

STATE OF MAHARASHTRA & ANR.

v.

BASANTIBAI MOHANLAL KHETAN & ORS.

MARCH 13, 1986

[E.S. VENKATARAMIAH AND M.P. THAKKAR, JJ.]

Maharashtra Housing and Development Act, 1976 (Maharashtra Act XXVIII of 1977), sub-sections 3 & 4 of section 44, Constitutional validity of - Whether infringes the provisions of Articles 14, 19, 21, 31 and 300A of the Constitution - Whether provisions of section 44(3) and (4) are protected by Article 31(c) of the Constitution.

One Mohanlal Fakirchand Khetan was the owner of a piece of land measuring 3.98.60 hectares bearing Survey No. 28 at village Bhushi in Maval Taluka of Pune District having purchased it under the sale deed dated January 18, 1966. The said land is, however, situated within the municipal limits of Lonavala town. Mohanlal Fakirchand Khetan died on May 18, 1976 leaving behind him his widow, respondent No. 1, and children respondents Nos. 2 to 5, as his heirs. In order to provide housing accommodation to economically weaker sections and to persons belonging to low income group and middle income group residing within Lonavala municipal limits and at the request of the Maharashtra Housing and Area Development Authority, a notice was published by the State Government under the proviso to section 41(1) of the Maharashtra Housing and Development Act, 1976 in Government Gazette dated August 30, 1979 inviting objections to the proposed acquisition of lands including the land which originally belonged to Mohanlal Fakirchand Khetan. Pursuant to the said notice Chandrakant Mohanlal Khetan, respondent No. 3 herein lodged his protest on September 6, 1979. After considering the various objections received from different people including the objections filed by Chandrakant Mohanlal Khetan on behalf of himself and the other co-owners, the State Government published the notification under sub-section (1) of section 41 in its Gazette dated July 3, 1980. On the publication of the said notification the land of Mohanlal Fakirchand Khetan vested in the State Government free from all encumbrances. On December 12, 1980 a notice was

A issued under section 42(1) of the Act, to the holders of the
lands to surrender and deliver possession of their lands to
the Collector, Pune within a period of 30 days. In January
1981, the legal representatives of Mohanlal Fakirchand Khetan
objected to the notice on the ground that Survey No. 28 of
village Bhushi that is, the land belonging to them had not
actually been notified in the notification published in the
B Gazette as it had been shown as lying in village Maval and not
in village Bhushi. On discovering the error which had crept
into the notification, on May 15, 1981 the State Government
published a corrigendum making the requisite correction and
thereafter issued a fresh notice on September 15, 1981 to the
heirs of Mohanlal Fakirchand Khetan to deliver possession of
C the land bearing Survey No. 28 of village Bhushi situated
within the Municipal limits of Lonavala. The widow and
children of Mohanlal Fakirchand Khetan, respondents herein
filed a writ petition in the High Court of Bombay questioning
the validity of proceedings leading up to the issue of
notification under section 41(1) of the Act and also the
D notification. The High Court negatived all the contentions
raised by the respondents in the writ petition except the
constitutionality of sub-section (3) and (4) of section 44 of
the Act. It found that sub-section 3 and sub-section 4 of
section 44 of the Act were unreasonable and discriminatory and
therefore ultra vires Article 14 of the Constitution. It found
E that the said provisions were not protected by Article 31C of
the Constitution and further held that the impugned provisions
of the legislation were otherwise unfair, unjust and un-
reasonable. The High Court also found that the deprivation of
the property under sections 41 and 42 of the Act had not been
done by authority of law. The High Court accordingly allowed
F the writ petition. Aggrieved by the decision of the High Court
the State of Maharashtra and the Maharashtra Housing and Area
Development Authority have filed this appeal by special leave.

Allowing the appeal the Court,

G **Held** : 1. Sub-sections 3 and 4 of the Maharashtra
Housing and Development Act, 1976 are constitutionally valid.
[730 F-G]

H 2.1 Every Act carries with it the presumption of consti-
tutionality and unless a party aggrieved in a writ petition is
able to discharge the said burden by placing adequate

material, the Court should not strike down a legislative provision particularly by the application of Article 14. [726 A-C]

In the instant case, sub-sections 3 and 4 of section 44 of the Act cannot be said to be discriminatory and violative of Article 14 of the Constitution, merely because in the case of lands in municipal area all the methods of valuation under the Land Acquisition Act, are not made available. [726 B-C]

2.2 The Act is not introduced for the benefit of areas like Bombay Corporation area and areas under the jurisdiction of other corporations and municipalities only. It is enacted for the whole State more than 90 per cent of which constitutes rural area. The potentialities of a land in a municipal area are far higher than the potentialities of land in a rural area. There is also no occasion under the Act for the State Government to treat one piece of land in a municipal area in one way and another piece of land in that area differently. All lands in a municipal area have to be valued in only one way that is in accordance with section 44(3) and (4) of the Act and all lands in rural areas have also to be valued only in one way and that is in accordance with the provisions of the Land Acquisition Act, 1894. There could have been two different Acts one for municipal areas and another for rural areas, each providing for a different method of valuation of land. Such a classification would have been un-exceptionable having regard to the object and purposes of the two Acts and the difference in the potentialities of the two types of lands. The method of capitalization is also one of the recognised methods which is adopted for the purpose of valuation of properties acquired under the Land Acquisition Act, 1894. All methods of valuation adopted under that Act are intended to achieve the same purpose, namely, determination of the market value of the land acquired. It is difficult to say whether any of them is superior to the other in the context of Article 14 of the Constitution and to hold that there will be discrimination, if any of them is not allowed to be availed of for purposes of valuation. [723 G-H; 724 A-E]

