PETITIONER:
DATTATRYA SHANKARBHAT AMBALGI & ORS.

Vs.

RESPONDENT:
STATE OF MAHARASHTRA & ORS.

DATE OF JUDGMENT01/08/1989

BENCH:
OJHA, N.D. (J)
BENCH:
OJHA, N.D. (J)
SHARMA, L.M. (J)

CITATION:
1989 AIR 1796 1989 SCR (3) 616
1989 SCC (4) 532 JT 1989 (3) 259
1989 SCALE (2)176

ACT:
Constitution of India, 1950: Articles 14 and 31-- Vires of Sections 10, 11 and 23 of the Urban Land (Ceiling & Regulation) Act, 1975. Maharashtra Regional and Town Planning Act, 1966.' Sections 125 and 126---Land reserved for public Purpose--Acquisition and compensation thereof--Applicability of Land Acquisition Act, 1894.
Urban Land (Ceiling & Regulation) Act, 1976.' Sections 10, 11 and 23--Whether violative of Articles 14 and 31 of the Constitution of India, 1950.

HEADNOTE:
The State Government sanctioned development plan in respect of and situated in Sholapur under the Maharashtra Regional and Town planning Act, 1966. Though the sanction covered the land of petitioners also, some of their land was reserved for public purpose under the said Act.
Thereafter, the Urban Land (Ceiling & Regulation) Act, 1976 came into force and proceedings for acquisition of land in excess of the ceiling limit were initiated. Against such proceedings, the petitioners have approached this Court by way of writ petitions.
The petitioners contended that the Urban Ceiling Act would not apply to the lands reserved for a public purpose under the Town Planning Act and that the proceedings should be quashed. They also challenged the constitutional validity of sections 10, 11 and 23 of the Ceiling Act, as being ultra vires of Articles 14 and 31, and prayed for a Writ of Mandamus restraining the State Government from acquiring the petitioners' land under the Ceiling Act.
Dismissing the writ petitions,
HELD: 1.1. The Act has been placed in the Ninth Schedule to the Constitution at SI. No. 132 and consequently comes under the protective umbrella of Article 31-B of the Constitution. [620A-B]
1.2. It is not the case of the petitioners that the provisions of the
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Ceiling Act in any way damage of destroy a basic or essential feature of the Constitution or its bask structure. Also there is no statutory provision either in the Ceiling Act or

in the Town Planning Act, which would exclude the operation of the Ceiling Act with regard to lands reserved for public purpose under the Town Planning Act. [620C-E]

Maharao Sahib Shri Bheem Singh v. Union of India and others, [1985] Suppl. 1 S.C.R. 862; applied.

2.1. The primary object and the purpose of the Ceiling Act is to provide for the imposition of a ceiling an vacant land in urban agglomerations, for the acquisition of such land in excess of the ceiling limit to regulate the construction of building on such land and for matters connected therewith, with a view to preventing the concentration of urban land in the hands of a few persons and speculation and profiteering therein, to bring about an equitable distribution of land is urban agglomerations to subserve the common good, in furtherance of the Directive Principles of Articles 39(b) and (c). The land to the extent which falls within the ceiling area stands in a class different from the land which is in excess of the ceiling area and is liable to be declared surplus to give effect to the purpose and object of the Ceiling Act. [620G-H; 621A, B & G]

2.2. In the instant case, the purpose and object of the Ceiling Act is entirely different from just acquiring a bit of land here or a bit of land there for some public purpose. The Ceiling Act is a self-contained Code having an overriding provision in Section 42. Once the land fails beyond the ceiling limit prescribed by the Ceiling Act and is capable of being acquired as surplus land under Section 10 thereof it would he wholly inappropriate to acquire the same very Land or a portion thereof under the Town planning Act inasmuch as it would inter alia apparently result in misuse of public funds by granting higher compensation when the purpose of acquisition can he achieved on payment of the lesser amount of compensation prescribed in Section 11 of the Ceiling Act. [624A, B, F & G]

Union of India etc. v. Valluri Basavaiah Chowdhary etc. etc., [1979] 3 S.C.R. 802; State of Gujarat & Others v. Parshottamdas Ramdas Patel & Others, [1988] 1 S.C.R. 997; relied on.

