a purpose which is not envisaged by land use.

69. A Director who is a very high ranking officer and is answerable only
B to the State is appointed under the Act to put an eye over the development activities; be it by the developers or others. Apart from the fact that gram panchayat which is a local authority within the meaning of the provisions of the Act had the occasion to consider each application for grant of sanction of the building plans which presumably would require to be drawn directly
C in terms of the building bylaws framed under a statute which in turn gave rise to a presumption that it had received an approval of the State, in the event of any further development the permission of the Director is necessary. The Director, however, being an authority under the Act was statutorily enjoined to perform his duties within the four-corners of the statute. Whereas the said statutory authority is required to apply its mind before an application for
D grant of development of land is filed, which itself having regard to its wide definition is extensive in nature, to the requirements of law, it cannot unduly withhold such permission if the application otherwise fulfils the statutory conditions. The Act itself envisages that in the event an application is not disposed of within the time specified, a development plan would be deemed
E to be sanctioned. [See Section 30(5) of the Act] Land use, therefore, is restricted. The manner in which the permission for construction of building is to be granted is also well-defined.

70. Respondents obtained permission for development from the competent authority for diversion of land use as far back as on 12.01.1989.
F They had applied for and were granted sanction of building plan by the gram panchayat in the year 1991. No step was taken by the statutory authorities or the appellant herein to notify a draft development plan. It was not notified till 2000. No further step was taken pursuant thereto or in furtherance thereof. Respondents filed an application before the Director for grant of permission only on 2.12.2004 which was rejected by reason of an order dated 14.12.2004
G purported to be for the following reason:

> "subjected land of village Bicholi Hapsi has been included in the proposed Development Scheme No. 164 of Indore Development Authority."

H 71. We may notice two precise submissions of Mr. Venugopal at this

stage:

(i) The development plan includes draft development plan;

(ii) Existence of any draft development plan would authorise the appellant - authority to declare its intention to prepare a town development scheme at any time.

72. The draft development plan was published on 27.06.2003 although it was sent for consideration of the State in terms of Section 19 of the Act on 9.10.2003. The same was returned to the appellant - authority stating that plan to be prepared for the projected population in the year 2021 on or about 4.01.2005. A draft development plan 2021 was published only on 13.07.2007 whereas the declaration by the appellant - authority was notified on 20.08.2004. Submission of Mr. Venugopal that a development plan would include a draft development plan is sought to be made as the statute has interchangeably used draft development plan, sanctioned development plan as development plan and, secondly, on the strength of clause (iv) of Sub-section (1) of Section 18 of the Act laying down that a notice shall be issued thereunder containing *inter alia* the particulars, viz., the provisions for enforcing the draft development plan and stating the manner in which permission for development may be obtained.

73. We do not see any force in the said argument. It is possible to enforce a draft development plan in a given case, but the statute must specifically provide for the same. But, a draft development plan which has not attained finality cannot be held to be determinative of the rights and obligations of the parties and, thus, it can never be implemented. Section 50 of the Act explicitly states that the authority may declare its intention to prepare a town development scheme which having regard to Section 2(u) of the Act must be read to mean declaration of its implementation to prepare a scheme for the implementation of the provisions of a development plan.

74. We have come across some legislations, as for example, The Himachal Pradesh Town and Country Planning Act, 1977 where a provision has been made for preparation of an interim development plan. It is not in dispute that legislations relating to town and country planning are somewhat similar. Had the legislature thought of implementation of a draft development plan, they could have also provided for an interim development plan which *ipso facto* would have been enforceable.

75. A development plan even in ordinary parlance can be implemented

A only when it is final and not when it is at the draft stage, i.e., susceptible to changes. Not only land use may make geographical change, the other details may also undergo a change. The objections and suggestions invited from the general public as also the persons affected may be accepted. There may be realignment. It may undergo serious modifications. Once the legislature has defined a term in the interpretation clause, it is not necessary for it to use the
B same expression in other provisions of the Act. It is well-settled that meaning assigned to a term as defined in the interpretation clause unless the context otherwise requires should be given the same meaning.

