Bombay High Court
The Municipal Corporation Of ... vs Durgadas Shankarrao Rege And Anr. on 27 April, 1979
Equivalent citations: AIR 1980 Bom 93, (1980) 82 BOMLR 76
Author: Madon
Bench: Deshmukh, Madon
JUDGMENT Madon, J.

1. In a Writ Petition filed on the Original Side of this High Court by one Durgadas Shankarrao Rege, the First Respondent in both these appeals, against the Municipal Corporation of Greater Bombay and the State of Maharashtra, the learned single Judge of this High Court held that Sub-sections (2) and (3) of Section 298, Section 299 and Sub-sections (1) and (2) of Section 301 of the Bombay Municipal Corporation Act, 1888 (Bombay Act No. III of 1888) (hereinafter referred to as "the Act"), were void as infringing the provisions of Article 14 of the Constitution of India, and set aside a notice dated February 1, 1974 issued by the Deputy Municipal Commissioner under Section 299 of the Act against the First Respondent, intimating to him that he intended to take possession of unbuilt open land belonging to the First Respondent falling within the regular line of the street after the expiry of seven days from the service of the said notice. The learned Judge also issued a writ directing the Municipal Corporation to forbear from taking any action as threatened or otherwise in pursuance, enforcement or execution of the said notice. He further directed the Municipal Corporation to pay the costs of the Petition to the First Respondent. Both the Municipal Corporation and the State have filed appeals against this Judgment and order, the appeal filed by the Municipal Corporation being Appeal No. 51 of 1979 and the appeal filed by the State being Appeal No. 122 of 1979. As both these Appeals are directed against the same judgment, we are disposing them of by a common Judgment.

2. The First Respondent, his brother, the First Respondent's sons and his brother's sons are the owners of a property consisting of a plot of land bearing Plot No. 353 with a building thereon situate at Linking Road (now known as Vithalbhai Patel Road). Khar, Bombay-400052. Under Section 297 of the Act the Municipal Commissioner has the power to prescribe a line on each side of any public street. The line so prescribed is called "the regular line of the street". He has also the power under that section to prescribe from time to time a fresh line in substitution for any regular line already prescribed or any part thereof provided he has received the authority of the Municipal Corporation in that behalf. A regular line of the street had originally been prescribed for the Linking Road. After following the procedure prescribed by Section 297 of the Act this regular line was revised and a fresh line of the said road was prescribed in September 1968 between Turner Road at Bandra and Juhu Road at Santa Cruz so as to increase the width of the said road between these two points from 60 feet to 90 feet. The result of this prescription of the fresh regular line was that a portion of the first respondent's property consisting of unbuilt open land fell within the fresh regular line. Under Section 299 of the Act the Municipal Commissioner has the power to take possession of any open land or land which is occupied only by a platform, verandah, step or some other structure external to a building abutting on a public street which is within the regular line of a street, after given 7 days' clear notice to the owner of the land or building and if necessary to clear the land. This is deemed to be acquisition of the land, and such land is deemed thereafter to form part of the public street vesting in the Municipal Corporation. Section 301 of the Act provides for compensation to be paid to the owner for the acquisition of such land. Under Section 296 of the Act the Municipal

Commissioner has the power to acquire any land or building for the purpose of opening, widening, extending or otherwise improving a public street or making a new public street, in which case unless the Municipal Commr. and the owner agree upon the price and the acquisition is thus by purchase, the acquisition is to be by the State Government at the instance of the Municipal Commissioner under the Land Acquisition Act, 1894, and the amount of compensation would thus be determined under the said Act. On Feb. 1, 1974 the Dy. Municipal Commissioner issued a notice under Section 299 of the Act to first respondent of his intention to take possession of that portion of his land, not occupied by a building, which lay within the revised regular line of the public street. The first respondent thereupon filed a petition under Article 226 of the Constitution on the Original Side of this High Court In the petition it was contended that Sections 297 to 301 of the Act were void as infringing Articles 14, 19(1)(f) and 31(2) of the Constitution. Though the impugned notice was issued by the Deputy Municipal Commissioner in exercise of the power in that behalf delegated to him by the Municipal Commissioner under Section 56 of the Act, surprisingly enough neither the Municipal Commissioner nor the Deputy Municipal Commissioner was made a party to the petition. This point was, however, not taken in the affidavit in reply nor was it argued at the hearing of the petition or before us in these Appeals, and we, therefore, do not propose to concern ourselves with it. The learned single Judge who heard the petition negatived the challenge under Articles 19(1)(f) and 31(2). He, however, upheld the challenge under Article 14 of the Constitution. The learned Judge held that it was open to the Municipal Commissioner to apply either the provisions of Section 296 or of SB. 297 to 301 of the Act for acquiring land for the object of widening a road and that because no personal hearing was provided to the owner of property before his land was acquired, as it would be if his land were acquired under the Land Acquisition Act, and as the compensation paid to him did not include the solatium of 15% of the market value of the land payable under Section 23(2) of the Land Acquisition Act, the provisions of Sections 297 to 301 were prejudicial as compared to the provisions of Section 296 of the Act. The learned Judge further held that the object of both sets of provisions in the Act. namely, Section 296 on the one hand and Sections 297 to 301 on the other, was the same, namely, the compulsory acquisition of land for a public purpose, and that there was no difference between the owners whose lands were to be acquired under the provisions of Sections 297 to 301 for prescribing the regular line of a street and the owners whose lands were to be acquired under Section 296 for widening or extending a public street and that, therefore, the classification between these two classes of owners was not one founded on an Intelligible differentia,

3. Before us on behalf of the appellants, namely, the Municipal Corporation and the State, it was submitted that the two sets of provisions in the Act, namely (1) Section 296 and (2), Sections 297 to 301 of the Act, do not have the same object; that it was not open to the Municipal Commissioner to have resort either to one set of provisions or to the other in his absolute discretion that in fact the Municipal Commissioner had no discretion in the matter, and if he desired to acquire unbuilt open land falling within the regular line of a street, he had no option but to proceed under the second set of provisions inasmuch as Section 296 contained general provisions, while Sections 297 to 301 contained particular provisions which constituted an exception to the general provisions contained in Section 296; that the classification between the owners whose lands fell outside the regular line of the street and those owners whose lands fell within the regular line of the street was a valid classification based on an intelligible differentia having a rational relation to the object sought to be achieved; and that the quantum of compensation and the procedure provided under Sections 297 to

301 were not discriminatory when compared to the provisions of the Land Acquisition Act. On the other hand, on behalf of the First Respondent it was contended that both sets of provisions dealt with the same matter and had the same object; that it was left to the Municipal Commissioner either to select one or the other as he pleased so that in the case of one owner whose land fell within the regular line of the street he could proceed under Sections 297 to 301 of the Act, while in the case of another owner whose land also fell within the regular line of the street he could proceed under Section 296. In the alternative it was submitted that assuming Sections 297 to 301 constituted an exception under Section 296, there was no valid basis for the classification sought to be made between one set of property owners and another and that the provisions of Sections 297 to 301 were highly prejudicial to a property owner as compared to the provisions of the Land Acquisition Act and were, therefore, discriminatory anil violative of the guarantee of equality before the law enshrined in Article 14 of the Constitution.

4. The questions which thus fall for our determination in this Appeal so far as the challenge under Article 14 is concerned are' (1) whether the group of sections, namely, Sections 297 to 301 of the Act, constitute a mode of acquisition alternative to the mode of acquisition pro-vided for by Section 296 or whether this group of sections constitutes an exception to the general provisions contained in Section 296;

(2) if this group of sections constitutes an exception to the general provisions contained in Section 296 of the Act, whether the classification made thereby Is a reasonable one founded on an Intelligible differentia and having a rational relation or nexus to the object sought to be achieved; and (3) whether there is any substantial or quantitative prejudice to the owner Whose land is acquired under this group of sections as compared to the owner of land who is proceeded against under Section 296 of the Act.

5. So far as the first question is concerned, the rule of interpretation is well settled. It was thus stated by Romilly, M. R. in Pretty v. Solly, (1859) 26 Beav 606, 610: (1859) 53 ER 1032 :

"The general rules which are applicable to particular and general enactments in statutes are very clear; the only difficulty is in their application. The rule is, that whenever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply."