Nagar Improvement Dust & Another v. Vithal Rao & Others,[1973] 3 S.C.R. 39, distinguished.

Prakash Chand Amichand Shah v. State of Gujarat and others, [1986] 1 S.C.C. 581; referred to.

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3. The alleged discrimination that if the purpose of reservation is construction of buildings, the land will be given compensation under the Ceiling Act whereas when the purpose of reservation is parks, gardens etc. compensation would be given under the Town Planning, Act, does not exist. The provisions of the Ceiling Act are applicable with regard to vacant land and if for same fortuitous circumstances a particular category of land does not fall within the definition of vacant land the provisions with regard to the vacant land can obviously not be applied to such land. The lands falling under the two categories constitute separate classes and cannot consequently be treated alike. [624B, C & D]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition Nos. 1830-32 of 1981.

(Under Article 32 of the Constitution of India).

U.R. Lalit, V.N. Ganpule, A.B. Lal and Ms. Punam Kumari for the Petitioners.

V.C. Mahajan, Ms. A Subhashini, P.H. Parekh, A.S. Bhasme

and A.M. Khanwilkar for the Respondents.
The Judgment of the Court was delivered by
OJHA, J. The petitioners in these petitions under Article 32 of the Constitution hold land within the city of Sholapur in the State of Maharashtra. According to the petitioners development plan has been sanctioned with regard to land situated m the city of Sholapur including the petitioners' land under the Maharashtra Regional and Town planning Act, 1976 (hereinafter referred to as the Maharashtra Act No. 37 of 1966) and some land of the petitioners was reserved for public purpose under that Act. The Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred to as the Act was brought into force on 28th February, 1976 and proceedings for acquisition of vacant land in excess of the ceiling limit placed under the Act were initiated against the petitioners. These writ petitions have been filed for the following reliefs:

(a) It may be declared that the Urban Ceiling Act does not apply to lands reserved for a public purpose under the Maharashtra Regional Town Planning Act, 1966:
(b)The proceedings for determination of ceiling be declared void and quashed so far as the lands are reserved for public purpose;
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(c) The State Government be restrained from taking any action under Section 10(3) of the Ceiling Act;
(d) The final statement under Section 9 of the Ceiling Act be amended suitably;
(e) A Writ of Mandamus or in the nature of Mandamus be issued restraining the State Government or its agents from acquiring and/or taking possession of final plots Nos. 26, 22, 42, 28A and 44A/1;
(f) Sections 10, 11 and 23 of the Ceiling Act be declared ultra vires of Articles 14 and 31 of the Constitution;
(g) Any other order and/or direction as this Hon'ble Court may deem fit, be passed.

It has been pointed out by the learned counsel for the petitioners that Section 125 of the Maharashtra Act No. 37 of 1966 contemplates, inter alia, that any land required, reserved or designated in a development plan for a public purpose shall be deemed to be land needed for a public purpose within the meaning of the Land Acquisition Act, 1894 whereas Section 126 thereof contains the procedure for acquisition of land required for public purposes. According to learned counsel if land is acquired as contemplated by Sections 125 and 126 aforesaid, the provisions of the Land Acquisition Act shall apply to the acquisition of the said land with the modification that the market value of the land shall be computed as contemplated by sub-section (3) of Section 126 whereas if the land was acquired under the Act, compensation payable would be much less as contemplated by Section 11 of the Act and that too with a ceiling of two lakhs of rupees as provided by sub-section (6) thereof. It has been urged that it is left to the sweet will of the authorities concerned to acquire land either under Sections 125 and 126 of the Maharashtra Act No. 37 of 1966 or under the provisions of Section 10 of the Act and that since in the event of proceedings for acquisition being taken under Section 10 of the Act as is sought to be done in the case of the petitioners the compensation payable would be far less than the compensation payable if the acquisition is made

under the Maharashtra Act No. 37 of 1966, discrimination under Article 14 of the Constitution was writ large, and in this view of the matter the petitioners are entitled to the reliefs claimed in these writ petitions.

