2023 INSC 200

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 5071 of 2022

Indore Development Authority …Appellant

Versus

Burhani Grih Nirman Sahakari Sanstha Maryadit
Sneh Nagar and Others …Respondents

WITH

CIVIL APPEAL NO. 5099 OF 2022
CIVIL APPEAL NO. 5074 OF 2022
CIVIL APPEAL NO. 5075 OF 2022
CIVIL APPEAL NO. 5076 OF 2022
CIVIL APPEAL NO. 5078 OF 2022
CIVIL APPEAL NO. 5079 OF 2022
CIVIL APPEAL NO. 5081 OF 2022
CIVIL APPEAL NO. 5080 OF 2022
CIVIL APPEAL NO. 5082 OF 2022
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CIVIL APPEAL NO. 5097 OF 2022
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CIVIL APPEAL NO. 5103 OF 2022
CIVIL APPEAL NO. 5104 OF 2022
CIVIL APPEAL NO. 5105 OF 2022
CIVIL APPEAL NO. 5106 OF 2022
CIVIL APPEAL NO. 5077 OF 2022
CIVIL APPEAL NO. 5083 OF 2022
CIVIL APPEAL NO. 5086 OF 2022
CIVIL APPEAL NO. 5089 OF 2022
CIVIL APPEAL NO. 5100 OF 2022
CIVIL APPEAL NO. 5102 OF 2022

J U D G M E N T

M.R. SHAH, J.

1. Delay condoned. Substitution allowed. Abatement is set aside. Cause title be amended accordingly.

1A. Feeling aggrieved and dissatisfied with the impugned common judgment and order dated 28.08.2014 passed by the High Court of Madhya Pradesh at Indore in Writ Appeal No. 873 of 2008 and other connected writ appeals, by which the Division Bench of the High Court has dismissed the said appeals, confirming the common judgment and order dated 10.12.1998 passed by the learned Single Judge whereby the learned Single allowed the respective writ petitions against finalisation of Scheme No. 97 under Section 50 of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (hereinafter referred to as

the ‘Adhiniyam’) and the subsequent land acquisition proceedings undertaken by the State of Madhya Pradesh under Sections 4 and 6 of the Land Acquisition Act, 1894 (hereinafter referred to as the ‘Act, 1894’), the Indore Development Authority has preferred the present appeals.

2. The facts leading to the present appeals in a nutshell are as under:

The Indore Development Authority (hereinafter referred to as the ‘IDA’) passed a Resolution under Section 50(1) of the Adhiniyam on 13.03.1981 declaring its intention to frame Scheme No. 97 – a residential scheme providing for other connected land uses. For the sake of convenience, Scheme No. 97 was divided into four parts, i.e., Part I, II, III & IV. The declaration of intention of the said scheme was further published in the form of public notice on 10.07.1981. *Vide* its order dated 24.12.1983, the State Government empowered all the Collectors and Divisional Commissioners to act as ex-officio Deputy Secretaries of the Department of Revenue, Government of Madhya Pradesh and ex-officio Secretary of the said Government respectively, for disposal of the cases under Sections 4, 5 6 & 17 of the Act, 1894. After completing various formalities, the IDA published Scheme No. 97 on 08.06.1984 as required under Section 50(7) of the Adhiniyam and the Scheme was also published in the Official Gazette on the said date.

2.1 According to IDA, the State of Madhya Pradesh in exercise of its powers conferred under Article 166(2) & (3) of the Constitution of India and in accordance with the Madhya Pradesh Government Rules of Business framed by the Governor, Madhya Pradesh, delegated its power to the District Collector to act as Under Secretary, Revenue Department, Government of Madhya Pradesh. *Vide* its order dated 6.03.1987, the State Government gave powers to the Deputy Collectors for exercising functions of the Collectors for acquisition of land in their respective areas.

According to IDA, as per section 56 of the Adhiniyam, the IDA started mutual negotiations with the landowners for procurement of their land for Scheme No. 97. Since the mutual negotiations failed, the IDA *vide* its letter dated 4.06.1987 moved the Collector for acquisition of the land.

2.2 Notification under section 4 of the Act, 1894 in respect of the land for Scheme No. 97 was published in the Official Gazette and the notification was then also published in the two daily Hindi Newspapers on 14.08.1987. Further, the publication was affixed on different dates and lastly on 09.10.1987.

2.3 The Deputy Collector and Land Acquisition Officer filed its report under section 5A of the Act, 1894 before the Collector for approval and also submitted the notification under section 6 of the Act, 1894 for signature of the Collector. The same was duly approved by the Collector.

2.4 The Deputy Collector filed its reports in respect of village Tejpur Garbari and also in respect of village Pipaliyarao under section 5A of the Act, 1894 and also filed an approval order of the Collector, for issuance of notification under section 6 of the Act, 1894. Declaration under section 6 of the Act, 1894 was published in the Official Gazette on 7.10.1988 and the said declaration was then also published in daily newspapers on different dates and lastly on 16.12.1988. The Collector then submitted its report to the Commissioner under section 5A of the Act, 1894 with the recommendation to reject the objections and to grant approval for issuance of notification under section 6 of the Act, 1894, which was approved by the Commissioner *vide* its letter dated 6.12.1988.

2.5 After the publication of the declaration under section 6 of the Act, 1894 and during the pendency of the land acquisition proceedings before the Collector, some of the landowners whose lands were acquired for Scheme No. 97 filed writ petitions before the High Court and obtained interim orders against dispossession of their land. Some writ petitions were filed after the declaration of the award. The Collector, Indore made his award in respect of the acquired land on 6.03.1991. That the original writ petitioners filed a Miscellaneous Petition before the learned Single Judge of the High Court challenging the notifications under sections 4 & 6 of the Act, 1894 and prayed that the entire acquisition proceedings be

quashed. The original writ petitioners also prayed that Scheme No. 97 prepared by the IDA be quashed and their land be ordered to be deleted and released therefrom. That in the year 1997, some lands were released from Scheme No. 97. The IDA during the pendency of the writ petitions filed a clarification regarding land release out of Scheme No. 97 pointing out the justification. The aforesaid release was sought challenging Scheme No. 97 on the following grounds:

(i) That the Scheme framed by the appellant under Section 50(7) of the Adhiniyam was not implemented within three years and therefore it stood lapsed, by virtue of Section 54 of the Adhiniyam.

(ii) That the notification issued under Section 6 was not in accordance with law inasmuch as the objections invited under Section 5-A were not decided by the Competent Authority. There was also a plea of hostile discrimination inasmuch as various parcels of lands were released from acquisition indiscriminately.

2.6 The learned Single Judge by a common judgment and order dated 10.12.19998 allowed the respective writ petitions and quashed the Scheme framed by the IDA as well as the land acquisition proceedings initiated by the State Government, mainly on three grounds, namely,:-

(i) The objections invited under Section 5-A of the L.A. Act were not decided by the Competent Authority, i.e., State Government.

