REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6156 OF 2013

HARI KRISHNA MANDIR TRUST ....Appellant (s)

versus

STATE OF MAHARASHTRA AND OTHERS .....Respondent (s)

J U D G M E N T

Indira Banerjee, J.

This appeal is against a judgment and order dated 15.9.2008 passed by a Division Bench of Bombay High Court dismissing Writ Petition No.904 of 2008 filed by the appellant, challenging an order dated 3.5.2006, whereby the State Government refused to sanction modification of a Scheme under the provisions of Section 91 of the Maharashtra Regional and Town Planning Act, 1966, hereinafter referred to as "the Regional and Town Planning Act").

2. One Thorat family was the owner of Plot No. 473 in City Survey No. 1092 at Bhamburda in Pune. By a registered deed of conveyance dated 21.12.1956 one Mrs. Krishnabai Gopal Rao Thorat sold the northern part of the plot admeasuring 4910 sq.m. jointly to Swami Dilip Kumar Roy, one of the most eminent disciples of Sri Aurobindo, and Smt. Indira Devi, daughter disciple of Swami Dilip Kumar Roy. The names of Swami Dilip Kumar Roy and Smt. Indira Devi were duly recorded in the relevant revenue records in 1959.

3. Swami Dilip Kumar Roy had moved to Pune to propagate the philosophy of Sri Aurobindo and established the Hare Krishna Mandir with his daughter disciple Smt. Indira Devi, on the land purchased from Mrs. Krishnabai Gopal RaoThorat.

4. According to the appellants, by an order dated 20.8.1970 of the Pune Municipal Corporation, Plot No. 473 which was originally numbered Survey No.1092, was divided. Final plot No. 473 B was sub divided into 4 plots being plot Nos. 473 B1 comprising an area of 1025 square meters, 473 B2 comprising an area of 603.00 square meters, 473 B3 comprising an area of 2838 square meters and 473 B4, a private road admeasuring 414.14 square meters.

5. Plot No. 473 B1 was owned by Mrs. Kanta Nanda, Plot No. 473 B2 by Mr. Premal Malhotra, and Plot No. 473 B3 by Swami Dilip

Kumar Roy and Smt. Indira Devi. Plot No. 473 B4, which was a vacant plot of land, was shown as an Internal Private Road measuring 444.14 Sq. mtr., in the possession of Swami Dilip Roy and Smt. Indira Devi and the holders of Plot Nos. 473 B1 and 473 B2, namely, Mrs. Kanta Nanda and Mr. Premal Malhotra. It is not in dispute that the Pune Municipal Corporation was not mentioned in the order dated 20.8.1970.

6. On 20.8.1970 the City Survey Officer directed issuance of separate property cards in view of a proposed Development Scheme under the Regional and Town Planning Act which included Final Plot No.473, and an Arbitrator was appointed. The Arbitrator made an Award dated 16.5.1972 directing that the area and ownership of the plots were to be as per entries in the property register.

7. In 1979, the Town Planning Scheme was sanctioned and came into effect. In 'B' Form, Final Plot No.473 was shown to have been divided into five parts with ownership as follows:-

473 B1: Mrs Kanta Nanda
473 B2: Mr Premal Malhotra
473 B3: Swami Dilipkumar Roy and Sm. Indira Devi
473 B4: Open space owned by Swami Dilipkumar Roy and Sm. Indira Devi
Unnumbered: Road measuring 444.14 sq.mt owned by Pune Municipal Corporation

8. The appellant contends that the Pune Municipal Corporation by its letters dated 29.6.1996, 4.1.1997 and 18.1.1997 admitted that the internal road had never been acquired by the Pune Municipal Corporation. The Town and Planning Department also admitted that Pune Minicipal Corpotation had wrongly been shown to be owner of said road.

9. By a letter dated 29th June, 1996, the City Survey Officer informed the Assistant Engineer, Land and Property of the Pune Municipal Corporation that, as per registered document no. 1429 dated 21.12.1956, Sri Dilip Kumar Roy and Mrs. Indira Devi had purchased, Final Plot No. 473B in Survey Plot No.1092 at Bhamburda, Pune, admeasuring 52,892 sq.f. from Krishnabai Gopal Rai Thorat. Accordingly as per letter number PTI 2325/12/56 of the City Architect, separate property card had been opened on 3.9.1959 and the names of the purchasers recorded.

10. The said letter recorded that as per the office order of the City Architect dated 20.8.1970, Survey Number 1092B was sub divided as follows:-

S.No.	C.S. No.	Area (Sq.mtr.)	Name of the Occupier
1	1092 B/1	1025.00	Smt. Kanta Nanda
2.	1092 B/2	603.00	Sri Premal Malhotra
3.	1092 B/3	2838.00	Shri Dilip Kumar Roy Smt. Indira Devi
4.	1092 B/4	444.00 (Road)	Occupiers of Sr. Nos. 1 to 3

11. The City Survey Officer pointed out that the names of the occupiers named above had been confirmed. However, as per Form I approved in Town Plan No. I, Pune, the name of Pune Municipal Corporation had been recorded and/or entered incorrectly. The City Survey Officer recommended initiation of further action, as may be deemed proper, to consider deletion of the name of the Pune Municipal Corporation as holder of the road to enable the office of the City Architect to take further action.

12. By a letter dated 4.1.1997 written in response to a letter dated 4.12.1995, the City Deputy Engineer, Construction Control, Pune Municipal Corporation informed Smt. Indira Devi that the internal road of final plot number 473B had not come into the possession of the Pune Municipal Corporation.

13. By a letter dated 18.1.1997 of the Town Planning and Valuation Department of the State Government at Pune, the Assistant Commissioner (Special), Pune Municipal Corporation was informed that the Government had finally approved Town Planning Scheme No. I, Pune. However, in the approved Town Planning Scheme, Plot No. 473B has been divided into two parts and out of that final plot number, 473B has been sub-divided into four sub-plots. A road with the width of 15 feet measuring 414.14 sqm. has been shown under the ownership of Pune Municipal Corporation.

However, on inspection, it was observed that there was no road in existence. Final plot number 473B was divided into three plots of land and one separate plot of land shown as open vacant premises. A layout was prepared and approved by the City Engineer.

14. On 12.3.1997, Smt. Indira Devi executed a registered trust deed constituting the appellant trust and transferred FP 473-B3 and the internal road to the appellant trust. The appellant trust wrote a letter to the State Government requesting the State Government to correct the wrong entry in the name of Pune Municipal Corporation in the B Form.

15. On 25.4.2000, an order number TPS1697/1271/CR70/ 20000/UD-13 was passed by the Urban Development Department, Government of Maharashtra. The said order is extracted hereinbelow for convenience: -

> *"Whereas, Town Planning Scheme Pune No.1 (First variation) has been sanctioned by the State Government vide Notification, Urban Development Department No. TPS 1879/1064/UD-7 dated 5.7.1979 and the same has come into force with effect from 15.8.1979 (hereinafter referred to as "the said Scheme').*
>
> *And whereas, in the said Scheme Final Plot No. 473B has been subdivided as 473B-1, 473B-2, 473B-3 473B-4 and internal layout road (area 444.14 sqmtr.) (hereinafter referred to as "the said road").*
>
> *And whereas the owner of the final plot no. 473B-2 and 473B-3 has requested Government to direct the Pune Municipal Corporation (hereinafter referred to as "the said Corporation") to vary the said Scheme to delete the said*

road and include the area in adjacent Final Plot No. 473B-2 to 473B-4 as per site conditions.

And whereas, the Director to Town Planning vide his letter No. TPS No.I/FP 473B/Shivajinagar/TPV-I/10420 dated 20.3.98 also informed that as per site condition it is not feasible for the said corporation to construct the said road;

And whereas, considering all these facts, the Government of Mahrashtra is satisfied that it is necessary to vary the said scheme under Section 91 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as the "said Act") to delete the said road and merge the area in adjacent plots and said variation required to be made is not of a substantial nature;

Now, therefore, the Government of Maharashtra hereby directs the said Corporation to undertake the variation to the said Scheme under sub-section (2) of Section 91 of the said Act in respect of the following:-

a) The said Corporation in accordance with provision contained in Section 91 of the said act shall undertake variation to the said Scheme to merge the said road area in Final Plot No. 473B-2 to 473B-4 and effect consequential changes in the area of these final plot numbers.

b) The said Corporation shall accordingly prepare and publish and draft variation as per provision laid down in sub-section (2) of Section 91 of the said Act.