Having heard learned counsel for the parties, we are of the
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opinion that none of the reliefs prayed for in the writ petitions can be granted to the petitioners. At the very outset, it may be pointed out that the Act has been placed in the 9th Schedule to the Constitution at SI. No. 132 and consequently comes under the protective umbrella of Article 31-B of the Constitution. In Maharao Sahib Shri Bheem Singh v. Union of India and others, [1985] Suppl. 1 S.C.R. Page 862 it has been held by a Constitution Bench of this Court that the Act is constitutionally valid save and except Section 27(1) to the extent mentioned in the judgment. With regard to sub-section (6) of Section 11, it has specifically been held at page 879 of the Report that this sub-section which provides that compensation payable under Section 11 shall in no case exceed two lakhs of rupees is valid. The amount thus payable is not illusory and the provision is not confiscatory. Rupees two lakhs are not like a earthing even if the excess land may be a fortune. In this connection, it may be pointed out that it has not been urged by the learned counsel for the petitioners that the provisions of the Act which have been impugned in the present writ petitions in any way damage or destroy a basic or essential feature of the Constitution or its basic structure. No statutory provision either in the Act or even in the Maharashtra Act No. 37 of 1966 has been brought to our notice excluding the operation of the Act with regard to lands reserved for public purpose under the Maharashtra Act No. 37 of 1966. On the other hand, there is a specific overriding provision in Section 42 of the Act which provides that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith in any other law for the time being in force or any custom usage or agreement or decree or order of a Court, Tribunal or other authority. It is in this view of the matter that we are of the opinion that none of the relief prayed for in the present writ petitions can be granted.

What has, however, been urged by the learned counsel for the petitioners is that notwithstanding the specific relief (f) referred to above, the petitioners are really not challenging the validity of Sections 10, 11 & 23 of the Act but they are challenging the action which is being taken with regard to the petitioners' land on the ground that it is discriminatory. We find no substance in this submission either.

In Union of India etc. v. Valluri Basavaiah Chaucer etc. etc., [1979] 3 S.C.R. Page 802 it was pointed out by a Constitution Bench of this Court that the primary object and the purpose of the Act as the long title and preamble show, is to provide for the imposition of a ceiling on vacant land in urban agglomerations, for the acquisition of such land in excess of the ceiling limit to regulate the construction of
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buildings on such land and for matters connected therewith, with a view to preventing the concentration of urban land in the hands of a few persons and speculation and profiteering therein, and with a view to bringing about an equitable distribution of land in urban agglomerations to subserve the common good, in furtherance of the Directive Principles of Article 39(b) and (c). That this was the object and the purpose of the Act has been reiterated in a recent decision

of this Court in State of Gujarat & others v. Parshottamdas Ramdas Patel & Others, [1988] 1 S.C.R. Page 997.

It is in this background that the submission of learned counsel for the petitioners about discrimination in the matter of implementation or taking action under the Act has to be considered. While elaborating this argument of discrimination it was pointed out by learned counsel for the petitioners that if land belonging to 'A' and 'B' within an urban agglomeration is reserved for a public purpose under development scheme and 'A' is holding land within ceiling area whereas 'B' holds land in excess of such ceiling area, 'A' will get compensation under the Maharashtra Act No. 37 of 1966 whereas 'B' will get compensation under the Ceiling Act and the basis and method of compensation will drastically vary. In support of this submission reliance was placed on a decision of this Court in Nagpur Improvement Trust & Another v. Vithal Rao & Others, [1973] 3 S.C.R. Page 39. In that case land was sought to be acquired under the Nagpur Improvement Trust Act. 1936. In a petition under Articles 226 and 227 of the Constitution the validity of the Nagpur Improvement Trust Act was challenged inter alia on the ground that the said Act was in violation of Article 14 of the Constitution inasmuch as it empowered the acquisition of lands at prices lower than those which could have been payable if they had been acquired under the Land Acquisition Act. The writ petition was allowed by the High Court and it was held that paragraphs 10(2) and 10(3) in so far as they added a new clause 3(a) to section 23 and a proviso to sub-section (2) of section 23 of the Land Acquisition Act, 1894 were ultra vires as violating the guarantee of Article 14 of the Constitution.