This rule of interpretation was also enunciated by a Full Bench of this High Court in Mulji Tribhovan Sevak v. Dakor Municipality, AIR 1922 Bom 247, 251 (2). The part of the above passage from the judgment of Romilly, M. R. which sets out the rule of interpretation, was cited with approval by the Supreme Court in J. K. Cotton Spinning & Weaving Mills Co. Ltd. v. State of Uttar Pradesh, . In that case the Supreme Court further observed (at p. 1174 (1)).

"In the interpretation of statutes the Courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have

effect."

This is known as the rule of harmonious construction.

6. Bearing these rules of interpretation in mind we will now examine the relevant sections of the Act. The terms 'street' and 'public street' are defined in Clause (w) and (x) respectively of Section 3 of the Act. These definitions are as follows:

"(w) 'street' includes any highway and any causeway, bridge, viaduct, arch, road, lane, footway, square, court, alley or passage whether a thoroughfare or not, over which the public have a right of passage or access or have passed and have access uninterruptedly for a period of 20 years; and, when there is a footway as well as carriageway to any street, the said term includes, both;

(x) 'public street' means any street heretofore levelled, paved, metalled, channelled, sewered or repaired by the Corporation and any street which becomes a public street under any of the provisions of this Act; or which vests in the Corporation as a public street": The subject of the "Regulation of Streets" is dealt with by Chap. XI of the Act. The first group of sections in that chapter, namely, from Sections 289 to 296, is headed "Construction, Maintenance and Improvement of Public Streets." Under Section 289 all public streets vest in the Corporation and are to be under the control of the Municipal Commissioner and a duty is cast upon him from time to time to "cause all such streets to be levelled, metalled or paved, channelled, altered and repaired" as also to "widen, extend or otherwise improve any such street or cause the soil thereof to be raised, lowered or altered." The Municipal Commissioner, however cannot widen, extend or otherwise carry out any improvement of a public street the aggregate cost of which exceeds Rs. 5,000. unless and until this work has been authorised by the Municipal Corporation. Under Section 291 of the Act the Municipal Commissioner has the power to make a new public street. We then come to Section 296 of the Act. The said section provides as follows:

"296. Power to acquire premises for Improvement of public streets.

(1) The Commissioner may, subject to the provisions of Sections 90, 91 and 92 -

(a) acquire any land required for the purpose of opening, widening, extending or otherwise improving any public street or of making any new public street, and the buildings, if any, standing upon such land;

(b) acquire in addition to the said land and the buildings, if any, standing thereupon, all such land with the buildings, if any, standing thereupon, as it shall seem expedient for the Corporation to acquire outside of the regular line, or of the intended regular line, of such street;

(c) lease, sell or otherwise dispose ol any land or building purchased under Clause (b).

(2) Any conveyance of land or of a building under Clause (c) may comprise such conditions as the Commissioner thinks fit, as to the removal of the existing building, the description of new building

to be erected, the period within which such new building shall be completed and other such matters." The powers of the Municipal Commissioner under Section 296 are expressly made subject to the provisions of Sections 90, 91 and 92 of the Act. Section 90 confers power upon the Municipal Commissioner to acquire any immovable property on behalf of the Municipal Corporation by agreement with the owner subject to his receiving sanction and authority as provided in that section. Section 91 deals with a case where the Municipal Commissioner is unable to acquire immovable property under Section 90 by agreement. In such a case the Municipal Commissioner is to make an application to the State Government, with the approval of the Improvements Committee and subject to the other provisions of the Act, to initiate proceedings for compulsory acquisition under the Land Acquisition Act, and the State Government may thereupon in its discretion order proceedings to be taken for compulsory acquisition. Section 92 deals with the disposal of Municipal property and does not concern us in these Appeals.

7. The next group of sections in Chap. XI consists of Sections 297 to 301 and bears the heading "Preservation of Regular Line in Public Streets," Since it is the vires of this group of sections which was challenged in the petition filed by the first respondent, it is necessary to set them out in extenso omitting such portions thereof as are not material for our present purpose:--

"297. Prescribing the regular line of a street.

(1) The Commissioner may -

(a) prescribe a line on each side of any public street :

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(b) from time to time, but subject in each case to his receiving the authority of the Corporation in that behalf, prescribe a fresh line in substitution for any line so prescribed, or for any part thereof, provided that such authority shall not be accorded -

(1) unless, at least one month before the meeting of the Corporation at which the matter is decided, public notice of the proposal has been given by the Commissioner by advertisement in local newspapers as well as in the Official Gazette, and special notice thereof, signed by the Commissioner, has also been put up in the street or part of the street for which such fresh line is proposed to be prescribed, and

(ii) until the Corporation have considered all objections to the said proposal made in writing and delivered at the office of the Municipal Secretary not less than three clear days before the day of such meeting.

(2) The line for the time being prescribed shall be called 'the regular line of the street."

(3) No person shall construct any portion of any building within the regular line of the street except with the written permission of the Commissioner, who shall, in every case in which he gives such

permission, at the same time report his reasons in writing to the Standing Committee.

298. Setting back buildings to regular line of the street.

(1) If any part of a building abutting on a public street is within the regular line of such street, the Commissioner may, whenever it is proposed-

(a) to rebuild such building or to take down such building to an extent exceeding one-half thereof above the ground level, such half to be measured in cubic feet; or

(b) to remove, re-construct or make any addition to any portion of such building which is within the regular line of the street, in any order which he issues, under Section 345 or 346, concerning the re-building, alteration or repair of such building require such building to be set back to the regular line of the street (2) When any building, or any part thereof within the regular line of a public street, falls down, or is burnt down, or is taken down whether under the provisions of Section 351 or 354 or otherwise, the Commissioner may at once take possession on behalf of the Corporation of the portion of land within the regular line of the street theretofore occupied by the said building, and, if necessary, clear the same, (3) Land acquired under this section shall thenceforward be deemed to a part of the public street and shall vest, as such, in the Corporation.

299. Acquisition of open land or of land occupied by platforms, etc, within the regular line of a, street.

(1) If any land not vesting fa the Corporation, whether open or enclosed, lies within the regular line of a public street, and is not occupied by a building, or if a platform, verandah, step or some other structure external to a building abutting on a public street, or a portion of a platform, verandah, step or other such structure, is within the regular line of such street the Commissioner may, after giving to the owner of the land or building not less than seven clear days' written notice of his intention so to do, take possession on behalf of the Corporation of the said land with its enclosing wall, hedge or fence, if any, or of the said platform, verandah, step or other such structure as aforesaid, or of the portion of the said platform, verandah, step or other such structure aforesaid which is within the regular line of the street, and, if necessary, clear the same and the land so acquired shall thenceforward be deemed a part of the public street.

(2) xxxx

300. Setting forward of buidings to regular line of the street.

(1) If any building which abuts on a public street is in rear of the regular line of such str

(a) to rebuild such building, or

(b) to alter or repair such building in any manner that will involve the removal or recrection

(2) For the purposes of this section, a wall separating any premises from a public street shal

301. Compensation to be paid in cases under the three last sections.

(1) Compensation shall be paid by the Commissioner to the owner of any building or land acquired for a public street under Section 298 or 299, for any loss which such owner may sustain in consequences of his building or land being so acquired and for any expense incurred by such owner in consequence of the order made by the Commissioner under either of the said sections, provided that any increase or decrease in the value of the remainder of the property of which the building or land so acquired formed part likely to accrue from the set-back to the regular line of the street shall be taken into consideration and allowed for in determining the amount of such compensation.

(2) If, in consequence of any order to set forward a building made by the Commissioner under the last preceding section, the owner of such building, sustains any loss or damage, compensation shall be paid to him by the Commissioner for such loss or damage."

8. Now, read by itself it is clear that Section 296 of the Act is couched in general terms. Under it the Municipal Commissioner has the power to acquire any land and even a building standing upon such land, whether the land and building are within the regular line of the street or outside it. Under Clause (a), of Sub-section (1) of the said section acquisition of land and building has to be for the purpose of opening, widening, extending or otherwise improving any public street or of making any new public street. Clause (b) confers upon the Municipal Commissioner a further power, in addition to the land and buildings, acquired under Clause (a), to acquire all such land with the buildings, if any, standing thereon, as it shall seem expedient for the Municipal Corporation to acquire outside of the regular line, or of the intended regular line, of such street. The language in which Clause (b) is couched and the use of the phrase therein "acquire in addition to the said land and the buildings, if any, standing thereupon" and the use of the further phrase "to acquire outside of the regular line, or of the intended regular line, of such street" would show that the powers of the Municipal Commissioner to acquire land under Clause (a) and (b) of Section 298 of the Act are not confined merely to acquiring land and buildings falling outside the regular line of the street.