76. It is also well-settled that in the absence of any context indicating
C a contrary intention, the same meaning would be attached to the word used in the later as is given to them in the earlier statute. It is trite that the words or expression used in a statute before and after amendment should be given the same meaning. It is a settled law that when the legislature uses the same words in a similar connection, it is to be presumed that in the absence of any context indicating a contrary intention, the same meaning should attach to the
D words. [See *Lenhon* v. *Gobson & Howes Ltd.,* (1919) AC 709 at 711, Craies on Statute Law, Seventh Edition, page 141 and G.P. Singh's Principles of Statutory Interpretation, Tenth edition, page 278]

77. In *Venkata Subamma and Anr.* v. *Ramayya and Ors.,* [AIR 1932 PC 92], it is stated that an Act should be interpreted having regard to its history,
E and the meaning given to a word cannot be read in a different way than what was interpreted in the earlier repealed section.

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

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

80. If the submission of Mr. Venugopal is accepted, a purpose which is otherwise not contemplated under Chapter IV would be brought in by side door in Chapter VII. It is well-settled that would cannot be done directly cannot be permitted to be done indirectly.

81. The purpose of declaring the intent under Section 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 under Section 16. If the declaration of intent to formulate a town development scheme is to get over Section 16 and freeze development activities under Section 53, it would amount to exercise of power for a collateral purpose.

82. 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.

83. 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 under Section 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

A 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 a owner thereof by virtue of Section 53 of the Act, and should no development plan be finalized within 3 years, such scheme would lapse and the authority thereupon B 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.

C 84. The essence of planning in the Act is the existence of a development plan. It is a development plan, which under Section 17 will indicate the areas and zones, the users, the open spaces, the institutions and offices, the special purposes, etc. Town planning would be based on the contents of the development plan. It is only when the development plan is in existence, can D 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.

85. Section 50 of the Act no doubt uses the word "at any time". The E 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 F 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 noticed hereinbefore.

G 86. 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 is so pleases. The words "at any time" are not charter for the exercise of an arbitrary decision as and when a scheme H 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. A

87. 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. B C

[See *State of H.P. & Ors.* v. *Rajkumar Brijender Singh & Ors.*, [2004] 10 SCC 585]

88. For construing a statute of this nature, we are dealing with, rule of purposive construction has to be applied. D

89. In Francis Bennion's Statutory Interpretation, purposive construction has been described as under : E

> "A purposive construction of an enactment is one which gives effect to the legislative purpose by-
>
> (a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or F
>
> (b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive-and-strained construction)."

[See also *Bombay Dyeing and Mfg. Co. Ltd.* v. *Bombay Environmental Action Group and Ors.*, [2006[3 SCC 434 and *National Insurance Co. Ltd.* v. *Laxmi Narain Dhut,* (2007) 4 SCALE 36] G

90. In *Maruti Udyog Ltd.* v. *Ram Lal and Ors.*, [2005] 2 SCC 638, while interpreting the provisions of Industrial Disputes Act, 1947, the rule of purposive construction was followed. H

A 91. In *Reserve Bank of India* v. *Peerless General Finance and Investment Co. Ltd.*, [1987] 1 SCC 424 this Court stated:

> "...If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act..."

B

C

92. In 'The Interpretation and Application of Statutes' by Reed Dickerson, the author at p.135 has discussed the subject while dealing with the importance of context of the statute in the following terms:

> "... The essence of the language is to reflect, express, and perhaps even affect the conceptual matrix of established ideas and values that identifies the culture to which it belongs. For this reason, language has been called "conceptual map of human experience".'

D

[See also *High Court of Gujarat* v. *Gujarat Kishan Mazdoor Panchayat*, [2003] 4 SCC 712, *Indian Handicrafts Emporium and Ors.* v. *Union of India and Ors.*, [2003] 7 SCC 589 and *Deepal Girishbhai Soni and Ors.* v. *United India Insurance Co. Ltd., Baroda*, [2004] 5 SCC 385, para 56]

E

Delegation :

F 93. An area conceived of under the Act, as noticed hereinbefore, consists of both plan area and non-plan area. Development of plan area may be in phases. A master plan may be followed by a zonal plan and a zonal plan may be followed by a town development scheme.

G 94. The limit of Indore planning area was specified by a notification dated 13.02.1974 in terms of Sub-section (1) of Section 13 of the Act. Appellant - Authority was constituted by the State of Madhya Pradesh in exercise of its power under Section 38(1) of the Act for the area comprised within the Indore planning as specified in the notification dated 13.02.1974. The State in exercise of its jurisdiction under Sub-section (1) of Section 75 of the Act delegated its power conferred upon it under Sections 13 and 47A of the Act

H

upon the District Planning Committee. No power under Section 38 was delegated. The District Planning Committee exercises its jurisdiction pursuant to the said delegation in terms of a notification dated 13.11.2000 extending the Indore Development Planning Area to 152 villages. The villages Bicholi and Kanadia were not included in the notification dated 12.08.1977. They were included only in the notification issued by the District Planning Committee.

