Before B. S. Dhillon and S. S. Dewan, JJ.

OM PARKASH,—*Petitioner.*

versus

MUNICIPALITY BHATINDA and another,—*Respondents.*

Civil Writ Petition No. 2342 *of* 1977

January 16, 1980.

Punjab Municipal Act (III of 1911)—*Sections* 3(13), (*a*) & (*b*), 58, 169, 171 *and* 192(1) (c)—*Constitution of India* 1950—*Articles* 14, 19(1) (*g*) *and* 31—*Section* 192(1) (c) *providing for transfer of land for building and town planning schemes—Such provision—Whether confers arbitrary and unguided power to a Municipal Committee—Such transfer—Whether amounts to acquisition of land and divesting of ownership—Section* 192(1) (c)—*Whether discriminatory in regard to the payment of compensation—Provisions of section* 192(1) (c)—*Whether offend against Articles* 19(1) (*g*) *and* 31 *of the Constitution.*

Held, that the Municipal Act 1911 has been enacted by the Legislature for making better provisions for the administration of Municipalities in Punjab and deals with the various aspects of the problems facing the Municipal Administration. The duties of the Municipal Committees and the spheres in which they are supposed to be of assistance to the citizens, have been elaborately provided for under the various heads in the Act itself. Section 192 is one ladder in the whole set up which authorises the Committee to draw up a building scheme for built areas and a planning scheme for unbuilt areas. There are sufficient guidelines given in the Act itself for the framing of such schemes. Clauses (a), (b) and (c) of section 192(1) of the Act again give sufficient guide-lines for the framing of the schemes postulated therein. In clause (c), it is specifically mentioned that the land in such unbuilt area, which shall be transferred to the Committee, will be for public purposes including use as a public street by the owners of the land. When town planning scheme is prepared by the Committee under the provisions of sub-section (1) of section 192 of the Act, public notice of the scheme is required to be given. Each affected person is entitled to prefer objections to the scheme and the Committee under sub-section (3) of section 192 is duty bound to consider the said objections and after due consideration and decision forward the scheme as originally drawn up or in a modified form to the Deputy Commissioner, who again is entitled in law to return the scheme to the Committee for reconsideration and resubmission if he is so advised. The scheme is ultimately sent to the State Government, who may sanction the same or may refuse to sanction the same. If a particular provision is made in the scheme with ulterior motive or

with *mala fide* intention to deprive any land-owner of his land, the same will be struck down by the Courts. But the provisions of the Municipal Act including section 192 (1) (c) give sufficient guideline for the preparation of the scheme. This section, therefore, does not give unlimited, unguided or arbitrary powers to the authorities.

(para 8).

Held, that the scheme of the Act visualizes private streets. The Town Planning Scheme for unbuilt area is framed under section 192 of the Act for the development of the unbuilt area which is ultimately to the advantage of the landowners whose land falls within that area. It cannot be disputed that if the unbuilt area is developed according to the plan approved, the value of the land falling within the area in question, appreciates to a great extent which ultimately results in great benefit to the land owners whose land can be sold at much higher rates. Section 192 has been enacted to enable the Municipal Committee to develop the unbuilt area so as to have a planned and phased development providing for public streets and other amenities. The word 'transfer' used in this clause, cannot be construed to mean that the land is acquired by the Committee and that the owner ceases to be its owner or he is not entitled to the possession of the land sought to be transferred under the Scheme. As is clear from the provisions of sections 169 and 171 of the Act, the Committee may take responsibility on itself to improve the streets which ultimately may become public streets. The provision has specifically used the words "use as public streets by owners of the land." The streets so provided or the land transferred for other public purposes, is for use by the owners of the land falling in the Town Planning Scheme for unbuilt area. If the said street or land reserved for public places is to be transferred to the Committee by way of ownership, in that case, the Committee has to proceed as regards the streets under the provisions of section 171 of the Act. The impugned clause, therefore, provides for transfer of the land to the Committee for the limited purposes of its development but in law the possession and ownership of the land so transferred under the Scheme, still remains with the owners. The true interpretation of clause (c) of section 192 of the Act would be that in all cases the land sought to be transferred upto 25 per cent shall be without payment of compensation and the land transferred beyond 25 per cent to 50 per cent will be with compensation to all the owners. There cannot be any scope for discrimination. Since the land-owners are not divested of the ownership or of the possession of the land, therefore, there can be no discrimination regarding the mode of acquisition of land.

(Paras 11, 12 and 13).

Held, that before the enforcement of the Constitution on 26th January, 1950, the provisions of the Punjab Municipal Act were applicable to the territories which fell within the jurisdiction of the

Municipal Committee and therefore in view of the provisions of clause (5) of Article 31 of the Constitution, the provisions of Article 31 will not affect the provisions of any existing law other than the law to the provisions of clause (6) apply. It is, therefore, obvious that section 192 (1) (c) of the Act being the existing law, the provisions of Article 31 of the Constitution are not attracted. Even otherwise, this section does not divest the owners of the ownership or of possession of the land falling within the scheme, even on that ground the provisions of Article 31 cannot be attracted. (Para 14).