9. The question which falls to be considered is whether Sections 297 to 301 of the Act constitute particular provisions which cut down or limit the general operation of Section 296 so as to confine the operation of that section to those fields in which Sections 297 to 301 do not operate. To this end we must now examine the scheme of Sections 297 to 301 of the Act. Under Clause (a) of Sub-section (1) of Section 297 the Municipal Commissioner has the power to prescribe a line on each side of any public street, that is, to prescribe the regular line of the street. Under Clause (b) he has the power to prescribe a fresh line in substitution lor any line prescribed earlier or for a part of such line. 'That

power is, however, not an unfettered one nor is the matter left to the sole discretion of the Municipal Commissioner. He cannot prescribe a fresh line unless the Corporation authorises him in that behalf. This authority of the Corporation is not to be given unless at least one month before the meeting of the Corporation at which the matter is going to be decided a public notice of the proposal to revise the regular line originally prescribed has been given by the Municipal Commissioner. This public notice is to be given by advertisements in local newspapers as well as in the Official Gazette, Further apart from these general advertisement, a special notice of this proposal, signed by the Municipal Commossioner, is also to be put up in the street or the part of the street for which the fresh line is proposed to be prescribed. The object of giving this public notice and the special notice is to bring to the notice of these property owners who are likely to be affected by the proposed new line what is intended to be done and to give them an opportunity of making their objections thereto. These ob-jections are to be made in writing and to be delivered at the office of the Municipal Secretary not less than three clear days before the meeting of the Corporation, and it is only after the Corporation has considered all objections to the proposal that it can accept the proposal and grant authority to the Municipal Commissioner to prescribe the fresh line. Sub-section (3) of See-297 of the Act shows the object for which the regular line of the street is prescribed. This sub-section prohibits construction of any portion of any building within the regular line of the street except with the written permission of the Municipal Commissioner. The matter is not left solely to the Municipal Commissioner. Whenever he gives such premission, he has to report the matter to the Standing Committee, giving his reasons in writing.

10. When the regular line of the street is prescribed, whether for the first time or in substitution of the earlier line, any building or part of building standing thereon is left unaffected by the provisions of this group of sections. However, the moment a built-up portion becomes vacant, either by the owner desiring to rebuild or reconstruct his building or by the building collapsing or being burnt down, the prohibition against construction enacted under Section 297 (3) of the Act comes into play. This is achieved by the enactment of Section 298. Under that section if any part of a building abutting on a public street is within the regular line of such street and whenever the owner of such building desires to rebuild it or to take it down to an extent provided in Clause (a) of Section 298 (1) or to remove, reconstruct or make any addition to any portion of such building which is within the regular line of the street, the Municipal Commissioner may grant to the owner permission for the proposed work, requiring that such building should be set back to the regular line of the street. Further, under Section 298 (3) of the Act when any building or any part thereof is within the regular line of a public street and it falls down or is burnt down, or is demolished under Section 351 because it is an unauthorized construction, or is pulled down under Section 354 because it is in a ruinous condition, or is likely to fall down or is demolished otherwise, the Municipal Commissioner has the power to take possession on behalf of the Corporation of the portion of the land within the regular line of the street which was occupied by the said building. Section 299 (1) of the Act confers upon the Municipal Commissioner the power to acquire a land lying within the regular line of the street, whether such land is open or enclosed, provided there is no building standing thereon. The power to take possession under this sub-section also extends to taking possession of a platform, verandah, step or any other structure abutting on a public street, or a portion thereof if such platform, etc. or the portion thereof is within the regular line of such street. Before, however, he takes such possession the Municipal Commissioner has to give to the owner of the land or building seven clear

days' written notice of his intention so to do. The land acquired by the Municipal Commissioner either under Section 298 or 299 of the Act after possession is taken is deemed to be part of the public street. Section 300 of the Act deals with setting forward of buildings to the regular line of the street. It confers power upon the Municipal Commissioner to order a building to be set forward either fo permit, or with the approval of the Standing Committee, to acquire a building to be set forward to the regular line of the building when such building which abuts on a public street is in the rear of the regular line of the street, if the owner proposes to rebuild the building or to carry out alteration or repair to it of the type mentioned In Clause (b) of Section 300 (1) of the Act. Section 301 deals with the compensation to be paid in the cases falling under Sections 298, 299 and 300 of the Act

11. An analysis of these sections shows that Sections 297 to 301 of the Act constitute a complete scheme for a particular purpose. The acquisition under Sections 298 and 299 can only be in respect of land falling within the regular line of the street Further, it can only be in respect of land which is not occupied by a building or which is occupied only by a compound wall or a platform, verandah, step or some other structure which is external to the building. Any other type of land or any building can only be acquired under Section 296 of the Act. Thus, the acquisition under Sections 298 and 299 is in respect of a particular kind of property only. These sections are thus particular enactments contained in the Act. If they are particular enactments, then on the rules of interpretation of statutes enunciated above, the general provisions contained in Section 296 of the Act and these particular provisions must be read harmoniously and the general provisions must be interpreted to affect only those types of properties which do not come under the particular provisions. These particular provisions thus constitute an exception to the general provisions enacted in Section 296 of the Act. If the Municipal Commissioner desires to acquire land which is not built upon or land from which the owner voluntarily wants to remove his building for the purpose of rebuilding or reconstruction or which becomes open by reason of the building falling down or being compulsorily demolished or removed and if such land falls within the regular line of the street, in our opinion, the Municipal Commissioner has no discretion and no power to proceed to acquire it under Section 296 of the Act. He must proceed to acquire it only under Section 298 or 299, as the case may be. As held by the Supreme Court in State of Gujarat v. Shantilal Mangaldas, , It is a settled rule of interpretation of statutes that when power is given under a statute to do a certain thing in a certain way the thing must be done in that way or not at all.

12, It was, however, argued on behalf of the First Respondent that the classification of land falling within the regular line of the building and land falling outside the regular line of the building was not a valid classification, for it was not based upon any intelligible differentia having a rational relation or nexus to the object sought to be achieved. It was submitted that the object underlying Section 297 of the Act was that of widening a public street, which was also one of the objects of Section 296 and that a classification whereby two classes were created having relation to the same object with separate treatment for each of these classes cannot be sustained in law. In support of the submission that the object was the same reliance was placed upon The Municipal Commissioner v. Mancherji Pestonji Choksey . In that case Sir Basil Scott C. J., observed (at page 1134):

"The substitution of a fresh regular line for a street or part of a street under the present Section 297 (b) will in all probalility in a progressive city like Bombay have for its objects the widening of the street."

In his concurring judgment, Batchelor J., said (at p. 1138):

"If fresh lines may from time to time be prescribed, it is certain that at least in the great majority of cases, the effect of a new line will be to increase the width of the street in comparison with the earlier line, and a result so directly flowing from the amended section may be safely taken to have been contemplated and approved by the Legislature."

These observations were, however, made in a very different context and must be understood in the context of the facts of that case and the contentions raised therein. Prior to its amendment by Bombay Act 5 of 1905, Section 297 provided as follows:

"297. (1) The Commissioner shall prescribe a line on each side of any public street, within which, except under the provisions of Section 310, no portion of any building abutting on the said street shall, after such line has been prescribed, be constructed (2) A line so prescribed shall be called 'the regular line of the street'." In Essa Jacob Hajee Jamal v. The Municipal Commissioner (1900) 2 Bom LR 810, a Division Bench of this High Court held that under Section 297 a regular line of a street can only be prescribed once and that it was not competent to the Municipal Commissioner to alter the line which was once prescribed; Apparently, as a result of this decision Section 297 as reproduced earlier came to be substituted for the original one. However, the heading to this group of sections continued to remain the same, namely, "Preservation of Regular Line in Public Streets". It was contended in The Municipal Commissioner v. Mancherji Pestonji Chok-sey that this heading governed the construction of the new Section 297 and that a fresh line could not be prescribed with the object of widening a street. This was negatived, and the Court held that when the section provided generally that a fresh line may be prescribed from time to time the authority conferred by the said section could not be in any way limited by reference to the motive or the result with which the authority may be exercised and that the Court could not, therefore, read into the section a limitation or restriction which the Legislature had not imposed. Batchelor, J., further pointed out that in Essa Jacob Hajee Jamal's case though it was admitted that a line for the purpose of regularity had already been prescribed and the object of prescribing the fresh line was not to attain regularity, but to widen the street, that case was not decided on this ground but on the ground that the object aimed at by the section having already been secured by the first line, no second line could be prescribed, whatever might be the motive for the attempt to prescribe it (see p. 1137).