State of Gujarat v. Shri Shantilal Mangaldas & Ors., [1969] 3 S.C.R. 341; **Prakash Amichand Shah v. State of Gujarat & Ors.**, [1986] 1 S.C.C. 581; **Raja Vyricherla Narayana Gajapatiraju v. The Revenue Divisional Officer**, [1939] 66 IA 104 -

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A.I.R. 1939 PC 98; **Rustam Cavasjee Cooper v. Union of India** [1970] 3 S.C.R. 530; **Union of India & Anr. v. Smt. Shanti Devi & Ors.**, [1983] 4 S.C.C. 542; **Special Land Acquisition Officer, Davangere v. P. Veerabhadrapa & Ors.**, [1984] 2 S.C.C. 120; **Oriental Gas Co. Ltd. & Ors., v. State of West Bengal** [1979] 1 S.C.R. 617 and **Government of Bombay v. Morwanji Muncherji Cama**, 10 Bom. LR 907 referred to.

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2.3 Even granting for purposes of argument that sub-sections 3 & 4 of section 44 are violative of Article 14 of the Constitution, the said provisions receive the protection of Article 31C of the Constitution. [726 C-D]

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3.1 Article 31C does not say that an Act there should be a declaration by the appropriate legislature to the effect that it is being enacted to achieve the object contained in Article 39(b). In order to ascertain whether it is protected by Article 31C, the Court has to satisfy itself about the character of the legislation by studying all parts of it. The question whether an Act is intended to secure the objects contained in Article 39(b) or not does not depend upon the declaration by the legislature but depends on its contents. [727 B-D]

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3.2 The Maharashtra Housing and Development Act, 1976 makes provision for acquisition of private lands for providing sites for building houses or housing accommodation to the community. The title to the lands of the private holders which are acquired first vests in the State Government. Later on the land is developed and then distributed amongst the people as house sites. It also provides for reserving land for providing public amenities without which people cannot live there. Community centres, shopping complex, parks, roads, drains, play grounds, are all necessary for civic life and these amenities are enjoyed by all. That is also a kind of distribution within the meaning of Article 39(b) of the Constitution. The Act is brought into force to implement the directive principle contained in Article 39(b) and hence even if there is any infraction of Article 14 it is cured by Article 31C which is clearly attracted to the case. [727 E-F; 729 A-B]

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Sanjeev Coke Manufacturing Company v. Bharat Coking Coal Ltd. & Anr., [1983] 1 S.C.R. 1000; **His Holiness Kesavananda Bharati Sripadagalavaru v. State of Kerala**, [1973] Supp. S.C.R.

1; *Minerva Mills Ltd. & Ors. v. Union of India & Ors.*, [1981] 1 S.C.R. 206 and *State of Karnataka & Anr. etc. v. Shri Ranganatha Reddy & Anr. etc.*, [1978] 1 S.C.R. 641 referred to. A

4. The Maharashtra Housing and Development Act, 1976 does not infringe Article 300A of the Constitution. Article 300A was not in force when the Act was enacted. Article 31 (1) of the Constitution which was couched in the same language was however in force. Article 31C gave protection to the Act even if it infringed Article 31. In this case, sub-section 3 and 4 of section 44 of the Act cannot be struck down on the ground that they are neither just nor fair or reasonable. Nothing contrary has been done by the authorities. Certain vacant lands lying inside a municipal area are being acquired for providing housing accommodation after paying an amount which is computed in accordance with a method considered to be a fair one by Courts. The purpose for which the lands are acquired is a public purpose. The owners are given opportunity to make their representations before the notification is issued. All the requirements of a valid exercise of the power of eminent domain even in the sense in which it is understood in the United States of America where property rights are given greater protection than what is required to be done in our country are fulfilled by the Act. [729 B-F] B C D

5. Land ceiling laws, laws providing for acquisition of land for providing housing accommodation, laws imposing ceiling on urban property etc. cannot be struck down by invoking Article 21 of the Constitution. Article 21 essentially deals with personal liberty. It has little to do with the right to own property as such. This is not a case where the deprivation of property would lead to deprivation of life or liberty or livelihood. On the other hand land is being acquired to improve the living conditions of a larger number of people. To rely upon Article 21 of the Constitution for striking down the provisions of the Act amounts to a clear misapplication of the great doctrine enshrined in Article 21. [730 A-C] E F G

6. Some problems presenting difficulty of valuation in the application of clause 5 of First Schedule to section 44(1) of the Act in regard to valuation of open lands situated in a city like Bombay or lands with building potentialities situated within the limits of big towns, are easily surmountable H

A problems of valuation in relation to individual lands and do not reflect on the constitutionality of the impugned provision. The concerned authorities entrusted with the function of making evaluation will doubtless resolve such problems as are likely to arise appropriately in accordance with law. [730 D-E]

B **Rasanti Bhai Mohanlal Khetan & Ors. v. State of Maharashtra** A.I.R 1984 Bombay 366 reversed.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1177 of 1984.

C From the Judgment and order dated 8.11.1983 of the Bombay High Court in W.P. No. 4192 of 1981.

Ashok Desai, M. Ganesh, G.B. Sathe and A.S. Bhasme for the Appellants.

D S.B. Bhasme, Mrs. V.D. Khanna, A.M. Khanwalkar and Anil Kumar Gupta for the Respondents.