Held, that if an existing law imposed on the exercise of the right guaranteed to the citizens of India by Article 19 (1) (g) restrictions which could not be justified as reasonable under clause (6) as it then stood and consequently under Article 31 that existing law became void to the extent of such inconsistency, that is to say, to the extent it became inconsistent with the provisions of Part III which conferred the fundamental rights on the citizens and the law still remained in force even after the commencement of the Constitution, with respect to the persons who were not citizens and could not claim the fundamental right. After the amendment of clause (6) by the Constitution (First Amendment) Act 1951 the Punjab Municipal Act ceased to be inconsistent with the fundamental rights guaranteed by Article 19 (1) (g) read with the amended clause (6) of that Article because that clause as it now stands, permits the creation by law which stands enacted, in the existing law. Section 192 (1) (c) became inconsistent with Article 31 as soon as the Constitution came into force on 26th January, 1950 and continued to be so inconsistent till the Constitution (Fourth Amendment) Act 1955 was passed and therefore under Article 13 (1) became void to the extent of such inconsistency. Nevertheless, that inconsistency was removed on and from the day when the Constitution (Fourth Amendment) Act 1955 was passed. The constitutionality of the Act cannot, therefore, be challenged after the said date. Thus, the provisions of section 192 (1) (c) of the Act are therefore neither violative of Article 19 (1) (g) nor Article 31 of the Constitution of India. (Paras 14 and 17).

Petition Under Articles 226/227 of the Constitution of India praying that this Hon'ble Court be pleased :—

(i) *to issue a writ of Certiorari for quashing the Scheme contained in Annexure P/4 and declaration of unbuilt area vide Annexure P/3.*

(ii) *issue directions to the respondent No. 1 not to take possession of any area from the petitioner's land ;*

(iii) *to summon the records from the respondent No. 1, regarding the Scheme ;*

(*iv*) *to dispense with filing of certified copies/originals of Annexures P-1 to P-6;*

(*v*) *to dispense with service of notices of filing the Writ-Petition on Respondents, as it is apprehended that the respondent No. 1 will dispossess the petitioner on receipt of the notice;*

(*vi*) *to grant any other relief to which the petitioner is found entitled.*

It is further prayed that dispossession of the petitioner and operation of the impugned Scheme (Annexure P/4) be stayed till the disposal of the Writ Petition.

J. R. Mittal, Advocate, *for the Petitoner.*

D. R. Puri, Advocate, *for Respondent No.* 1.

G. S. Grewal, Addl. A.G. Pb., *for Respondent No.* 2.

JUDGMENT

B. S. Dhillon, J.

(1) Civil Writ Petitions Nos. 2342, 4097, 4098 of 1977; 1424, 1757, 2973, 2974, 2983, 3083, 3986, 4203, 4624, 5176 of 1978; 186, 226, 621, 2358 and 2846 of 1579, are being disposed of by this common judgment as the questions of law involved in all these writ petitions are common. In all the writ petitions, the Town Planning Schemes framed by Municipal Committees, Amritsar and Bhatinda under section 192 of the Punjab Municipal Act, 1911 (hereinafter referred to as the Act) are sought to be impugned on various grounds. In C.W.P. No. 1757 of 1978, the Town Planning Scheme framed by the Municipal Committee, Amritsar,—*vide* notification, dated 19th January, 1976, and approved by the Governor of Punjab on 31st March, 1976,—*vide* Annexure. 'P-3', is sought to be impugned. In C.W.P. No. 4090 of 1977 and C.W.P. No. 4624 of 1978, the Town Planning Schemes framed by the Municipal Committee, Bhatinda and approved by the Governor of Punjab,—*vide* order, dated 25th February, 1977, are sought to be impugned. In C.W.P. 2342 and 4097 of 1977; C.W.P. Nos. 3083, 4283, 5176 of 1978; C.W.P. Nos. 186, 226, 621 and 2350 of 1979, the Town Planning Schemes framed by the Municipal Committee, Bhatinda, and approved by the Governor of Punjab,—*vide* order, dated 1st March, 1977, are sought to be

impugned. In C.W.Ps. No. 1424, 2973, 2974, 2983, 3986 of 1978 and C.W.P. No. 2846 of 1979, the Town Planning Schemes framed by the Municipal Committee, Bhatinda, and approved by the Governor of Punjab,—*vide* order, dated 1st/2nd March, 1977, have been sought to be impugned.

(2) The common question of law involved in all these cases is the challenge to the vires of the provisions of sub-section (c) of section 192(1) of the Act. The Act was enacted in 1911 to make better provisions for the administration of Municipalities in Punjab. Section 3 in chapter I deals with the definitions. Chapter II of the Act deals with the Constitution of Municipalities. Chapter III deals with the Constitution of Committees. Chapter IV deals wih Municipal fund and Property, whereas Chapter V deals with taxation. Chapter VI provides for Municipal police and Chapter VII makes provision for extinction and prevention of fire. Chapter VIII deals with water-supply, whereas Chapter IX codifies powers for sanitary and other purposes. Chapter X of the Act provides for the By-laws and Chapter XI makes provision for procedure and powers of entry and inspection. Chapter XII deals with control over Municipal Committees and Chapter XIII makes provision for small towns. Chapter XIV of the Act makes provision for Municipal Election Inquiries. The various purposes for which the Municipalities are constituted under the Act, have been vividly specified in the relevant provisions, the details of which need not be mentioned. Section 3(13)(a) defines street as follows:—