Suffice it to say, so far as this submission is concerned that the land to the extent which falls within the ceiling area stands in a class different from the land which is in excess of the ceiling area and is liable to be declared surplus to give effect to the purpose and object of the Act.' What is the purpose and object of the Act has already been noticed earlier. Further unlike the Nagpur Improvement Trust Act, 1936 the validity whereof was 'challenged in the case of Vithal Rao
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(supra), the Act has been placed in the 9th Schedule. As a result thereof the Act comes within the protective umbrella of Article 31-B of the Constitution which was not available to the Nagpur Improvement Trust Act.

The decision in the case of Vithal Rao (supra) came up for consideration before a Constitution Bench of this Court with reference to Bombay Town Planning Act, 1954 in Prakash Chand Amichand Shah v. State of Gujarat and others, [1986] 1 S.C.C. Page 581. It was held:

> "In order to appreciate the contentions of the appellant it is necessary to look at the object of the legislation in question as a whole. The object of the Act is not just acquiring a bit of land here or a bit of land there for some public purpose. It consists of several activities which have as their ultimate object the orderly development of an urban area. It envisages the preparation of a development plan, allocation of land for various private and public uses, preparation of a Town Planning Scheme and making provisions for future development of the area in question. The various aspects of a Town Planning Scheme have already been set out. On the

final Town Planning Scheme coming into force under Section 53F of the Act there is an automatic vesting of all lands required by the local authority. It is not a case where the provisions of the Land Acquisition Act, 1894 have to be set in motion either by the Collector or by the Government."

It was further held:

"The provision under consideration in the above decision corresponds to Section 11 and to Section 84 of the Act, which we are now considering. Section 59 of the Nagpur Improvement Trust Act, 1936 provided that the Trust might, with the previous sanction of the State Government acquire land under the provisions of the Land Acquisition Act, 1894 as modified by the provisions of the said Act for carrying out any of the purposes of the said Act. But the provisions which are questioned before us are of a different pattern altogether. They deal with the preparation of a scheme for the development of the land. On the final scheme coming into force the lands affected by the scheme which are needed for the local authority for purposes of the scheme automatically vest in the local authority. There is

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no need to set in motion the provisions of the Land Acquisition Act, 1894 either as it is or as modified in the case of acquisition under Section 11 or Section 84 of the Act. Then the Town Planning Officer is authorised to determine whether any reconstituted plot can be given to a person whose land is affected by the scheme. Under Section 51(3) of the Act the final scheme as sanctioned by the Government has the same effect as if it were enacted in the Act. The scheme has to be read as part of the Act. Under Section 53 of the Act all rights of the private owners in the original plots would determine and certain consequential rights in favour of the owners would arise therefrom. If in the scheme, reconstituted or final plots are allotted to them they become owners of such final plots subject to the rights settled by the Town Planning Officer in the final scheme. In some cases the original plot of an owner might completely be allotted to the local authority for a

public purpose. Such private owner may be paid compensation or a reconstituted plot in some other place. It may be a smaller or a bigger plot. It may be that in some cases it may not be possible to allot a final plot at all. Sections 67 to 71 of the Act provide for certain financial adjustments regarding payment of money to the local authority or to the owners of the original plots. The development and planning carried out under the Act is primarily for the benefit of public. The local authority is under an obligation to function according to the Act. The local authority has to bear a part of the expenses of development. It is in one sense a package deal. The proceedings relating to the scheme are not like