The Judgment of the Court was delivered by

E **VENKATARAMIAH, J.** This appeal by special leave is filed against the judgment dated November 8, 1983 in Writ Petition No. 4192 of 1981 by which the High Court declared sub-section (3) and sub-section (4) of section 44 of the Maharashtra Housing and Development Act, 1976 (Maharashtra Act No. XXVIII of 1977) (hereinafter referred to as 'the Act') as void and gave certain ancillary directions.

F One Mohanlal Fakirchand Khetan was the owner of a piece of land measuring 3.98.60 hectares bearing Survey No.28 at village Bhushi in Maval taluka of Pune district having purchased it under the sale deed dated January 18, 1966. The said land is, however, situated within the municipal limits of Lonavala town. Mohanlal Fakirchand Khetan died on May 18, 1976 leaving behind him his widow, respondent No.1, and children, respondents Nos. 2 to 5 as his heirs. On August 1, 1978 the Maharashtra Housing and Area Development Authority (hereinafter referred to as 'the authority' established under section 3 of the Act wrote a letter to the Municipal Council,

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Lonavala seeking information regarding its needs for providing housing accommodation to economically weaker sections and to persons belonging to low income group and middle income group residing within Lonavala municipal limits. In order to ascertain the demand for tenements, the Municipal Council of Lonavala issued two advertisements in local newspapers on August 3, 1978 and February 10, 1979 inviting applications for housing accommodation from the general public. After taking into consideration the representations made by the people and assessing their requirements, the municipal council informed the authority about the extent of land needed for providing housing accommodation for the people. The authority in its turn informed the State Government by its letter dated September 15, 1979 that an extent of 26 hectares of land was needed initially for providing accommodation for people within the limits of Lonavala Municipal Council and requested the State Government to issue a notification under sub-section (1) or section 41 of the Act. The proposal was processed by the Public Works Department and the Housing Department of the State Government and a notice was published under the proviso to section 41 (1) of the Act in Government Gazette dated August 30, 1979 inviting objections to the proposed acquisition. In that notice it was mentioned that the Government proposed to acquire the land which originally belonged to Mohanlal Fakirchand Khetan refer to above also. Pursuant to the said notice Chandrakant Mohanlal Khetan, respondent No.3 herein lodged his protest on September 6, 1979. After considering the various objections received from different people including the objections filed by Chandrakant Mohanlal Khetan on behalf of himself and the other co-owners the State Government published the notification under sub-section (1) of 41 in its Gazette dated July 3, 1980. On the publication of the said notification the land mentioned in it including the land of Mohanlal Fakirchand Khetan vested in the State Government free from all incumbrances. On December 12, 1980 a notice was issued under section 42(1) of the Act to the holders of the lands which had been notified under section 41(1) of the Act to surrender and deliver possession to the Collector, Pune within a period of 30 days. In January, 1981 the legal representatives of Mohanlal Fakirchand Khetan objected to the notice on the ground that Survey No. 28 of village Bhushi, that is, the land belonging to them had not actually been notified in the notification published in the

A Gazette as it had been shown as lying in village Maval and not
in village Bhushi. On discovering the error which had crept
into the notification, on May 15, 1981 the State Government
published a corrigendum making the requisite correction and
thereafter issued a fresh notice on September 15, 1981 to the
heirs of Mohanlal Fakirchand Khetan to deliver possession of
the land bearing Survey No.28 of village Bhushi situated
B within the municipal limits of Lonavala. The widow and
children of Mohanlal Fakirchand Khetan, respondents herein,
thereafter filed the writ petition out of which this appeal
arises on December 17, 1981 on the file of the High Court of
Bombay questioning the validity of proceedings leading up to
the issue of the notification under section 41(1) of the Act
C and also the notification.

The respondents contended in the writ petition filed by
them inter alia : (i) that there was no material with the
State Government to form an opinion about the need for issuing
the notification under section 41(1) of the Act; (ii) that the
D respondents had not been heard personally after they had filed
the objections under the proviso to section 41(1) of the Act
to the proposal of acquisition; (iii) that the land of the
respondents had actually not been notified; and (iv) that the
provisions of sub-sections (3) and (4) of section 44 of the
Act which contained the basis for the determination of
E compensation payable in respect of the land were violative of
Article 14, Article 19 and Article 31 of the Constitution and
therefore the said two sub-sections and the notification were
liable to be declared as void. They also stated that the
compensation payable to them was illusory in its quantum and
the procedure prescribed for the acquisition was not fair and
F reasonable.

The petition was contested by the State Government and
the Authority. The High Court negatived the contentions of the
respondents namely that there was no material before the State
Government for forming an opinion about the need for issuing
G the notification under section 41(1) of the Act, that the
respondents had not been given adequate opportunity to submit
their objections to the notification under the proviso to
section 41(1) of the Act, and that the land belonging to them
had not been included in the notification. The High Court
found that the correspondence which had preceded the issue of
H the notification between the Government, the Authority,