By order and in the name of the Governor of Maharashtra."

16. By a letter dated 23.10.2002, the Additional Municipal Corporation Commissioner, Pune Municipal Corporation informed the Secretary, Urban Development Department, Government of Maharashtra that the Town Planning Scheme No. I in respect of Plot number 473B had been given effect without any change in the boundaries of the plot. The plot had been divided into two large plots, one of which had been further sub-divided. **The area of ownership of the plot was to be as per entries in the property register.** In the said letter it has categorically been stated that it was necessary to confirm the area of final plot number

473B as per Town Planning Scheme No. I (first variation), as decided by the arbitrator, for initiating action of deleting Pune Municipal Corporation from Form B in respect of the road which had been shown in that plot after making sub-division of the said plot, and to give effect to the Property Card of Pune Municipal Corporation recording the names of the holders of the final plot. The said letter dated 23.10.2002 clearly stated that as per division made during the year 1970, there was no road. However, a road would have to be provided for approaching the plot of Shri Nanda.

17. From the said letter dated 23.10.2002, it appears that, as per Resolution No.117 taken at the General Body meeting of the Pune Municipal Corporation on 21.5.2001, approval had been given for necessary action for changes as per Section 93 of the Regional and Town Planning Act and notice dated 23.8.2001 to that effect published in the Gazette of Maharashtra.

18. By a notice dated 8.9.2004, the Municipal Commissioner, Pune Municipal Corporation invited objections against the proposal for merging the internal road with the adjoining sub plots 473 B1, B2, B3 and B4. There does not appear to have been any objection.

19. Thereafter, by a Resolution No. 611 dated 23.3.2006, the Pune Municipal Corporation adopted the following resolution:-

> *"Perused the letter on the subject of the Hon'ble Municipal Commissioner and taking into consideration recommendation of the Improvement Committee:*
>
> *After cancelling internal road of Plot No. 473B at Shivaji Nagar and after declaring the same as No-development zone no. F.S.I. should be granted in respect of the road which has been cancelled. Similarly as shown in the affidavit of the Plot Holder Applicant in front of the plot of plot No. 473B-1, approval is being provided to give the opinion of Municipal Corporation for providing the road available."*

20. By a letter dated 5.4.2006, the City Engineer, Pune Municipal Corporation informed the Municipal Commissioner that the internal road in plot number 473B as shown in the layout measuring 444.14 sq. meters had been merged and included in adjacent sub plot number 473 B-2 and accordingly orders had been issued to implement the decision as per Section 92(2) of the Regional and Town Planning Act. In pursuance of Resolution number 117 dated 24.6.2001, sanction was being given for making changes as per Section 91 of the Regional and Town Planning Act.

21. Thereafter the Municipal Commissioner wrote a letter to the State Government on 7.4.2006 submitting a proposal for approval of variation in the Town Planning Scheme under Section 91 of the Regional and Town Planning Act.

22. By an order dated 3.5.2006 impugned in the writ petition, the Urban Development Department, Government of Maharashtra rejected the proposal for modification of the Scheme under Section 91 with the following observations:-

1. *The proposal had been opposed by the Pune Municipal Corporation, who is the owner in respect of the land.*
2. *Non-compliance of legal requirements in connection with the proposal.*
3. *It could not be assumed that the Trust would grant permission to the plot holders of 473B for using the private road of the adjacent society.*
4. *It has been considered a basic necessity of the Town Planning Scheme to have approach road for every plot.*
5. *The deletion of the road would mean that the road would not be available for new plots of land.*

23. The finding that the Pune Municipal Corporation was the owner of the land is patently contrary to official records and smacks of patent error. In any case the impugned order is totally vague in the absence of any whisper of the legal requirements alleged to have not been complied with.

24. The observation in the impugned order, that it could not be assumed that the appellant Trust would grant permission to other

plot holders of Plot No.473B is speculative and conjectural, overlooking the usage of the vacant land (Plot No.473 B-4) for several decades as also the statutory records including the Award of the Arbitrator in terms whereof Plot 473 B4 was shown to be held by the owners of Plot Nos. 473 B1, 473 B2 and 473 B3. In any case, none of the owners of the adjacent plots had raised any objection to the modification. Furthermore, the attention of the authorities had duly been drawn to the express terms of the will of Sm. Indira Devi giving the easementary rights to owners of adjacent plots of access through the plot held by her. If the Planning Authority felt it necessary to provide approach roads, it was incumbent upon it to acquire land in accordance with law, upon payment of compensation to its owners or alternatively purchase the same by negotiation.

25. By a letter dated 9.8.2007, the Appellant Trust drew the attention of the then Chief Minister of Maharashtra to relevant facts pertaining to the road, and in particular, to the fact that Smt. Indira Devi had in her will bequeathed to the other plot owners access through the plot. The appellant Trust requested the Government to delete the name of Pune Municipal Commissioner wrongly entered in the property register.

26. The appellants filed the writ petition being Writ Petition No.904 of 2008 in the Bombay High Court challenging the said order dated 3.5.2006. The writ petition has been dismissed by the judgment and order under appeal. The High Court found that the land in question had vested, without any encumbrances, in the Pune Municipal Corporation at the time of commencement of the Town Planning Scheme, by virtue of Section 88 of the Regional and Town Planning Act.

27. The High Court has apparently misconstrued Section 88, reading the same in a narrow, pedantic manner in isolation from other relevant provisions of the Regional and Town Planning Act, as discussed later in the judgment.

28. The High Court has failed to address the question of how the name of Pune Municipal Corporation could all of a sudden be shown as the owner of the internal road with effect from 4th March 1986, in complete disregard of all records. The High Court has, with the greatest of respect, failed to apply its mind to relevant facts, particularly the records of the Pune Municipal Corporation with regard to property holders, the Arbitrator's Award dated 16.5.1972 under section 72 of the Regional and Town Planning Act and the admission of Pune Municipal Corporation that the road did not belong to it, it was never acquired and that the name of Pune

Municipal Corporation had wrongly been recorded. Rather, the High Court records that the Respondent authorities have not disputed facts in their counter affidavit, but only claimed that the land had vested under Section 88 and that it was not feasible to make changes in the Scheme.

29. The finding of the High Court that it was never the case of the petitioner that the land had not vested, is misconceived. First of all there does not appear to be any admission of vesting on the part of the Appellant Trust. In any case land can only vest in accordance with law. If the land has not vested, a mistaken admission would make no difference, for there can be no estoppel against the Constitution of India, or any statute.

30. Significantly, the High Court has, in its judgment and order under appeal, duly recorded the submission that Pune Municipal Corporation had by its Resolution No.611 passed on 23rd March, 2006 resolved not to claim any right in respect of Final Plot No.B4.

31. The High Court failed to appreciate that the mere sanctioning of a Town Planning Scheme would not wipe out a patently erroneous recording in the scheme. The High Court did not examine how the road measuring 414.14 square meters could have been allotted to Pune Municipal Corporation.

32. Furthermore, the High Court came to the conclusion that since any variation had to be in the light of the provisions of Section 91, the same would be applicable to the given case which would permit only a variation or modification of a minor nature. The High Court found the deletion of a public road from the Town Planning Scheme, to be a variation of a substantial nature, which could not be permitted, since it would be hit by the bar inherent in the Section.

33. The condition precedent for variation of a scheme under Section 91 is an error, irregularity or informality. There can hardly be any doubt that the Scheme smacks of apparent error, irregularity and infirmity in so far as it records Pune Municipal Corporation as the owner of the private road. A variation of the Scheme by recording the name of the true owner cannot be a substantial variation. It is nobody's case that the road is a public road. The finding of the High Court that the change of a public road into a private road was variation of a substantial nature, is ex facie erroneous and inconsistent with facts as recorded in the judgment and order itself.