"3. In this Act, unless there is something repugnant in the subject or context,—

* * * * *

(13)(a) 'Street' shall mean any road, foot-way, square, court, alley or passage, accessible, whether permanently or temporarily to the public, and whether a thoroughfare or not; and shall include every vacant space, notwithstanding that it may be private property and partly or wholly obstructed by any gate, post, chain or other barrier, if houses, shops or other buildings abut thereon and if it is used by any person as a means of access to or from any public place or thoroughfare, whether

such persons be occupiers of such buildings or not, but shall not include any part of such space which the occupier of any such building has a right at all hours to prevent all other persons from using as aforesaid: and shall include also the drains or gutters therein, or on either side, and the land, whether covered or not by any pavement, verandah or other erection, up to the boundary of any abutting property not accessible to the public".

(3) Section 3(13)(b) defines the public street in the following terms:—

"3(13)(b) 'public street' shall mean any street—

(i) heretofore levelled, paved, metalled, channelled, sewered, or repaired out of municipal or other public funds, unless before such work was carried out there was an agreement with the proprietor that the street should not thereby become a public street, or unless such work was done without the implied or express consent of the proprietor; or

(ii) which, under the provisions of section 171, is declared by the Committee to be, or under any other provision of this Act becomes, a public street."

Section 169 of the Act, which falls in Chapter IX, deals with streets and buildings. Section 169(f) is as follows:—

"169. The committee—

* * * * *

(f) subject to the provisions of any rule prescribing the conditions on which property may be acquired by the Committee, may acquire any land, along with the building thereon, which it deems necessary for the purpose of any scheme or work undertaken or projected in exercise of the powers conferred under the preceding clause".

(4) Section 171, which also falls in the same Chapter, deals with the power to require repairs of streets and to declare such public street, is as follows:—

"171(1)(a) When the municipal committee consider that in any street other than a public street, or in any part of such street within the municipality, it is necessary, for the public health, convenience or safety, that any work should be done for the levelling, paving, mettalling, flagging, channelling, draining, lighting, or cleaning, thereof, the municipal committee may by written notice require the owner or owners of such street or part thereof, to carry out such work in a manner and within a time to be specified in such notice; and

(b) Should the owner refuse or should be fail to carry out the work within the time specified, the committee may by, written notice, require the owners of the land or buildings, fronting, adjoining or abutting upon such street or part thereof to carry out the work in such manner and within such time as may be specified in the notice.

(2) If compliance with the terms of the notice issued under clause (b) of sub-section (1) is not effected within the time specified, the committee, may, if it thinks fit, itself execute the work and may recover under the provisions of section 81, the expenses, incurred in doing so in such proportions as it may deem equitable from the owner of the street and the persons served with a notice under clause (b) of sub-section (1).

(3) after such work has been carried out by the persons served with a notice under clause (b) of sub-section (1) or as provided in sub-section (2) by the committee at the expense of such persons and the owner of the street, the street or part thereof, in which such work has been done, may, and on the requisition of the owner or owners of the major portion of the said street or part thereof, or on the requisition of a majority of the persons served with a notice under clause (b) of sub-section (1), it shall be declared by a public notice to be put up therein by the committee to be a public street and shall vest in the committee.

(4) a committee may at any time, by notice fixed up in any street or part thereof not maintainable by the committee, give intimation of their intention to declare the same a public street, and unless within one month next after such notice has been so put up, the owner or any one of several owners of such street or such part of a street lodge objection thereto at the municipal office, the municipal committee may, by notice in writing, put in such street, or such part, declare the same to be a public street vested in the committee.

(5) This section shall not take effect in any municipality until it has been specially extended thereto by the State Government, of its own motion or at the request of the Committee".

(5) Section 172 provides for punishment for immovable encroachment or overhanging structure over street; whereas section 173 makes a provision regarding the power to permit occupation of public street and to remove obstruction. Section 174 deals with the power to regulate line; whereas section 174-A makes special provisions regarding streets belonging to the Government. Section 192, which falls in Chapter X, deals with the Building Scheme and is in the following terms: —

"192(1) The committee may, and if so required by the Deputy Commissioner shall, within six months of the date of such requisition, draw up a building scheme for built areas, and a town planning scheme for unbuilt areas, which may among other things provide for the following matters, namely: —

(a) the restriction of the erection or re-erection of buildings or any class of buildings in the whole or any part of the municipality, and of the use to which they may be put;

(b) the prescription of a building line on either side or both sides of any street existing or proposed; and

(c) the amount of land in such unbuilt area which shall be transferred to the committee for public purposes including use as public streets by owners of land either on payment of compensation or otherwise, provided that the total

amount so transferred shall not exceed thirty-five per cent, and the amount transferred without payment shall not exceed twenty-five per cent, of any one owner's land within such unbuilt area.

(2) When a scheme has been drawn up under the provisions of sub-section (1) the committee shall give public notice of such scheme and shall at the same time intimate a date not less than thirty days from the date of such notice by which any person may submit to the committee in writing any objection or suggestion with regard to such scheme which he may wish to make.