95. The District Planning Committee, however, issued another notification amending the planning area to 90 villages only and deleting 62 villages from its earlier notification.

96. There cannot be any doubt whatsoever that even a delegatee exercises its power relying on or on the basis of its power conferred upon it by the delegator, its act would be deemed to be that of the principal as has been held by this Court in *State of Orissa and Ors.* v. *Commissioner of Land Records and Settlement, Cuttack and Ors.*, [1998] 7 SCC 162, this Court held:

> "25. We have to note that the Commissioner when he exercises power of the Board delegated to him under Section 33 of the Settlement Act, 1958, the order passed by him is to be treated as an order of the Board of Revenue and not as that of the Commissioner in his capacity as Commissioner. This position is clear from two rulings of this Court to which we shall presently refer. The first of the said rulings is the one decided by the Constitution Bench of this Court in *Roop Chand* v. *State of Punjab* 3 . In that case, it was held by the majority that where the State Government had, under Section 41(1) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, delegated its appellate powers vested in it under Section 21(4) to an "officer", an order passed by such an officer was an order passed by the *State Government* itself and "not an order passed by any officer under this Act" within Section 42 and was not revisable by the State Government. It was pointed out that for the purpose of exercise of powers of revision by the State under Section 42 of that Act, the order sought to be revised must be an order passed by an officer *in his own right* and *not as a delegate of* the State. The State Government was, therefore, not entitled under Section 42 to call for the records of the case which was disposed of by an officer acting as its delegate."

97. Whether issuance of notification by the delegatee would

A automatically extend the jurisdiction of the appellant is the question. Before we consider the legal issues involved, we may notice that the appellant filed an application before the High Court wherein it was stated:

> "2. The respondent no. 2 submits that though in 2004 itself the State Government had in principle agreed to extend the area of the Indore
B Development Authority u/s 38 of the Adhiniyam, the said decision could not be implemented because of certain procedural and other difficulties. Subsequently, when the respondent no. 2 took up the matter with the State Government, it insisted that in the absence of a formal request from the IDA it could not extend its area u/s 38 of
C the Adhiniyam. Accordingly, the respondent no. 2 had submitted its formal request by its aforesaid letter dated 14/10/2005."

98. The State, it is interesting to note, took a similar plea when the appellant-authority sought permission for new Transport Nagar Scheme on 265 hectares of land situated in village Mundrla Nayata by its letter dated
D 23.08.2005 stating:

> "Please refer the reference letter by which the Indore Development Authority sought permission for new Transport Nagar Scheme on 265 hectares of land situated in village Mundrla Nayata.
>
E (1) In this regard opinion of law department has been received and as per that in the year 1977 the areas of Indore Development Authority was prescribed whereas the questioned scheme is failing beyond the prescribed operational area.
>
F (2) Although as per letter dated 28th June, 2002, the planning area of Indore city is extended but the operational area of Indore Development Authority has not been extended. At present, Indore Development Plan, 1991 is in force and new Development Plan is being prepared.
>
(3) Thus, the Indore Development Authority is not competent to
G declare "Town Development Scheme" beyond its prescribed operational area."

99. Yet again, the State in exercise of its power under Section 38(1) of the Act notified planning area confirming to the one identified by the District Planning Committee in terms of its notification dated 28.10.2005.

H

How State understood it :

100. Application of the principle of executive construction would lead to a conclusion that the State and the appellant themselves proceeded on the basis that in terms of the notification issued by the District Planning Committee, the area of operation of the appellant was not extended.

101. In *G.P. Singh's 'Principles of Statutory Interpretation,* 10th Edn. at p. 319, it is stated :

> "But a uniform and consistent departmental practice arising out of construction placed upon an ambiguous statute by the highest executive officers at or near the time of its enactment and continuing for a long period of time is an admissible aid to the proper construction of the statute by the Court and would not be disregarded except for cogent reasons. The controlling effect of this aid which is known as 'executive construction' would depend upon various factors such as the length of time for which it is followed, the nature of rights and property affected by it, the injustice result from its departure and the approval that it has received in judicial decisions or in legislation.
>
> Relying upon this principle, the Supreme Court in *Ajay Gandhi* v. *B. Singh* having regard to the fact that the President of the Income Tax Appellate Tribunal had been from its inception in 1941 exercising the power of transfer of the members of the Tribunal to the places where Benches of the Tribunal were functioning, held construing sections 251(1) and 255(5) of the Income Tax Act that the President under these provisions has the requisite power of transfer and posting of its members. The court observed : "For construction of a statute, it is trite, the actual practice may be taken into consideration."
>
> Contemporary official statements throwing light on the construction of a statute and statutory instruments made under it have been used as contemporanea expositio to interpret not only ancient but even recent statute both in England and India."