34. In 1966 the Maharashtra State Legislature enacted the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as 'the Regional and Town Planning Act') to make

provision for planning and development and use of land in Regions established for that purpose, and for the constitution of Regional Planning Boards therefor; to make better provision for the preparation of Development Plans with a view to ensuring that Town Planning Schemes are made in a proper manner and their execution is made effective; to provide for the creation of new towns by means of Development Authorities; **to make provisions for the compulsory acquisition of land required for public purposes in respect of the plans**; and for purposes connected therewith.

35. Section 3 of the Regional and Town Planning Act, 1966 empowers the State Government to establish by notification any area in the State by defining its limits, to be region for the purposes of the said Act and to name and alter the name of any such region. Section 4 read with Section 8 of the Regional and Town Planning Act provides for the constitution of Regional Planning Boards:-

(a) to carry out a survey of the Region, and prepare reports on the surveys so carried out;

(b) to prepare an existing-land-use map and such other maps as may be necessary, for the purpose of preparing a Regional Plan;

(c) to prepare a Regional Plan;

(d) to perform any other duties or functions as are supplemental, incidental or consequential to any of the foregoing duties, or as may be prescribed by regulations.

36. Sections 21(1), (2) and (3) of the Regional and Town Planning Act as it stood at the material time provided:-

> *"**21. Development Plan:–** (1) As soon as may be after the commencement of this Act, but not later than three years after such commencement, and subject however to the provisions of this Act, every Planning Authority shall carry out a survey, prepare an existing land-use map and prepare a draft development plan for the area within its jurisdiction, in accordance with the provisions of a Regional plan, where there is such a plan [publish a notice in the Official Gazette and in such other manner as may be prescribed stating that the draft development plan has been prepared] and submit the plan to the State Government for sanction. The Planning Authority shall also submit a quarterly Report to the State Government about the progress made in carrying out the survey and prepare the plan.*
>
> *(2) Subject to the provisions of this Act, every Planning Authority constituted after the commencement of this Act shall, not later than three years from the date of its constitution, [declare its intention to prepare a draft Development plan, prepare such plan and publish a notice of such preparation in the Official Gazette] and in such other manner as may be prescribed] and [submit the draft development plan] to the State Government for sanction.*
>
> *[(3) On an application made by any Planning Authority, the State Government may, having regard to the permissible period specified in the preceding sections, from time to time, by order in writing and for adequate reasons to be specified in such order, extend such period.]"*

37. Section 21 provides that a development plan shall generally indicate the manner in which the use of land in the area of the Planning Authority shall be regulated and also indicate the manner in which the development of land therein shall be carried out.

38. Section 51 of the Regional and Town Planning Act empowers the Planning Authority to revoke or modify any permission to develop as per development plan to such extent as appears to be necessary after giving the person concerned an opportunity of hearing.

39. Section 59 of the Regional and Town Planning Act enables a Planning Authority to prepare Town Planning Schemes for the area within its jurisdiction, or any part thereof, for the purpose of implementing proposals for development. Section 59(b) of the Regional and Town Planning Act provides that a Town Planning Scheme might make provisions for the matters specified in the said Section, which includes, *inter alia,* proposals for allocating the use of land for residential, industrial, commercial, agricultural or recreational purposes, proposals for designation of lands for public purposes such as schools, colleges and other educational institutions, medical and public health institutions, markets, social welfare and cultural institutions, theaters and places of public entertainment, transport and communications such as roads, highways, railways, waterways, canals, airports etc. water supply, sewage etc.

40. The Town Planning Scheme might also make provisions, apart from the matters specified in Section 22, *inter alia, relating* to

laying out or re-laying out of land, either vacant or already built upon, including areas of comprehensive development ; layout of new streets or roads, construction, diversion, extension, alteration, improvement and closing up of streets and roads etc; the construction, alteration and removal of buildings, bridges and other structures; allotment or reservation of land for open spaces, gardens, recreation grounds, schools, markets, green-belts, dairies, transport facilities and public purposes of all kinds; drainage, including sewerage, surface or sub-soil drainage and sewage disposal; lighting; water supply; preservation of objects of historical or national interest or natural beauty, and of buildings used for religious purposes or other objects.

41. Section 59 of the Regional and Town Planning Act is reproduced hereinbelow for convenience:

> *"**59. Preparation and contents of town planning scheme:**- [(1)] Subject to the provisions of this Act or any other law for the time being in force—*
>
> *(a) a Planning Authority may for the purpose of implementing the proposals in the final Development plan prepare [or in respect of any land which is likely to be in the course of development or which is already built upon], prepare one or more town planning schemes for the area within its jurisdiction, or any part thereof ;*
>
> *(b) a town planning scheme may make provision for any of the following matters, that is to say—*
>
> *(i) any of the matters specified in section 22 ;*

(ii) the laying out or re-laying out of land, either vacant or already built upon, including areas of comprehensive development;

[(ii-a) the filling-up or reclamation of low-lying, swampy or unhealthy area, or levelling-up of land;

(ii-b) layout of new streets or roads, construction, diversion, extension, alteration, improvement and closing up of streets and roads and discontinuance of communications;

(ii-c) the construction, alteration and removal of buildings, bridges and other structures;

(ii-d) the allotment or reservation of land for open spaces, gardens, recreation grounds, schools, markets, green-belts, dairies, transport facilities and public purposes of all kinds;

(ii-e) drainage, inclusive of sewerage, surface or sub-soil drainage and sewage disposal;

(ii-f) lighting;

(ii-g) water supply;

(ii-h) the preservation of objects of historical or national interest or natural beauty, and of building actually used for religious purposes;]

(iii) the suspension, as far as may be necessary for the proper carrying out of the scheme, of any rule, bye-law, regulation, notification or order made or issued under any law for the time being in force which the Legislature of the State is competent to make;

(iv) such other matter not inconsistent with the object of this Act, as may be directed by the State Government.

[(2) In making provisions in a draft town planning scheme for any of the matters referred to in clause (b) of sub-section (1), it shall be lawful for a Planning Authority with the approval of the Director of Town Planning and subject to the provisions of section 68 to provide for suitable amendment of the Development plan.]

42. Section 61 enables the Planning Authority to make a draft scheme for an area, in respect of which a declaration is made. In case of failure to make a draft scheme within the period specified in sub-section (1) of Section 61 or within the period as extended by sub-section (3), the declaration is to lapse. However notwithstanding such lapse the Planning Authority is not debarred from making a fresh declaration. The time to make a draft scheme may on an application of the Planning Authority be extended by the State Government, subject to the limitation in Section 61(3) a first declaration.

43. If at any time before a draft scheme is prepared and submitted to the State Government for sanction, the Planning Authority or its officers are of the opinion or on any representation made to them, that an additional area be included within the same scheme, the Planning Authority or the officer may, after informing the State Government and giving notice in the Official Gazette, and also in one or more local newspapers include such additional area in the scheme, and thereupon all the provisions of Sections 59, 60 and 61 are to apply in relation to such additional area as they apply to any original area of the scheme, and draft scheme is to be prepared for the original area and the additional areas.

44. Section 63 of the Regional and Town Planning Act enables the State Government to require any Planning Authority to make and submit and sanction a draft scheme in respect of any land with regard to which a Town Planning Scheme may be made.

45. If the Planning Authority fails to make the declaration of intention to make a scheme within three months from the date of direction made under sub-section (1), the State Government may by notification in the Official Gazette, appoint an officer to make and submit the draft scheme for the land to the State Government [after a notice regarding its making has been duly published as aforesaid] and thereupon the provisions of sections 60, 61 and 62 shall, as far as may be applicable, apply to the making of such a scheme.