13. An examination of Sections 297 to 301 of the Act shows that the object underlying this group of sections is not the widening of a public street, though such a result may be achieved in the majority of cases. The object underlying these sections is to have a regular line of a public street. A regular line of a public street is not the same as its boundaries. A regular line is prescribed in order to bring about regularity and orderly development both in building activities and in traffic control. Such a power is a necessity for a local authority and all the more so in a city like Bombay which is one of the largest cities in the country. This object is clearly shown by the provisions of Sub-section (3) of

Section 297 of the Act which makes the land falling within the regular line of the building subject to the disability that it cannot be built upon. It is also shown by the powers of the Municipal Commissioner to order a set back under Section 298 or to order a set forward under Section 300 of the Act. In Abdul Rahim Mahomed Narma v. Municipal Commissioner for City of Bombay land within the regular line of the street was acquired by the Municipal Commissioner, the object being to provide ground for the erection of the foundation of an overhead bridge. It was contended that the acquisition under Section 299 of the Act for this purpose was unlawful and the acquisition ought to have been under Section 296. Repelling this contention Sir Basil Scott, C. J., who delivered the judgment of this High Court, said (at p. 941):

"To show that the result of laying down a regular line would be to enable the Commissioner to enter upon vacant land within that line under Section 299 does not show that the Commissioner was not also actuated by the necessity of laying down of regular line for the street and the existence of the incidental result does not vitiate the legality of his action".

14. Dealing with the contention about the object of acquisition the Learned Chief Justice said (at p. 941):

"Then, it was contended that because the object of acquiring the land under Section 299 was to provide ground for the erection of the foundations of the bridge, the acquisition was unlawful, because there was Section 296 of the Act which provided the manner in which the Commissioner might acquire land. Now, that section gives the Commissioner power to acquire land, whether vacant or with buildings upon its whereas Section 299 only gives him power to acquire vacant land falling within the regular line of the street. Provided he had a regular line and vacant land failing within that line, it was quite unnecessary for him to resort to the powers given under Section 296 of the Act; and granting the legality of the prescription of the line, the powers under Section 299 lawfully followed."

The matter was carried to the Privy Council. In giving the opinion of the Judicial Committee, Lord Sumner said (at p. 946):

"The contention must stand or fall on the construction of the Bombay Act. There is no word in the Act which prescribes the frame of mind in which the Commissioner is to exercise the powers given by Section 297. or which restricts the objects for which he is to exercise them to the mere regulation of the street in question or to the creation or preservation of a regular line in it. Even if it were proved, as it is not, that the creation and preservation of a regular line on the north side of the road was no part of the Commissioner's object though it certainly was an incidental result of his scheme, their Lordships can find nothing in the Act which either entitles the appellants to investigate his motives or has the effect of invalidating his action on account of the purpose, with which in fact he prescribed the regular line of the street in 1909, "....The case was very fully and cogently dealt with by the Learned Chief Justice of Bombay in the High Court of Bombay, and their Lordships think it unnecessary to discess the matter further".

There is yet another decision of the Judicial Committee of the Privy Council which may usefully be referred to namely, the case of Shankar Dattatraya Prabhavalkar v. The Municipal Corporation of

the City of Bombay . In that case it was contended that on a proper construction Of the relevant sections of the Act, the regular line of a public street which may be prescribed under Section 2&7 (1) (a) meant the boundary line of a street, or the intended boundary line of a street as ultimately to be constructed and that it did not contemplate what is commonly known as a building line which might but more probably would not, correspond with such boundary line of the street but would lie within the adjoining plots of land at a prescribed distance from the boundary line of the street. After referring to the relevant sections, the Judicial Committee rejected this contention in the following words (at p. 438-9):

"Their Lordships agree with the opinion of all the learned Judges of the High Court that a consideration of the terms of Section 297, and of its setting in the Act, Shows conclusively that Section 297 is dealing with the building line of a public street, as distinguished from the boundary line or intended boundary line of a public street. In the first place the definition of 'public street' in Section 3 (x) relates to a street that is already in existence, and this definition applies in Section 297; this may be contrasted with Section 296 (1) (b) which shows that the expression 'intended' is used when appropriate. In short, the boundary line of a street is fixed prior to actual construction, and the regular line of the street is prescribed after it has come into existence. In the second place, all public streets are vested by Section 289 (1) in the Corporation, and no one is entitled to build upon them; therefore Section 297 (3) would be mere surplus age, unless it relates to building on land outside the boundary line of the street, but within the regular line of the street, and the same comment applies to Section 298 (1), and Sub-section (3) of that section must apply to the vesting of land acquired outside the boundary line of the street, as, otherwise, it must have been acquired under Section 296 (1), subject to compensation, Section 299 (1) must also apply to land outside the boundary line of a public street".

Thus, while the object underlying Sections 297 to 300 of the Act is to prescribe a building line, the object underlying Section 296 is wholly different. That object is that of opening, widening, extending or otherwise improving any public street or making a new public street. This section is not concerned with the regular line of the street or with the building line nor is the acquisition thereunder confined by any reference to the regular line of the street. The powers under that section are not to be exercised by the Municipal Commissioner alone. They are to be exercised in the manner prescribed by Sections 90 and 91 of the Act to which reference has already been made. The contention of the First Respondent that the object of widening a street is common to both Sections 296 and 297 of the Act must, therefore, be rejected.

15. Not only is the object sought to be achieved by Section 296 of the Act wholly different from the object sought to be achieved by Sections 297 to 301, but these two types of acquisition operate on very different lands. The land which can be acquired under Sections 298 to 299, as pointed out earlier, is Subject to disability so far as construction is concerned. It was pointed out by the Supreme Court in the case of the Municipal Corporation of the City of Ahmedabad v. The State of Gujarat, , while dealing with similar provisions of the Bombay Provincial Municipal Corporation Act, 1949 "when set-back is imposed by the line of the street, the land actually acquired by the Corporation may be in some cases a few sq. yards or even a few sq. inches. Then again the land acquired may be of no significant use to anybody except to the Corporation as a part of the street. The land acquired

may be wedge-shaped, sometimes irregular in contour and often shapeless." When a piece of land is of this class and description and is also subject to the disability that no construction, except in rare instances, would be permitted thereon, it cannot be said that it is land of the same type or quality as land not subject to such a disability. In re the Special Courts Bill, 1S78, AIR 1979 SC 47S, while referring to Article 14 of the Constitution, Chandrachud, C. J., summarised the propositions to be deduced from the judgments of the Supreme Court on Article 14 of the Constitution. Propositions 3, 4 and 7 are relevant for our purposes. These propositions are as follows (at p. 509).

"3. The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The Courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

4. The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory - or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same,

7. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act.

Applying the tests laid down above. It would follow that the classification between land falling within the regular line of the building which is subject to disability and land outside the regular line which is not subject to any such disability is not arbitrary but is rational. The differentia, which is the basis of this classification, is the type and quality of the land and the purpose and the use to which the owner can put it. This differentia has a rational relation to the objects sought to be achieved by Sections 296 and 297 to 301 of the Act.

16. The next question then is whether the owners of lands which are acquired under Sections 296 and 299 are treated prejudicially as compared to the owners of lands which are acquired under Section 296 of the Act. In the submission of the Appellants, they are not. On the other hand, according to the Respondents there is great prejudice both in the amount of compensation which would be payable for such acquisition and in the procedural safeguards and that this discrimination renders Sections 297 to 301 of the Act Void as infringing Article 14 of the Constitution. We will first deal with the question of compensation. Compensation for land acquired under Section 298 or 299

is payable under Sub-section (1) of Section 301. The said sub-section provides for the payment of compensation "for any loss which such owner may sustain in consequence of his building or land being so acquired and for any expense incurred by such owner in consequence of the order made by the Commissioner under either of the said sections". The question of the compensation payable under Sub-section (2) of Section 301 of the Act does not really arise in this case because it refers to compensation in respect of the setting forward of a building under Section 300 but in this case also any loss or damage which the owner of the building may suffer is to be made good to him by the Municipal Commissioner by way of compensation. The Bombay Municipal Act of 1872 by Section 163 made similar provision in respect of the land acquired when a building was ordered to be set back in circumstances similar to those provided for in our Section 298. In the Municipal Commr. for the City of Bombay v. Patel Haji Mohomed Ahmed Janu (1890) ILR 14 Bom 292, a Division Bench of this High Court held that compensation became due under the said Section 163 as soon as the Corporation took possession of the set-back land and that prima facie compensation should be assessed according to the set of things then existing, and not upon the basis of what the owner might have in his power to do, by appropriating other property which he might have at the back, towards diminishing the damage which would otherwise result to him. The said Section 163 used the expression "any damage he (that is, the owner) may sustain". The Division Bench held that that expression ensured compensation to the owner for every sort of damage, and did not restrict it for the compensation for such damage as the owner might by his own arrangements contrive to reduce it to.