(3) The Committee shall consider every objection or suggestion with regard to the scheme which may be received by the date intimated under the provisions of sub-section (2) and may modify the scheme in consequence of any such objection or suggestion and shall then forward such scheme as originally drawn up or as modified to the Deputy Commissioner, who may, if he thinks fit, return it to the committee for reconsideration and resubmission by a specified date; and the Deputy Commissioner shall submit the plans as forwarded, or as resubmitted as the case may be, with his opinion to the State Government, who may sanction such scheme or may refuse to sanction it, or may return it to the committee for reconsideration and resubmission by a specified date.

(4) If a committee fails to submit a scheme within six months of being required to do so under sub-section (1) or fails to resubmit a scheme by a specified date, when required to do so under sub-section (3) or resubmits a scheme which is not approved by the State Government, the Deputy Commissioner may draw up a scheme of which public notice shall be given by notification and by publication within the municipality together with an intimation of the date by which any person may submit in writing to the Deputy Commissioner any objection or suggestion which he may wish to make, and the Deputy Commissioner shall forward with his opinion any such objection or suggestion to the State Government and the State Government may sanction such scheme as originally notified

or modified in consequence of any such objection or suggestion, as the State Government may think fit; and the cost of such scheme or such portion of the cost as the State Government may deem fit, shall be defrayed from the municipal fund.

(5) when sanctioning a scheme the State Government may impose conditions for the submission of periodical reports on the progress of the scheme to the Deputy Commissioner or to the State Government, and for the inspection and supervision of the scheme by the State Government".

(6) At this stage, reference may also be made to the provisions of section 58 of the Act, which are as follows: —

"58. When any land, whether within or without the limits of a municipality is required for the purposes of this Act, the State Government may, at the request of the committee, proceed to acquire it under the provisions of the Land Acquisition Act, 1894, and on payment by the committee of the compensation awarded under that Act, and of any other charges incurred in acquiring the land, the land shall vest in the committee.

Explanation.—When any land is required for a new street or for the improvement of an existing street, the committee may proceed to acquire, in addition to the land to be occupied by the street, the land necessary for the sites of the buildings to be erected on both sides of the street and such land shall be deemed to be required for the purposes of this Act".

(7) The vires of the provisions of clause (c) of section 192(1) of the Act are sought to be challenged on the grounds that the said provisions are violative of Articles 14, 19(f) and 31 of the Constitution of India. It has been argued that the provisions are violative of Article 14 as the said provisions confer unlimited, unguided and arbitrary powers to the authorities to transfer the land of some persons, and not to touch the land of other persons falling under the scheme. It has been argued that the provision clearly provides the scope of pick and choose and even the purposes for which the provisions have to be made in the scheme are not specified, thus the arbitrariness is writ

large on the face of it. Reliance in this connection has been placed by the learned counsel for the petitioners on a decision of the Supreme Court in *The State of Punjab and another* v. *Khan Chand*, (1).

(8) We are unable to agree with this contention of the learned counsel for the petitioners. The Act has been enacted by the Legislature for making better provisions for the administration of Municipalities in Punjab and deals with the various aspects of the problems facing the Municipal Administration. The duties of the Municipal Committees and the spheres in which they are supposed to be of assistance to the citizens, have been elaborately provided for under the various heads in the Act itself. Section 192 is one ladder in the whole set up which authorises the Committee to draw up a building scheme for built areas and a planning scheme for unbuilt areas. There are sufficient guidelines given in the Act itself for the framing of such schemes. Clauses (a), (b) and (c) of section 192(1) of the Act again give sufficient guidelines for the framing of the schemes postulated therein. In clause (c), it is specifically mentioned that the land in such unbuilt area, which shall be transferred to the Committee, will be for public purposes including use as a public street by the owners of the land. When town planning scheme is prepared by the Committee under the provisions of sub-section (1) of section 192 of the Act, public notice of the scheme is required to be given. Each affected person is entitled to prefer objections to the scheme and the Committee under sub-section (3) of section 192 is duty bound to consider the said objections and after due consideration and decision forward the scheme as originally drawn up or in a modified form to the Deputy Commissioner, who again is entitled in law to return the scheme to the Committee for reconsideration and resubmission if he is so advised. The scheme is ultimately sent to the State Government, who may sanction the same or may refuse to sanction the same. If a particular provision is made in the scheme with ulterior motive or with *malafide* intention to deprive any land-owner of its land, the same will be struck down by the Courts. But the provisions of the Municipal Act including the impugned provisions, give sufficient guideline for the preparation of the scheme. It will depend on the facts and circumstances of each case where the scheme is sought to

(1) A.I.R. 1974 S.C. 543.

