(1983) 11 BOM CK 0045

Bombay High Court

Case No: Writ Petition No. 4192 of 1981

Basantibai Fakirchand Khetan and Others		APPELLANT
	Vs	
State of Maharashtra and Another		RESPONDENT

Date of Decision: Nov. 8, 1983

Acts Referred:

- Constitution of India, 1950 - Article 14, 19, 31, 31
- Maharashtra Housing and Area Development Act, 1977 - Section 41, 42, 43, 44, 44(3)

Citation: AIR 1984 Bom 366 : (1984) MhLj 534

Hon'ble Judges: Chandurkar, Acting C.J.; Pendse, J

Bench: Division Bench

Advocate: K.K. Singhavi and P.K. Singhvai, for the Appellant; V.H. Gumaste, for Advocate General, M.B. Mehare, M.V. Paranjpe and D.P. Hede, for the Respondent

Judgement

Pendse, J.

This petition and 13 other petitioner filed under Art. 226 of the Constitution raised the question of constitutional validity of s, 44 of the maharashtra Housing and area Development Act, 1976, being maharahstra Act No. XXVII of 1977 (hereinafter referred to as the Act), which provides the basis for determination of amount of Acquisition of land all municipal areas. The petitioners in all these petitions are owners of land either agricultural of non-agricultural, situated within the municipal areas. It is not necessary to refer to the fact of each of the petition and it would suffice if the facts in the main petition are Stated to appreciate the question urged by the rival sides.

2. The land involved in this writ petition bears Survey No., 28 and admeasures 398.60 Hectares and is situated at village Bhushi in Maval Taluka of Pune District. Mohanlal Fakirchand was the owner of this land having purchased ti under the sale

ded dated Jan. 18 1966 leaving behind petition 1 - his widow,, and petitioner 2 to 5 - his children /. On August 1, 1978 respondent 2- Maharashtra Housing & area Development Authority - sent a letter to Municipal counsil, Lonavala eliciting information regarding need of local populace for housing accommodation for economically weaker Section low income economically weaker, Section low income group and middle income group . For the purpose of dated August 3, 1978 and Feb. 10 1979 in the local newspaper inviting application for housing accommodation from general public. After having assessed the requirements respondent, 2,by letter date Sept. 15, 1979 conveyed to the State Government its initial requirement of the area of about 26 Hectares for the purpose of proposed social housing scheme to be developed within the limits of Lonavala Municipal Counsil, and requested the Government to publish notification under the provisions of S. 41(1) of the ACt. The proposal was processed by the Public ?Works and Housing Department and the State Government published a notice under the proviso to s. 41(1) of the Act and the notice was published in the Government Gazette on Aug. 30, 1979 inviting objections to the proposed Acquisition. In pursuance of this notice, petitioner 3 lodged his protest on Sept. 6 1979. After considering the various the objections including that of petitioner No.3 the State Government published the final notification under sub-Section (1) of S. 41 of the Act in the Maharashtra Government Gazette dated JUly 3, 1980 acquiring certain land, including that of the petitioners. Sub-sec. 41 prescribes that the land shall, on and from the date on which the notification is published , vest absolutely in the State Government free from all encumbrabces. In DEc. 12, 1980, the notice was issued under sub-Section (1) of s. 42 of the ACt to the landholders to surrender and deliver possession to the Collector of Pune within a period of thirty days. In Jan 1981, the petitioner lodged their objection on the ground that Survey No. 28 of village Bhushi was not included in the notification published in the Gazette, as survey No.28 described is of village Maval. In pursuance oto the objection lodged by the petitioner of May, 15, 1981 the State Government published a corrigendum making the requisite a fresh notice for delivery of possession was issued. The petitioners thereafter filed the present petition in this Court on Dec.17 1981.

3. The petitioner claim that there was no material before the State Government to exercise powers under s. 41 of the Act, and therefore, there notification issued u/s 41 was illegal and bad in law. There is no merit whatsoever in this submission. In along with the showing the area to be acquired after assessing the requirement of the area and also the requirement of the housing accommodation. In view of this return, it is not possible to hold that exercise of powers by the State Government u/s 41 of the Act was illegal. The petitioner also claim that the notification has been issued in breach of rules of natural justice as the petitioner were never served with any notices. The grievance is that though the predecessor of the petitioner Mohanlal died on May 18, 1976 the notices were issued in the name of deceased Mohanlal land not in the name of the petitioner although their name of the recorded in the

Record of Rights. There is no merit in this submision, because in pursuance of the notice issued under the proviso to sub Section (1) of the S. 41 of the Act on Aug 21, ''1979, petitioner 3 appeared before in the Authorities and lodged the protest on behalf of the petitioner n Sept 6 1979. It is not in dispute that he petitioner not only lodged their objections but participated in the proceedings and were personally heard by the Collector before publication of notification under sub-case. (1) of S. 41 of the ACt acquiring the land. In the circumstances, the petitioner suffered no prejudice whatsoever because of notices being issued the name of deceased Mohanlal. Survey No.28 of village Bhushi was not notified for acquisistion, but this submission was not pressed on May 15, 1981.

4. The main thrust of submission in support of the petition is that subSection (3) of s. 44 of the petition is that sub-Section (3) s. 44 of the ACt is ultra vires ARt. 14 of the Constitution, inasmuch as it enables the State Government to discriminate between one landholder and the other by acquiring in one case under the Land Acquisition Act, 1894, and in another under the ACt. The petitioners claim that on April 25, 1977 when the Legislature enacted the ACt and on Dec. 5, 1977 when the Act was brought in force in the entire State of Maharahstra, the powers of the State Legislature to enact laws was subject to Art. 19(1)(f) and Article 31 of the Constitution as existed at a that time. It is claimed that he Legislature had no power either to impose unreasonable restriction a on citizens right to hold property or to acquire property on payment of illusory amount in lieu of deprivation of the property. It is further claimed that sec 43 read with sub-Section (3) and (4) of Sec. 44 of the Act not only impose unreasonable property, but enables the State to expropriate citizen property on payment of an illusory amount having of the nexus whatsoever with the value of the acquired property. The petitioner further claim that Section 44 of the Act does not provide just and reasonable procedure for deprivation of the property as is required under Article 300A of the Constitution and as the citizen is deprived of his property without payment of proper amount, the provision relating to payment of amount for the purpose of compulsory Acquisition are violative of the fundamental rights guaranteed under the Constitution.