17. It was, however, contended on behalf of the First Respondent that the compensation which an owner would receive under Section 301 of the Act would be much less than what he would receive under the Land Acquisition Act had the acquisition been under that Act. In support of this submission reliance was placed upon Sections 23 and 24 of the Land Acquisition Act. In particular stress was laid upon Sub-section (2) of Section 23 of the said Act which provides that the owner of the acquired land is to be awarded a sum of fifteen percentum of the market value of the acquired land in consideration of the compulsory nature of the acquisition. This is what is known in legal terminology as 'solatium'. Stress was also laid on the fact that under the sixth clause in Section 24 of the said Act the Court is not to take into consideration any increase in the value of the other land of the person interested likely to accrue from the use to which the land acquired would be put. Under the third and fourth clauses of Section 23(1) of the said Act the damage sustained by reason of severance of the acquired land from the other land as also the damage sustained by reason of the acquisition injuriously affecting other property, movable or immovable, in any other manner or the earning of the person interested would be taken into consideration. It was submitted on behalf of the First Respondent that under the proviso to Section 301 of the Act, on the other hand, not only decrease but also increase in the value of the remainder of the property of which the building or land acquired formed part likely to accrue from the set-back is to be taken into consideration and is to be allowed for in determining the amount of such compensation. In the submission of learned Counsel for the First Respondent, these two points of difference rendered the amount of compensation received under Section 301 of the Act much less than what would have been received under the Land Acquistion Act. In our opinion, the argument of learned Counsel is based upon the fallacy that the only just compensation that can be provided for in any case of acquisition is one on the basis of the principles laid down in the Land Acquisition Act. A challenge on similar ground to the amount of

compensation payable under the Bombay Town Planning Act, 1955, was negatived by the Supreme Court in State of Gujarat v. Shantilal Mangaldas, , referred to earlier. Sections 209 to 211, 213, 215 and 216 of the Bombay Provincial Municipal Corporation Act. 1949. contained provisions substantially similar to our Sections 296 to 301. The said Act by Section 212 further conferred power upon the Municipal Commissioner to order a building to be set back to the regular line of the street and to pull down such part of it as was within the regular line and to acquire the land upon which such part of the building stood. It further conferred upon the Municipal Commissioner the power, in a case where the increase in the value of the remainder of the property exceeded the amount of loss or expenses, to recover from the owner half the amount of such excess as a betterment charge. The validity of these provisions of the Bombay Provincial Municipal Corporation Act was challenged in a writ petition filed before the High Court of Gujarat, under Section 299 of the Government of India Act, 1935. as also Article 31 of the Constitution. This challenge succeeded in the High Court. The petitioners in that case had also challenged those provisions on the ground that they infringed the constitutional safeguards guaranteed by Articles 14 and 19 of the Constitution. The challenge under Article 19 was rejected by the High Court and was not pressed before the Supreme Court. The challenge under Article 14 was not decided by the High Court. In appeal by the Ahmedabad Municipality the Supreme Court reversed the judgment of the Gujarat High Court and held that neither the provisions of Section 299 of the Government of India Act, 1935, nor of Article 31 of the Constitution were violated and left the question of Article 14 of the Constitution to be disposed of by the Gujarat High Court. The decision of the Supreme Court is reported as the Municipal Corporation of the City of Ahmedabad v. The State of Gujarat, , referred to earlier. In the said case the Supreme Court observed as follows (at pp. 1736 (2) and 1737):--

"The Land Acquisition Act makes market value at a certain date the basis for the determination of compensation. But there is no one sure way of applying the principle. As is well known when set back is imposed by the line of the street the land actually acquired by the Corporation may be in some cases a few sq. yards or even a few sq. inches. Then again the land acquired may be of no significant use to anybody except to the Corporation as a part of the street. The land acquired may be wedge-shaped, sometimes irregular in contour and often shapeless. If the principle of a willing seller and a willing buyer is applied, there can possibly be no market at all for the property acquired. It is not suggested that in every case of acquisition of land for the street this principle will break down. But having regard to the fact that in the course of widening the street the Corporation may have to acquire very irregular, shapeless and small pieces of land for the purposes of the street, a host of principles may have to be employed to determine the compensation. We asked learned counsel for the respondents what one general principle of determination of compensation in such cases could have been appropriately specified. We did not get any satisfactory reply. It appears to us that this very difficulty in specifying any known rule of compensation is responsible for the wording of Section 216 and Section 389 of the Act which, in our opinion, gets over the difficulty by providing full indemnification for the loss or deprivation suffered by the owner of the building or other interests in the property. We have referred to the provisions with regard to appeals.

The first, appeal lies to the Judge of the Small Causes Court and a second appeal to the District Judge. The involvement of Civil Courts in finally determining compensation imports judicial norms. Since full indemnification in accordance with judicial norms is the goal set by the Act, it is implicit in

such a provision that the rules for determination of compensation shall be appropriate to the property acquired and such as will achieve the goal of full indemnity against loss. In other words, the Act provides for compensation to be determined in accordance with judicial principles by the employment of appropriate methods of valuation so that the person who is deprived of property is fully indemnified against the loss. This, by itself, in our opinion, is a specification of a principle for the determination of compensation."

Since the provisions of Section 301 of the Act are in pari materia with the provisions relating to compensation in the Bombay Municipal Corporation Act, it follows that by Section 301 a full indemnification in accordance with judicial norms has been provided for, and it cannot be said that the compensation is not adequate or would be less than what would be allowed under the Land Acquisition Act. The solatium by way of 15 per cent provided for in Section 23(2) of the Land Acquisition Act is to be 15 percentum of the market value of the land which has been acquired Where, however, In the case of majority of acquisitions under Section 298 or 299 of the Act the land is such that there would be no market value for the property acquired, as pointed out by the Supreme Court in the Municipal Corporation of the City of Ahmedabad v. The State of Gujarat, to complain about non-receipt of 15% of the market value of the property acquired sounds like a contradiction in terms. In fact, the judgment of the Supreme Court in the above case shows that the owner of the land acquired under Section 298 or 299 of the Act is in most cases on a better footing when he receives compensation under Section 301 of the Act than he would be were the compensation to be given to him only on the principles laid down in Sections 23 and 24 of the Land Acquisition Act.

18. It was next submitted that Section 301 of the Act did not itself lay down the principles upon which compensation was to be determined. This argument must be rejected in view of the judgment of the Division Bench of this High Court in the Municipal Commissioner for the City of Bombay v. Patel Haji Mahomed Abdul Janu, (1890) ILR 14 Bom 292 referred to earlier. Such an argument was also advanced in the Municipal Corporation of the City of Ahmedabad v. The State of Gujarat, and was expressly rejected. Another Division Bench of this High Court consisting of Kamat and Mukhi, JJ., in First Appeal No. 386 of 1968 with First Appeals Nos. 387 to 395 of 1968, Municipal Corporation of Greater Bombay v. The Central Bank Executor and Trustee Company Ltd., decided on Aug. 5/6, 1974 (Unrep.) after referring to the above decision of the Supreme Court, has pointed out in detail what "full indemnification" would mean. The Division Bench held that the owner must be fully indemnified for each and every loss that has been sustained by him, whether it related to the land acquired or to the remainder of the property.

19. It was then contended by learned counsel for the first respondent that under Section 34 of the Land Acquisition Act interest was payable to the owner from the time possession was taken of the land acquired until the amount was paid or deposited as provided in the said Act, while there was no such provision in Section 301 of the Act. We are unable to accept this argument. If full indemnification is to be made to the owner, we fail to see why he would not be entitled to interest on the amount of compensation from the date of taking possession of his property, and we are informed by learned counsel for the Municipal Corporation that in fact Courts when determining compensation award interest on the amount of compensation as from the said date.