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Municipal Council, Lonavala and the representations received
by the Municipal Council, Lonavala from the public and the
proceedings of the State Government constituted sufficient
basis for the Government to form opinion about the need for
issuing the notification under section 41(1) of the Act. The
High Court found that although the names of the respondents
had not been shown in the record of rights after the death of
Mohanlal Fakirchand Khetan, respondent No.3 who was acting on
behalf of all the heirs of Mohanlal Fakirchand Khetan had
lodged his objections under proviso to section 41(1) of the
Act and that he had also been personally heard by the
Collector, Pune before the publication of the notification
under sub-section (1) of section 41. The High Court, C
therefore, held that the respondents suffered no prejudice
whatsoever on that account. The High Court further found that
the description of the land of the respondents as the land
bearing Survey No.28 of village Maval had been duly corrected
by the issue of the corrigendum and that there was no doubt
about the identity of the land of the respondents which was
being acquired. After rejecting the above contention, the High
Court however proceeded to uphold the contention of the
respondents as regards the constitutionality of sub-section
(3) and sub-section (4) of section 44 of the Act. It found
that sub-section (3) and sub-section (4) of section 44 of the
Act were unreasonable and discriminatory and therefore ultra
vires Article 14 of the Constitution. It found that the said
provisions were not protected by Article 31C of the
Constitution and further held that the impugned provisions of
the legislation were otherwise unfair, unjust and
unreasonable. The High Court found that the deprivation of the
property under sections 41 and 42 of the Act had not been done
by authority of law. The High Court accordingly allowed the
writ petition. Aggrieved by the decision of the High Court the
State of Maharashtra and the Authority have filed this appeal
by special leave. D
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In the course of this appeal the parties have not
questioned the correctness of the decision of the High Court
as regards the facts which had been found against the
respondents. The arguments were confined to the constitutional
validity of sub-sections (3) and (4) of section 44 of the Act.

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Before the Act was enacted in the year 1976 by the State

A Legislature there were in force in the State of Maharashtra, the Bombay Housing Board Act, 1948, in the Bombay and Hyderabad areas of the State, the Madhya Pradesh Housing Board Act, 1950 in the Vidarbha area of the State, the Bombay Building Repairs and Reconstruction Board Act, 1969 and the Maharashtra Slum Improvement Board Act, 1973. All these Acts were repealed by section 188 of the Act and in their place,

B the Act was brought into force inter alia with the object of unifying, consolidating and amending the laws relating to housing, repairing and reconstructing dangerous buildings and carrying out improvement works in slum areas. The Preamble to the Act stated that before the Act was passed there were in

C existence various corporate and statutory bodies in the State for dealing with the problem of housing, accommodation, for repairing and reconstructing buildings in a bad state of disrepair and presenting a dangerous possibility of collapse, for carrying out improvement works in slum areas, and for advancing loans for construction of houses. It took note of the fact that the programmes undertaken by these bodies were

D more or less complementary and there was considerable overlapping in their working or functioning and hence it was considered necessary and expedient to co-ordinate the housing programmes for an orderly development of the urban areas in the State. It was felt that it was necessary to provide for a more comprehensive and co-ordinated approach to the entire

E problem of housing development in a balanced manner, with sufficient attention to ecology, pollution, over-crowding and amenities required for leading a wholesome civic life, and that it was expedient to establish a single Corporate Authority for the whole State and establish new Boards for certain

F areas of the State to carry out the plans, programmes and other functions of the Authority. The Act was passed by the State Legislature for the aforesaid purposes. It received the assent of the President on April 25, 1977.

Chapter II of the Act provides for the establishment of the Authority and Boards. Section 3 of the Act authorises the

G State Government to establish the Authority by a notification in the Official Gazette for securing the objectives and purposes of the Act. The Authority is a body corporate having perpetual succession and a common seal with the powers to own property and to enter into contract. Section 18 of the Act provides for the establishment of Boards for implementing the

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provisions of the Act. Four Boards are constituted for the four areas of the State namely, Bombay area, Nagpur area, Aurangabad area and the Pune area. The functions, duties and powers of the Authority and the Boards are set out in Chapter III of the Act. Section 28 which is in Chapter III of the Act provides that subject to the provisions of the Town Planning Act and the provisions of clauses (b) and (h) of sub-section (1) of section 12 and section 13 of the Metropolitan Act it is the duty and function of the Authority among others to prepare or direct the Boards to prepare and execute proposals, plans or projects for (i) housing accommodation in the State or any part thereof, sale, including transactions in the nature of hire-purchase of tenements in any building vested in, or belonging to, the Authority, letting or exchange of property of the Authority (ii) development including provisions for amenities in areas within the jurisdiction of the Authority, (iii) clearance and re-development of slums in urban areas, (iv) development of peripheral areas of existing urban areas to ensure an orderly urban overspill, (v) development of commercial centres, (vi) development of new towns in accordance with the provisions of the Town Planning Act, (vii) development of lands vested in the Authority, etc. etc.. The functions of the Authority as stated above naturally involve acquisition of land and disposal of property of the Authority. Chapter V of the Act deals with the acquisition of land and disposal of property of the Authority. Section 41 of the Act which deals with the power of the State Government to acquire land reads thus :

"41. (1) Where, on any representation from the Authority or any Board it appears to the State Government that, in order to enable the Authority to discharge any of its functions or to exercise any of its powers or to carry out any of its proposals, plans or projects, it is necessary that any land should be acquired, the State Government may acquire the land by publishing in the Official Gazette a notification to the effect that the State Government has decided to acquire the land in pursuance of this section :

Provided that, before publishing such notification, the State Government shall, by notice published in

A the Official Gazette and served in the prescribed manner, call upon the owner of, or any other person who, in the opinion of that Government, may be interested in, such land to show cause, why it should not be acquired, and after considering the cause, if any, shown by the owner or any other person interested in the land, the State Government may pass such order as it thinks fit.

B (2) The acquisition of land for any purpose mentioned in sub-section (1) shall be deemed to be a public purpose.

C (3) Where a notification as aforesaid is published in the Official Gazette, the land shall, on and from the date on which the notification is so published, vest absolutely in the State Government free from all encumbrances."