5. In answer to the petition, Shankar marytrao Shinde, Officer on Special Duty, Maharashtra Housing and area Development Authority, ags filed the return sworn on March 5, 1982 and in para 2 if the claimed that the Statement and submissions made in the return filed in Writ Petition No. 3507 of 1981 are relied upon. The return merely denies that the provision of Section 44 are discriminatory. Respondent 1, State of maharashtra, has not cared to file any return, but the Additional Government Pleader informed the petitioner Advocate by a letter that Respondent No.1 would rely upon the return filed by respondent 2. It is really unfortunate that in a matter of such importance the State should not the file any return.

6. To appreciate the contention of Shri singhavi, learned counsel appearing in support of the petition, that the provision of the Act providing for determination of

amount for Acquisition of land are discriminatory, it is necessary to make reference to certain provision of the Act. Chap V. deals with Acquisition of land had and disposal of property of the Authority. Section 41 of the Act confers power on the State Government to acquire land to, enable the Authority constituted under the Act to discharge any of its function or to carry out any of its proposal plans and projects Section 43 of the ACt provides that every person having interest in any land acquired under Chap. V shall be entiled to receive from the State Government , an amount as provided in the Chapter, Section 44 to Section 49 of the Act provide basis for determination of amount for Acquisition of land in Municipal area, while Section 50 in respects of land in rural areas. land in municipal areas are those which are situated within the jurisdiction of any Municipal Corporation or Municipal council while the land in rural areas those outside the municipal council. Sub-Section (2) of S 44 provides that the State Government shall pay such amount for the Acquisition of the is owner determined by agreement between the land owner and the Authority. Sub-Section (3) of the Section 44 of prescribes that where no such agreement can be reached, the amount shall payable an amount of equal to one hundred times the net average monthly income actually derived from such hland, during the period of five consecutive years immediately preceding the date of publication of the notification referred to in Section 41 of the Act. Sub-Section (4) of Section 44 prescribes that the net average monthly income shall be calculated in the manner and in according with the principles set out in the First Schedule. The First Schedule to the Act requires the Land Acquisition Officer to hold an inquiry for determination of the net average monthly income, leaving the remaining forty per cent of the gross monthly rental towards expenditure which the owner of the land would normally incur for payment of tax, collection charges, income tax words of repair and maintains etc. It also provides that were any land has been unoccupied ,. Or the owner has not been in receipt of rent, the gross rent shall would in fact have derived if the land had been leased our for rent during the relevant period. Sub-Section (6) of Section 44 of the Act provides for an appeal to the Tribunal against the determination by the Land Acquisition Officer of the net average monthly income. The Tribunal , which hears the appeal is one constituted under Cl (I) oif Section 2 of the maharashtra Slum areas (Improvement, Clearance and Re-Development) Act, sub-Section (7) of Section 44 of the Act gives finality to the order of the Tribunal on appeal and prescribes that the decision of the Tribunal is not open to question in any court . Section 50 of the Act provides that in respect of Acquisition of the land in rural areas, where the amount could not be determined by agreement, the Sate Government shall refer the case to the Collector, who shall determine the amount for Acquisition in accordance with the Collector. Who shall determine the amount for acquistion in accordance with the principle for determine compensation laid down in the land Acquistion Act, 1894, and the provision of that Act (including provision of reference to Court and appeal) shall apply thereto mutatis mutandis as if the land had been acquired and compenastion. Under the provision of that Act. The Act, therefore, provides that the amount which the owner of the land in rural

area is entitled to receive of r te compulsory Acquisition shall be determined in accordance with the provision of the Land Acquisition Act, while in cases of land in the Municipal areas it shall be one hundred derived during the immediately preceding the date of publication of the notification.

7. The basis of for determination of amount in respect of Acquisition of land in Municipal areas and in rural areas is clearly discriminatory. In respect of Acquisition of land in the rural areas, the owneer os the land ae entitled to receive the amount of compensation to be determined in accordance with the provision of the Land Acquisition Act, 1984. That enables the owner to receive the market value which would be determined in accordance with the would be determined in accordance with the principles laid down u/s 23 of the Land Acquisition Act. Section 23 of the Land Acquisition Act provides that the Court shall take into consideration the market value the potentiality of the land is always taken into account. Even if an agricultural land is acquired under the Land Acquisition ?Act, while determining compensation , if it is noticed that the land has potentiality to be used as building site then market value of such land would befar in excess than that of the agricultural land. Section 23 also enables the owner of land to claim damages sustained by reason of losing possession standing crops of centers or by severance of land from the other land of the owner of the damage suffered by reason of the Acquisition injuriously affecting the other compelled to change his residence or place ofbusiness. All these advantages ae available to the owner of the land if the basis for determination of the land is in accordance with the provisions of the land Acquisition Act, .In addition to this, under sub-Section (2) of Section 23 of the Land, Acquisition Act. In addition tothis, under Sub-Section (2) of Section 23 of the Land Acquisition ACt, the owner is entitled to a sum of fifteen per cent on such market value as consideration of the compulsory nature if the Acquisition. This amount of solatium is available provided the compensation is determined in accordance with the provision of the Land Acquistion Act. The power of the land situated within the rural areas also gets an advantage to approach the Civil Court against the determination Officer, while such right is to the owner of the land within the Municipal areas. In view of the provisions of s. 44(3) of theAct, the owner of the land in Municipal area is entitled to the amount for compulsory Acquisition, which is equal to one hundred times the net average monthly in come derived during the period of vie consecutive years immediately preceding the date of publication of the notification. This net average monthly income has no relation whatsoever with the market value of the land and is an entirely artificial method of ascertaining the market value. While ascertaining the net average monthly income, the First Schedule provides that forty percent of the gross rental should be excluded for the purpose of tax and maintenance of the property. And the Act does not give any indication as to why the amount of forty percent out of the gross rental is required to be deducted . In the State maharashtra, several Rent Acts and Tenancy Acts are in excess of what was prevailing in the year 1940. The rents in the earlier years were mere pittance

compared to that rent could be charged in respect of the properties newly constructed, and therefore, the net of average monthly income could byu no stretch of imagination reflect the true value of the property. In respect of agricultural land the owner is not entitled to charge more, than the standard rent and determining the compensation on the basis of net average monthly income would be very inappropriate method. Shri singavi is right in his submission that there is no rational or logic a sto why the owners of the land in municipal areas should be deprived of the advantage of the provisions of the Land Acquisition Act, while such right is conferred upon the owner of the land in the rural areas.