20. In support of his submission that in being paid compensation under Section 301 of the Act the first respondent was being discriminated against when compared with the owners who would be paid compensation under the Land Acquisition Act, Mr. Sakhardande, learned counsel for the first respondent, referred us to several decisions of the Supreme Court. In our opinion, none of these decisions is relevant to the point which arises before us, for in each of these cases the classification sought to be made was held to be unreasonable and not to have a reasonable relation to the object sought to be achieved, and it was either admitted or clearly apparent that the compensation payable under the impugned statute was grossly discriminatory as compared to the compensation payable under the Land Acquisition Act, We will however, briefly refer to these decisions. The first of these cases relied upon was that of P. Vajravelu Mudaliar v. The Special Deputy Collector for Land Acquisition, West Madras, . In that case the Land Acquisition (Madras Amendment) Act, 1961 (the Madras Amendment Act, 1961), was struck down as infringing Article 14 of the Constitution. The said Amending Act permitted the State to acquire land for housing schemes and laid down principles for fixing compensation different from those provided in the Land Acquisition Act under which the owner admittedly got a much lesser value than he would have got for the same land or a similar land if it was acquired for another public purpose, like, for example, a hospital. The Supreme Court held that the classification so sought to be made was not reasonable. Now, in the case before us there is no question of the same land or similar land being acquired for different purposes by the Municipal Commissioner. Aa pointed out by the Supreme Court in that case (at pp. 1027-8):

"Out of adjacent lands of the same quality and value, one may be acquired for a housing scheme under the Amending Act and the other for a hospital under the Principal Act (that is, the Land Acquisition Act); out of two adjacent plots belonging to the same individual and of the same quality and value, one may be acquired under the Principal Act and the other under the Amending Act. From whatever aspect the matter is looked at the alleged differences have no reasonable relation to the object sought to be achieved..... For achieving the object, any land falling in any of the said categories can be acquired under the Amending Act. So too, for a public purpose any such land can be acquired under the Principal Act. We, therefore, hold that discrimination is writ large on the Amending Act and it cannot be sustained on the principle of reasonable classification. We, therefore, hold that the Amending Act clearly infringes Article 14 of the Constitution and is void."

In the case before us the land which could be acquired under Section 298 or 299 of the Act is not and cannot be of the same quality and value as the land falling outside the regular line of the street, because the land within the regular line of the street suffers from various disabilities which we have pointed out above. The second case relied upon was the Deputy Commissioner and Collector, Kamrup v. Durga-nath Sarma, , in which the Assam Acquisition of Land for Flood Control and Prevention of Erosion Act, 1955, was held to be unconstitutional as violating Article 31(2) of the Constitution as it stood prior to the Constitution (Fourth Amendment) Act. Under that impugned Act the State Government had the power to acquire lands for works or other development measures in connection with flood control or prevention of erosion. The compensation provided for in that Act was admittedly nominal. The Supreme Court held that in the State of Assam some land could be taken under the impugned Act for the purpose of works and other measures in connection with flood control and prevention of erosion on payment of nominal compensation while an adjoining land might be taken for other public purposes under the Land Acquisition Act, 1894, on payment of

adequate compensation and that this differential treatment of land acquired under the two Acts was not permissible under Article 14 of the Constitution and resulted in unjust discrimination to owners of land similarly situated by the mere accident of some land being acquired under one Act and another land being acquired under another Act. Here the owners of lands falling outside the regular line of the street and owners of lands falling within the regular line of the street are not similarly situated. The quality and value of the lands are different. An adjoining land lying within the regular line of the street can only be acquired by the Municipal Commissioner under Section 298 or 299 of the Act, and compensation would be paid for it only in the manner provided by Section 301. Further the compensation payable under Section 301 of the Act is not only not nominal but in the majority of cases more beneficial to the owner as pointed out earlier.

21. The last Supreme Court authority on this point relied upon by Mr. Sakhardande, learned counsel for the first respondent, was the case of Nagpur Improvement Trust v. Vithal Rao, AIR 1973 SC 689. In that case the Nagpur Improvement Trust Act, 1936, was held to be void. The compensation under that Act was admittedly much lower. Further the land could be acquired either under this Act or under the Land Acquisition Act. The Supreme Court held that this enabled the State Government to discriminate between one owner and another owner both equally situated. As we have pointed out earlier, in the case before us all lands falling within the regular line of the street are subject to the same disability. They are not of the same quality or value as the land outside the regular line, and there is no discretion or power in the Municipal Commissioner to acquire land within the regular line of the street under the Land Acquisition Act. Reliance was also placed upon a decision of this High Court in Union of India v. Kantilal Nihalchand, (1973) 75 Bom LR 155. The question in that case was of the validity of Section 7 of the Requisitioning and Acquisition of Immoveable Property Act, 1952, as amended by Act XXXI of 1968. Under that section the compensation payable was admittedly much less than what would be payable under the Land Acquisition Act. It was argued on behalf of the State that the impugned statutory provisions implied-ly repealed the Land Acquisition Act so far as acquisitions of the type provided for in the said Section 7 were concerned. The two principles, namely (1) where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all, because that method necessarily forbids other methods and (2) that a special law dealing with a particular matter excludes the general law previously enacted and dealing with the same matter, were accepted by the Court, What was, however, found on a comparison of the two Acts was that there was no implied repeal as contended for by the State and that the provisions of the two statutes were consistent with each other and could accordingly be enforced at the same time, and thus enabled the authorities to pick and choose lands for acquisition under either of the two Acts. The impugned provision was, therefore, declared to be void as infringing Article 14 of the Constitution. As we have pointed out earlier, there is no power in the Municipal Commissioner to pick and choose in this case. In respect of lands falling within the regular line of the street he must proceed if he wants to acquire land only under Section 298 or Section 299 as the case may be, and not under Section 296 of the Act. Further, there is no question before us of an implied repeal of one enactment by another. Both the provisions occur in the same Act one general and the other particular, and the question is whether these two provisions constitute alternative modes of acquisition so that the Municipal Commissioner can pick and choose either as he likes, or whether the particular provision constitutes an exception to the general provision. It may finally be pointed out that so far as we are concerned, the matter is concluded by the decision of

the Supreme Court in the Municipal Corporation of the City of Ahmedabad v. The State of Gujarat, , which dealt with Identical provisions. It is true that the challenge wider Article 14 of the Constitution was not decided by the Supreme Court but the arguments which have been advanced on the points decided by the Supreme Court are the vary same arguments that have been advanced before us on the challenge under Article 14. Compensation is to be determined in money value. If what the owner of property which has been acquired under Section 297 or 298 of the Act receives by way of compensation is either the same or in a number of cases even more than what he would have got under the Land Acquisition Act, we fail to see how any question of discrimination arises. We may also mention that on remand by the Supreme Court, a Division Bench of the Gujarat High Court, after considering the various sections of the Bombay Provincial Municipal Corporations Act, which are in pari materia with the sections impugned in this case, negatived the challenge under Article 14 of the Constitution (See Municipal Corporation of the City of Ahmedabad v. State of Gujarat, (1973) 10 Guj LT 55J.

22. This brings us to the question of procedural discrimination raised by the first respondent. According to learned counsel for the first respondent, procedural discrimination arises in 3 ways (1) there is no provision in the Act for personal service of the notice of the proposal to prescribe a fresh regular line of the street upon the owners of the properties likely to be affected thereby, (2) there is no provision for giving a personal hearing to a person who has filed his objections to such a proposal, and (3) there is no provision for any Inquiry to be held by the Municipal Commsisioner in determining compensation nor any right to the owner affected to be heard before such compensation is determined nor is there any provision for a reference or appeal to a judicial tribunal against the amount of compensation determined by the Municipal Commissioner.