46. Section 64 provides as follows:-

> "***64. Contents of draft Scheme. -*** *A draft scheme shall contain the following particulars so far as may be necessary, that is to say,—*
>
> *(a) the ownership, area and tenure of each original plot ;*
>
> *(b) reservation, acquisition or allotment of land required under sub-clause (1) of clause (b) of section 59 with the general indication of the uses to which such land is to be put and the terms and conditions subject to which, such land is to be put to such uses ;*
>
> *(c) the extent to which it is proposed to alter the boundaries of the original plots by reconstitution ;*
>
> *(d) an estimate of the total cost of the scheme and the net cost to be borne by the Planning Authority ;*

(e) a full description of all the details of the scheme with respect to such matters referred to in clause (b) of section 59 as may be applicable ;

(f) the laying out or re-laying out of land either vacant or already built upon including areas of comprehensive development ;

(g) the filling up or reclamation of low lying, swamp or unhealthy areas or levelling up of land ;

(h) any other prescribed particulars."

47. **A draft scheme is to contain particulars of the ownership, area and tenure of each original plot**; reservation, acquisition or allotment of land required under sub-clause (i) of clause (b) of section 59 with a general indication of the uses to which such land is to be put and the terms and conditions subject to which, such land is to be put to such uses; the extent to which it is proposed to alter the boundaries of the original plots by reconstitution; a full description of all the details of the scheme with respect matters referred to in clause (b) of section 59 as might be applicable.

48. Section 65 provides as follows:-

*"**65**. **Reconstituted plot–** (1) In the draft scheme, the size and shape of every reconstituted plot shall be determined, so far as may be, to render it suitable for building purposes, and where a plot is already built upon, to ensure that the buildings as far as possible comply with the provisions of the scheme as regards open spaces.*

(2) For the purpose of sub-section (1), a draft scheme may contain proposals—

(a) to form a final plot by reconstitution of an original plot by alteration of the boundaries of the original plot, if necessary ;

(b) to form a final plot from an original plot by the transfer wholly or partly of the adjoining lands ;

(c) to provide, with the consent of the owners, that two or more original plots each of which is held in ownership in severally or in joint ownership shall hereafter, with or without alteration of boundaries be held in ownership in common as a final plot ;

(d) to allot a final plot to any owner dispossessed of land in furtherance of the scheme; and

(e) to transfer the ownership of an original plot from one person to another."

49. Section 65 provides that in the draft scheme, the size and shape of every reconstituted plot shall be determined, so far as may be, to render it suitable for building purposes, and where a plot is already built upon, to ensure that the buildings as far as possible comply with the provisions of the Scheme as regards open spaces. A draft scheme may contain proposals to form a final plot by reconstitution of an original plot, if necessary, by alteration of the boundaries of the original plot ; to form a final plot from an original plot by the transfer wholly or partly of the adjoining lands; to provide, with the consent of the owners, that two or more original plots each of which is held in ownership severally or in joint ownership shall with or without alteration of boundaries be held in

ownership in common; to allot a final plot to any owner dispossessed of land in furtherance of the scheme and to transfer the ownership of an original plot from one person to another.

50. None of the provisions referred to above enable the Planning Authority or any other authority to divest an owner of his/her property. Rather, Section 64 mandates that a draft scheme is to contain particulars of ownership area and tenure of each original plot. Any transfer or any alteration of boundary, amalgamation or separation has to be with the consent of the owner in view of the express mandate of Section 65. Implicit in Section 65 is that a transfer must be for consideration.

51. Section 66 provides:-

> "***66. Compensation for discontinuation of use -*** *Where under sub-clause (1) of clause (b) of section 59 the purposes to which the buildings or areas may not be appropriated or used in pursuance of clause (m) of section 22 have been specified, then the building or area shall cease to be used for a purpose other than the purposes specified in the scheme within such time as may be specified in the final scheme, and the person affected by this provision shall be entitled to such compensation from the Planning Authority as may be determined by the Arbitrator:*
>
> *Provided that, in ascertaining whether compensation be paid, the time within which the person affected was permitted to change the user shall be taken into consideration."*

52. Section 68 provides as follows:-

> *"**68. Power of State Government to sanction draft scheme –** (1) The Planning Authority or, as the case may be, the officer aforesaid shall, not later than six months [from the date of the publication of the notice, in the Official Gazette, regarding the making of the draft scheme], submit the same with any modifications which it or he may have made therein together with a copy of objections received by it or him to the State Government, and shall at the same time apply for its sanction.*
>
> *(2) On receiving such application, after making such inquiry as it may think fit and consulting the Director of Town Planning, the State Government may, not later than [three months] from the date of its submission, by notification in the Official Gazette, [or not later than such further time as the State Government may extend] either sanction such draft scheme with or without modifications and subject to such conditions as it may think fit to impose or refuse to give sanction.*
>
> *(3) If the State Government sanctions such scheme, it shall in such modification state at what place and time the draft scheme shall be open to the inspection of the public [and the State Government shall also state therein that copies of the scheme or any extract therefrom certified to be correct shall on application be available for sale to the public at a reasonable price.]"*

53. Section 68 empowers the Planning Authority of the State Government to sanction the draft scheme not later than six months.

Section 71 provides:-

> *"**71. Disputed ownership:-** (1) Where there is a disputed claim as to the ownership of any piece of land included in an area in respect of which a declaration of intention to make a town planning scheme has been made and any entry in the record of rights or mutation register relevant to such disputed claim is inaccurate or inconclusive, an inquiry may be held on an application being made by the Planning Authority or the Arbitrator at any time prior to the date on which the arbitrator draws up the final scheme under clause (xviii) of sub-section (3) of section 72 by such officer as the State Government may appoint for the purpose of deciding*

who shall be deemed to be owner for the purposes of this Act.

(2) Such decision shall not be subject to appeal but it shall not operate as a bar to a regular suit.

(3) Such decision shall, in the event of a civil court passing a decree which is inconsistent therewith, be corrected, modified or rescinded in accordance with such decree as soon as practicable after such decree has been brought to the notice of the Planning Authority either by the Civil Court or by some person affected by such decree.

(4) Where such a decree of the civil court is passed, after final scheme has been sanctioned by the State Government under section 86, such final scheme shall be deemed to have been suitably varied by reason of such decree."

54. Section 71 provides that where there is disputed claim as to the ownership of any piece of land included in an area in respect of which a declaration of intention to make a Town Planning Scheme has been made, and any entry in the record of rights or mutation register relevant to such disputed claim is inaccurate or inconclusive, an inquiry may be held on an application being made by the Planning Authority or the Arbitrator at any time prior to the date on which the arbitrator draws up the final scheme under clause (xviii) of sub-section (3) of section 72 by such officer as the State Government may appoint for the purpose of deciding who shall be deemed to be owner for the purposes of this Act. Although the decision of the Arbitrator is not subject to appeal in view of sub-section (2) of the Section 71, the award is not to operate as a bar to regular suit. In case there is any decree in a Civil Suit, inconsistent

with the Award, the Award is to be connected, modified or rescinded and in case the decree is passed after sanction of a final Scheme, such final scheme is to be deemed to have been suitably varied, by reason of such decree.

55. Section 72 of the Regional and Town Planning Act enables the State Government to appoint an Arbitrator for the purposes of one or more planning schemes received by it. Section 73 provides:-

> *"**73. Certain decisions of Arbitrator to be final.-** Except in matters arising out of Section 72, every decision of the Arbitrator shall be final and conclusive and binding on all parties including the Planning Authority."*

56. Section 74 as it stood at the material time provided:-

> ***74. Appeal.-** (1) Any decision of the Arbitrator under clauses (iv) to (xi) to (xi) both inclusive and clauses (xiv), (xv and (xvi) of sub-section 3 of section 72 shall be forthwith communicated to the party concerned including the Planning Authority; and any party aggrieved by such decision may, within two months from the date of communication of the decision, apply to the Arbitrator to make a reference to the Tribunal of Appeal for decision of the appeal. (2) The provisions of sections 5, 12 and 14 of the Indian Limitation Act, 1963 shall apply to appeals submitted under this section.*

57. As observed above, in this case there was a reference to the Arbitrator. The Arbitrator made an award which has assumed finality. The Award has never been questioned, either by the Planning Authority or any of the owners. The verdict of the Arbitrator cannot be undone by the Planning Authority.