8. Shri Paranjpe, learned counsel appearing on behalf of respondent 2, submitted that capitalizing rent of number of years purchases is a recognised mode for determining compensation under the provisions of the Land Acquisition Act. It was urged by the learned counsel that providing that basis for determination of the amount in respect of land situated within the Municipal areas, the Legislature was not discriminating between the holders of land within the Municipal area and outside. It is no doubt true a that capitalizing the rent of number of years purchases is one method adopted while determining compensation under the Land Acquisition Act, but it is an accepted position that it is not quire a no other method is available. This method is entirely unsafe when the rent is very low. This Court advised capitalization of ground rent at twenty years purchase and in the case of unsecured ground rent at 16-2|8 years purchase in the decision reported in Government of Bombay Vs. Merwanji Muncherji Cama, Though it is not possible to be dogmatic regarding number of years and it must vary with the condition of the property market and the nature of the property, it is difficult to appreciate on what basis the Legislature though it proper to capitalize the rent equal to o hundred times of the net average monthly income. Shri Paranjpe submitted that capitalization of rent of twenty years purchases was fixed by this Court with an idea that he interest given by the banks would be equivalent to the profits of the owner from the property. Shri paranji suggested that as the Bank interest has been raised from time to tme, the number of years purchase must be less than the period of twenty years. There is nothing on record to support the submission of the learned counsel, and there isno reason why the State Government should not have produced the material to sustain the claim that the amount that the amount ascertained by method of capitalizing number of years purchase was equivalent to the market value of the land which would be determined under the provision of the Land Acquisition Act. Shri Paranjpe then submited that as the amount determined under sub-Section (3) of the S. 44 is not illllusory, it is not open for the petitioners to challenge the validity of the Section on the ground of discrimination. It was urged that there is no rule that in every Acquisition, compensation must be ascertained according to the provisions of the a land Acquisition Act,. The submission is that it is open for the Legislature to provide any other basis for determination of compensation and it is not permissible to make any grievance of the Legislature adopts such a course. In support of the submission

reliance is place on the decision of the Supreme Court reported of the submission, reliance is placed on the decision of the Supreme Court State of Gujarat Vs. Shantilal Mangaldas and Others, In the case before the Supreme Court, it was claimed that the Government by acquiring the property for the public purpose under the provision of the Bombay Town Planning ACt avoided to pay the compensation under the Land Acquisition Act and that in fringes ARt. 14 of the Constitution, inasmuch as for one public purpose the land are acquired under the Land Acquisition under the Town Planning ACt, which deprives the owner of certain advantages under the Land Acquisition ACt. The Supreme Court in para 54 of the Judgemet found that there is no option under the Bombay Town Planning ACt , no acquire the land either under the Land Acquistion ACt or under the Town Planning Act and as there is no option, the contention that the provisions for Acquisition under the Town Planning for Acquisition under the Town Planning ACt are invalid on the ground that tey deny equal protection under the laws, must stand rejected. The decision of the supreme Court has no application to the facts of the present cse of as the present ACt provides for different basis for determination of amount for Acquisition of land. The Act prescribes one rule for the land situated in rural areas while other in respect of the land within the Municipal areas. The principle laid down by the Supreme Court would have application provided the basis for determination of the amount was same for all the land wherever they are situated and then the grievance is made that the advantage of the Land Acquisition of Act is denied.

9. Shri Paranjpe then submitted that the land in Municipal areas and land in rural areas are two distinct classes and therefore the discrimination while determining the amount for acquisition of land is permissible. The submission is not accurate, because, it is not sufficient that there are two distinct classes, being the land in municipal areas and the land in rural areas, but the discrimination is permissible provided is it has some nexus to the object to be achieved. The object to be achieved is determination of the amount for the compulsory Acquisition of the land and it is not possible to accept the submission that the discrimination made in respect of providing different basis for determination of amount is valid Shri Paranjpe submitted that the Constituted itself makes classification between the agricultural land and non-agricultural land and makes reference to the Second Proviso to Article 31A of the Second Constitution. The proviso issues a fiat to the State not to acquire any agricultural land held by person under his personal cultivation and within the ceiling limit unless the law relating to acquistion of such land provides for payment of compensation at the rate which shall not be less than the market value thereof. The learned counsel submitted that the land in the rural area are mostly agricultural while in the municipal area there is hardly any agricultural basis for determination of amount for Acquisition of land in the two areas, the Legislature wisely provided different modes. The submission cannot be accepted, because the assumption that there are hardly any agricultural land in the Municipal are is without ay basis. The State Government has not produced any statistics or material on record to establish

that the land within the municipal area are olny non-agricultural land, while on the other had it is common knowledge that there are large tract os agricultural land within the Municipal area. The limits of the Municipal areas extend far beyond the developed town and are determined by taking into consideration the Development in future and also for fixing the octroi limits . In this group of petion certain petitioner are holders of agricultural land within the municipal area and also personally cultivating the landa and the area held by then is within the ceiling limit. In these circumstances, it is not permissible to accept the broad submission of the learned counsel that there are hardly any agricultural land in the Municipal area, of the land in the rural ara are mostly agricultural and therefore, the discrimination is permissible. Infact the protection of Second Proviso to ARt. 31A of the Constitution of Section 4 of the Act in respect of holders of such land are clearly availability of Arts. 31A and 14 of the ?Constitution. In our Judgment , the Act clearly discriminates and those of rural areas and such discriminations clearly availability of Art,. 14 of the constitution.

10. We may refer to some decisions of the Supreme Court in this connection, and the first decision is P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another, . the Supreme Court held that the law under the subject of violation of protection under Art. 14 is well settled make a reasonable classification for the purpose of legislation the said classification has to pass two test, anmely, (I) the classification must be founded on an intelligible differential which distinguishes persons and differential must have a rational relation to the object sought to be achieved by the statue in question . The Supreme Court on a comparative study of the Land Acquisition (Madras Amendment) Act (23 of 1961) found that if a land is acquired for housing scheme under the Amending Act, the claimant gets lesser value than the would get for the same land or a similar land if it is acquired for a public purpose, like hospital, under the Land Acquisition Act. The Supreme Court held that the classification sought to be made by the Land Acquisition (Madras Amendment) Act between the persons whose land are acquired for other public purposes has no reasonable relation to the object sought to be achieved ans the discrimination is writ large on the Amending Act. The decision in P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another, was approved in later decision of the Supreme Court Balammal and Others Vs. State of Madras and Others, The supreme Court found that under the Madras City Improvement ?Trust Act (37 of 1950), which enables the State to acquire land for the right to the statutory solatium and that would result into a clear case of discrimination which infringes the guarantee of equal protection of the law and the provision which is more prejudicial to the owners of the land compulsorily acquired must be deemed invalid.