23. So far as the questions of personal service of notice and personal hearing are concerned some more facts are required to be set out. Section 267 of the Act requires the giving of a public notice of the proposal to prescribe a fresh regular line of the street. For the Linking Road in the instant case it was given by the Municipal Commissioner by publication In the Maharashtra Govt, Gazette, Part II, dated Oct. 26, 196T. It was also published in ten local newspapers of different languages on the same day. By this public notice objections were invited to the proposal. Under Section 297 of the Act a special notice is also required to be put up in the street or the part of the street for which a fresh fine is proposed to be prescribed. This special notice, signed by the Municipal Commissioner, was put up also on the same day, that is, on Oct. 26, 1967, at nine different points on the Linking Road, As the documents filed by consent at the hearing of the writ petition show, objections were in fact raised to this proposal by several parties. These objections were considered and the matter was referred to the Works Committee (Suburbs by the Municipal Commissioner by his letter dated June 1, 1968. The said Committee met on June 26, 1958, considered the matter and recommended the said proposal to the Municipal Corporation. At its meeting held on Sept. 12, 1968 the Municipal Corporation accepted this recommendation. These facts clearly show that all the requiremments of Section 297 of the Act were complied with, that there was ample and adequate publicity given to this proposal and that such publicity resulted in the objections being raised to this proposal by several owners of properties who would be affected by the fresh regular line intended to be prescribed. What was, however, submitted was that each and every owner who would be affected should have been served personally with the notice of this proposal and that because he was not so served, the

First Respondent remained in ignorance that a fresh line was to be prescribed. Reference was made to the provisions of Section 5A of the Land Acquisition Act in support of this submission. We are unable to understand this argument about personal service of notice or the reliance placed upon the provisions of the Land Acquisition Act for this purpose. Under Section 4 of the said Act when a land is intended to be acquired for a public purpose, a notification to that effect was at the relevant time required to be published in the Official Gazette and also made known by giving a public notice of the substance of such notification at convenient places in the concerned locality. Under Section 5A any person interested in any such land could thereupon, within thirty days after the issue of the notification, file his objections to the intended acquisition. There is no provision in the Land Acquisition Act for personal service of a notice of the intention to acquire any land for a public purpose. It is true that Section 5A(2) provides for a personal hearing to be given to such person. A personal service of a notice and a personal hearing are not sine qua non for the exercise of every power by a public authority. Similar contentions with respect to the Maharashtra Regional and Town Planning Act, 1966, and the Bombay Town Planning Act, 1954, were raised before one of us (before Deshmukh J., as he then was) in Misc. Petn. No. 344 of 1974, Bharat Barrel & Drums Mfg. Co., Pvt. Ltd. v. The State of Maharashtra, decided on Feb. 24/25, 1976 (Unrep.) and were negatived. Even from the very nature of things, it would be extremely difficult, cumbersome and time-consuming, in cases such as this, to effect personal service of notice of the intention to prescribe a fresh regular line of the street upon each and every owner of the property who would be affected or to give them a personal hearing. Even under the Land Acquisition Act in cases of urgency referred to in Section 17 the Government or the Commissioner, as the case may be, has the power to direct that the provisions of Section 5A of the Land Acquisition Act should not apply, and in such a case there would be no scope for filing any objections or giving any personal hearing to anyone wanting to object.

24. Let us also see why personal hearing is provided for by Section 5A of the Land Acquisition Act. It is because of the type of objections which can be filed to the proposed acquisition. The type of objections which can be raised can be seen from the rules for the guidance of officers made by the Gov-ernor-in-Council under Section 55 of the said Act by G. O. No. 9173 Revenue, dated Oct. 4, 1926. These objections have to be specific such as:

"(i) the notified purpose is not genuinely or properly a public purpose;

(ii) the land notified is not suitable for the purpose for which it is notified;

(iii) the land is not so well suited as other land;

(iv) the area proposed is excessive;

(v) the objector's land has been selected maliciously or vexatiously;

(vi) the acquisition will destroy or impair the amenity of historical or artistic monuments and places of public resort; will take away important public rights of way or other conveniences or will desecrate religious buildings, graveyards and the like." These are objections which require to be

heard and determined. It is obvious that hardly any one of these objections could have any relevance when a fresh regular line of the street is to be prescribed. Can it be contended that prescribing a regular line of the street, whether original or in substitution of the line already prescribed, is not a public purpose ? It cannot be for obviously this is a public purpose. Is it possible for a property-owner to raise the other objections listed above ? The regular line of the street would have to be either a straight line or 8 regular curve. Can a property-owner say that the regular line of the street should pass through the properties of his neighbours but not his own ? That would be tantamount to saying that the regular line of the street should not be regular but should be zig-zag. Can he say that his land has been selected maliciously and vexatiously when the regular line proposed to be prescribed passes regularly and uniformly through his property as also through the properties of his neighbours? The nature of the objections which can be raised to the proposed prescription of a fresh regular line are from their very nature so limited and restricted that no personal hearing is necessary for their consideration.

25. Further, since under Section 297 (2) of the Act the authority to the Municipal Commissioner is to be given by the Municipal Corporation at one of its meetings, one wonders by whom the personal hearing contended for by the first respondents is to be given, Under Section 297 (1) (b) (ii) it is for the Municipal Corporation to consider all objections to the proposal. In such a case the personal hearing suggested by the first respondent could only be given by the Municipal Corporation, that is, by the Councillors who have to give to the Menicipal Commissioner the authority of the Corporation in a meeting of the Municipal Corporation. Such a hearing is impracticable. Once the public purpose is granted and the authority of the Municipal Corporation given and the fresh regular line is prescribed, all that remains is to take possession of land falling within the regular line of the street when it is open or becomes open, as and when it is convenient and financially feasible for the Municipal Corporation to do so. For this Section 299 provides for a 7 days' notice of the intention to take possession to be given to the owner of the land or building when the land is unbuilt upon. There is no question then of giving any hearing to the owner, for there is nothing on which he can be heard. We thus see no procedural discrimination in the absence of a provision for personal service of notice or in the absence of any provision for a personal hearing.

26. So far as the third ground on which it is contended that there is procedural discrimination is concerned, such a ground is not borne out by the relevant provisions of the Act. It is true that there is no provision in Section 301 of the Act for the Municipal Commssioner to give a hearing before determining the compensation, but under Section 504 any person aggrieved by his determination has the right to make an application to the Chief Judge of the Court of Small Causes. The said section provides as follows:

"504. Amount of expenses or compensation to be determined in all cases of dispute by the Chief Judge of the Small Causes Court.

If, in any case not falling under Section 491, any person is required by this Act, or by any regulation or by-law framed under this Act, to pay any expenses or any compensation, the amount to be so paid and, if necessary, the apportionment of the same, shall, in case of dispute, be determined, except as is otherwise provided in Sections 502 and 515, by the Chief Judge of the Small Cause Court on

application being made to him for this purpose at any time within one year from the date when such expenses or compensation first became claimable."

Against the decision of the Chief Judge of the Court of Small Causes an appeal lies to the High Court under Section 3 of Act No. 12 of 1888. It was, however, contended that the word 'person' in Section 504 does not include the Municipal Commissioner. We are unable to accept this argument. Section 3 of the Bombay General Clauses Act, 1904, defines certain words and expressions, and these definitions apply to these words and expressions when used in the said Act and in all Bombay Acts or Maharashtra Acts made after the commencement of the Bombay General Clauses Act. Under Section 4 of the said Act the definitions of several of the words given in Section 3 are also to apply to all Bombay Acts made before the commencement of the Bombay General Clauses Act. The Act with which we are concerned was made before the Bombay General Clauses Act, and by virtue of the provisions of Section 4 of the Bombay General Clauses Act the definition of the word 'person' given in Clause (35) of Section 3 of that Act would apply wherever the word 'person' is used in the Act, namely the Bombay Municipal Corporation Act, unless there is anything repugnant in the subject or context. The word 'person' is defined by the said Clause (35) as follows:

"person" shall include any company or association or body of individuals, whether incorporated or not,".