be prepared as to how many public streets or other public places be provided in the scheme. The area covered by the scheme in that respect will be one of the guidelines. The site of the scheme is another important factor to be considered. The location of the public places and of the roads and streets to be provided in the scheme is again a matter which will depend on the peculiar facts and circumstances of each case. No Legislature can provide more guidelines than the one provided under the Act to the Committee for framing of such schemes. The object of framing of scheme cannot be to deprive a particular landowner of his land but the object is to frame the scheme so as to achieve the objects as mentioned in the Act. The decision of their Lordships of the Supreme Court in *Khan Chand's case* (supra) is of no help to the petitioners. In that case, the provisions of section 2 of the East Punjab Movable Property (Requisitioning) Act were held to be violative of Article 14 of the Constitution of India. The said provision even did not provide that the order under the same was to be passed for public purposes. Their Lordships observed that the enactment must prescribe the guidelines for the furtherance of the object of enactment and it is within the frame work of these guidelines that the authorities can use their discretion in the exercise of the powers conferred upon them. The provision was struck down as it was found that no guideline was laid down in the Act regarding the object or the purpose for which the State Government or the officers authorised by it may consider it necessary or expedient to requisition a movable property. In the present case, as already observed. sufficient guidelines are available from the scheme of the Act. Sufficient policy has been laid down in the present case and thus the decision in *Khan Chand's case*, (supra) is of no assistance. It is, therefore, difficult to hold that the impugned provisions have given unlimited, unguided and arbitrary powers to the authorities.

(9) The second facet of the argument, that the impugned provision is violative of Article 14 of the Constitution of India, is that the land of a citizen living in a city can be acquired under the Land Acquisition Act. 1894; under the provisions of the Punjab Town Improvement Act, 1922, for framing a scheme under that Act and so also under the provisions of section 192(1)(c) of the Act. It has been contended that if the land is acquired under the provisions of the Land Acquisition Act and so also the Punjab Town Improvement Act, the citizen whose land has been acquired, is entitled to the compensation at the market rate; whereas if the land is acquired under the

provisions of section 192(1)(c) of the Act, to the extent of 25 per cent of the holdings of the citizens falling within the town planning scheme, he is not entitled to receive any compensation. It has been contended that the acquisition proceedings in a given case, in the discretion of the Committee, may be taken either under the former two acts or under the impugned provisions and thus arbitrary power vests in the Committee so as in one case to acquire the land and give compensation at the market rate and in another case under the impugned provisions not to give any compensation to the extent of 25 per cent of the holding of the citizen falling within the town planning scheme. Reliance in this connection has been placed on two Full Bench decisions of this Court in *Devinder Kaur* v. *Ludhiana Improvement Trust, Ludhiana and others,* (2) and *Hari Krishan Khosla (deceased) and others* v. *The Union of India and another* (3). It has further been contended that in view of the decision of this Court in *Shri Goverdhan Dass and others* v. *The State of Punjab and another,* (4), if two different schemes concerning the same area are prepared within the same limits, one under the Municipal Act and the other under the Town Improvement Act, the scheme so prepared under the Town Improvement Act shall hold the field. Thus it has been contended that under the Town Improvement Act, similar scheme can be prepared, but in that case the citizen, whose land is acquired, is entitled to compensation; whereas no compensation to the extent of 25 per cent of the area taken under the scheme is to be paid to the citizen whose land is acquired under the impugned provisions.

(10) Shri Grewal, the learned Additional Advocate-General, Punjab, after making reference to the various provisions of the Act, has vehemently contended that under the provisions of clause (c) of section 192(1) of the Act, the land transferred to the Committee under the scheme is not acquired, the ownership and possession of the land remain with the land-owner, and the right of the land-owner is restricted to use the land only for the purpose of the scheme and no further. The learned counsel has made a reference to the provisions of section 3(13) (a) and (b) and also to the provisions of sections 169 and 171 of the Act, to contend that the scheme of the Act is that even though the possession and ownership remain

(2) 1975 P.L.R. 527.
(3) A.I.R. 1975 Pb. & Haryana 74.
(4) 1975 P.L.R. 175.

that of the land-owner, yet the Municipal Committee provides certain facilities to the land-owners by way of providing the streets, etc. so as to develop the land of the land-owners and restrict the use of the land provided for the roads and other public purposes by the owners to the extent provided in the scheme and the owners are neither divested of the ownership nor they are deprived of the possession of the land and thus there is no question of any discrimination or arbitrariness as contended on the behalf of the learned counsel for the petitioners.

(11) After carefuly taking into consideration the various provisions of the Act, reference to which has already been made in the earlier part of the judgment, and after hearing the learned counsel for the parties, we are of the opinion that there is no merit in the contention raised. The scheme of the Act visualises private streets. The Town Planning Scheme for unbuilt area is framed under section 192 of the Act for the development of the unbuilt area which is ultimately to the advantage of the land-owners whose land fall within that area. It cannot be disputed that if the unbuilt area is developed according to the plan approved, the value of the land falling within the area in question, appreciates to a great extent which ultimately results in great benefit to the land owners whose land can be sold at much higher rates. The impugned provision has been enacted to enable the Municipal Committee to develop the unbuilt area so as to have a planned and phased development providing for public streets and other amenities. The provisions of clause (c) of sub-section (1) of section 192 of the Act have to be given construction keeping in view the other provisions of the Act. It has been provided in the impugned provisions that the amount of land in such unbuilt area, which shall be transferred to the Committee for public purposes including use as public streets by the owners of the land either on payment of compensation or otherwise, cannot exceed 35 per cent and out of which 25 per cent land will be transferred without payment of compensation. In our considered opinion the word 'transfer' used in this clause, cannot be construed to mean that the land is acquired by the Committee and that the owner ceases to be its owner or he is not entitled to the possession of the land sought to be transferred under the Scheme. As is clear from the provisions of sections 169 and 171 of the Act, the Committee may take responsibility on itself to improve the streets which ultimately may become public streets. The provision has specifically used the words "use as public streets by owners

of the land". The streets so provided or the land transferred for other public purpose, is for use by the owners of the land falling in the Town Planning Scheme for unbuilt area. If the said street or land reserved for public places is to be transferred to the Committee by way of ownership, in that case, the Committee has to proceed as regards the streets under the provisions of section 171 of the Act. The impugned clause, therefore, provides for transfer of the land to the Committee for the limited purposes of its development but in law the possession and ownership of the land so transferred under the Scheme, still remains with the owners.