11. the next decision of the Supreme Court in reported in AIR 1973 SC 689 , Nagpur Improvement Trust v. Vithal Rao. The Supreme Court held that the Legislature cannot lay down different principle of compensation for land acquired for a hospital

of a school or Government building because the Acquisition in all the three case are for public purpose and as far as the owner is concerned, it does not matter to him whether it is for one public purpose or the other. It was further held that the classification based on a public purpose is not permissible under ARt. 14 of the Constitution for the purpose of determining compensation. The principle was reiterated by the Supreme Court in the Judgment Om Prakash and Another Vs. State of U.P. and Others, , State of Kerala and Others Vs. T.M. Peter and Others, State of Kerala v. T.M. Peter. The vires of Section 34 of the Town Planning Act (Travanceore Act 4 of 1108) a was challenged on the Constitution as it excluded Section 25 of the Kerala Land Acquisition Act, which provides for quantification of compensation, including payment of the solatium Mr. Justice Krishna Iyer, speaking for Acquisition not discrimination compensation ; whether you take A''s land for improvement scheme of irrigation scheme how can you pay more or les, guided by an relevance viz. The particular public purpose? The State must act equally when it takes property unless there is between two categories of owners having a nexus with the with the object, namely, the scale of compensation. It is intellectual confusion of constitutional principle to regard classification of good for one purpose as obliteration of difference for unrelated aspects". (Underline supplied) The learned Judge referred to the earlier decision of the Supreme Court and concluded in para 19 as follows:
"The principle that may be distilled form these rulings and the basics of ''equality'' jurisprudence is that classification is not permissible for compensation purpose so long as the differentia relied on has no rational relation to the object in view viz. Reduction in recompense.

This decision makes it clear that the object of the provision of the Act is fixing the scale of compensation and the discrimination between the holders of the land in municipal areas and outsides a has no nexus whatsoever to this on\\bject. In our Judgment the provision of sub-section (3) and (4) of Section 4 are clearly violative of the protection guaranteed under ARt. 14 of the Constitution and are required to be struck down. If those provisions are unconstitutional, then the basis for determination of the amount for Acquisition of land in municipal areas is not available and the right to receive the amount for Acquisition provided u/s 43 of the Act becomes nugatory.

12. Shri Gumaste, learned counsel appearing on behalf of the Advocate General, submitted that even assuming that the provision of Section 44 of the Act are discriminatory, still it is not permissible to touch them as the protection under Article 19(1) and Article 32 is the available to the petitioners because those Article were not deleted when the Legislature passed the legislation still the protection is taken the away by Art. 31C of the Constitution. Shri singavi had urged that the protection of ARt. 19(1)(f) and Article 31 is available in view of the decision of the ascertaining whether the protection is available or not is the date on which the Act

came into operation. It is not in dispute that Article 19(1)(f) and Article 31 of the Constitution were available both and on April 25, 1977 when the Act was passed and on Dec. 5, 1977 when the it came into operation. Article 31C reads as under :

"Notwithstanding anything contained in Article 13, on law giving effect to the policy of the State towards securing all or any of the principle laid down in part IV shall be deemed to the void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by ARt. 14 or Art. 19; and who law containing a declaration that it is for giving effect to such policy shall be called in question in any Court on the ground that it does not give effect to such policy :

Provided that where such is laws made by the Legislature of a State, the provisions of this Articles shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent".

This Article was amended by the Constitution (forty second Amendment) Act 1976, and the words "all or any or the principle laid down in Part IV" were substituted for the original words the principle specified in Cl. (b) or Cl (c) of Art. 39" with effect from Jan. 3 1977. Shri Gumaste submitted that the Act was enacted to give effect to the policy of the State towards securing the principle laid down in Part IV of the Constitution. It was urged that he ACt was enacted for giving effect to the Directive Principles contained in ARt. 48A of the Constitution. To enable him to advance this submission , Shri, Gumaste had to claim that we must read Art. 31C as it exists today, that is as it a was amended by sec. 4 of the Constitution (Forty-second Amendment) Act, 1976, Shri Gumaste in this connection submitted and was heartily joined supreme Court in the case of Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others, is not good law. The supreme Court in the face of Minerva Mills held that Section 4 of the Constitution (42nd Amendment) ACt is beyond the amending power of the Parliament and is void since it damages the basis or essential features of the constitution and destroys it basics structure by a total exclusion of challenge to any law on the ground that it is inconsistent with or takes away or abridges any of the rights caontution, if the law is for giving giving effect to the policy of the State towards securing all or any of the principle laid down in part IV of theConstitution. The result of this decision that the protection of Art. 31C is available provided the law is for giving effect to the policy of the State towards securing the principle specified in Cl. (b) of Cl. (c) of Art. 39. The validity of Art. 31C which was introduced by the constitution (25th Amendmet) Act, 1971, was considered by the Supreme Court in the case His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, and the latter and part of the Article 31C and no law containing a declaration that it is for giving effect to such policy shall be called in question in any Court on the ground that it does not give effect to such policy was held to be invalid.

13. Shri Gumaste submitted that the decision of the Supreme Court in Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others, is no good law for two reasons.

First the judgmental Minerva Mills case striking down Section 4 of the Constitution (42nd Amendment) act was obiter as the question did not arise for consideration in that case and did not require determination. The second ground urged is that the decision is no longer a good law in view of the subsequent decision of the supreme Court, Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another, the submission cannot be accepted and both the reasons suggested by the learned counsel are devoid of anymerit. The first submission that the question of validity of Section 4 of the Constitution (42nd Amendment) Act did not arise for consideration, and therefore, the conclusion is obiter, is without any substance , because the said contention was urged before the Supreme Court by the Attorney General and Additional Solicitor General, and that is noted in para 412 of the Judgment. The Supreme Court in para 43 rejected the preliminary objection ot the consideration of the question as regard validity of Section 4 of the Constitution (421st Amendment) Ac,, holding that the question is not an academic or hypothetical question. The supreme Court then proceeded to consider to the validity of the amended ARt. 31C and recorded a conclusion that S. 4 was void and in these circumstances it is futile to claim that the decision in inerva Mills to case should be ignored as obiter. The second contention law that Minerva Mills case is no longer a good Supreme Court as equally misconceived . In Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another, Mr. Justice Chinnappa Reddy, speaking for the Bench, did not sought some misgivings about Minerva Mills decision, but observed in para 13 of the Judgment:
"We wish to say no more about the Minerva Mills case as wer are told that there in is pending a petition to review the Judgment".

In face of these observations oof the Supreme Court it is futile for Shri Gumaste to urge that the decision in Minerva Mills case stands overruled by the later decision. In our Judgment , the decision of the Minerva Mills case is binding on us and the protection of Art. 31C is available provided of law is made to give effect to the policy of the State toward securing the principle specified Constitution.