D Section 42 of the Act confers power on the State Government to require the person in possession of land which is vested under sub-section (3) of section 41 of the Act to surrender or deliver possession thereof to the State Government. Section 43 of the Act provides that every person having any interest in any land acquired under Chapter V of the Act would be entitled to receive from the State Government an amount as provided by the provisions contained in Chapter V, Sections 44 to 49 of the Act deal with acquisition of lands in municipal areas and section 50 deals with acquisition of lands in rural areas. The land situated in any area within the jurisdiction of any Municipal Corporation or Municipal Council is considered as land lying in a municipal area for purposes of determination of compensation and the land outside the jurisdiction of a Municipal Corporation or a Municipal Council is treated as land in a rural area for the said purpose. Section 44 which is material for purposes of this case which lays down the basis for determination of the amount for acquisition of lands in municipal areas read thus :

H "44. (1) Where any land including any building thereon is acquired and vested in the State Government under this Chapter and such land is situated in any area within the jurisdiction of any

Municipal Corporation or Municipal Council, the State Government shall pay for such acquisition an amount which shall be determined in accordance with the provisions of this section.

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(2) Where the amount has been determined with the concurrence of the Authority by agreement between the State Government and the person to whom it is payable, it shall be determined and paid in accordance with such agreement.

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(3) Where no such agreement can be reached, the amount payable in respect of any land acquired shall be an amount equal to one hundred times the net average monthly income actually derived from such land, during the period of five consecutive years immediately preceding the date of publication of the notification referred to in section 41 as may be determined by the Land Acquisition Officer.

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(4) The net average monthly income referred to in sub-section (3) shall be calculated in the manner and in accordance with the principles set out in the First Schedule.

(5) The Land Acquisition Officer shall, after holding an inquiry in the prescribed manner, determine in accordance with the provisions of sub-section (4) the net average monthly income actually derived from the land. The Land Acquisition Officer shall then publish a notice in a conspicuous place on the land and serve it in the prescribed manner calling upon the owner of the land and every person interested therein to intimate to him, before a date specified in the notice, whether such owner or person agrees to the net average monthly income actually derived from the land as determined by the Land Acquisition Officer. If such owner or person does not agree, he may intimate to the Land Acquisition Officer before the specified date what amount he claims to be such net average monthly income.

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A (6) Any person, who does not agree to the net
average monthly income as determined by the Land
Acquisition Officer under sub-section (5) and the
amount for acquisition to be paid on that basis and
claims a sum in excess of that amount may prefer an
B appeal to the Tribunal, within thirty days from the
date specified in the notice referred to in
sub-section (5).

C (7) On appeal, the Tribunal shall, after hearing
the appellant, determine the net average monthly
income and the amount to be paid on that basis and
its determination shall be final and shall not be
questioned in any court."

D Section 45 of the Act provides for apportionment of
amount payable on acquisition amongst different persons
claiming interest in the amount of compensation. Section 46 of
the Act lays down the procedure for payment of amount for
acquisition or for depositing of same in the Court. Section 47
of the Act lays down the powers of the Land Acquisition
Officer in relation to determination of the amount for
acquisition and section 48 of the Act provides for payment of
interest on that amount at the rates specified therein, by the
E State Government. The Land Acquisition Officer is appointed by
the State Government under the powers conferred by section 49
of the Act. Section 50 of the Act which contains the
provisions relating to the basis for determination of amount
for acquisition of lands in rural areas and the procedure to
be followed in that case reads thus :

F "50. (1) Where any land (including any building
thereon) is acquired and vested in the State
Government under this Chapter and such land is
situated in any area outside the jurisdiction of
any Municipal Corporation or Municipal Council (in
G this Chapter referred to as 'a rural area'), the
State Government shall pay for such acquisition an
amount, which shall be determined in accordance
with the provisions of this section.

H (2) Where the amount has been determined, with the
concurrence of the Authority, by agreement between

the State Government and the person to whom it is payable it shall be determined and paid in accordance with such agreement. A

(3) Where no such agreement can be reached, the State Government shall refer the case to the Collector, who shall determine the amount for acquisition in accordance with the principles for determining compensation laid down in the Land Acquisition Act, 1894, and the provisions of that Act (including provisions for reference to Court and appeal) shall apply thereto mutatis mutandis as if the land has been acquired and compensation had to be determined, apportioned and paid under the provisions of that Act, subject to the modifications that reference in section 23 and 24 of that Act to the date of publication of the notification under section 4, sub-section (1) were reference to the date on which the notice under the proviso to sub-section (1) of section 41 of this Act is published, and the references to the time or date of the publication of the declaration under section 6 of that Act were references to the date of publication of the notification refer to in sub-section (3) of section 41 of this Act in the Official Gazette. B C D E

Explanation - In this section, "Collector" means the Collector of a District and includes any officer specially appointed by the State Government or by the Commissioner to perform the functions of a Collector under the Land Acquisition Act, 1894". F

Wherever the amount payable on acquisition is settled by agreement there is no distinction between a land in a municipal area or a land in a rural area. The point of distinction which is alleged to be discriminatory between the two types of land lies in the method of computation of the amount payable on acquisition where there is no agreement. Whereas in the case of the land situated in a rural areas section 50 of the Act provides that the valuation of the land shall be made in accordance with the provisions contained in section 23 and section 24 of the Land Acquisition Act, 1894 in G H

A the case of the land situated in a municipal area the amount
payable has to be calculated according to sub-section (3) of
section 44 of the Act. Section 44(3) of the Act provides that
the said amount shall be equal to one hundred times the net
average monthly income actually derived from such land during
the period of five consecutive years immediately preceding
B the date of publication of the notification referred to in
section 41 of the Act as may be determined by the Land
Acquisition Officer. Under sub-section (4) of section 44 of
the Act the net average monthly income referred to in
sub-section (3) of section 44 is required to be calculated in
the manner and in accordance with the principles set out in
C the First Schedule to the Act. The First Schedule to the Act
reads thus :

"FIRST SCHEDULE

(See sub-section (1) of section 44)

D Principles for determination of the net average
monthly income :-

1. The land Acquisition Officer shall first
determine the gross rent actually derived by the
owner of land acquired, including any building on
such land, during the period of five consecutive
E years referred to in sub-section (3) of section 44.