[See also *S.B. Bhattacharjee* v. *S.D. Majumdar & Ors.,* Civil Appeal arising out of S.L.P. (Civil) No. 3413 of 2006, disposed of today].

Exercise of delegated power - effect of :

A 102. The State exercises its different power for different purposes. Issuing notification of a planning area, whether named or not, for the purpose of Section 13(1) is different from the one for which a development authority is created within the meaning of Section 38(1) of the Act. The State in a given situation may appoint more than one authority for the same planned area. The State delegated its power upon the District Planning Authority under Section B 38 of the Act. The appellant-authority was created for a definite purpose. Its jurisdiction was limited to the area notified. When so creating, although 1974 notification was referred to, the same was only for the purpose of limiting the area of operation of the appellant-authority. The principle of legislation by incorporation was applied and not the principle of legislation by reference.

C 103. The difference between the two principles is well-known. Whereas in the case of the former, a further notification amending the ambit or scope of the statute would be necessary, if the statute incorporated by reference is amended, in the latter it would not be necessary.

D 104. In *Rakesh Vij* v. *Dr. Raminder Pal Singh Sethi and Ors.*, AIR (2005) SC 3593, this Court observed:

> "9. Adopting or applying an earlier or existing Act by competent Legislature to a later Act is an accepted device of Legislation. If the adopting Act refers to certain provisions of an earlier existing Act, it E is known as legislation by reference. Whereas if the provisions of another Act are bodily lifted and incorporated in the Act, then it is known as legislation by incorporation. The determination whether a legislation was by way of incorporation or reference is more a matter of construction by the courts keeping in view the language employed by the Act, the purpose of referring or incorporating provisions of an F existing Act and the effect of it on the day-to-day working. Reason for it is the courts' prime duty to assume that any law made by the Legislature is enacted to serve public purpose.."

105. It is furthermore a well-settled principle of law that a delegatee must G exercise its jurisdiction within the four-corners of its delegation. If it could not exercise its delegated power for the purpose of creation of the appellant authority or extended its jurisdiction, in our opinion, it cannot be done by amendment of a notification issued under Section 13(1) of the Act.

106. We may at this juncture notice the effect of the notifications issued H by the authority :

* It is a matter of record that the notification issued on 13.02.1974 under Section 13 notifying the planning area, did not include land of Respondent No. 1. A

* It is also a matter of record that the Indore Development Plan, 1991 notified in 1975 does not admittedly include the village in which the land of Respondent No. 1 is situate. B

* The notification issued under Section 38(1) of the Act on 09.05.1977 is also limited to the area specified in the notification dated 13.02.1974 and admittedly does not include the land of Respondent No. 1.

107. Admittedly, the villages in question had been included by the State in its notification issued on 28.10.2005. Prior thereto, the said villages having not been included within the area of operation of the appellant authority, any action taken either by way of its intention to frame a town planning scheme or otherwise shall be wholly illegal and without jurisdiction. It would render its act in relation to the said villages a nullity. C D

108. It is, therefore, difficult for us to accept the submission of Mr. Venugopal and Mr. Gambhir that the notification dated 13.11.2000 subsumes in the notification dated 12.08.1977.

109. For the reasons aforementioned, we do not have any other option but to uphold the impugned judgment of the High Court. E

110. We may, however, observe that several other contentions, as noticed hereinbefore, have been raised before us but we do not find any necessity to go thereinto.

F

Should we issue Mandamus ?

111. Before parting, however, we must notice a submission of Mr. C.A. Sundaram, learned counsel appearing on behalf of the respondents, to the effect that the High Court committed a manifest error insofar as it limited its direction only to the following: G

> "...The impugned order dated 17.5.2006 of the learned Single Judge in W.P. No. 4 of 2005 is set aside and the notification dated 24.8.2004 of the Indore Development Authority insofar as it applies to village Bicholi Hapsi and the communication of the Joint Director, Town and Country Planning, Indore to the appellant that he cannot approve the H

A plan for construction of the house of the appellant because of the publication of the Draft Scheme No. 164 U/s. 50(2) of the Adhiniyam are quashed and the Director is directed to reconsider the application of the petitioner for permission to undertake construction of the house in accordance with the provisions of the Adhiniyam and the observations in this judgment..."