(ii) There was hostile discrimination against the respondents by the appellant and the State of Madhya Pradesh inasmuch as the various parcels of land owned by several other persons and societies forming part of the same scheme were released by the appellant violating the fundamental rights of the respondents as guaranteed under Article 14 of the Constitution of India.

(iii) That in view of Section 54 of the Adhiniyam, the Scheme lapsed as it was not implemented within three years from the date of its publication as provided under Section 54 of the Adhiniyam.

2.7 Feeling aggrieved and dissatisfied with the common judgment and order passed by the learned Single Judge, quashing and setting aside the entire acquisition proceedings as well as quashing and setting aside Scheme No. 97 on the ground that the same had lapsed in view of Section 54 of the Adhiniyam, the IDA preferred the writ appeals before the Division Bench of the High Court. By the impugned common judgment and order, the Division Bench of the High Court has dismissed the said appeals, which has given rise to the present appeals.

3. Shri Balbir Singh, learned Additional Solicitor General of India, assisted by Shri Sanjay Kapur, learned counsel, appearing on behalf of the IDA has vehemently submitted that in the facts and circumstances of the case, the learned Single Judge as well as the Division Bench of the High Court have materially erred in quashing and setting aside the entire

acquisition proceedings as well as Scheme No. 97 framed under the Adhiniyam.

3.1 It is further submitted by the learned Additional Solicitor General that the learned Single Judge allowed the writ petitions declaring Scheme No. 97 as illegal and invalid and quashed and set aside the entire acquisition proceedings under the Act, 1894, mainly on three grounds, namely:-

(i) That there was no delegation of power by the State Government with regard to Section 5-A of the Act, 1894 to Collector;

(ii) That IDA failed to take substantial steps to implement the scheme within a period of three years from the date of final publication as envisaged under section 54 of the Adhiniyam; and

(iii) That huge and big chunk of land, out of the total land sought to be acquired by the Authority, has been released.

3.2 Insofar as the finding recorded by the learned Single Judge, as confirmed by the Division Bench, that there was no delegation of power to the Collector with respect to Section 5-A of the Act, 1894 is concerned, learned Additional Solicitor General has submitted as under:

(i) That Section 5-A of the Act, 1894 provides for inviting and hearing of objections from the landowners by the appropriate authority and then preparation of report thereof. It is submitted that insofar as the decision on the report by the Appropriate Government is concerned, it is taken under section 6 of the Act, 1894. Section 5-A merely declares that the decision of the Appropriate Government on the report would be final. Thus, Section 5-A

does not require any further delegation of power. The decision on the report is required to be taken under Section 6 of the Act, 1894.

(ii) Further, it is submitted that the State Government *vide* its letter dated 22.03.1985 delegated its power to the District Collector to act as Dy. Secretary of the Revenue Department and to the Commissioner of the Division, to act as Secretary of the Revenue Department, to adjudicate matters related to land acquisition by exercising powers given under Sections 4, 5, 6 and 17 of the Act, 1894. A bare reading of Sections 4 to 6 of the Act, 1894 would reveal that the power given to the District Collector and to the Commissioner under these sections are consequential and cannot be separated inasmuch as one section leads to another, which finally culminates in the passing of declaration under Section 6 of the Act, 1894.

(iii) Further, a declaration under section 6 of the Act, 1894 could be passed only after the report submitted under section 5-A has been considered by the appropriate government. It is respectfully contended that even though the order dated 22.03.1985 does not specifically mention Section 5-A, the same is implied in the said order.

(iv) Under section 5-A of the Act, the objections are required to be considered by the Collector. Section 3(c) of the Act, 1894 defines Collector as under:

> "3(c) The expression Collector means the Collector of a District, and includes a Dy. Commissioner and any Officer specially appointed by the appropriate Govt. to perform the functions of a Collector under this Act."

3.3 It is contended that in the present case, apart from being specially appointed by the appropriate Government to perform the functions of a

Collector, the Authority who has considered the objections u/s 5-A is the Collector of a District. The definition of the Collector is an inclusive one and means the Collector of the District and includes Dy. Commissioner as well. Further the State Government *vide* its circular dated 06.03.1987 conferred power to the Dy. Collector for exercising functions of the Collector for acquisition of land in their areas.

3.4 It is further contended that Article 166 of the Constitution of India provides that all executive action of the Government of a State shall be expressed to be taken in the name of the Governor and orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order on instruction which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

3.5 It is submitted that therefore the learned Single Judge as well as the Division Bench of the High Court have materially erred in quashing and setting aside the entire acquisition proceedings on the ground that there was no delegation of power by the State Government with regard to Section 5-A of the Act, 1894 to the Collector.

It is further submitted that even the learned Single Judge specifically observed and held that except for technical irregularity, the award cannot be declared invalid.

3.6 As regards the quashing and setting aside Scheme No. 97 on the ground that IDA failed to take substantial steps to implement the scheme

within three years from the date of publication as per section 54 of the Adhiniyam, it is submitted that section 54 of the Adhiniyam provides that "if the Town and Country Development Authority fails to commence implementation of the Town Development Scheme within a period of three years from the date of notification of the final scheme under section 50, it shall, on the expiration of the said period of three years, lapse."

3.7 It is submitted that in the present case the substantial steps were taken within three years. That before the expiration of three years when the negotiations failed, the State Government immediately issued the notification under Section 4 of the Act, 1894.

3.8 It is next submitted that in the present case declaration of intention to prepare a town development scheme under section 50(1) was issued on 13.03.1981; publication of the said declaration under Section 50(2) was carried out on 10.07.1981; final development scheme was published in the Official Gazette under section 50(7) of the Adhiniyam on 08.06.1984; the State Government was requested to acquire the land on 4.06.1987, i.e., within three years of the final publication. It is submitted that substantial steps taken within these three years are as under:

	Mutual Negotiation between the Petitioner Authority and the landowners' u/s 56 of the Adhiniyam
23.10.1984	Final sanction scheme was prepared and sent to the Joint Director, Town and Country Planning and Commissioner Municipal

	Corporation for being made available to the general public
01.03.1986	Patwari of the Petitioner Authority directed to produce the revenue records
24.11.1986	Petitioner Authority requested the Collector to send the Patwari for preparation of the proposal of the land acquisition
06.09.1986	State of MP issued circular to all concerned to proceed with whatever is required to be followed in cases relating to land acquisition
16.12.1986	Petitioner Authority sought NoC from the Town and Country Planning Department, of proposed acquisition of the land in question
31.01.1987 24.02.1987	Reminders sent to the Town & Country Planning Department for giving NoC.
15.04.1987	NoC obtained by the Town & Country Planning Department
04.06.1987	Since Negotiation failed, State Govt. was requested by the Petitioner to acquire the land
24.07.1987	Notification issued u/s 4 of the L.A. Act

3.9 It is submitted that in view of the timeline set out above, the learned Single Judge has completely erred in declaring the scheme as having lapsed on the ground of non-implementation of the scheme under section 54 of the Adhiniyam. It is submitted that the words “commence implementation” occurring in Section 54 do not mean completion of implementation of the scheme. It is submitted that the only reasonable interpretation of Section 54 would be that some steps should be taken by the Authority for implementation of the scheme and must have an intention to implement the scheme.