14. Shri Gumaste then submits that Article 39(b) which forms part of Part IV of the Constitution, provided that the State shall direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. Article 39(c) requires the State to secure that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. Shri Gumaste submits that the Act was enacted to give effect to the directive principle contained in Art. 39(b) and (c) of the Constitution and urged that the expression "material resources of the Community" would take in its weep the land held by the citizens and the legislation providing for Acquisition of such land ot subserve the common good is entitled to protection under Art. 31C of the Constitution. In support of the submission, reliance is placed upon the decision is in Sanjeev Coke

Manufacturing Company Vs. Bharat Coking Coal Limited and Another, where the expression "material resources of the community" as considered and held not confined to natural resources, to or resources owned by the public, but means and includes all resources, natural and man-made, public and private-owned. In view of the dictum laid down by the Supreme Court it cannot be debated tat the expression "material resources of the community" would cover the land held by private owners>

15. Now, what are the principles or tests for determining whether Article 31C is attracted in respect of particular legislation? In Minerva Mills case (AIR 1980 SC 238) for the majority observed that in the very nature of things is it difficult for a court to determine whether a particular law gives effect to a particular policy. Mr. Justice Bhagwati, in his minority Judgment, observed that :

"One thing is clear that a claim to that effect put forward by the State would have no meaning or value; it is the court which would have to determine the question. Again it is not enough that there may be some connection has to be between the law and the Directive Principle and it must be a real and substantial connection. To determine whether a law satisfies this test, the court would have to examine the pith and substance, the true nature and character of the law of the also its design and the subject matter dealt by it together with tis subjects and scope. If on such examination the Court finds that the dominant object and scope. It on such examination the court finds that the dominant object of the law is to give effect to the Directive Principle, it would accord protection to the law under the amended Art. 31C. But if the court finds that law though passed seemingly for giving effect to a Directive Principle, it in pith and substance, one for accomplishing an unauthorised purpose - unauthorised in the sense of not being covered by any Directive Principle - such law would not have the protection of the amended Article 31C".

The learned Judge further observed that even where the dominant object of law is to give effect to a Directive Principle, it is not every provision of the law which is entitled to claim protection. The learned Judge further observed that the words of Art. 31C of a plain, natural construction do not include all the provision of the law but only those which give effect to the Effective Principle. The test laid down in th3e Minerva Mills case by Mr. Justice Bhagwati was approved by the Supreme Court in Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another,

16. Bearing in mind the test laid down by the supreme Court, we will examine the provision of the Legislation to find out whether the legislation and the provision contained in Chap V are enacted to secure the directive Principle under Art. 39(b) of the Constitution. The Statement of Object and reasons does not throw any light to ascertain whether the Legislature intended by the enactment of the Act on to secure Directive Principle unde Art. 39(b) and (c) of the Constitution. The Act contains no to the Directive Principle. The preamble sets out that there are various corporate and statutory bodies in the State which have been established for dealing with the

problem of housing accommodation, for repairing and reconstructing building in a bad State of disrepair and presenting a dangerous possibility of collapse, and with a view to integrating the activities of these bodies so as to provide for more comprehensive and co-ordinated approach that thee Act has been enacted,. Chapter Ii provides for establishment of the authority and Boards, and four Board at Bomabay, Nagpur, Aurangabad and PUne are established under S. 18 of the Act. Chapter III deals with functional duties and powers of the Authorities and Board and Section 28 receipts various functions under the different groups. The Authority has to prepare and execute proposals, plans or projects and for housing accommodation plans or projects for housing accommodation subject to the provision of the Town Planning Act and Metropolitan Act, Some of the duties are to develop commercial centers and new towns Planning Act, and confers power to sell the land vested in the Board, expression "development" is defined u/s 2(13) and means ''carrying out of building , engineering , mining or other operations in or over,, or undder, any land (including land under sea , crock, river, lake or any other water) or the making of nay material change in any building or land, and includes re-Development and lay-out and sub-division of land.'' One oof the function is to provide of the amities in the area within jurisdiction of the Authority and the expression "amenity" has been defined u/s 2(1) of the Act and it means ''road , bridge,any other means of communication, transport supply of water and electricity , any other source of energy street lighting, drainage, sewerage, education and welfare projects, markets and conservancy and any convenience which the State Government may specify to the be an amentity. Sub-Section (2) of Section 28 prescribed that in addition the Authority or Board may undertake any duties of the Planning Act. Chapter IV deal with Budget, finance, account and audit, while Chap VIII provides for levy of Repairs and Reconstruction cess on the building and it is to be collected by the Municipal Corporation or Municipal Council and to be paid over to the Authority under the Act. Section 93 enables the Authority 96 requires the Authority to pay compensation as provided under Chap. V. Section 97 requires the State Government and the Municipal Corporation of Greater bombay to pay an amount of Rs. 2,40.00.000|- every year to the Authority. Chapter IX deals with environmental improvement of slums, and u/s 209 the Authority can issue a declaration that certain land is a slum a improvement area. Section 105 enables the Authority to enTrust the improvement work of such area to the Municipal Corporation. Chapter XI deals with the control and Section 164 enables control over the Authority or the Board. Section 183 repeals the various Act regarding housing existing in the State of Maharashtra including, Bombay Housing Board Act, 1948. The earlier ACt also provided for Acquisition of the land but did not make any discrimination between the holders of land in municipal area and the rural area, and the amount was determined in respect of the all the land in accordance with the provisions of the Land Acquisition Act.

17. Considering the provision of the ACt in detail, we find that the function duties and powers conferred on the Authorities and the Board are not restricted only to provide housing accommodation to the needy, but the functions take in their sweep several activities which are normally carried out by the municipalities of the Town Planning Authorities. The functions of the Authorities and the Board are not restrictedd only to the Development of te land and provided amenities for housing people, but includes commercial activities, whereby the Authorities make profit. The Development of commercial centers, which is considered as a function or duty of the Authority, is clearly indicative of the fact that he legislation is not restricted for only providing the housing accommodation . By undertaking Development oof commercial centers, the Authority is expected to make profits which of course would be used for advancing the objects of the Act. In this light if the power to acquire land is considered, then it is clear that the Acquisition is made without reference to the holding of the owner unlike Agricultural land Ceiling Act or Urban Land Ceiling Act, where the land above certain ceiling is compulsorily acquired for distribution to the land less people. The Acquisition of the land under the present act is undoubtedly for a public surcharge any of its functions or to carry out achieve the directive principles, that is to distribute the ownership and control of the material resources as best to subserves the common good. The powers under chapter "V are to be exercised for carrying out a public purpose and it had no bearing whatsoever with the distribution of the assets, like land. The land are not acquired from those who have got ample and land for the purpose of distribution to the land less people. The power of Acquisition is exercised under Chap V without reference to the holding of the owner or to the nature of the land. As in the cse of some of the petitioner in the present group, the land shield by them are agricultural land which are under personal cultivaton and the holding of the petitioner is not only under the ceiling area buts minimum, and the only source of maintenacnce. In spite of this, , it is permissible for the Government ot deprive them of their land to subserve the public purpose. The land is surely not compulsorily acquired from such holder for purpose of distribution, and the Legislature had not even in contemplation the directive principle contained in Article 39(b) while enacting the provision of Acquisition under Chap. V. In our Judgment the true nature and character of the Act is to create an authority or a Board to deal with the problem of housing accommodation. Repairing and reconstructing buildings presenting dangerous possibility of collapse. The object is also to carry out improve mental work in slum areas and incidentally develop the area in a balanced manner, with sufficient attention to ecology, pollution, and over crowding. The object in enacting the Legislation was obviously to provide wholesome civic life to the citizen and to achieve and land or buildings in a bad State of disrepair was conferred by the legislation. The principle or dominant object was certainly not to give effect to the Directive Principles, but to provide a separate or independent entity for carrying out duties and function which are normally required to be done by the municipal Corporation . With the growth of the cities the problem of housing shortage and mushroom growth of slums has gone