58. Section 91 of the Regional and Town Planning Act provides as follows:-

> ***"91. Power to vary schemes on ground of error, irregularity or informality:-*** *(1) If after the final scheme has come into force, the Planning Authority considers that the scheme is defective on account of an error, irregularity or informality or that the scheme needs the variation or modification of a minor nature, the Planning Authority may apply in writing to the State Government for variation of the scheme.*
>
> *(2) If, on receiving such application or otherwise, the State Government is satisfied that the variation required is not substantial, the State Government shall, by notification in the Official Gazette, authorise or direct the Planning Authority to prepare 1[a draft of such variation and publish a notice in the Official Gazette, and in such other manner as may be prescribed stating that a draft variation has been prepared.]*
>
> *(3) 2[The notice of preparation of a draft variation published] under sub-section (2) shall state every amendment proposed to be made in the scheme, and if any such amendment relates to a matter specified in any of the sub-clauses (i) to (iii) of clause (b) of section 59, the draft variation shall also contain such other particulars as may be prescribed.*
>
> *(4) The draft variation shall be open to the inspection of the public at the office of the Planning Authority during office hours and copies of such draft variation or any, extract therefrom certified to be correct shall be available for sale to the public at a reasonable price.*

(5) Not later than one month of the date of the publication of the notice regarding preparation of draft variation, any person affected thereby may communicate in writing his objections to such variation to the State Government,and send a copy thereof to the Planning Authority.

(6) After receiving the objections under sub-section (5), the State Government may, after consulting the Planning Authority and after making such inquiry as it may think fit, by notification in the Official Gazette,-

(a) appoint an Arbitrator, and thereupon the provisions of this Chapter shall so far as may be, apply to such draft variation, as if it were a draft scheme submitted to the State Government for sanction;

(b) sanction the variation with or without modifications; or

(c) refuse to sanction the variation.

(7) From the date of the notification sanctioning the variation, with or without modifications, such variation shall take effect as if it were incorporated in the scheme."

59. Chapter VII of the Regional and Town Planning Act comprising Sections 125-129 contains provisions for compulsory acquisition of land needed for the purposes of any Regional Plan, Development Plan or Town Planning Scheme. The Respondent authorities never took recourse to these proceedings to acquire any part of Plot No.473 B3, 473 B4 or any other adjacent Plot.

60. Mr. Pallav Sisodia, learned senior counsel appearing for the Appellant trust, assisted by Mr Braj K Mishra, argued, and in our view rightly, that the Appellant cannot be deprived of the subject strip of land being the private road without authority of law, as this would be a violation of Article 300-A of the Constitution of India, which prohibits deprivation of person from property without authority of law.

61. Mr. Sisodia submitted that in any case the award made by the Arbitrator in 1972 under Section 72 of the Regional and Town Planning Act stood final and binding. Mr. Sisodia emphatically argued that the award dated 16.5.1972 of the Arbitrator appointed under the Regional and Town Planning Act made it clear that the area and ownership of the plots were to be determined as per **entries in the Property Register**. This award is final and binding under Section 73 of the Regional and Town Planning Act. This is not disputed by the Respondents Sub-division in the Regional and Town Planning Act, therefore, has to be as follows:-

"1092 B1	1025	Smt. Kanta Nanda
1092 B2	603	Shri Premal Malhotra
1092 B3	2838	Shri Dilip Kumar Roy Smt. Indira Devi
1092 B4	444(Road)	Holders of Sl. No. 1 to 3"

62. However, in Form B of the Town Planning Scheme (TPS) the said sub-division was sought to be changed as follows:-

"473 B1	*1024.86*	*Smt. Kanta Nanda*
473 B2	*602.98*	*Shri Premal Malhotra*
473 B3	*2335.03*	*Shri Dilip Kumar Roy* *Smt. Indira Devi*
473 B4	*502.82*	*Shri Dilip Kumar Roy* *Smt. Indira Devi*
Road	*444.14*	*Pune Municipal Corporation"*

63. Mr. Sisodia pointed that the change was not preceded or followed by any demarcation, re-constitution, determination of compensation or any kind of taking over of possession or acquisition by Pune Municipal Corporation in accordance with procedure known in law, be it under Section 64, 65 read with Section 72 or Section 126 of the Regional and Town Planning Act. This is also not in dispute. As argued by Mr. Sisodia, Pune Municipal Corporation had on the other hand clearly admitted that they had never initiated any proceedings for acquisition or of taking over possession of the private road.

64. Mr. Sisodia submitted that there is no other award of the Arbitrator regarding the plot in question, except the one passed on 16.5.1972 showing the plot 1092 B4 to be a private road admeasuring 444.14 Sq. mtrs. to be in possession of the holders of plot No. 1092 B1, 1092 B2 and 1092 B3. The Town Planning Scheme thus clearly smacks of an error apparent in that plot 1094 B4 has been shown as a private road of the Pune Municipal Corporation.

65. Mr. Sisodia strenuously argued, and in our view rightly, that the respondent authorities were duty bound to correct the error in showing plot 414 Sq. mtrs. odd in Plot 1092 B4 as private road of the Pune Municipal Corporation. Mr. Sisodia argued that this fundamental error was the genesis of a series of errors which followed subsequently.

66. Mr. Sisodia submitted that although the Appellants were praying for rectification of an error, the Pune Municipal Corporation proposed the variation of the Town Planning Scheme by merging plot No.1092 B4 in other adjacent plots being 471 B1, B2 and B3, though there was no such prayer by the Appellant.

67. Mr. Sisodia submitted that the Pune Municipal Corporation as also the State had agreed to accept the simple request of correction of land records to bring the same to conform to the award made on 16.5.1972. Mr. Sisodia submitted that a simple prayer for rectification of records has been given the colour of variation in the Town Planning Scheme, and made to appear as if public land of Pune Municipal Corporation was to be released and plots re-constituted to dis-mantle the sub-division Form B. Mr. Sisodia emphatically argued that the documents enclosed in the paper book would clearly show

that neither the State, nor the Pune Municipal Corporation, had opposed the rectification of the error. This is borne out by records.

68. Mr. Sisodia submitted that the High Court had erred in proceeding on the premise that the subject strip of land had vested in Pune Municipal Corporation and could not be released. In doing so, the High Court had erroneously applied the deeming provision of Section 88(a) without the pre-conditions of the said Section of re-constitution, acquisition, compensation and award in respect of the strip of land. Mr. Sisodia argued that the Authorities ought not to have been allowed to illegally interfere with the subject strip of land which was full of sacred trees and deities. Mr. Sisodia argued that on a proper reading of Section 91 of the Regional and Town Planning Act, no further exercise is needed to rectify an error in the present case, except to correct the land record as per the award referred to above. The artifice of vesting, supposed variation in Town Planning Scheme, modification of substantial character are without basis.

69. On the other hand, Mr. Nishant R. Katneshwarkar, learned counsel appearing on behalf of the State of Maharashtra argued that Section 88 contemplates automatic vesting of the properties coming under the Town Planning Scheme, with the planning authority. Even the Pune Municipal Corporation cannot seek deletion of the roads as

the same amounts to substantial variation in the Town Planning Scheme.

70. Mr. Katneshwar argued that the High Court has rightly interpreted Section 88 and Section 91 of the Regional and Town Planning Act and dismissed the writ petition. Deletion of a road from a Town Planning Scheme can be said to be a variation of substantial nature. Section 91 contemplates minor variation in Town Planning Scheme by following requisite procedure. Mr. Katneswhar argued that pragmatically also modification of the scheme would not be expedient, as future purchasers would have no approach road to access their properties as would be clear from the map of the said plots.

71. Mr. Katneshwar, by insinuation, questioned the propriety of the resolution of the Pune Municipal Corporation and emphasized that the corporation did not support its resolution either before the State Government or before the High Court. Mr. Katneswar argued that the stand of the Corporation in the High Court was correct and beneficial to the citizens. The photographs of the site would show some trees but that cannot be a ground to stall the development as per the Town Planning Scheme. The deities can be shifted in case they come on the approach road. Development as per the Town Planning Scheme should be given prime importance.