In support of his above submission, reliance is placed on the decision of the Madhya Pradesh High Court in the case of ***Sanjay***

Gandhi Grih Nirman Sahakari Sanstha Maryadit v. State of M.P. & Others, reported in AIR 1991 MP 72. It is submitted that a special leave petition against the said decision has been dismissed by this Court. It is submitted that in the aforesaid decision, it was held as under:

> "S. 54 does not appear to apply when substantial steps have been taken within three years to implement the scheme. The Court had also taken into consideration S. 56, 57 and 58 of the Adhiniyam and has taken a view that the words 'fails to implement' would means failure to take any substantial steps for the implementation of the scheme and if no such step is taken within three years the scheme will lapse…"

It is submitted that therefore the learned Single Judge as well as Division Bench of the High Court have materially erred in declaring the scheme as having lapsed on the ground of non-implementation of the scheme under Section 54 of the Adhiniyam.

3.10 Without prejudice to the above, it is further submitted that Section 54 of the Adhiniyam is clear in its terms that in case the Development Authority failed to commence implementation of the scheme (which means taking substantial steps) within the period of three years from the date of notification, the scheme shall lapse but the acquisition shall not. It is averred that once the land is acquired, it vests in the Government and once it is vested in the Government, it cannot be transferred back and it becomes the property of the Government.

3.11. As regards the finding recorded by the learned Single Judge on hostile discrimination and quashing and setting aside the entire

acquisition proceedings on the ground that a huge and big chunk of land, out of the total land, has been released and therefore to continue with the acquisition with respect to rest of the land is discriminatory and violative of Article 14 of the Constitution of India, it is submitted that the learned Single Judge as well as the Division Bench have not properly appreciated the grounds on which the lands were released. That the learned Single Judge as well as the Division Bench have materially erred in not properly appreciating the fact that the release of the land would depend on the requirement. It is submitted that it is settled law that where the land is acquired for establishing a residential, commercial, or industrial area and the application for release of the land reveals that the land has been used for the same purpose, the Government may release the land, if its existence does not by any means hinder development as per the notification for acquisition. Reliance is placed on the decisions of this Court in the cases of ***Rajasthan State Industrial Development and Investment Corporation v. Subhash Sindhi Cooperative Housing Society, Jaipur, (2013) 5 SCC 427; Union of India v. Bal Ram Singh, 1992 Supp (2) SCC 136; Sube Singh v. State of Haryana, (2001) 7 SCC 545; Jagdish Chand v. State of Haryana, (2005) 10 SCC 162; and Dharam Pal v. State of Haryana, (2009) 2 SCC 397***.

3.12 It is next contended that in the present case, the lands were acquired for residential, park and industrial purposes. That hence the

release of land has not prejudiced or affected the integrity of the scheme. That the end result of the release of some land was that the total area of the scheme has become lesser to that extent but the integrity of the scheme remains the same.

3.13 It is submitted that as such in the present case the IDA filed a clarification giving reasons regarding land released out of Scheme No. 97. That however the learned Single Judge failed to appreciate those reasons.

3.14 It is further submitted that the following were the reasons to release some of the land proposed to be acquired:

a. 111.156 hectors of land were released in favour of Housing Cooperative Societies - As stated above that this release has no impact on the implementation of the scheme because the object of the said housing societies and of the scheme was the same. It may further be pointed out that the Authority/ State Govt. had released the land only of those societies who had either developed or started development of colony or had acquired the title to the land or had obtained exemption u/s 20 of the Urban Land (Ceiling & Regulation) Act, 1976 before publication of final scheme u/s 50 (7) of the Adhiniyam. It may be submitted that the Respondents have not fulfill any of these conditions, therefore, it cannot be said that they are similarly situated with the other Housing Societies.

In case of R-1**/** Burhani Nagar Society, admittedly the exemption u/s 20 of the Urban Land Ceiling Act was granted to the Burhani Nagar on 30.09.1988 i.e., much after the final declaration of the scheme u/s 50 (7) of the Adhiniyam and also after the publication of notification u/s 4 of the Act. It is also pertinent to mention that the said Burhani Nagar Society had purchased the land by a registered sale deed on 03.10.1988 i.e., after publication of notification u/s 4 of the Act.

b. 104.524 hectors of land released from the scheme – As stated above, the land use of the said land was either agricultural or regional park.

c. Release of land having area 46.116 hectors - Aforesaid land was released by the Land Acquisition Officer while considering the objections u/s 5-A of the Act because of certain reasons like existing houses, religious places, different land use etc.,

3.15 It is further submitted by Shri Balbir Singh, learned ASG that in the present case some of the lands have been acquired and in fact used for the park.

3.16 Making above submissions, it is prayed that the present appeals be allowed and the impugned common judgment and order passed by the Division Bench dismissing the writ appeals and the common judgment and order passed by the learned Single Judge, quashing and setting aside the entire acquisition proceedings under the Land Acquisition Act as well as quashing and setting aside Scheme No. 97 under section 54 of the Adhiniyam, be quashed and set aside. It is submitted that if the impugned judgment and order passed by the High Court is not interfered with, the same shall affect the development of the area under the scheme, which may be against public interest.

4. All these appeals are vehemently opposed by Shri Basava Prabhu S. Patil, Shri Subash Samvatsar, Shri N.K. Mody, learned Senior Advocates, Shri Puneet Jain and Shri Mayank Kshirsagar, learned counsel appearing on behalf of the respective original writ petitioners.

4.1 Shri Punit Jain, learned counsel appearing on behalf of the respective contesting respondents in Civil Appeal No.5099/2022 @ SLP No. 34880/2014, Civil Appeal No. 5101/2022 @ SLP No. 34907/2014, Civil Appeal No. 5103/2022 @ SLP No. 34879/2014 and Civil Appeal No. 5077/2022 @ SLP 34855/2014 has vehemently submitted that in the facts and circumstances of the case neither the learned Single Judge

nor the Division Bench of the High Court has committed any error in quashing and setting aside the scheme(s) and acquisition proceedings with respect to the lands in question.

4.2 It is submitted by Shri Punit Jain, learned counsel appearing on behalf of the original writ petitioners that the learned Single Judge as well as the Division Bench of the High Court has struck down the scheme as well as the acquisition, *inter alia*, on the following grounds: -

(i) That the scheme has lapsed in view of section 54 of the M.P. Nagar Tatha Gram Nivesh Adhiniyam.