beyond imagination of the State Government and the problem cannot be resolved by the Municipal Corporation or the Municipal Councils with their limited resources and man-power . The legislation was enacted with a view to take away the burden on the Corporation to successfully concentrate it s attention on solving those problems and make the life of the citizen comfortable. It is possible to denote some remote and tenuous connection between the Act and some Directive Principal but as there is no real and substantial connection between the Directive Principles and the legislation, it is not possible to conclude that thee Act is entitled to the protective shield of ARt. 31C of the Constitution. We have no hesitation in concluding that the provision about Acquisition of the land contained in Chap. V of the Act are merely subsidiary or incidental to the object of the Act and are not essentially and intergrating connected with the implementation of the Directive Principles and as such wold not be able to enjoy the protection of Art. 31C of the Constitution. Article 31C deprives the citizen of very valuable fundamental rights it under Arts. 14, 19 and 31, and unless it is found that the dominant object of the Act is to give effect to the Directive Principles, the court should be slow in holding that he legislation was enacted to secure the principles specified in Cls. (b) and (c) of Art. 39 of the Constitution. In our Judgment, the Maharashtra Housing and area Development Act, V of the Act are not enacted to secure the Directive Principles under Art. 39(b) and (c) of the Constitution, and therefore, the respondents are not entitled to plead that the provisions of the Act under challenge should be upheld even though violative of the fundamental rights under Art. 14 of the constitution.

18. That takes us to an interesting argument presented to us about the introduction of ARt. 300A in Chapter IV of Part XII of the Constitution . Shri Singavi submitted that even assuming that the submission urged on behalf of the respondents that the Act is protected by ARt. 31C of the Constitution and the fundamental rights under Art. 14, 19 and 31 are not available under is correct, still the provision of sub-sec (3) and (4) of Section 44 of the Act cannot stand the scrutiny of Art. 300A of the Constitution. Article 300A provides that no person shall be deprived of his property save by authority of law of and it was urged that the expression "authority of law" means sof the law or in other words the law providing for deprivation of the property shall be just, fair and reasonable. Shri Paranjpe on the other hand submitted and the ably supported by Shri Gumaste, that after deletion of Article for deprivation of the property. It was urged that the right conferred on the holder of the property under Art. 300A is only a legal right and not a fundamental right as earlier available under Art. 31 of the constitution. The submission is that under Article 300A of the Constitution, the Parliament, merely intended that there shall not be deprivation of the property except by legislation or in other words the Parliament did not desire deprivation only by legislatiom. Shri Paranjpe went a step further and submitted that once the right to hold property and there isn no obligation on the Legislation to pass legislation which is just, fair and reasonable, or to provide for payment of any compensation or amount for the deprivation of the property. Shri Singavi, in answer

to this submission, urged that in spite of deletion of Article 31 from the Chapter on Fundamental Rights the phraseology used in Article 300A is identical with that of Article 31(1) and that is indicative of the fact that the Parliament recognised the doctrine of eminent domain and the obligation to pass legislation, which is just, fair and reasonable is not taken away. Article 31(1) and (2), as originally enacted, ran as follows:

"31. Compulsory Acquisition of property-

(1) No person shall be deprived of his property save by authority of law;

(2) No property movable or immovable including any interestin, or inn any Company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purpose under any law authority the taking up of such possession or such Acquisition , unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given".

(3) In The State of Bihar Vs. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Others, , it was contended before the Supreme Court that the Bihar Land Reforms At, 1950 was invalid for lack of legislative competence since the impugned law was not enacted for the public purpose and did not provide for compensation. The submission was that the expression "Acquisition" used in legislative Entry 3 of the Entry 36 of LIst II and Entry 42 of List III dealing with Acquisition and requisition of property, inter in alia, provides that Acquisition must be for the public purpose and there is an obligation to pay the compensastion. The contention was not accepted by the Supreme Court. The Supreme Court considered the doctrine of eminent domain applied in the United States in regard to the nature of the States power to acquire private property for public use. The Supreme Court held that as Art. 311(2) of the Constitution was intention expropriating private property, and the two conditions being requirement of a public purpose and obligation to pay compensation , it is not necessary to trace the power to the doctrine of eminent domain. Chief Justice Patanjali SAstri observed that under the common law of eminent domain as recognised in the jurisprudence of all civilized countries the State cannot take the property of its subject unless such property is required for a public purpose and without compensating the owner for its loss. Justice Mahajan observed that on the continent the power of compulsory Acquisition is described by the them term " eminent domain" and the term seems to have been originated in 1625 by Hugo Grotius, who wrote of this power in his work "De jure Belli et Pacis" as follows:
The property of subjects is under the eminent domain of the State ,, so that the State or he who acts for it may use and even alienate and destroy such property in not only in the case of extreme necessity , in which even private persons have a

right over thee property of others but of ends of public utility, to which ends those who founded civil society must be supposed to have intended that private endshould give way. But is it to be added that when this is done the State is bound to make good the loss to those who lose ther property".

The learned Judge further observed:

"Shorn of all its incidents, the simple definition of the power to acquire compulsorily or of the power to acquire compulsorily or of the term "eminent domain" is the power of the sovereign to take property for public use without the owners consent. The meaning of the power in its irreducible terms is, (a) power to take, (b), without the owners consent ,(c) for the public use. The concept of the public use has been inextricably related to an appropriate exercise of the power and is considered essential in any Statement of its meaning. Payment of compensation, though not an essential ingredient of the connotation of the term, is an essential power. Courts have defined domain" so as to include this universal limitation as an essential constituent of its meaning. Authority is universal in support of the amplified definition of "eminent domain" as the power of sovereign to take property for public use without the owners consent upon making just compensation".