(12) As regards the argument that the said provisions can be used in a discriminatory manner so as to pay the compensation to a particular owner for all the land transferred and no compensation to another owner of the land similarly situated, we are of the opinion that the same is also without any merit. The true interpretation of the clause would be that in all cases the land sought to be so transferred up to 25 per cent shall be without payment of compensation and the land so transferred beyond 25 per cent to 35 per cent will be with compensation to all the owners. There cannot be any scope for discrimination.

(13) Since we have come to the conclusion that the land owners are not divested of the ownership or of possession of the land, therefore, the contention raised on behalf of the petitioners that there can be discrimination regarding the mode of acquisition of land and thus the impugned provisions are arbitrary, is without any merit.

(14) The contention of the learned counsel for the petitioners that the impugned provision is violative of Articles 19(f) and 31 of the Constitution of India, is again untenable. As regards Municipal Committee, Bhatinda, this Committee was within the territorial jurisdiction of Patiala State, which merged into Patiala and East Punjab States Union (hereinafter referred to as PEPSU) on 22nd May, 1949, by Pepsu Municipal Ordinance No. 2006 B.K. After the PEPSU merged with the State of Punjab in 1956, the provisions of the Act were applied to the whole area of the erstwhile PEPSU by Act No. 5 of 1959. It would thus be seen that before the enforcement of the Indian Constitution on 26th January, 1950, the provisions of the Punjab Municipal Act, 1911 were applicable to

the territories which fell within the jurisdiction of Municipal Committee, Bhatinda. In view of the provisions of sub-Article (5) of Article 31 of the Constitution of India, the provisions of Article 31 will not affect the provisions of any existing law other than the law to which the provisions of clause (6) apply. From what has been stated above, it is obvious that the impugned provisions of the Act being the existing law, the provisions of Article 31 of the Constitution are not attracted. Even otherwise, since we have come to the conclusion that the impugned provisions do not divest the owners of the ownership or of possession of the land falling within the Scheme, even on that ground, the provisions of Article 31 of the Constitution cannot be held to be attracted. Confronted with this situation, the learned counsel for the petitioners contended that even if for argument's sake it be held that the impugned law does not provide for the transfer of the ownership and right of possession, still to some extent the rights of the landowners, who are put to the restricted use of the land as provided in the Scheme, are affected and, therefore, keeping in view the fact that such deprivation was not permissible in view of the unamended provisions of Article 31 before the 4th Amendment of the Constitution was carried out, therefore, the impugned provision is violative of Articles 19(1)(g) and 31 of the Constitution. This argument again is without any merit. It is well settled that if an existing law imposed on the exercise of the right guaranteed to the citizens of India by Article 19(1)(g) restrictions which could not be justified as reasonable under clause (6) as it than stood and consequently under Article 13(1), that existing law became void "to the extent of such inconsistency, that is to say, to the extent it became inconsistent with the provisions of Part III, which conferred the fundamental rights on the citizens, and the law still remained in force even after the commencement of the Constitution, with respect to the persons who were not citizens and could not claim the fundamental right. After 18th June, 1951, when clause (6) was amended by the Constitution (First Amendment) Act, 1951, the impugned Act ceased to be inconsistent with the fundamental right guaranteed by Article 19(1) (g) read with the amended clause (6) of that Article, because that clause as it now stands, permits the creation by law which stands enacted, in the existing law. The impugned provision became inconsistent with Article 31 as, soon as the Constitution came into force on 26th January, 1950 and continued to be so inconsistent right up to the 27th April, 1955, and, therefore, under Article 13(1) became void to the extent of such

inconsistency. Nevertheless, that inconsistency was removed on and from 27th April, 1955 by the Constitution (Fourth Amendment) Act, 1955. The constitutionality of the impugned Act cannot, therefore, be challenged on or after 27th April, 1955. Reference in this connection may be made to the decision of their Lordships of the Supreme Court in *Bhikaji Narain Dhakras and others* v. *State of Madhya Pradesh and another* (5). From what has been stated above, it is clear that when Article 31 was amended, by the Constitution (Fourth amendment) Act, 1955, by which the provisions of Article 31(2-A) of the Constitution were incorporated, the inconsistency in the amended provisions ceased to exist and thus the said provision, though void before the said amendment became operative. The provisions of Article 31(2-A) of the Constitution are as follows: —

> "31(2-A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property"

(15) According to these provisions, where the law does not provide for the transfer of ownership or right to possession of any property to the State or to a corporation owned or controlled by the State in that case it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property.