(ii) That a substantial portion of the lands forming part of the two schemes 97(2) and 97(4) had been released and continuing the scheme thereafter and acquiring the lands of the other landowners (i.e., the respondents herein) is an act of hostile discrimination being in violation of Article 14.

(iii) That there was no delegation of the power of the State Government under section 5A to the Commissioner and hence, the decision for acquisition of land under section 5A is not by a proper authority. Therefore, the acquisition is vitiated.

4.3 It is contended that in the present case the date of publication of final scheme under section 50(7) is 08.06.1984. No steps were taken by the IDA to implement the scheme for approximately three years, except engaging in so called negotiations with the original land owners to acquire the land by mutual consent. The notification under Section 4 of the Land Acquisition Act (LA Act) was issued on 24.07.1987 and the

declaration under Section 6 of the LA Act was made on 03.10.1988. It is submitted that the award came to be declared under Section 11 of the LA Act on 06.03.1991. That therefore, when the final scheme No. 97 was published on 08.06.1984, the IDA was expected to "implement" the scheme within the period of three years from the said date.

4.4 It is further contended that the word "implement" appearing in section 54 of the Adhiniyam must be understood narrowly and must therefore, mean full and complete implementation. It is submitted that in any case, the word "implement" ought to be understood to mean "substantial implementation."

4.5 It is submitted that in the present case, the learned Single Judge did not accept the narrow view and proceeded to test the actions of the IDA on the "substantial implementation" principle. It is submitted that the High Court has found that sending a request for acquisition of land, four days before the deadline did not satisfy the "substantial implementation" test.

4.6 It is next submitted that the word "implement" appearing in Section 54 ought to be interpreted purposively looking at the purpose of the said section along with the other provisions of the Adhiniyam.

4.7 It is further contended with regard to Section 54 on non-implementation of the scheme as under: -

(a) That Section 54 must be understood as the time-cap for the restriction provided in section 53. It is submitted that, section 53 places a restriction on land owners whose lands have been notified to be part of a Town Development scheme to carry out development of this land. That such restriction cannot be

for an unlimited duration and hence section 54 gives the maximum period of three years up to which such restrictions can continue.

(b) While the restrictions under section 53 are in place, substantial steps are required to be taken for “acquisition” of land either by agreement or under the Land Acquisition Act, 1894.

(c) The manner of acquisition has been provided under Section 56 of the Act and Rule 19 of the then existing M.P. Nagar Tatha Gram Nivesh Niyam, 1975, prescribes the steps to be taken in the process of acquisition. Section 56 provides two modes of acquisition: -

(i) Proceed to acquire by agreement, and

(ii) On failure to acquire by agreement, proceed to acquire under the Land Acquisition Act.

Rule 19 of the 1975 Rules, read with section 56, provide as under: -

> “19. Acquisition of land - (1) For the purpose of land acquisition under section 56 of the Act, the land shall be in the Town and Country Development Authority subject to the following terms and conditions namely:-
>
> (i) Within three years from the date of publication of the Town Development Scheme under Section 50, the town and country development authority shall proceed to acquire the land required for the implementation of the scheme.
>
> (ii) Where such acquisition is by agreement, the land shall vest in the Town and Country Development Authority on terms and conditions arrived at through such agreement.
>
> (iii) On failure of agreement the Town and Country Development Authority shall request the state government to acquire such land under the provisions of the Land Acquisition Act, 1894 (1 of 1894) on payment of compensation awarded under that Act.
>
> (iv) Declaration shall be published under section 6 of the Land Acquisition Act, 1894 (1 of 1894)

(v) After such declaration the collector shall proceed to take order for the acquisition of the land under the said Act, and the provisions of the Act shall apply *so* far as may be, apply to the acquisition of the said land with the modification that the market value of the said land shall be the determining factor."

Rule 19(1)(i) contains a general statement enabling the authority to "proceed to acquire" the land required for implementation of the scheme. This, can be done in two ways - (1) acquisition by agreement under 19(1)(ii), and on failure to acquire by agreement, (2) by compulsory acquisition the steps necessary for which are provided under 19(1)(iii)(iv) and (v). Thus, for compulsory acquisition there should be :-

(1) A request by the Town and Country Development Authority for compulsory acquisition,

(2) A declaration under section 6 of the Land Acquisition Act, and

(3) A request by the Collector to the appropriate government for an order for acquisition of land under section 7 of the Land Acquisition Act, 1894.

4.7 It is submitted that thus, while the restrictions under section 53 are in place, the Authority is expected to "implement" the scheme. During the period, the authority must act in a manner and reach the stage where the position becomes "irreversible" or substantially irreversible" so far as the land owner is concerned, i.e.,

(i) The land of the land owner is either "acquired" by agreement, in which case he would get the agreed compensation for his land; or

(ii) Substantial steps are taken for compulsory acquisition of the land under the Land Acquisition Act, 1894 such that the position reaches the stage of the order under section 7 of the said Act; or

(iii) Passing of an award under section 11 or takeover of possession under section 16 resulting in complete vesting is however not the requirement of "implementation" for the purposes of section 54 read in conjunction with section 56 read and rule 19.

4.8 It is further submitted that as per Section 55, the land for a town development scheme would be land needed for public purpose under the Land Acquisition Act. That once a declaration under section 6 is issued under section 6(3) of the LA Act, the declaration becomes conclusive evidence that the land is needed for public purpose. It is submitted that the statutory fiction under section 55 also continues for a period of three years, for, if the scheme lapsed under section 54, the statutory fiction under section 55 also comes to an end. That therefore, before the period lapses, a declaration under section 6(3) takes over and necessity of a statutory fiction under section 55 thereafter is no longer necessary.

4.9 It is averred that in a case where a notification under section 4 is issued after expiry of 3 years from the date of final scheme under section 50(7), the statutory fiction under section 55 would come to an end and acquisition for a lapsed scheme would not be for a public purpose. It is submitted that acquisition of land for a "public purpose" is a *sine-qua-non,* absent which no acquisition would be valid.

4.10 It is next submitted that taking steps for acquisition by agreement cannot be said to amount to “taking steps” to implement the scheme within a period of three years. That as rightly observed by the learned Single Judge, even assuming that IDA was making efforts to acquire the lands through private negotiations with the land owners, this effort of the IDA would not create any bar against getting the scheme implemented under the Adhiniyam. That as rightly observed by the learned Single Judge, both the steps could have been taken by the IDA simultaneously. Therefore, the learned Single Judge as well as the Division Bench of the High Court have rightly held that the scheme in question had lapsed in view of Section 54 of the Adhiniyam as the scheme was not implemented within a period of three years.