72. In conclusion Mr. Mr. R. Katneshwarkar submitted that the Regional and Town Planning Act is a benevolent piece of legislation meant for providing basic facilities to the people at large. The legislation is made for the people. In support of his arguments Mr. Katneshwarkar cited ***Laxminarayan R. Bhattad & Ors. v. State of Maharashtra & Anr.***[1]

73. In ***Laxminarayan R. Bhattad*** *(supra),* this Court held that the contents of the scheme under the Bombay Town Planning Act now replaced by the Maharashtra Regional and Town Planning Act will prevail over any policy decision taken by the Corporation or by the State. Significantly, in ***Laxminarayan R. Bhattad*** *(supra),* the Arbitrator had made an award dated 30.10.1987, while making the Town Planning Scheme whereby final Plot No. 694 admeasuring 1240 square meters and final Plot No. 173 admeasuring 2079 square meters aggregating 3319.9 square meters had been allotted in lieu of original Plot No. 433 belonging to the Appellant. Further, for acquisition of the said land as also the structure standing thereupon, compensation of Rs.4,97,567.20/- had been awarded. The judgment in ***Laxminarayan R Bhattad (supra)*** is clearly distinguishable and of no assistance to the respondents.

1 (2003) 5 SCC 413

74. Mr. Markand D. Adkar, learned counsel appearing with Mr. Rajesh Kumar, learned counsel submitted that the writ petition in respect of variation of the Town Planning Scheme has been dismissed by the High Court by a reasoned judgment, which does not require interference. We are however, of the view that the reasons are misconceived as discussed later in the judgment.

75. Mr. Adkar also submitted that the High Court has recorded a finding that the suit land stood vested in the Pune Municipal Corporation in 1979, when the Town Planning Scheme became final. This finding is patently incorrect.

76. Mr. Adkar argued that the Appellant had itself contended that in view of the documentary evidence, particularly the city survey records and the award of the Arbitrator, the correction in the town planning record can be made even de hors Section 91 of the Regional and Town Planning Act, and accordingly invited this Court to make orders under Article 142 of the Constitution of India.

77. Mr. Adkar submitted that during the pendency of the appeal, the Appellants purported to bring on record certain new facts which had been discovered, without leave of this Court. The respondents therefore did not have occasion to respond to new facts and documents. Mr. Adkar submitted that the award or city survey

record, now referred to, did not find reference in the decision of the High Court. The Appellant had produced certain documents purportedly issued by certain departments of the Corporation for the first time. The Corporation did not have occasion to respond to the same.

78. This Court has only proceeded on the basis of pleadings and documents in the Special Leave Petition to which the Respondents had ample opportunity to respond. The Award and the City Survey papers are matters of record. The records are in the custody of the Respondents.

79. Mr. Adkar emphasized on the fact that the High Court had recorded specific finding regarding ownership of the Corporation as per Town Planning Scheme, with which we are unfortunately unable to agree. He argued that the High Court found that title had statutorily vested in the Corporation under Section 88 of the Regional and Town Planning Act and the only method to change or vary the Town Planning Scheme was under Section 91 of the Regional and Town Planning Act.

80. Mr. Adkar argued that the submission of the Appellant that the scheme could be varied de hors Section 91 of the Regional and Town Planning Act, rendered the appeal liable to be dismissed on that

ground alone. Mr. Adkar argued that it was settled that the land in question stood vested in the Pune Municipal Corporation by virtue of Section 88 of the Regional and Town Planning Act. Such argument is not sustainable in law.

81. Mr. Adkar submitted that the Government had rejected the proposal under Section 91 of Regional and Town Planning Act recording reasons, which cannot be assailed by submissions which were not advanced either before the Government or before the High Court. The affidavit of the trustees made in this Court for the first time cannot be examined.

82. Mr. Adkar submitted that Municipal Corporation had tendered a true copy of Form I prepared under Rule 6(V) of the Rules for consideration of this Court. The copy has been produced from the custody of the Corporation and its authenticity has not been questioned either by the Appellant or by the State.

83. Under the said rules, there are five forms which had to be filled in as the Town Planning Scheme progressed, the final Form being No.5 under Rule 13(9). The relevant documents pertaining to proceedings of the Town Planning Scheme are in the Town Planning Department of the Pune Municipal Corporation and the Town Planning Department of the State Government. Mr. Adkar submitted

that the content of Form I indicates that the suit land in question belonged to the Pune Municipal Corporation even before the Town Planning Scheme came into existence in 1979, and as such entry was never questioned or disputed by any of the parties for approximately two decades, the Town Planning Scheme ought not to be disturbed.

84. There is, however no whisper from the Respondents of any proceedings, if any, resorted to for transfer of the private road to Pune Municipal Corporation, and not even any specific averment by the Respondents that the Appellant had the opportunity to controvert the entries in the Forms in question.

85. Mr. Adkar submitted that Form I not having been questioned for two decades, it was in the interest of justice that all relevant town planning proceedings be examined by the competent authority, to examine the alleged discrepancy between town planning records, and the city survey records, and for that purpose the matter would require consideration de novo at the appropriate level.

86. Mr. Adkar submitted that the Town Planning Scheme has been drawn under Section 59 of the Regional and Town Planning Act, to give effect to the proposals in the final development plan. Mr.

Adkar submitted that Section 68(3) of the Regional and Town Planning Act provides that the draft scheme should be available for inspection of the public. Section 71 of the said Act makes provisions for disputed claims and under Section 72(4), the Arbitrator while preparing preliminary scheme has to give notice to all concerned. There are provisions for ample opportunity to stakeholders to dispute entries in the scheme. Under Rule 13(3) every interested person is to be given notice. Mr. Adkar argued that in view of the aforesaid provisions and ample opportunity, no person could be heard to contend after 20 years that he had not been put to notice.

87. Mr. Adkar submitted that it is settled law that if the statute prescribes a procedure, it is to be assumed that the procedure has been followed scrupulously, unless the contrary is shown. Further it is needless to say in the facts of this case, the Appellant has not been able to demonstrate that the authorities preparing Town Planning Scheme failed to follow the procedure mandated by the statute.

88. Mr. Adkar submitted that the matter should be remanded to the Government for de novo adjudication to consider all relevant aspects of the matter. The Corporation respects and reveres the great personalities involved in the Appellant Trust, and for that reason the present litigation is not adversarial in nature, but in the

interest of justice. Proper legal method should be followed before arriving at any conclusion one way or the other. Mr. Adkar's arguments are untenable, since as recorded in the judgment and order under appeal, the facts pleaded by the Appellant are not in dispute. At the cost of repetition it is reiterated that the name of Pune Municipal Corporation was incorporated without recourse to any procedure contemplated under the Regional and Town Planning Act. The Respondents have not produced any materials evincing compliance with the procedure prescribed under the Regional and Town Planning Act. The case made out by the Appellant cannot be rejected on the basis of assumption. Since the parties have been litigating for over a decade and a half we are not inclined to remit the matter back to the authority concerned for de novo hearing and decision.