(16) The contention of the learned counsel that the impugned provisions were invalid even before the advent of the Constitution in view of the provisions of section 299 of the Government of India Act, 1935, and, therefore, this was still-born law, is again without any merit. Their Lordships of the Supreme Court in *Bhikaji Narain Dhakras' case* (supra), rejecting the similar argument, observed as under: —

> "Learned counsel for the petitioners sought to raise the question as to the invalidity of the impugned Act even before the advent of the Constitution. Prior to the Constitution, when there were no fundamental rights,

(5) A.I.R. 1955 S.C. 781.

section 299 of the Government of India Act, 1935, which corresponds to Article 31 had been construed by the Federal Court in *Lal Singh* v. *The Central Provinces and Berar,* (6) and in other cases referred to in *Rajah of Bobbili* v. *The State of Madras* (7), and it was held by the Federal Court that the word 'acquisition' occurring in section 299 had the limited meaning of actual transference of ownership and not the wide meaning of deprivation of any kind that has been given by this Court in *State of West Bengal* v. *Subodh Gopal,* (8), to that word acquisition appearing in Article 31(2) in the light of the other provisions of the Constitution.

It is, therefore, not clear at all that the impugned Act was in conflict with section 299 of the Government of India Act, 1935. Besides, this objection was not taken or even hinted at in the petitions and cannot be permitted to be raised at this stage."

(17) The decision of their Lordships of the Supreme Court in *Swami Motor Transport (P) Ltd., and another* v. *I. SriSankaraswamigal Mutt and another,* (9), is of no help to the petitioners as the observations made by their Lordships of the Supreme Court in paragraph 28 of the judgment, as relied upon by the learned counsel for the petitioners, have been made in a completely different context.

For the reasons recorded above, we are of the opinion that the impugned provisions are neither violative of Article 19(1)(g) nor Article 31 of the Constitution of India and consequently the same are found to be *intra vires* the Constitution of India.

(18) Having held that the provisions of section 192(1)(c) of the Act are *intra vires,* the other attacks on the impugned schemes may now be taken up for consideration. The impugned scheme are Town Planning Scheme of Unbuilt Area No. 2, Part I; Town Planning Area Scheme No. 1, Part II, called the D.A.V. College

(6) A.I.R. 1944 F.C. (D).
(7) A.I.R. 1952 Madras 203 at pp. 216—216(E).
(8) A.I.R. 1954 S.C. 52(F).
(9) A.I.R. 1963 S.C. 864.

Scheme framed by the Municipal Committee, Bhatinda, and the Town Planning Scheme framed by the Municipal Committee, Amritsar,—*vide* notification dated 19th January, 1976.

(19) There is no merit in the contention that the Town Planning Scheme for Unbuilt Area No. 2, Part I was not validly framed as there was no valid resolution passed for framing the Scheme. After taking into consideration the averments made in the petition and the reply and looking at the records, we find that the Committee did pass proper resolution and the Scheme cannot be held to be invalid on this ground.

(20) Similarly, the contention that this Scheme was not sanctioned by the State Government as the Scheme sanctioned by the State Government,—*vide* copy of the order annexure 'P-2' with C.W.P. No. 4097 of 1977, is dated 9th October, 1975, and not the Scheme which is dated 9th January, 1975. We do not find any merit in this contention as well, as we find after seeing the records that is because of the misprint that the date of the Scheme has been mentioned as 9th October, 1975 instead of 9th January, 1975.

(21) The remaining objections regarding all the three Schemes are common and, therefore, the same are being disposed of jointly. It has been contended that keeping in view the provisions of section 192(1)(c) of the Act, it is mandatory for the Committee with a view to prepare a scheme in conformity with the provisions of section 192, to prepare the statement of ownership regarding the land owned by various owners which fall within the area of the scheme. It has been contended that it is on the basis of such statement only that it can be verified whether the land of a particular owner, which is sought to be transferred under the Scheme, has not exceeded 35 per cent and the transfer of land without payment of compensation does not exceed 25 per cent. It has been contained that the Committee did not prepare any ownership statements and if at all such statements were prepared, the same were incomplete and incorrect as the names of many of the petitioners do not exist, in the ownership statements and thus the calculations arrived at with regard to the compliance of the provisions of section 192(1)(c) of the Act have not been correctly arrived at. Petitioner Om Parkash, in C.W.P. No. 2342 of 1977, is alleged to have not been shown in the statement of ownership and the land owned

by him has been shown to be owned by his father Shri Suraj Bhan. It has been alleged that Suraj Bhan has nothing to do with the land comprising in Khasra Nos. 2052, 2059, 2060, 2043 etc., but strangely enough he is shown to be the owner of this land in the Scheme. It has further been averred that even his brothers Ram Lal and Krishan Lal partitioned their land,—*vide* mutation No. 6658, dated 18th February, 1947, much before the framing of the Scheme, yet the Scheme does not take notice of it and the whole land is shown to be under the ownership of Suraj Bhan. This fact has been admitted in the return filed on behalf of the Committee. It has been averred in the petition that for the purpose of calculating the total area of the land-owner, the land which is outside the purview of the Scheme has been included. The petitioner sold the area mentioned in the petition much before the framing of the Scheme to different owners but still the sold area has been taken into consideration while calculating the ownership. These averments have also been admitted in the return filed on behalf of the Committee.