4.11 As regards the competence of the Collector to act as “appropriate government” for the purposes of section 5A and 6 of the LA Act, 1894, it is submitted that in the present case after the issuance of the notification under section 4, objections under section 5A were invited which were collated by the Deputy Collector and Land Acquisition Officer who filed his report before the Collector. The collector proceeded to decide the objections under section 5A of the Act. That thereafter, the collector proceeded to issue a declaration under section 6 of the Act. It is submitted that in the present case, the Hon’ble Minister did not delegate

his powers under section 5A of the Land Acquisition Act, 1894 to the Collector, who was empowered to act under sections 4, 5, 6 and 17 of the Act.

4.12 It is contended that the power to take a decision under section 5A is the power of the “appropriate government”, which in view of section 3(ee) would mean the State Government in the facts of the present case. That in the present case, the powers of the “appropriate government” under section 5A have not been delegated to any authority by the order dated 22.03.1985.

4.13 It is next submitted that powers under section 6 have to be exercised “under the signature of a Secretary to such government or of some officer duly authorized to certify its orders”. That the said powers have been conferred by the Government order dated 22.03.1985 upon the “Divisional Commissioner.” The declarations under section 6 have been issued by and under the signatures of the Collector as Deputy Secretary. Therefore, the High Court is fully justified in its conclusion that the Collector, who had exercised powers of the State Government under section 5A, did not have the said powers.

4.14 It is further submitted that even otherwise, as rightly observed and held by the High Court, there was a hostile discrimination on the part of the State Government and the IDA. That in the present case, out of

531.428 hectares of land identified and included for schemes at the time of final notification of the scheme under section 50(7), 261.796 hectares of land has already been released by the IDA/State of Madhya Pradesh. That once the large portions of the land have been released, the schemes as originally envisaged cannot be implemented. Since the scheme and the acquisition notification have been quashed, the respondents did not avail of the remedy of increase in compensation by filing a reference under section 18 of the Act. That in case, this Court upholds the scheme and the acquisition, the respondents may be given liberty to file reference, if so advised, for increase in compensation determined by the LAO.

4.15 It is further submitted that even otherwise the appeals filed by the IDA have since been rendered infructuous in view of the amendment in Section 50 of the Adhiniyam by 2019 Amendment Act. That as per amended section 50(1)(b) of the Act, where a town development scheme has been notified under the repealed provisions of the Act, but development has either not started or not been taken up for any reason, the same shall lapse. It is submitted that in the present case, insofar as others schemes are concerned, the same have been declared to have lapsed in view of amended section 50(i)(b). It is submitted that since the scheme in question was quashed by the High Court in year 1988 which

order was confirmed by the Division Bench in the year 2014, the scheme could not be acted upon. That in the present case, neither the possession of the lands has been taken by the authority (as there was stay orders by the High Court) nor compensation for the schemes has been deposited. It is submitted that admittedly out of 531.428 hectares, 261.796 hectares of land out of approved scheme layout has been released and no land has been acquired through mutual negotiations with the land owners. Therefore, in the facts and circumstances of the case, learned Single Judge as well as the Division Bench of the High Court have rightly quashed the scheme, treated it as having been lapsed under Section 54 of the Adhiniyam and have rightly quashed the acquisition proceedings under the LA Act.

4.16 Other learned senior counsel/counsel appearing on behalf of the original writ petitioners have virtually made the same submissions as made by Shri Punit Jain and therefore, the same are not repeated. All the learned counsel appearing for the original writ petitioners have supported the impugned judgment and order passed by the High Court on the lapse of the scheme as well as quashing and setting aside the acquisition proceedings.

5. We have heard learned counsel for the respective parties at length.

By the impugned common judgment and order, the High Court has quashed Scheme No. 97 framed by the appellant – Indore Development Authority framed in exercise of the powers conferred under Section 50 of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973, as well as the entire acquisition proceedings under the Land Acquisition Act, 1894 with respect to the lands covered under Scheme No. 97. From the judgment and order passed by the learned Single Judge, confirmed by the Division Bench, it appears that the High Court has set aside the scheme as well as the acquisition proceedings, *inter alia*, on the following grounds:

(i) That the scheme has lapsed in view of section 54 of the M.P. Nagar Tatha Gram Nivesh Adhiniyam;

(ii) That a substantial portion of the lands forming part of the two schemes 97(2) and 97(4) had been released and continuing the scheme thereafter and selectively acquiring the lands of the other landonwers (i.e., the respondents herein) is an act of hostile discrimination being in violation of Article 14; and

(iii) There was no delegation of the power of the State Government under Section 5-A to the Commissioner and hence, the decision for acquisition of the land under Section 5A is not by a proper authority. Acquisition is thus vitiated.

6. As regards the finding recorded by the High Court that Scheme No. 97 has lapsed in view of section 54 of the Adhiniyam and in order to consider whether the High Court is justified in quashing the entire

scheme on the ground that the same has lapsed under section 54 of the Adhiniyam, the relevant provisions of the Adhiniyam are required to be referred to, which are as under:

> **"**50. Preparation of Town Development Schemes**.** - (1) The Town and Country Development Authority may, at any time, declare its intention to prepare a town development scheme.
>
> (2) Not later than thirty days from the date of such declaration of intention to make a scheme, the Town and Country Development Authority shall publish the declaration in the Gazette and in such other manner as may be prescribed.
>
> (3) Not later than two years from the date of publication of the declaration under sub-section (2) the Town and Country Development Authority shall prepare a town development scheme in draft form and publish it in such form and manner as may be prescribed together with a notice inviting objections and suggestions from any person with respect to the said draft development scheme before such date as may be specified therein, such date being not earlier than thirty days from the date of publication of such notice.
>
> (4) The Town and Country Development Authority shall consider all the objections and suggestions as may be received within the period specified in the notice under sub-section (3) and shall, after giving a reasonable opportunity to such persons affected thereby as are desirous of being heard, or after considering the report of the committee constituted under sub-section (5) approve the draft scheme as published or make such modifications therein as it may deed fit.
>
> (5) Where the town development scheme relates to reconstitution of plots, the Town and Country Development Authority shall, notwithstanding anything contained in sub-section (4), constitute a committee consisting of the Chief Executive Officer of the said authority and two other members of whom one shall be representative of the Madhya Pradesh Housing Board and the other shall be an officer of the Public Works Department not below the rank of an Executive Engineer nominated by the Chief Engineer, Public Works Department for the purpose of hearing objections and suggestions received under sub-section (3).
>
> (6) The committee constituted under sub-section (5) shall consider the objections and suggestions and give hearing to such persons as are desirous of being heard and shall submit its report to the Town and Country Development Authority within such time as it may fix along with proposals to,-

(i) define and demarcate the areas allotted to or reserved for public purpose;

(ii) demarcate the reconstituted plots;

(iii) evaluate the value of the original and the reconstituted plots;

(iv) determine whether the areas reserved for public purpose are wholly or partially beneficial to the residents within the area of the scheme;

(v) estimate and apportion the compensation to or contribution from the beneficiaries of the scheme on account of the reconstitution of the plot and reservation of portions for public purpose;

(vi) evaluate the increment in value of each reconstituted plot and assess the development contribution leviable on the plot holder :

Provided that the contribution shall not exceed half the accrued increment in value;

(vii) evaluate the reduction in value of any reconstituted plot and assess the compensation payable therefor.