89. Mr. Adkar submitted that reliance was placed by the Appellant on the award for the first time before this Court, on the premise that there was no acquisition, and without acquisition or compensation, vesting of the suit land could not have been effected. Counsel argued that the vesting of property under the Town Planning Scheme was entirely different in nature than acquisition of property under Land Acquisition Act or under Section 127 of the Regional and Town Planning Act. In support of such submission, Mr. Adkar cited

Pukhrajmal Sagarmal Lunkad (D) thru. His Legal heirs and Others v. Municipal Council, Jalgaon and Others.[2]

90. In ***Pukhrajmal Sagarmal Lunkad*** *(supra),* the issue was whether any land reserved, allotted or designated for any purpose specified in any plan under the Regional and Town Planning Act but not cleared by agreement within 10 years from the date on which the final regional plan or final development plan came into force, nor proceedings under the Land Acquisition Act, 1894 commenced within such period and if a person interested has served notice on the Planning Authority/Developmental Authority/ Appropriate Authority as the case might be and the land is not cleared within six months of such notice; whether the allotment will be deemed to be released from reserve in view of the provisions of Section 127 of the Regional and Town Planning Act. This Court held :-

> ***"11.*** *Before further discussion, we think it just and proper to look into the definitions of "development plan" and "town planning scheme". Section 2(9) of the MRTP Act defines the term "development plan" and reads as under:*
>
> > *"**2. (9)"Development plan**" means a plan for the development or re-development of the area within the jurisdiction of a Planning Authority and includes revision of a development plan and proposals of a Special Planning Authority for development of land within its jurisdiction."*
> >
> > *The expression town planning scheme is not defined in the Act but under Section 2(30) the word "scheme" is defined as:*
> >
> > *"**2. (30)"Scheme**" includes a plan relating to a town planning scheme."*

2. (2017) 2 SCC 722

12. *According toConcise Oxford English Dictionary "scheme" means a systematic plan or arrangement for attaining some particular object or putting a particular idea into effect. In the same dictionary, the term "planning" means planning and control of the construction, growth, and development of a town or other urban area. As such, we may say that the term "planning scheme" means, a systematic plan with an object of planning and control of the construction, growth and development of a town. We also think it relevant to mention here that development plans are dealt with under Chapter III, and town planning schemes are dealt with under Chapter V of the MRTP Act. Section 126 of the Act which is part of Chapter VII, deals with plans as well as schemes, but Section 127 does not refer to town planning schemes.*

13. *Effect of final town planning scheme is provided in Section 88 of the MRTP Act which reads (as it existed before 2014), as under:*

*"**88. Effect of final scheme**.—On and after the day on which a final scheme comes into force—*

(a) all lands required by the Planning Authority shall, unless it is otherwise determined in such scheme, vest absolutely in the Planning Authority free from all encumbrances;

(b) all rights in the original plots which have been reconstituted shall determine, and the reconstituted plots shall become subject to the rights settled by arbitrator;

(c) the Planning Authority shall hand over possession of the final plots to the owners to whom they are allotted in the final scheme."

xxx xxx xxx

16. *In the present case the prayer is made by the appellants in the writ petitions specifically in respect of Town Planning Scheme III, which was finally sanctioned, as such, we find no error in the impugned judgment passed by the High Court dismissing the writ petitions. From the copy of special notice dated 25-4-1980 in Form 4 issued under the Town Planning Scheme Rules (filed as Annexure B with the additional documents) and copy of order dated 16-5-1980 passed by the arbitrator*

in the aforesaid Rules, it is clear that the compensation was determined in respect of land in question under town planning scheme. The decision of the arbitrator appears to have been published in the Official Gazette dated 20-8-1980, and appeal was dismissed. In the circumstances, we find no error in the order passed by the High Court.

17. *The landowners further relied on Girnar Traders v.State of Maharashtra [Girnar Traders v. State of Maharashtra, (2007) 7 SCC 555] to contend that the land is deemed to have been released after 6 months of the issue of notice under Section 127 of the MRTP Act. The contention of the landowners cannot be accepted for the reason that the decision relied on by the landowners to contend that no steps were taken relates to the "development plan" for which the steps for acquisition had to be taken as per Section 126. In the present case, before the scheme is implemented, the procedure contemplated under Chapter V is followed to finalise the scheme. The procedure includes the sanctioning of draft scheme, appointment of arbitrator, issuing notices to persons affected by the scheme, determination of compensation by the arbitrator and then the final award made by the arbitrator. In respect of the land required under town planning scheme except the development plan, the steps under Section 126 may not require to be resorted to at all. It is clear from the record that the draft town planning scheme was published in 1976, arbitrator determined the compensation in 1980, the appeal filed before the Tribunal was dismissed in 1987 and the scheme was sent to the Government for sanction in 1988 and it was finally sanctioned in 1993 by following the procedure under Chapter V which is a self-contained code for the implementation of the town planning scheme."*

91. In ***Pukhrajmal Sagarmal Lunkad*** *(supra),* compensation had been determined in respect of the land in question under the Town Planning Scheme and there was no challenge to the decision of the Arbitrator published in the Official Gazette. It was in the

backdrop of the aforesaid facts that the High Court/Supreme Court refused to interfere.

92. From the records of the case, particularly the order dated 20.8.1970 of sub division of plot number 473B and the award of the arbitrator, it is patently clear that the name of Pune Municipal Commissioner was at no point of time reflected as holder of the private road. There is no whisper as to how the road came to be shown as in possession of Pune Municipal Commissioner nor of the procedure adopted for effecting changes, if any, in the property records.

93. On perusal of the documents, there can be no doubt at all that the road in question measuring 444.14 sqm. never belonged to the Pune Municipal Corporation. In the property records, there was no private road. There were three plots 473 B1, B2, B3 and 473B4 shown as vacant land held by the owners of all the three adjacent plots.

94. The Municipal Corporation was never shown as owner of the vacant plot or of any private road. Even assuming that there was any policy decision to have an approach road to every plot, it was incumbent upon the authorities concerned to acquire the land. On

the other hand, the scheme clearly records that the same was based on entries in property records, and the award of the arbitrator.

95. As argued by Mr. Sisodia, the Award dated 16th May, 1972 of the Arbitrator awarded under the Regional and Town Planning Act made it clear that the area and ownership of the plots were to be determined as per entries in the property registered. The Award is being final and binding under Section 74 on the Planning Authority as also the owners under Section 73 of the Regional and Town Planning Act. The sub-division in the Scheme under the Regional and Town Planning Act is asfollows:

S.No.	C.S. No.	Area (Sqmt.)	Name of the Occupier
1	1092 B/1	1025.00	Smt. Kanta Nanda
2.	1092 B/2	603.00	Sri Premal Malhotra
3.	1092 B/3	2838.00	Shri Dilip Kumar Roy
4.	1092 B/4	444.00 (Road)	Smt. Indira Devi Occupiers of Sr. Nos. 1 to 3 (Road)

96. The right to property may not be a fundamental right any longer, but it is still a constitutional right under Article 300A and a human right as observed by this Court in ***Vimlaben Ajitbhai Patel v. Vatslaben Ashokbhai Patel and Others***[3]. In view of the mandate of Article 300A of the Constitution of India, no person is to be deprived of his property save by the authority of law. The

3. (2008) 4 SCC 649 (para42)

appellant trust cannot be deprived of its property save in accordance with law.

97. Article 300A of the Constitution of India embodies the doctrine of eminent domain which comprises two parts, (i) possession of property in the public interest; and (ii) payment of reasonable compensation. As held by this Court in a plethora of decisions, including ***State of Bihar and Others v. Project Uchcha Vidya, Sikshak Sangh and Others***[4]; ***Jelubhai Nanbhai Khachar and Others v. State of Gujarat and Anr.***[5]; ***Bishambhar Dayal Chandra Mohan and Ors. v. State of Uttar Pradesh and Others***[6], the State possesses the power to take or control the property of the owner for the benefit of public. When, however, a State so acts it is obliged to compensate the injury by making just compensation as held by this Court in ***Girnar Traders v. State of Maharashtra and Others***[7].

98. It has been established beyond any iota of doubt that the private road admeasuring 414 sq. meter area had never been acquired by the Pune Municipal Corporation. The right to property includes any proprietary interest hereditary interest in the right of management of a religion endowment, as well as anything acquired by inheritance. However, laudable be the purpose, the Executive

4. (2006) 2 SCC 545, 574 (para 69)
5. (1995) Suppl. 1 SCC 596
6. (1982) 1 SCC 39
7. (2007) 7 SCC 555 (paras 55 and 56)

cannot deprive a person of his property without specific legal authority, which can be established in a court of law.

99. In case of dispossession except under the authority of law, the owner might obtain restoration of possession by a proceeding for Mandamus against the Government as held by this Court in ***Wazir Chand v. State of Himachal Pradesh***[8]. Admittedly, no compensation has been offered or paid to the appellant Trust. As observed by this Court in **K.T. Plantation Private Limited and Anr. v. State of Karnataka**[9], even though the right to claim compensation or the obligation of the State to pay compensation to a person who is deprived of his property is not expressly provided in Article 300A of the Constitution, it is inbuilt in the Article. The State seeking to acquire private property for public purpose cannot say that no compensation shall be paid. The Regional and Town Planning Act also does not contemplate deprivation of a land holder of his land, without compensation. Statutory authorities are bound to pay adequate compensation.