2. For such determination, the Land Acquisition
Officer may hold any local inquiry and obtain, if
necessary, certified copies of extracts from the
property tax assessment books of the local
F authority concerned showing the rental value of
such land.

3. The net average monthly income referred to in
sub-section (3) of section 44 shall be sixty per
cent, of the average monthly gross rent which shall
be one-sixtieth of the gross rent during the five
consecutive years as determined by the Land
G Acquisition Officer under paragraph 1.

4. Forty per cent, of the gross monthly rental
referred to above shall not be taken into
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consideration in determining the net average monthly income but shall be deducted in lieu of the expenditure which the owner of the land would normally incur for payment of any property tax to the local authority, for collection charges, income tax or bad debts as well as for works of repair and maintenance of the building, if any, on the land.

5. Where the land or any portion thereof has been unoccupied, or the owner has not been in receipt of any rent for the occupation of the land during the whole or any part of the said period of five years, the gross rent shall be taken to be the income which the owner would in fact have derived if the land had been leased out for rent during the said period, and for this purpose the rent actually derived from the land during a period prior or subsequent to the period during which it remained vacant or from similar land in the vicinity shall be taken into account."

The High Court does not say that the amount payable under sub-sections (3) and (4) of section 44 of the Act for the land situated in municipal area is illusory. It however says that the method of capitalization set out in section 44(3) and (4) of the Act being the only method out of the several methods of valuing the land under the Land Acquisition Act, 1894 the owner of land in a municipal area is placed in a less advantageous position and is denied equality of treatment. In order to appreciate this ground of objection, it is necessary to examine whether the classification of the land under the Act into the land in municipal area and the land in rural area for purposes of determining the amount payable on acquisition is bad. It is not denied that the land in municipal area commands various advantages which are not available in the case of land in rural areas. The Act is not introduced for the benefit of areas like Bombay Corporation Area and areas under the jurisdiction of other Corporations and municipalities only. It is enacted for the whole State more than 90 per cent of which constitutes rural area. The potentialities of a land in a municipal area are far higher than the potentialities of land in a rural area. There is also no occasion under the Act for the State Government to treat one piece of land in a

A municipal area in one way and another piece of land in that area differently. All lands in a municipal area have to be valued in only one way that is in accordance with section 44(3) and (4) of the Act and all lands in rural areas have also to be valued only in one way and that is in accordance with the provisions of the Land Acquisition, 1894. There could have been two different Acts one for municipal areas and another for rural areas, each providing for a different method of valuation of land. Such a classification would have been unexceptionable having regard to the object and purposes of the two Acts and the difference in the potentialities of the two types of lands. It may be noticed that in **State of Gujarat v. Shri Shantilal Mangaldas & Ors.**, [1969] 3 S.C.R. 341 this Court has upheld the classification of land under the same Act for purposes of valuation at different stages of town planning. This view is adopted and followed in **Prakash Amichand Shah v. State of Gujarat & Ors.**, [1986] 1 S.C.C. 581, recently. The method of capitalization is also one of the recognised methods which is adopted for the purpose of valuation of properties acquired under the Land Acquisition Act, 1894. All methods of valuation adopted under the Act are intended to achieve the same purpose, namely, determination of the market value of the land acquired. It is difficult to say whether any of them is superior to the other in the context of Article 14 of the Constitution and to hold that there will be discrimination, if any of them is not allowed to be availed of for purposes of valuation. In the case of agricultural lands, the method of capitalization is followed by our Courts for several years (See **Raja Vyricherla Narayana Gajapatiraji v. The Revenue Divisional Officer**, [1939] 66 I.A. 104, A.I.R. 1939 P.C. 98, **Rustom Cawasjee Cooper v. Union of India**, [1970] 3 S.C.R. 530, **Union of India & Anr. v. Smt. Shanti Devi & Ors.**, [1983] 4 S.C.C. 542, **Special Land Acquisition Officer, Davangere v. P. Veerabhadrapa & Ors.**, [1984] 2 S.C.C. 120 and **Oriental Gas Co. Ltd. & Ors. v. State of West Bengal**, [1979] 1 S.C.R. 617). No doubt, such calculation has been made by adopting varying methods, that is, from 33-1/3 times to 8 times the annual net return as explained in **Shantidevi's** case (supra). Such variation has taken place on account of the variation of the rate of interest on gilt-edge securities as pointed out in that case. The higher the rate of interest, the lower would be the number of years' purchase adopted by courts to determine the market value of the property acquired.