(7) Immediately after the town development scheme is approved under sub-section (4) with or without modifications the Town and Country Development Authority shall publish in the Gazette and in such other manner as may be prescribed a final town development scheme and specify the date on which it shall come into operation.

xxx xxx xxx

54. Lapse of scheme - If the Town and Country Development Authority fails to commence implementation of the town development scheme within a period of two years or complete its implementation within a period of five years from the date of notification of the final scheme under Section 50, it shall, on expiration of the said period of two years or five years, as the case may be, lapse :
Provided that, if a dispute between the authority and parties, if any, aggrieved by such scheme, is brought before a Court or Tribunal of competent jurisdiction, for consideration, the period for which such dispute pending before such Court or Tribunal shall not be reckoned for determination of the lapse of the scheme.]

xxx xxx xxx

56. Acquisition of land for Town and Country Development Authority. - The Town and Country Development Authority may at any time after the date of publication of the final town development scheme under Section 50 but not later than three years therefrom, proceed to acquire by agreement the land required for the implementation of the scheme and, on its failure so to acquire, the State Government may, at the request of the Town and Country Development Authority, proceed to acquire such land under the

provisions of the Land Acquisition Act, 1894 (No. 1 of 1894) and on the payment of compensation awarded under that Act and any other charges incurred by the State Government in connection with the acquisition, the land shall vest in the Town and Country Development Authority subject to such terms and conditions as may be prescribed."

Thus, as per Section 54 of the Adhiniyam, if the Town and Country Development Authority fails to **commence** implementation of the Town Development Scheme within the period stipulated in section 54 of the Adhiniyam, the Scheme shall lapse. Therefore, the words "commence implementation" are vital and important words which are required to be considered and interpreted.

7. It is the case on behalf of the Development Authority that the following steps were taken for implementation of Scheme No. 97 within three years, i.e., 8.6.1984, which are as under:

Date	Particulars
13.03.1981	Declaration of intention to prepare a town development scheme as per section 50(1)
10.07.1981	Publication of the declaration u/s 50(2)
08.06.1984	Publication of the final development scheme in the official gazette u/s 50(7)
	Mutual Negotiation between the Petitioner Authority and the landowners' u/s 56 of the Adhiniyam
23.10.1984	Final sanction scheme was prepared and sent to the Joint Director, Town and Country Planning and Commissioner Municipal Corporation for being made available to the general public
01.03.1986	Patwari of the Petitioner Authority directed to get the revenue records

24.11.1986	Petitioner Authority requested the Collector to send the Patwari for preparation of the proposal of the land acquisition
06.09.1986	State of MP issued circular to all concerned to proceed which is required to be followed in cases relating to land acquisition
16.12.1986	Petitioner Authority sought NOC from the Town and Country Planning Department of proposed acquisition of the land in question
31.01.1987 & 24.02.1987	Reminders sent to the Town & Country Planning Department for giving NOC
15.04.1987	NOC obtained by the Town & Country Planning Department
04.06.1987	Since negotiation failed, State Govt. was requested by the petitioner to acquire the land
24.07.1987	Notification issued u/s 4 of the L.A. Act

At this stage, it is required to be noted that as per section 56 of the Adhiniyam, the Development Authority may at any time after the date of publication of the final town development scheme under section 50, but not later than three years therefrom, proceed to acquire by agreement the land required for the implementation of the scheme and, on its failure so to acquire, the State Government may, at the request of the Development Authority, proceed to acquire such land under the provisions of the Act, 1894. Thus, under section 56 of the Adhiniyam, within three years the Development Authority was required to proceed to acquire by agreement the land required for the implementation of the scheme and only thereafter and on its failure so to acquire, the State

Government may, at the request of the Development Authority, proceed to acquire such land.

8. It is the case on behalf of the Development Authority that in the present case since negotiations failed and the Development Authority failed to acquire the land by agreement, the Development Authority requested the State Government on 4.06.1987 to acquire the land, which request was made within a period of three years from the date of finalization of the scheme. Therefore, it is the case on behalf of the Development Authority that the scheme shall not have lapsed under section 54 of the Adhiniyam. It is the case on behalf of the Development Authority that taking various steps between 8.06.1984 and 4.06.1987 can be said to be in furtherance of, or commencing implementation of the scheme.

However, on the other hand and as per the High Court, actual implementation of the scheme is a must and that there were no substantial steps to implement the scheme within three years. That to make the request four days before the completion of three years would not be sufficient and therefore the scheme has lapsed under section 54 of the Adhiniyam. As observed hereinabove, the words used in Section 54 of the Adhiniyam are “fails to commence implementation”. That does not mean that there must be implementation of the scheme within the

time stipulated under section 54 of the Adhiniyam. There is a clear distinction between the words “implementation” of the scheme and “to commence implementation”.

9. An identical question came to be considered by the Madhya Pradesh High Court in the case of ***Sanjai Gandhi Grah Nirman Sahkari Sanstha Maryadit v. State of M.P. and others, reported in 1990 SCC OnLine MP 115 : AIR 1991 MP 72***. While interpreting the words “implementation of the scheme” and the word “implementation” occurring in section 54 of the Adhiniyam, it was observed and held that the word “implementation” occurring in section 54 of the Adhiniyam cannot be construed to mean that even after substantial steps have been taken by the authority towards the implementation of the scheme, the scheme shall lapse after the expiry of three years because of its non-completion within that period. While observing and holding so, in paragraphs 16 to 20, it was observed as under:

> **“16.** It has next been contended by learned counsel for the petitioners that in accordance with the provisions contained in S. 54 of the Adhiniyam the scheme has lapsed because the Indore Development Authority has failed to implement the scheme within a period of three years from the date of the publication of the scheme under S. 50 of the Adhiniyam. The learned counsel for all the petitioners have laid much emphasis on the fact that the word ‘implementation’ would clearly mean fulfilment, performance, accomplish, complete, carry out and as such from the dictionary meanings in the Webster Dictionary, Chambers Dictionary, Oxford Dictionary or any other dictionary, there can only be one meaning to the word ‘implementation’ that the scheme has to be completed or carried out in all respects within the prescribed period of three years and if the Indore Development Authority fails to implement the scheme within that period the scheme shall lapse in view of the statutory provision of S. 54.

17. On the other hand it has been argued that the word 'implementation' has to be construed in the context of the Adhiniyam itself. The whole scheme of the Adhiniyam in respect of formulation of the scheme and the implementation of the scheme has to be taken into consideration before holding that the implementation would only mean the completion.