19. As mentioned hereinabove, ARt, 300A of the Constitution reproduces verbatim provision of Art. 31(1) and the submission urged is that the doctrine of eminent domain would come into play and though the Government has power to deprive owner of the property, such power is circumstances by two conditions, being requirement of a public purpose and the obligation to pay compensation. On the other hand, it was claimed that the deletion of Art. 31(2) makes it clear that the property can be compulsorily acquired and the two requirements need not be present . Article 300A provides that no person shall be deprived of the his property save bny authority of law ans it is impossible to accede to the submission that the ''authority of law '' can enable deprivation of property save by authority of law and it is impossible to aced to the submission that the ''authority of law'' can enable deprivation of property for a private purpose. The entire democratic structure of this country is based upon the concept of the rule of law'' and it is not possible to imagine that the legislation of a private property for a purpose which is not a public purpose. Shri Paranjpe reluctantly conceded to that position, but submited that it would not be proper to import the requirement ot pay compensation or amount while construing the ambit of ARt. 300A when the Parliament in its wisdom decided to delete ARt. 31 from the Chapter on the Fundamental Rights. It was urged that payment of compensation for compulsory Acquisition of the property has led to considerable debate and produced large case law, and therefore the Parliament thought it wise to remove the right to property from Part III of the Constitution. The learned counsel drew support for his submission that after the 44th Amendment there is no express provision in the Constitution requiring the State to pay relying upon the opinion expressed by Mr. Durgadas Basu on page 677 of his ''Shorter

Constitution of India" Eighth Edition. The view expressed by the learned author is different from the opinion of Mr. Seervai expressed in the book ''Constitutional Law of India Special Edition , Vol III, 15A , 20A on wards , and by Mr. P. K. Tripathi in his Article published in AIR 1980 Jour, pag 49 . In our Judgment it would be difficult to conclude that by deletion of ARt. 31 from conclude that by deletion Constitution the Parliament intended to codifier absolute right on the Legislature to deprive the citizen of his property by mere passing of a legislation without complying with the requirement that the deprivation with is for a public purpose and on payment of amount which is not illusory. The doctrine of eminent domain really recognises the natural right of a person to hold property, and if that right can be taken away by the legislation without satisfying the two requirements,. then the entire concept of rule of law would be redundant. The introduction of ARt. 300A in the Constitution while deleting Article 31 clearly indicates that the Parliament intended to confer a right on the citizen to hold property and which could not be deprived without authority of law,. In our Judgment, inspite of deletion of Art. 31, the constitution obligation to pay adequate amount to the expropriated owner is not taken away.

20. Shri singavi then submitted that expression ''authority of law'' in Art. 300A requires that the legislation providing for deprivation of property must be just, fair and reasonable, and the contrary submission of the respondents that the only requirement of the Article is enactment of the legislation to deprive of the property and the legislation need to not the be just, fair and reasonable cannot be accepted. The leaned counsel in support of his submission pointed out that Article 21 enable the State to deprive the citizen of his lif or liberty, Art, 265 enables the State to levy and collect the tax and ARt. 300A enables the State to deprive the citizen of his property, but all these three Articles provide that such deprivation or levy of tax shall not be except according to the procedure established by law or by authority or law. The expression "according to the procedure established by law or by authority of law. The expression according to the procedure established by law or by authority or law has been considered by the supreme Court in (a) large number of cases as the procedure which must be just, fair and reasonable. It is well accepted that if the procedure which must be just, reasonable and fair, then the deprivation of the valuable rights of the citizen cannot be sustained. The decision of the Supreme Court in A.K. Gopalan Vs. The State of Madras, holding that law means enacted law and need not be just and fair was specifically disapproved and overruled in the decision of the Supreme Court in Rustom Cavasjee Cooper Vs. Union of India (UOI), In this case dealing with challenge to the nationalisation of banks, Mr. Justice J,C. Shah, speaking for the bench , observed in para 62 of the Judgment that Art, 31(2) requires that property must be acquired for a public purpose and that it must be acquired under the law with characteristics set out in that ARticel, but formal compliance with the conditions under Article 31(2) is not sufficient to negative the protection of the guarantee or right to property. The learned Judge further held that (at p. 597):

"Acquisition must be under the authority of a law and the expression ''lalw'' means a law which is within the competence of the Legislature ,and does not impair the guarantee of the right in Part. III

The Supreme Court further observed that the assumption is in A.K. Gopalan Vs. The State of Madras, that certain Articles in the Constitution exclusively deal with specific matters and in determining whether there is infringement of the individual''s guaranteed rights, the object and the form of the State action alone need be considered and effect of the law on fundamental rights of the individuals in general will be ignored, cannot be accepted as correct. Even earlier, the Supreme Court in the decision Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, held that the provision of ARt. 31(1) are to be construed subject to the fundamental right under Art. 19 and therefore must be reasonable.

21. The question as to whether the expression "authority of law of procedure established by law or means "just , fair and reasonable " is no longer open to debate in view of te celebrated decision of the Supreme Court Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, The passport of Mrs. Maneka Gandhi was impounded in public interest and the Government of India declined in the interest of the general public to furnish the reason for its decision. The action was challenged on the ground that Section 3(c) of the Passport Act, 1967, is void as conferring an arbitrary power since it does not provide for a hearing and is also availability of Art. 21 of the Constitution since it does not prescribe "procedure " within the meaning of that Article. Justice Krishna Iyer expressed total Article . Justice Krishna Iyer expressed total agreement with the conclusion reached by Justice Bhagwati in regard to the construction of expression "procedure established by by law" . In para 115 of the Judgment, Mr. Justice Krishna Iyer observed that anything formal, legislatively Justice Krishna Iyer further observed that law is , when it is legitimated by the conscience and consent of the community generally and not nay capricious command. It was further observed .

"The compulsion of constitution humanism and the assumption of full faith in life and liberty cannot be so futile or fragmentary that any transient legislative majority in tantrums against any minority by there quick reading of a bill with the requisite quorum can prescribe any unreasonable modality and thereby sterilise the grandiloquent mandate. ''Procedure established by law'' with its lethal potentiality, will reduce life and liberty to a precarious plaything? If we do not ex-necessitate import into those weightily words on adjectival rule of law, civilised in its soul, fair in its heart and fixing those imperatives of procedural protection absent which the processual tail will wag the substantive head .....