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A reading of the rules contained in the First Schedule to the Act shows that they lay down fairly appropriate principles to be followed in determining the net average monthly income. The net average monthly income referred to in sub-section (3) of section 44 of the Act is required to be determined in accordance with paragraph 3 of the First Schedule to the Act at sixty per cent of the average monthly gross rent which shall be one sixtieth of the gross rent during the five consecutive years as determined by the Land Acquisition Officer under paragraph 1 of the First Schedule. In paragraph 7 of its judgment the High Court observes that the Act does not give any indication as to why the amount of forty per cent out of the gross rental is required to be deducted. This is an incorrect statement. Paragraph 4 of the First Schedule gives the reason for such deduction. It says that forty per cent of the gross monthly rental shall not be taken into consideration in determining the net average monthly income but shall be deducted in lieu of the expenditure which the owner of the land would normally incur for payment of any property tax to the local authority, for collection charges, income tax or bad debts as well as for works of repair and maintenance of the building if any on the land. In the case of agricultural lands many times one-half of the annual yield is deducted towards cultivation charges, land revenue, cost of personal labour etc. before determining the net annual yield for purposes of capitalization. In the instant case the Act directs payment of 100 times the net monthly income, that is, $8 \frac{1}{3}$ times the net annual income from the property as the amount payable on its acquisition which cannot be considered to be too low having regard to the rate of interest on safe investments which is prevailing from 1976-77 onwards. In **Oriental Gas Co's** (supra) eight times the net annual income was considered to be adequate compensation by this Court. The High Court erred in relying upon the decision in **Government of Bombay v. Morwanji Muncherji Cama**, 10 Bom. L.R. 907, a decision rendered at the commencement of this century to say that $16 \frac{2}{3}$ years' purchase of unsecured annual ground rent as the basis for determination of market value by capitalization method in recent years. It may incidentally be mentioned that even that decision does not lay down that the valuation of vacant land by the application of the rule of capitalization is not a reasonable method. Paragraph 5 of the First Schedule to the

A Act provides that method of valuation of unoccupied lands or
lands where the owner is not in receipt of rents. The High
Court while deciding the case before it has overlooked the
principle that every Act carries with it the presumption of
constitutionality and unless the petitioner is able to
discharge the said burden by placing adequate material, the
Court should not strike down a legislative provision particu-
B larly by the application of Article 14. We fail to see any
hostile discrimination in the instant case which will make
sub-section (3) and sub-section (4) of section 44 of the Act
violative of Article 14 of the Constitution merely because
in the case of lands in municipal area all the methods of
valuation under the Land Acquisition Act are not made
C available.

Even granting for purposes of argument that
sub-sections (3) and (4) of section 44 are violative of
Article 14 of the Constitution, we are of the view that
the said provisions receive the protection of Article 31C
D of the Constitution. We shall proceed to test the validity of
the argument keeping aside for the time being the obser-
vations in **Sanjeev Coke Manufacturing Company. v. Bharat
Coking Coal Ltd. & Anr.** [1983] 1 S.C.R. 1000. Let us proceed
on the basis that after **His Holiness Kesavananda Bharati
Sripadagalavaru v. State of Kerala** [1973] Supp. S.C.R. 1. and
E **Minerva Mills Ltd & Ors. v. Union of India & Ors.** [1981] 1
S.C.R. 206, Article 31C reads as "notwithstanding anything
contained in Article 13, no law giving effect to the policy of
the State towards securing the principles specified in clause
(b) or clause (c) of Article 39 shall be deemed to be void on
the ground that it is inconsistent with or takes away or
F abridges any of the rights conferred by Article 14 or Article
19. Clause (b) of Article 39 of the Constitution which is
relevant for our purpose states that the State shall, in
particularly direct its policy towards securing that the
ownership and control of material resources of the community
are so distributed as best to subserve common good. The High
G Court rightly observed at the end of paragraph 14 of its
judgment following **Sanjeev Coke Manufacturing Company's** case
(supra) that the expression 'material resources' of the
community' would cover the lands held by private owners also.
But it however erred thereafter in reaching the conclusion
that Article 31C was not applicable to the case for the reason
H that (1) the Act did not contain a declaration that it was

enacted to give effect to Article 39(b), (ii) by undertaking development of commercial centres while providing housing accommodation, the Authority was expected to make profits and hence following that the power to acquire was not conferred with a view to achieving the directive principles in Article 39(b), and (iii) the object of enacting the legislation was obviously to provide wholesome civic life to the citizens and not distribution of material resources. We are of the view that each one of these reasons is invalid and erroneous. First Article 31C does not say that in an Act there should be a declaration by the appropriate legislature to the effect that it is being enacted to achieve the object contained in Article 39(b). In order to ascertain whether it is protected by Article 31C, the Court has to satisfy itself about the character of the legislation by studying all parts of it. The question whether an Act is intended to secure the objects contained in Article 39(b) or not does not depend upon the declaration by the legislature but depends on its contents. We have already dealt with the objects of the Act with which we are concerned in this case. It inter alia makes provision for acquisition of private lands for providing sites for building houses or housing accommodation to the community. The title to the lands of the private holders which are acquired first vests in the State Government. Later on the land is developed and then distributed amongst the people as house sites. It also provides for reserving land for providing public amenities without which people cannot live there. Community centres, shopping complexes, parks, roads, drains, play grounds, are all necessary for civic life and these amenities are enjoyed by all. That is also a kind of distribution. In **State of Karnataka & Anr. etc. v. Shri Ranganatha Reddy & Anr. Etc.** [1978] 1 S.C.R. 641 at pages 69 dealing with the question whether nationalisation of bus transport was covered by Article 39(b), Justice Krishna Iyer has observed thus :