18. For properly appreciating the respective arguments of the parties let us read the different provisions contained in the Adhiniyam in respect of the preparation and implementation of the scheme. Section 50 provides for the preparation, of a town development scheme and different stages have been provided for the preparation of the scheme and sub-section (7) of S. 50 of the Adhiniyam provides that as soon as the town development scheme is approved under sub-section (4) with or without modifications the Town and Country Development Authority shall publish in the gazette and in such other manner as may be prescribed a final town development scheme and specify the date on which it shall come into operation. After the final publication of the scheme a power of revision has been provided in S. 51, wherein the Director of Town and Country Planning has been given a power, on an application filed by any of the aggrieved person or suo motu, to examine the record of the scheme and pass any such order modifying the scheme as he may deem fit after perusing the record and during that time he may suspend the execution of the scheme. This power of the Director can be exercised by him within two years from the date of the publication of the final, scheme. Then again under S. 52 of the Adhiniyam the State Government has a power to give directions in respect of modification of a scheme, revoking the scheme or for framing a fresh scheme. Then S. 54 of the Adhiniyam provides for the lapse of a scheme if it is not implemented within a period of three years.

Section 56 of the Adhiniyam provides that after the date of publication of the final scheme under S. 50 the Authority may proceed to acquire the land required for the implementation of the scheme within a period of three years by agreement and if there is a failure in acquiring the land by agreement then request for the acquisition of the land may be made to the authority. Then S. 57 provides for the development which clearly says that when the land has vested in the Authority under S. 56 of the Act in accordance with the provisions of the Town Development Scheme, the authority shall take necessary steps to develop the land. Thereafter also the State Government or the Director has a supervisory power to ensure that the development is in accordance with the scheme and may also issue directions to the authority which are binding on the authority. As such the aforesaid provisions made in the Adhiniyam have to be taken into consideration before interpreting the word 'implementation.'

After a scheme is published under S. 50(7) of the Adhiniyam, the Director has an authority to revise the final scheme within a period of two years and then under S. 56 of the Adhiniyam the Authority has been given power to initiate negotiations for acquisition a within a period of 3 years, failing which the land acquisition proceedings may be initiated and S. 57

postulates the commencement of the development work after the land is acquired and is vested in the authority. As such the word ‘implementation’ can never be construed to mean that the scheme should be fulfilled or carried out within a period of three years. Reading S. 54 of the Adhiniyam along with Ss. 56 and 57 of the Adhiniyam the irresistable conclusion is that the intention of the legislature was that if a scheme is lying idle after its final publication for a period of 3 years, then it will lapse. But if steps have been taken by the authorities towards the implementation of the scheme then, the word ‘implementation’ shall not be construed to mean that the period of three years is the period prescribed for the completion of the scheme.

19. In the instant case the scheme is for the preparation of a ring road and developing different facilities and civic conveniences around the ring road. A scheme for a much larger construction and development may be prepared which may even take ten years to complete. If we interpret the word ‘implementation’ in its narrow sense, a big scheme can never be taken in hand by any development authority because it may not be possible to complete that scheme within 3 years. Therefore, that only reasonable interpretation in view of the different provisions of the Adhiniyam, can be that if the development authority takes steps towards the implementation of the scheme and does not sit just idle for a period of three years, then the scheme shall not lapse, but if after the publication of the scheme nothing is done on the part of the authority, towards the implementation of the scheme then that scheme shall lapse.

20. A Division Bench of this Court in the case of *Laxmichand* v. *The Indore Development Authority, Indore* (M.P. No. 390 of 1980 decided on 14-12-81) in which a similar argument was advanced that after the expiry of three years if the scheme is not implemented it lapsed, has held that S. 54 does not appear to apply when substanital steps have been taken within three years to implement the scheme. The Court had also taken into consideration Ss. 56, 57 and 58 of the Adhiniyam and has taken a view that the words ‘fails to implement’ would mean failure to take any substantial steps for the implementation of the scheme and if no such step is taken within three years the scheme will lapse. If substantial steps have been taken within three years though the scheme is not fully implemented within that period the scheme would not lapse and proceedings for acquisition of land under the scheme is a substantial step towards its implementation. We are in respectful agreement with the aforesaid view taken by a Division Bench of this Court and hold that the word ‘implement’ occurring in S. 54 of the Adhiniyam cannot be construed to mean that even if a substantial step has been taken by the authority towards the implementation of the scheme then also the scheme shall lapse after the expiry of three years because of its non-completion within that period.”

We are in complete agreement with the view taken by the Madhya Pradesh in the aforesaid case.

10. At this stage, Rule 19 of the M.P. Nagar Tatha Gran Nivesh Niyam, 1975 r/w Section 56 of the Adhiniyam are required to be referred to. As per section 56 of the Adhiniyam r/w Rule 19 and for the purposes of land acquisition under section 56 of the Adhiniyam, within three years from the date of publication of the final town development scheme under section 50, the Town and Country Development Authority shall proceed to acquire the land required for the implementation of the scheme. The words used are " proceed to acquire" and not "actual acquisition". The intention of the legislature thus seems to be very clear and unambiguous. Therefore, when the Statute provides certain things to be done within the stipulated time mentioned in the Act, the Authority is to be given such time, more particularly while dealing with the scheme which has been framed for the entire area and for the public purpose. In the present case, Scheme No. 97 has been framed and the lands have been acquired for residential, park and industrial purposes. Any other meaning may frustrate the purpose of framing of the scheme for residential, part and industrial purposes.

11. In view of the above and when within three years various steps were taken for implementation of the scheme including the steps to

acquire the land by negotiations and even thereafter on failure to acquire the land by negotiations approaching the State Government to acquire the land under the Land Acquisition Act, the High Court has erred in declaring that the scheme has lapsed under section 54 of the Adhiniyam. The High Court has adopted too narrow a meaning while interpreting and/or considering section 54 of the Adhiniyam.

12. So far as quashing and setting aside the entire acquisition proceedings including sections 4 & 6 notifications issued under the provisions of the Land Acquisition Act with respect to the lands in question on the ground that there was no proper delegation of power to the Collector with regard to Section 5A of the Act, is concerned, it is required to be noted that in the present case, the State Government *vide* its letter dated 22.3.1985 delegated its power to the District Collector as Deputy Secretary of the Revenue Department and to the Commissioner of the division to act as Secretary of the Revenue Department and to adjudicate matters related to land acquisition by exercising powers given under Sections 4, 5, 6 and 17 of the Act, 1894. Merely because Section 5A has not been mentioned in the said order, the entire acquisition proceedings including notifications under Sections 4 & 6 of the Act, 1894 and more particularly the declaration which was issued after considering the report/objections under section 5A cannot be declared illegal.