(22) In Civil Writ Petitions Nos. 4097 of 1977, 3083, 4023, 5174 of 1978, 186, 226, 621 and 2350 of 1979, it has been averred that practically the whole of the plot belonging to the petitioners is sought to be transferred under the Scheme which is in violation of the mandatory provisions of section 192(1)(c) of the Act. In all these petitions, it has been averred that the land which was transferred much before the framing of the Scheme, was taken into consideration for calculating the ownership of the land-owners, i.e., the petitioners and, therefore, the Scheme is in violation of the provisions of section 192(1)(c) of the Act.

(23) Similarly it has been averred in C.W.P. No. 1757 of 1978 that even though Raminder Singh Walia, and Ashokjit Singh Walia, petitioners are the owners of the land comprising in Khasra Nos. 843, 845, and 846, yet one Inderjit Singh is shown to be the owner of the land in the statement prepared by the Committee and thus without application of mind the petitioners' land is sought to be transferred under the Scheme. In the returns filed on behalf of the Committee, the facts stated above are almost admitted. We directed the learned counsel for the Municipal Committee of Bhatinda and Amritsar to produce the records before us at the time of hearing so as to find out the truthfulness or otherwise of the averments made in the petitions, reference to which has

already been made. Whole of the records were not produced before us and the learned counsel for the Committees conceded that the facts as alleged in these petitions about the preparation of the incorrect ownership statements, are borne out from the records. As is clear, since no records were produced by the learned counsel for the Committees before us, it is very difficult for us to go into these questions of facts and to record definite findings as to whether the provisions of the Scheme sought to be impugned violate the provisions of section 192(1)(c) of the Act, and since all the material averments regarding the non-mentioning of the petitioners as owners in the Scheme and consequently their lands having been taken to be owned by other persons mentioned therein, have been admitted, it is difficult for us to dismiss the petitions on the ground that this Court will not go into the disputed questions of facts especially in the background when we find that the petitioners were not given any opportunity of filing the objections against the Scheme as in most of the cases the names of the petitioners as landowners were not mentioned in the records of the Scheme and naturally they would not know that their lands were being subjected to the provisions of the Scheme and thus they were deprived of an opportunity of filing the objections. It has also been pleaded in the petitions that the publication of the notice for inviting the objections against the Scheme, was not done in accordance with the provisions of Rule 5 of the Punjab Municipal General Rules, framed under the Act. We asked the learned counsel for the Committees to produce before us the records to show that the Scheme was properly published under the said Rules. No such records could be produced by the counsel for the Committees and it was in fact conceded that no such records were available to prove the proper publication of the Scheme. In view of all this background, the learned counsel for the Committees conceded that keeping in view the facts and circumstances of these cases, it would be proper to send the cases back to the Municipal Committees so as to consider the objections raised by the petitioners as regards the non-compliance of the provisions of section 192(1)(c) of the Act. We accordingly direct that the petitioners shall file objections before the Committee as regards the non-compliance of the provisions of section 192(1) (c) of the Act, only as regards the percentage of the land of the petitioners so transferred under the Scheme, within 12 weeks and the Committee shall then proceed to consider the said objections and dispose them of within three months

thereafter and make a recommendation to the Government in accordance with the provisions of section 192 of the Act if it accepts the objections and the Government shall further proceed in accordance with law to amend the Scheme if found necessary. We may also point out that it was contended by Shri Mittal, the learned counsel for the petitioners that the objections filed by the predecessors of petitioners in C.W.P. Nos. 4098 of 1977 and 4624 of 1978, were accepted by the Administrator but the said order has not been reflected in the Scheme as the Scheme has not been amended in view of the acceptance of the objections. On the other hand, the learned counsel for the committees contends that the order of the Administrator, Municipal Committee, accepting the objections has been implemented and the Scheme has been amended accordingly. The question whether the order of the Administrator accepting the objections referred to above, has been implemented or not, shall also be gone into by the Committee and if the said order has not been implemented, the Committee shall take steps to implement the order by proposing necessary amendment to the State Government who shall proceed in accordance with law.

(24) It is made clear that the provisions of the Scheme so far as they affect the rights of the petitioners, will not be taken to be final and the said provisions will only become final after the objections filed by the petitioners are considered by the Committees and disposed of. If the objections are rejected, the provisions of the Scheme shall become final and if there is merit in the objections, the same shall be accepted and forwarded to the State Government for amending the Scheme in accordance with law. We order accordingly. The writ petitions stand disposed of with no order as to costs. C.M. Nos. 1985 and 1639 of 1979 in C.W.P. No. 1757 of 1978, have become infructuous and are, therefore, dismissed as such.

N. K. S.

Before J. V. Gupta, J.

CANTONMENT BOARD, AMBALA,—*Appellant*

versus

BERHMA NAND,—*Respondent.*

Second Appeal From Order No. 35 *of* 1979

January 21, 1980.

Cantonments Act (II of 1924)—Section 273(3)—Board terminating the services of an employee—Order of termination unsuccessfully challenged in appeal and revision under the Act—Suit then filed