We are unable to see anything repugnant in the subject or context in which the word 'person' is used in Section 504 to exclude from the meaning of that word the Municipal Commissioner. On the contrary, the language of that section shows that the Municipal Commissioner is in fact included. This section confers upon the Chief Judge of the Court of Small Causes the power to determine the amount of any expenses or compensation "except as is otherwise provided in Sections 502 and 515". Under Section 502 it is for a Magistrate who convicts a person of a municipal offence to determine the compensation payable by such person. Under Section 515 a Presidency Magistrate is conferred the power, upon any complaint made to him by any person about the existence of any nuisance, inter alia to direct the Municipal Commissioner to pay to the complainant compensation for his loss of tune in prosecuting such complaint. But for the exception enacted in Section 504, the compensation which a Presidency Magistrate would direct the Municipal Commissioner to pay under Section 515 would also have been determinable by the Chief Judge of the Court of Small Causes, and it is for this reason that Section 515 along with Section 502 have been excluded from the ambit of Section 504. Regularly applications are made to the Chief Judge of the Court of Small Causes for determining compensation under Section 301, and appeals therefrom have been filed before this High Court either by the Municipal Commissioner or by the applicant. In Dattatraya Balwant Chitnis v. The Municipal Commissioner of Bombay , a suit was filed by the trustees of a temple at Walkeshwar for an injunction against the Municipal Corporation from carrying out certain drainage operations at Malabar Hill. In the course of his judgment Russell, J, observed that the amount of compensation would have to be determined before the Chief Judge of the Small Cause Court, Bombay, under Section 504 of the Act. The case of The Municipal Commissioner for the City of Bombay v. Patel Haji Mohomed Ahmed Janu, (1890) ILR 14 Bom 292, was an appeal by the Municipal Commissioner against the decision of the Chief Judge of the Small Cause Court given under Section 504 of the Act, determining the compensation in respect of set-back lands taken

possession of by the Municipal Commissioner. The Division Bench judgment in First Appeal No. 386 of 1968 with First Appeals Nos. 387 to 395 of 1968 -- Municipal Corporation of Greater Bombay v. The Central Bank Executor and Trustee Company Ltd. was also given in appeals filed by the Municipal Commissioner against the decision of the Chief Judge of the Court of Small Causes under Section 504 determining compensation in " respect of lands acquired under Sections 297 and 298 of the Act. It is true that in none of these cases the point was taken directly, but as we have pointed out earlier, this argument of the First Respondent is without any substance.

27. So far as the nature of the inquiry and the manner of determination of compensation are concerned, the following passage from the judgment of the Supreme Court in the case of The Municipal Corporation of the City of Ahmedabad v. The State of Gujarat , is apposite:

"As regards the manner of determination of compensation, it is provided in Section 390 of the Corporation Act (that is, the Bombay Provincial Municipal Corporation Act, 1949). Under that section the Commissioner or such other officer as may be authorised by him shall hold such enquiry as he thinks fit and determine the amount of compensation to be paid. Either the Commissioner or an Officer authorised by him has to hold an appropriate enquiry before determining the amount of compensation. Since, as already seen, there is an appeal from such determination to the Judge of the Small Cause Court under Section 391 and a second appeal to the District Court under Section 411, it is clear that the enquiry must be made on broad judicial lines. Any arbitrary determination is bound to be set aside in appeal because the Judges in appeal will be chiefly concerned to see whether the enquiry is made in accordance with normal judicial procedures for evaluating the loss by the application of methods of valuation appropriate to the particular acquisition before them. Since no limitations are placed on the powers of the Appellate Judges in determining the loss in a just and appropriate manner, it is expected that the Commissioner or his authorised officer, who holds the enquiry in the first instance, will be guided by principles which meet with the approval of the Appellate authorities. In our opinion, therefore, the manner of the determination of compensation is also specified by the Act"

It is true that unlike in the Bombay Provincial Municipal Corporations Act there is no provision in the Act with which we are concerned, namely, the Bombay Municipal Corporation Act, for the holding of an inquiry at the time when the Municipal Commissioner determines the compensation. This, in our opinion, makes no difference, for while under that Act the original determination is to be by the Municipal Commissioner and an appeal is to lie to the Judge of the Court of Small Causes in the City of Ahmedabad and a second appeal to the District Court, under the Bombay Municipal Corporation Act the original determination itself, in case the compensation offered by the Municipal Commissioner is not acceptable to the owner, is to be by a Judicial Officer, namely, the Chief Judge of the Court of Small Causes at Bombay, from whose decision an appeal lies to this High Court. Thus, the above observations of the Supreme Court apply with equal force to the case before us.

28. Turning now to the challenge under Article 31(2) of the Constitution, the learned single Judge has negatived this challenge. This challenge was, however, again repeated before us by Mr. Sakhardande, learned Counsel for the First Respondent. In our opinion, it is not open to the First Respondent to challenge the sections in question on the ground of any violation of Article 31(2) in

view of the provisions of Article 31(5)(a) of the Constitution which provides as follows:--

"31. Compulsory acquisition of property. (5) Nothing in Clause (2) shall affect-

(a) the provisions of any existing law other than a law to which the provisions of Clause (6) apply, or" If the Act were an "existing law", the provisions of Clause (2) of Article 31 would not apply to it, Mr. Sakhardande, however, contended before us that the Act was extended to the area in which the land in question is situate after the coming into force of the Constitution, and it, therefore, was not an existing law as defined by Clause (10) of Article 366 of the Constitution. Under the said Clause (10) 'existing law' means any law, ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any Legislature, authority or person having power to make such a law, Ordinance, order, bye-law, rule or regulation". What is, therefore, to be seen under Clause (10) of Article 366 in order to determine whether any law made by a Legislature is an existing law is to see whether it was made before the commencement of the Constitution by a Legislature having any power to make such law. The Act was passed in the year 1888. The fact that it extended to some areas after the coming into force of the Constitution, does not mean that it was made after the coming into force of the Constitution, and the submission of Mr. Sakhardande that the Act is not an existing law must, therefore, be rejected. Apart from this, the challenge under Article 31(2) of the Constitution cannot survive in view of the judgment of the Supreme Court in the Municipal Corporation of the City of Ahmedabad v. The State of Gujarat,

29. Mr. Sakhardande, learned Counsel for the First Respondent, also relied upon a judgment of the Andhra Pradesh High Court in Shrinivas Pitti v. Municipal Corporation of Hyderabad by its Commissioner, ILR (1972) Andh Pra 214. That was a case under the Hyderabad Municipal Corporation Act, 1956. The material provisions of that Act and the Act with which we are concerned are substantially the same. The Andhra Pradesh High Court held Section 387 (1) of the said Act to be ultra vires as infringing Articles 14 and 31(2) of the Constitution. Section 387 (1), apart from the second proviso thereto, is in the same terms as Section 301 of our Act. The second proviso permitted the Municipal Commissioner to recover from the owner half the amount of the excess as a betterment charge if the increase in the value of the remainder of the property exceeded the amount of loss sustained or expenses incurred by the owner. According to the Andhra Pradesh High Court, no principle for determination of compensation was specified by the said Section 387 (1) and, therefore, it contravened the provisions of Article 31(2) of the Constitution, This part of the judgment is no longer good law in view of the decision of the Supreme Court in the Municipal Corporation of the City of Ahmedabad v. The State of Guja-rat. The Andhra Pradesh High Court further held that the provisions for acquisition of land under Section 384 of the said Act, which corresponds to Section 299 of our Act, were more stringent than the provisions made in Section 380 of that Act, which corresponds to our Section 296 and that discrimination was, therefore, writ large in the said provisions, and as there was no nexus between the basis of classification and the object sought to be achieved, Section 387 (1) was void also as infringing Article 14 of the Constitution. We have, however, come to the conclusion that the provisions of the sections impugned in the instant case are not more stringent than the provisions of Section 296 of the Act. We have held that the classification made is reasonable and has a rational relation to the object sought to be achieved. With respect to the learned Judges of the Andhra Pradesh High Court who decided the case, we are

unable to agree with their reasoning or to follow this decision. We may also point out that in the said Act there was no provision for any reference or appeal on the question of compensation to a judicial tribunal, which is not the case in the Act with which we are concerned.

30. The First Respondent's challenge under Article 19(1)(f) of the Constitution was negatived by the learned single Judge. At the hearing of these Appeals Mr. Sakhardande stated that the First Respondent was not pressing this challenge.

31. In the result, we allow both these appeals, set aside the judgment and order appealed against and dismiss the Writ Petition filed by the First Respondent with costs.

32. The First Respondent will pay to the Appellants in each of these two Appeals the costs of the Appeals.

33. The Second Respondent in both these appeals will bear and pay their own costs of the Appeals.

34. The amount deposited by the Appellants in court as security for the costs in these appeals will be refunded to the Appellants.

35. At this stage, Mr. Sakhardande, learned Counsel for the First Respondent makes an oral application for certificate of fitness to appeal to the Supreme Court under Article 133(1) of the Constitution.

36. Since we have merely followed the Supreme Court decisions, including J. K. Cotton Spinning and Weaving Mills Co. Ltd. v. State of Uttar Pradesh ; and The Municipal Corporation of the City of Ahmedabad v. The State of Gujarat , so far as all the points arising in these appeals are concerned, it is not possible for us to give a certificate contemplated by Article 133(1) of the Constitution. Hence we reject the application for leave to appeal to the Supreme Court.

37. Appeals allowed.