12.1 Further, a declaration under Section 6 of the Act, 1894 could be issued only after the report submitted under Section 5A has been considered by the appropriate government. Under Section 5A of the Act, the objections are required to be considered by the Collector, i.e., the Collector of a District including a Deputy Commissioner and any other officer especially appointed by the appropriate government to perform the functions of a Collector under the Land Acquisition Act. In the present case, apart from being specially appointed by the appropriate government to perform the functions of a Collector, the authority who has considered the objections under Section 5A is the Collector of a District. Even the State Government *vide* its circular dated 6.03.1987 conferred power on the Deputy Collectors for exercising the functions of the Collector for acquisition of the land in their respective areas.

12.2 An identical question came to be considered by the Madhya Pradesh High Court in the case of ***Adarsh Nagar Grih Nirman Sahkari Sansthan Maryadit, Bhopal v. State of M.P. and Others, reported in 2004 (1) M.P.L.J. 539 : 2003 SCC OnLine MP 329***, in paragraphs 24 to 26, it was observed and held as under:

> **"24.** The submission raised by the learned counsel that this notification (R-6) is bad in law and based on the provisions of sections 4, 5-A and 6 of the Act cannot be accepted. Division Bench of this Court in case of *Gajancm* v. *State of M.P.*, AIR 2000 MP 2, repelled similar submission that such satisfaction was arrived at by Collector/Commissioner, not by State Government the acquisition cannot be challenged on the ground of satisfaction was not arrived at by 'appropriate government'. The business

of the Government is required to be transacted in the name of Governor, it is not possible or practicable that all such business was dealt with by him or by Council of Ministers. In *Gajanan* (supra), it has been held:—

> "33. In State of M.P., Governor had made Rules of Business and Rules of allocation of Business and had also issued instructions thereunder. Under Rule 4 of BAR he had put Revenue Department under the charge of a Minister. He had further allotted business of land acquisition to the Revenue Department. The Revenue Minister was authorised to delegate the power for disposal of any item of business to the Secretary of the Department under Rule 2-A of the Supplementary Instructions issued Rule 13 of Business Rules. Similarly, the government had declared in terms of Entry 49 of Business Allocation Rules that General Administrative Department would be entitled to designate ex-officio of ficers and in exercise whereof it had notified the Revenue Commissioners and Collectors as ex-officio Secretaries/Deputy Secretaries to take decisions in land acquisition matters on behalf of the Government. All this showed that power to deal with land acquisition subject flowed down to Secretary/Deputy Secretary of the Revenue Department or any other of ficial who was declared/appointed/designated so ex-officio for the purpose and once such appointed ex-officio Secretary (Revenue Commissioner) was asked to dispose of land acquisition matters by the Minister-in-charge under Rule 2-A of supplementary instructions, he assumed the jurisdiction to deal with such matters and all his actions and decisions become that of the Government."

25. The question of delegation of such power has been answered in *Gajanan* (supra) as under:

> "33A. Mr. Asudani's reliance on AIR 1957 Mad 48 to suggest that Minister's order to empower ex-officio Secretary (Revenue Commissioner) was invalid as it was not a Government order and that such power could not be delegated by him is wholly misconceived. It is true that a Minister's instruction or direction does not partake the character of a Government order unless formalised in conformity with the Rules of Business but in the present case no such Government order was required to be passed to vest the requisite power in the Revenue Commissioner. It is also fallacious to contend that the Minister could not delegate such power because Governor alone could do that. Once Governor himself had empowered the Minister to ask the Secretary to deal with and dispose of any item of business under the rules, it tantamounted to delegation of power by the Governor himself. We are also not impressed by the submission that such power could be delegated only to "a Secretary" perhaps implying Secretary of the Department. This overlooks a situation where a department may have more than one Secretary and the Minister could delegate the power to any of them."

> **26.** In the instant case Collector has exercised the power of appropriate Government and Deputy Collector has forwarded the objections and submitted the report to the Collector and Collector has exercised the power under section 6, I find no impropriety in the same."

12.3 In the instant case also, when the Collector has exercised the power of the appropriate government and a declaration under section 6 of the Act has been issued after considering the report on the objections under Section 5A of the Act, the High Court has seriously erred in quashing and setting aside the entire acquisition proceedings on the aforesaid ground.

13. So far as the third ground on which the scheme and the entire acquisition proceedings have been set aside, namely, the huge and big chunk of land out of the total land sought to be acquired by the Development Authority which has been released, is concerned, it is required to be noted that out of the total land acquired, 68.11% of the land has been developed and 31.89% has not been developed due to interim orders passed by the Courts. Even otherwise, it is required to be noted that out of the total land covered under the scheme, i.e., 332.616 hectares (277.853 hectares of land acquired through award plus 44.763 hectares of the land owned by the Authority), land has been released for various purposes to the extent of 54.660 hectares and still the remaining land would be to the extent of 267.956 hectares out of which the land

involved in the present appeals would be to the extent of 85.430 hectares. According to the Development Authority, 111.156 hectares of the land covered under the scheme was released in favour of Housing Cooperative Societies because the object of the housing societies and the scheme was the same. According to the Development Authority, the Authority/State Government had released the land only of those societies who had either developed or started development of colonies or had acquired the title to the land or had obtained exemption under section 20 of the Urban Land (Ceiling & Regulation) Act, 1976 before publication of the final scheme under section 50(7) of the Adhiniyam. According to the Development Authority, 104.524 hectares of land covered under the scheme which was released from the scheme, the land use of the said land was either agricultural or regional park. Release of the land having area of 46.116 hectares of land was in response to objections under section 5A of the Act because of certain reasons like existing houses, religious places, different land use etc.

13.1 Thus, from the above, it cannot be said that the release of the land was arbitrary and/or with an object of undue favour to those persons whose lands have been released. As rightly submitted that even otherwise such lands were to be acquired for residential, park and industrial purposes, release of the land which according to the authority

was for valid reasons or valid grounds has not prejudiced or affected the integrity of the scheme. The end result of the release of some land is that the total area of the scheme is lesser to that extent but the integrity of the scheme remains the same. At this stage, it is required to be noted that some of the lands have already been used by the authority for the purpose of a park which is used for the benefit of local people. Under the circumstances, the third ground on which the scheme and the entire acquisition proceedings have been quashed by the High Court does not stand on its legs and the said finding is unsustainable.

14. In view of the above and for the reasons stated above, the present appeals are allowed and the impugned common judgment and order passed by the High Court dismissing the writ appeals and the common judgment and order passed by the learned Single Judge declaring Scheme No. 97 as having lapsed under section 54 of the Adhiniyam and quashing and setting aside the entire acquisition proceedings with respect to the lands in question, are unsustainable and the same deserve to be quashed and set aside and accordingly are hereby quashed and set aside. However, in the facts and circumstances of the case, there shall be no order as to costs.

…….J.
[M.R. SHAH]

NEW DELHI;
MARCH 03, 2023.

……J.
[B.V. NAGARATHNA]