100. The High Courts exercising their jurisdiction under Article 226 of the Constitution of India, not only have the power to issue a Writ of Mandamus or in the nature of Mandamus, but are duty bound to exercise such power, where the Government or a public authority has failed to exercise or has wrongly exercised discretion conferred

8. AIR 1954 SC 415
9. (2011) 9 SCC 1

upon it by a Statute, or a rule, or a policy decision of the Government or has exercised such discretion *malafide,* or on irrelevant consideration.

101. In all such cases, the High Court must issue a Writ of Mandamus and give directions to compel performance in an appropriate and lawful manner of the discretion conferred upon the Government or a public authority.

102. In appropriate cases, in order to prevent injustice to the parties, the Court may itself pass an order or give directions which the government or the public authorities should have passed, had it properly and lawfully exercised its discretion. In ***Directors of Settlements, Andhra Pradesh and Others v. M.R. Apparao and Anr.***[10]. Pattanaik J. observed:

> *"One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus, "Mandamus" means a command. It differs form the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any*

10. (2002) 4 SCC 638

person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law."

103. The Court is duty bound to issue a writ of Mandamus for enforcement of a public duty. There can be no doubt that an important requisite for issue of Mandamus is that Mandamus lies to enforce a legal duty. This duty must be shown to exist towards the applicant. A statutory duty must exist before it can be enforced through Mandamus. Unless a statutory duty or right can be read in the provision, Mandamus cannot be issued to enforce the same.

104. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. Reference may be made inter alia to the judgments of this Court ***Gunwant Kaur v. Municipal Committee, Bhatinda***[11] ***and State of Kerala v. M.k. Jose***[12]. ***h***

M.K. Jose (supra), this Court held:-

11 (1969) 3 SCC 769
12 (2015) 9 SCC 433

"16. Having referred to the aforesaid decisions, it is obligatory on our part to refer to two other authorities of this Court where it has been opined that under what circumstances a disputed question of fact can be gone into. In Gunwant Kaur v. Municipal Committee, Bhatinda [(1969) 3 SCC 769] , it has been held thus: (SCC p. 774, paras 14-16)

> *"14. The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit-in-reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine.* ***The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles.*** *When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons.*
>
> *15. From the averments made in the petition filed by the appellants it is clear that in proof of a large number of allegations the appellants relied upon documentary evidence and the only matter in respect of which conflict of facts may possibly arise related to the due*

publication of the notification under Section 4 by the Collector.

16. ***In the present case, in our judgment, the High Court was not justified in dismissing the petition on the ground that it will not determine disputed question of fact. The High Court has jurisdiction to determine questions of fact, even if they are in dispute and the present, in our judgment, is a case in which in the interests of both the parties the High Court should have entertained the petition and called for an affidavit-in reply from the respondents, and should have proceeded to try the petition instead of relegating the appellants to a separate suit.*** *" (emphasis supplied)*

105. In ***ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd.***[13]**,** this Court referring to previous judgments of this Court including ***Gunwant Kaur*** (supra) held: -

"19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of Gunwant Kaur [(1969) 3 SCC 769] this Court even went to the extent of holding that in a writ petition, if the facts require, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition 2 even if the same arises out of a contractual obligation and/or involves some disputed questions of fact.

27. From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:

13 (2004) 3 SCC 553

a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule;

c) A writ petition involving a consequential relief of monetary claim is also maintainable."

106. In the present case, it is not even in dispute that the private road in question did not at any point of time belong to the Pune Municipal Corporation. It is shown to be held by the holders by adjacent Plot Nos. 473 B1, 473 B2 and 473 B3.

107. In the facts and circumstances of the instant case, in the light of admissions, on the part of the respondent authorities that the private road measuring 414 sq. was private property never acquired by the Pune Municipal Corporation or the State Government, the respondents had a public duty under Section 91 to appropriately modify the scheme and to show the private road as property of its legitimate owners, as per the property records in existence, and or in the award of the Arbitrator. In our considered opinion, the Bombay High Court erred in law in dismissing the Writ Petition with the observation that the land in question had vested under Section 88 of the Regional and Town Planning Act.

108. Section 88 of the Regional and Town Planning Act, 1966 provides:

> *"**88. Effect of [preliminary scheme]**.- On and after the day on which a [preliminary scheme] comes into force-*
>
> *(a) all lands required by the Planning Authority shall, unless it is otherwise determined in such scheme, vest absolutely in the Planning Authority free from all encumbrances;*
>
> *(b) all rights in the original plots which have been reconstituted shall determine, and the reconstituted plots shall become subject to the rights settled by Arbitrator;*
>
> *[(c) ***]"*

109. Section 88 of the Regional and Town Planning Act cannot be read in isolation. It has to be read with Section 125 to 129 relating to compulsory acquisition as also Section 59, 69 and 65.

110. Section 125 provides as follows:

> *"**125. Compulsory acquisition of land needed for purposes of Regional Plan, Development plan or town planning scheme, etc.-** Any land required, reserved or designated in a Regional plan, Development plan or town planning scheme for a public purpose or purposes including plans for any area of comprehensive development or for any new town shall be deemed to be land needed for a public purpose [within the meaning of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013)].*
>
> *[Provided that, the procedure specified in sections 4 to 15 (both inclusive) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013) shall not be applicable in respect of such lands.]*

111. Section 126 stipulates the mode and manner of acquisition of land acquired to a designate in Regional, Development and Town scheme for a public purpose and the mode of payment of compensation.

112. Section 127 provides that any land reserved, allotted or designated for any purpose specified in any plan under the Regional and Town Planning Act, which is not acquired by agreement within ten years from the date on which a final regional plan or final development plan comes into force, is to be deemed to have lapsed and the land shall be deemed to be released from such reservation. Of course by virtue of sub-section (2) of Section 126 inserted by Amendment by Maharashtra Act No.16 of 2009 on lapsing of reservation or a designation of any land under sub-section (1), the Government shall notify the same by an order published in the Official Gazette. Section 128 enables the Government to acquire lands for a purpose other than the one for which it is designated in any plan or scheme.

113. In our considered opinion, the High Court erred in dismissing the writ petition, misconstruing Section 88 of the Regional and Town Planning Act, by reading the same in isolation from the other provisions of the Regional and Town Planning Act, particularly Sections 65, 66, 125 and 126 thereof.

114. Section 125 read with Section 126 enables the state/Planning authority to acquire land. On a proper construction of Section 88, when land is acquired for the purposes of a Development Scheme, the same vests in the State free from encumbrances. No third party can claim any right of easement to the land, or claim any right as an occupier, licensee, tenant, lessee, mortgagee or under any sale agreement. On the other hand, Section 65 referred to above read with Section 66 protects the interests of the owners.

115. In the absence of any proceedings for acquisition or for purchase, no land belonging to the Appellant Trust could have vested in the State.

116. The High Court also erred in its finding that the modification proposed involved substantial alteration by deletion of a public road and was therefore impermissible. The modification only involved deletion of the name of Pune Municipal Corporation as holder of the private road. The finding that deletion of a public road is a substantial alteration is, for the reasons already discussed above, completely baseless.

117. The appeal is therefore allowed, and the Judgment and order under appeal is set aside.

118. In exercise of our power under Article 142 of the Constitution of India to do complete justice between the parties, we direct the

Respondent authorities to act in terms of the Award dated 16th May, 1972 and delete the name of the Pune Municipal Corporation as owner of the private road in the records pertaining to the Scheme and carry out such other consequential alterations as may be necessary under Section 91 of the Regional and Town Planning Act. The appellant trust shall within a fortnight from the date of this order, give an undertaking to the Planning Authority not to obstruct access of adjacent plot owners through the private road in question. The necessary alteration or modification under Section 91, as directed above, shall be carried out within six weeks from the date of furnishing of the undertaking by the appellant, as directed above.

.....J
[INDU MALHOTRA]

.....J
[INDIRA BANERJEE]

AUGUST 07, 2020
NEW DELHI