"The next question is whether nationalisation can have nexus with distribution. Should we assign a narrow or spacious sense to this concept? Doubtless, the latter, for reasons so apparent and eloquent. To 'distribute' even in its simple dictionary meaning, is to 'allot, to divide into classes or into groups and distribution' embraces 'arrangement, classification, placement, disposition,

A apportionment, the way in which items, a quantity,
or the like, is divided or apportioned; the system
of dispersing goods throughout a community' (See
Random House Dictionary). To classify and allocate
certain industries or services or utilities or
articles between the private and the public sectors
of the national economy is to distribute those
B resources. Socially conscious economists will find
little difficulty in treating nationalisation of
transport as a distributive process for the goods
of the community. You cannot condemn the concept of
nationalisation in our Plan on the score that
Article 39(b) does not envelope it. It is a matter
C of public policy left to legislative wisdom whether
a particular scheme of takeover should be
undertaken.

D Two conclusions strike as quintessential. Part IV,
especially Article 39(b) and (c), is a futuristic
mandate to the state with a message of
transformation of the economic and social order.
Firstly, such change calls for collaborative effort
from all the legal institutions of the system: the
legislature, the judiciary and the administrative
E machinery. Secondly and consequentially, loyalty to
the high purpose of the Constitution, viz. social
and economic justice in the context of material
want and utter inequalities on a massive scale,
compass the court to ascribe expansive meaning to
the pregnant words used with hopeful foresight, not
to circumscribe their connotation into contradic-
F tion of the objectives inspiring the provision. To
be Pharisaic towards the Constitution through
ritualistic construction is to weaken the social-
spiritual thrust of the founding fathers' dynamic
faith."

G These observations are noted with approval by another
Constitution Bench in **Sanjeev Coke Manufacturing Company's**
case (supra). it is true that when public money is invested on
the development of land, the Authority is expected to
reimburse itself to some extent. The Authority, however, is
H expected to conduct its operations as a public utility concern

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and not as a private land development agency. The High Court erred in taking a very narrow view of the objects of the Act and the functions of the Authority under it. We are satisfied that the Act is brought into force to implement the directive principle contained in Article 39(b) and hence even if there is any infraction of Article 14 it is cured by Article 31C which is clearly attracted to the case. B

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We next proceed to consider a contention lacking in merit which has unfortunately been accepted by the High Court namely that the Act infringes Article 300A of the Constitution. Article 300A was not in force when the Act was enacted Article 31(1) of the Constitution which was couched in the same language was however in force. Article 31C gave protection to the Act even if it infringed Article 31. Let us assume that the action of acquiring private properties should satisfy now Article 300A also because the proceedings to acquire the land started in the instant case after Article 300A came into force. Let us also assume that a law should be fair and reasonable and not arbitrary and that a law should also satisfy the principle of fairness in order to be effective and let us also assume that the said principle of fairness lies outside Article 14. We are assuming all these, without deciding these questions, since the action can be upheld even if all these assumptions are well-founded. What is it that is being done now in the instant case? Certain vacant lands lying inside a municipal area are being acquired for providing housing accomodation after paying an account which is computed in accordance with a method considered to be a fair one by courts. The purpose for which the lands are acquired to be is a public purpose. The owners are given opportunity to make their representations before the notification is issued. All the requirements of a valid exercise of the power of eminent domain even in the sense in which it is understood in the United States of America where property rights are given greater protection than what is required to be done in our country are fulfilled by the Act. Yet the High Court, with respect, grievously erred in holding that even assuming that the provisions of Chapter V of the Act are protected from challenge under Articles 14, 19 and 31 of the Constitution due to the applicability of Article 31C of the Constitution still the impugned provisions of the Act are required to be struck down as the said provisions are neither just nor fair or reasonable.

A Then in the end we have to consider the argument based on
Article 21 of the Constitution which is urged on behalf of the
respondents. Article 21 essentially deals with personal
liberty. It has little to do with the right to own property as
such. Here we are not concerned with a case where the
deprivation of property would lead to deprivation of life or
liberty or livelihood. On the other hand land is being
B acquired to improve the living conditions of a large number of
people. To rely upon Article 21 of the Constitution for
striking down the provisions of the Act amounts to a clear
misapplication of the great doctrine enshrined in Article 21.
We have no hesitation in rejecting the argument. Land ceiling
C laws, law providing for acquisition of land for providing
housing accommodation, laws imposing ceiling on urban property
etc. cannot struck down by invoking Article 21 of the
Constitution.

D Before concluding we may refer to one other point. Our
attention has been called to the fact that some problems
presenting difficulty or valuation will have to be faced in
the application of clause 5 of First Schedule (See Section 44
(1) in regard to valuation of open lands situated in a city
like Bombay or lands with building potentialities situated
within the limits of big towns. These are easily surmountable
E problems of valuation in relation to individual lands and do
not reflect on the constitutionality of the impugned
provisions. The concerned authorities entrusted with the
function of making evaluation will doubtless resolve such
problems as are likely to arise appropriately in accordance
with law. Be that as it may the constitutionality of the
F impugned provisions remains unimpaired.

G In the result we hold that the judgment of the High Court
is liable to be set aside to the extent that sub-sections (3)
and (4) of Section 44 of the Act have been held
unconstitutional and struck down. We wish to make it clear
that the findings recorded against the writ petitioners on
other points remain unaffected by this judgment. We accordingly
allow this appeal, uphold the provisions contained in
sub-sections (3) and (4) of section 44 of the Act and dismiss
the writ petition filed by the respondents. There shall,
however, be no order as to costs.