"Is the prescription of some sort of procedure enough or must the procedure comply with pany particular requirements ? Obviously, the procedure cannot be arbnitrary, unfair or unreasonable. This indeed was conceded by the learned Attorney General who with his usual candour frankly Stated that it was not possible

for him to content that any procedure howsoever arbitrary, oppressive or unjust may be prescribed by the law. There a was some discussion in A.K. Gopalan Vs. The State of Madras, in regard to the nature of the procedure required to be prescribed under Art . 21 and at least three of the learned Judges out of five expressed themselves strongly in favour of the view that the procedure cannot be any arbitrary, fantastic or oppressive procedure. Fazal Ali, J., who has was in a minority, went to the farthest limit the in saying that the procedure must include the four essentials set out in Prof. Willis books on Constitutional of procedure. Patanjali Sastri, J., did not go as as far that but he did say that "certain basics principles emerged as the constant factors known to all those procedure and they formed the core the of the procedure established by law". Mahajan. J., also observed that Art. 21 requires that '' there should be some form of proceeding before a person can be condemned either in respect of his life or his liberty " and it negative the idea of fantastic, arbitrary and oppressive forms of proceedigns". But apart altogether from these observation in A.K. Gopalan''s case, which have great weight, we find that even on principle the concept of reasonableness must be projected in the procedure contemplated by Art. 21 having regard to the impact of Art. 14 on Art. 21"

22. Shir Paranjpe submitted that the decision in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, is based upon the inter relationship between Arts. 14, 19 and 21 and the concept of reasonabless in the legislation is projected having regard to the impact of Art. 14 on Art, 21. The submission is that the concept of ''reasonableness of legilsation'' is based ion the availability of Art. 14 in the case of Mrs. Maneka Gandhi, and once it is not held that protection of Art., 14 in the case of Mrs. Maneka Gandhi and once it is held that protection of Art. 14 is not available because of application of Art. 31C, then it is not necessary that he legislation should be just, fair and reasonable. The submission was advanced by relying upon the observation of Mr. Justice Bhagwati quoted herinabove, but in our Judgment, the decision in Maneka, Gandhi case projecting the concept of reasonableness is not merely due to the impact of Art. 14 on Article 21. The contention of Shri Paranjpe loses its merit when reference is made to the decision of Mr. Justice Chandrachud, as he then was, in Maneka Gandhi''s case. In para 40 of the Judgment, the learned Judge observed:

"But the mere prescription of some kind of procedure cannot ever met the mandate of Art 21. The procedure prescribed by law has to be fair, just and reasonable, not fanciful, oppressive or arbitrary. The question whether the procedure prescribed by a law which curtails or takes ways the personal liberty guaranteed by Art. 21 is reasonable or not has to be considered not in the abstract or on hypothetical consideration like the provision for a full dress hearing as in a Court room trial, but in the context, primarily, of the purpose which the Act is intended to to achieve and of urgent situations which those who are charged with the duty of administering the Act may be even the Article 21 is not be the journey''s end because, a law which prescribed fair and reasonable procedure of for prescribed curtailing of taking away

the personal liberty guaranteed by Art. 21 has still to meet a possible challenge under other provisions of the Constitution like, for example, Arts. 14 and 19. ''

These observations l;eave to no manner of doubt that the Supreme Court held that the procedure prescribed by law must be a fair and reasonable procedure independently of the protection guaranteed under Arts. 14 and 19 of the Constitution. The submission of Shri Paranjpe that concept of reasonableness in legislation should not be imported in cases where Art. 14 is not available, therefore, deserves to be repelled. The legislation must be just, fair and reasonable whether protection of Arts. 14 and 19 is available or otherwise, and the submission that the legislation providing for deprivation of property under Art. 300A of the Constitution must be just, fair and reasonable deserves acceptance.

23. The decision of the Supreme Court in Maneka Gandhi''s case was approved and reiterated in several subsequent decisions of the supreme Court , and it is not necessary to discuss all those decisions and it wold suffice merely to kame a reference . The decision are Madhav Hayawadanrao Hoskot Vs. State of Maharashtra, , Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, , Bachan Singh Vs. State of Punjab, , Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, , Kasturi Lal Lakshmi Reddy v. State of J. & K., and AIR 1981 SC 746 Francis of coralie Mullin v. Administrator, Union Territory of Delhi. From this catena of decision of the Supreme Court it must be held that the legislation providing for deprivation of property must satisfy the requirements of being fair, just and reasonable.

24. Shri singavi then submitted that the provision of Chap. V which provide for deprivation of the property and the grant of amount in lieu thereof, are neither just, nor fair or reaosnable. The submission is that is the legislation provides for different standards for grant of compensation for compulsory acquisition of land and such different standards have of land and no nexus to the object to be achieved then the legislation cannot be said to be just, fair and reasonable. The provision of Chap V. held earlier, clearly favour the owner of land in rural areas and such favourable treatment is not shown to be justified for any reason whatsoever. There cannot be any difference between the developed town with the municipal care could have no comparison tio the value of the land in rural area, and it is difficult to fathom why more compensation, including solatium is provided in case of land in rural areas and the same is denied for the land within the municipal area, which are of very high value. As the legislation providing for compensation is clearly discriminatory and the discrimination is not substantiated on valid grounds it must be held that the provisions of sub-sec. (3) and (4) of s. 44 do not conform to the constitutional right conferred upon the citizen under Art. 300A of the Constitution. In our Judgment, even assuming that the provisions of Chap V of the Act are protected from challenge under Arts. 14, 19 and 31 due to the applicability of Art. 31C of the Constitution, still

the impugned provisions of the Act are required to be struck down as the sid provisions are neither just nor fair or reasonable . Our conclusions, therefore, are:

(1) Sub Section (3) and sub-Section (4) of S. 44 of the Maharashtra Housing and area Development Act, 1976 are unreasonable and discriminatory and therefore ultra vires Art. 14 of the Constitution;

(2) Section 43 and sub-Section (3) and (4) of S. 44 are not enacted to give effect to the policy of the State towards securing the principles specified in Cl. (b) or Cl. (c) of Art. 39, and therefore, the right conferred by ARt. 14 of the Constitution is not taken away as provided under Art. 31C of the Constitution; and

(3) Even otherwise the impugned provisions of the legislation are unjst, unreasonable and unfair and the deprivation of the property under Ss. 41 and 42 of the Act is not by authority of law.

25. In view of our conclusions , the petition must succeed and the action taken by the respondent to deprive the petitioner of their land requires of be quashed.

26. Accordingly, the petition succeeds and the rule is made absolute in terms of prayer (a) . In the circumstances of the case, there will be no order as to costs.

27. Petition allowed.