B

112. The learned counsel would submit that the said direction is not correct as the High Court should have directed the Director to consider the respondents' application in accordance with the law as it existed at the relevant point of time. We do not subscribe to the said view as it is now well-known that that where a statute provides for a right, but enforcement thereof C is in several stages, unless and until the conditions precedent laid down therein are satisfied, no right can be said to have been vested in the person concerned.

113. In *Director of Public Works* v. *Ho Po Sang,* (1961) AC 901 : [1961] D 2 All ER 721, the Privy Council considered the said question having regard to the repealing provisions of the Landlord and Tenant Ordinance, 1947 as amended on 9-4-1957. It was held that having regard to the repeal of Sections 3-A to 3-E, when applications remained pending, no accrued or vested right was derived stating:

E "In summary, the application of the second appellant for a rebuilding certificate conferred no right on him which was preserved after the repeal of Sections 3-A to 3-E, but merely conferred hope or expectation that the Governor-in-Council would exercise his executive or ministerial discretion in his favour and the first appellant would thereafter issue a certificate. Similarly, the issue by the first appellant of notice of F intention to grant a rebuilding certificate conferred no right on the second appellant which was preserved after the repeal, but merely instituted a procedure whereby the matter could be referred to the Governor-in-Council. The repeal disentitled the first appellant from thereafter issuing any rebuilding certificate where the matter had been G referred by petition to the Governor-in-Council but had not been determined by the Governor."

[See also *Lakshmi Amma* v. *Devassy,* (1970) KLT 204]

114. The question again came up for consideration in *Howrah Municipal* H *Corpn.* v. *Ganges Rope Co. Ltd.,* [2004] 1 SCC 663, wherein this Court

categorically held : A

> "The context in which the respondent Company claims a vested right for sanction and which has been accepted by the Division Bench of the High Court, is not a right in relation to ownership or possession of any property for which the expression vest is generally used. What we can understand from the claim of a vested right set up by the B respondent Company is that on the basis of the Building Rules, as applicable to their case on the date of making an application for sanction and the fixed period allotted by the Court for its consideration, it had a legitimate or settled expectation to obtain the sanction. In our considered opinion, such settled expectation, if any, did not create C any vested right to obtain sanction. True it is, that the respondent Company which can have no control over the manner of processing of application for sanction by the Corporation cannot be blamed for delay but during pendency of its application for sanction, if the State Government, in exercise of its rule-making power, amended the Building Rules and imposed restrictions on the heights of buildings on G.T. D Road and other wards, such settled expectation has been rendered impossible of fulfilment due to change in law. The claim based on the alleged vested right or settled expectation cannot be set up against statutory provisions which were brought into force by the State Government by amending the Building Rules and not by the E Corporation against whom such vested right or settled expectation is being sought to be enforced. The vested right or settled expectation has been nullified not only by the Corporation but also by the State by amending the Building Rules. Besides this, such a settled expectation or the so-called vested right cannot be countenanced against public interest and convenience which are sought to be served by amendment F of the Building Rules and the resolution of the Corporation issued thereupon."

115. In *Union of India* v. *Indian Charge Chrome,* [1999] 7 SCC 314, yet again this Court emphasized :

G

> "The application has to be decided in accordance with the law applicable on the date on which the authority granting the registration is called upon to apply its mind to the prayer for registration."

116. In *S.B. International Ltd.* v. *Asstt. Director General of Foreign Trade,* [1996] 2 SCC 439, this Court repelled a contention that the authorities H

A cannot take advantage of their own wrong viz. delay in issuing the advance licence, stating :

> "We have mentioned hereinbefore that issuance of these licences is not a formality nor a mere ministerial function but that it requires due verification and formation of satisfaction as to compliance with
B all the relevant provisions."

[See also *Kuldeep Singh* v. *Govt. NCT of Delhi,* [2006] 5 SCC 702]

117. For the reasons aforementioned, there is no merit in these appeals which are dismissed accordingly. There shall, however, be no order as to
C costs.

B.S. Appeal dismissed.