acquisition proceedings under the Land Acquisition Act, 1894. Nor are the provisions of the Land Acquisition Act, 1894 made applicable either without or with modifications as in the case of the Nagpur Improvement Trust Act, 1936. We do not understand the decision in Nagpur Improvement Trust case as laying down generally that wherever land is taken away by the government under a separate statute compensation should be paid under the Land Acquisition Act, 1894 only and if there is any difference between the compensation payable under the Land Acquisition Act, 1894 and the compensation payable under the statute concerned the acquisition under the statute would be discriminatory. That case is distinguishable from the present case."

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In the instant case also the purpose and object of the Act being entirely different from just acquiring a bit of land here or a bit of land there for some public purpose, and the Act being a serf-contained Code having an overriding provision in Section 42, the decision in the case of Vithal Rao (supra) is wholly inapplicable in so far as acquisition of surplus land under the Act is concerned.

It was also urged that if one person holds land in excess of ceiling area and the excess therein is reserved for a public purpose under the development scheme there will still be discriminatory results if the land in excess of ceiling is reserved for different purposes. According to learned counsel if the purpose of reservation is construction of buildings the land will be given compensation under the Ceiling Act whereas when the purpose of reservation is parks, gardens etc. compensation would be given under the Maharashtra Act 37 of 1966. The result, according to learned counsel, is discriminatory. This submission again has apparently no substance inasmuch as the provisions of the Ceiling Act are applicable with regard to vacant land and if for some fortuitous circumstances a particular category of land does not fail within the definition of vacant land the provisions with regard to vacant land can obviously not be applied to such land. Here again, the lands failing under the two categories constitute separate classes and cannot consequently be treated alike.

Learned counsel for the petitioners also referred .to some other cases wherein a similar view, as in the case of Vithal Rao (supra), was taken but we do no consider it necessary to deal with those cases separately for the reasons already stated above. With regard to the submission of learned counsel that the question as to whether a land reserved for public purpose under the Maharashtra Act No. 37 of 1966 should be acquired under that Act or under Section 10 of the Act has been left to the sweet will of the authority concerned, we are of the opinion that it is not so. Once the land falls beyond the ceiling limit prescribed by the Act and is capable of being acquired as surplus land under Section 10 of the Act it would be wholly inappropriate to acquire the same very land or a portion thereof under the Maharashtra Act No. 37 of 1966 inasmuch as it would inter alia apparently result in misuse of public funds by granting higher compensation when the purpose of acquisition can be achieved on payment of the lesser amount of compensation prescribed in Section 11 of the Act.

In the case of Parshottamdas Patel (supra), the State Government of Gujarat issued a notification under section

4(1) of the Land
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Acquisition Act, 1894 stating that the lands of the respondents were likely to be needed for the public purpose of providing housing accommodation for the employees of the Municipal Corporation. Subsequently, a notification under Section 6 of the said Act declaring that the aforesaid lands along with the other lands were needed for the said public purpose, was also made. In the meantime, the Act came into force and the respondents filed writ petitions contending inter alia that the acquisition proceedings under the Land Acquisition Act should be proceeded with and the acquisition proceedings to the extent it related to the surplus land under the ceiling law should be dropped. The writ petitions were allowed. Reversing the judgment of the High Court, this Court held:

> "The declaration made by the High Court in these cases that the land acquisition proceedings did not suffer from an infirmity which indirectly suggests that the proceedings should go on is again erroneous. It is open to the State Government to drop the land acquisition proceedings and to withdraw the lands from acquisition under section 48 of the Land Acquisition Act, 1894. We are informed that the State Government has in fact subsequently withdrawn these lands from acquisition. The proceedings under the Land Acquisition Act, 1894 cannot therefore have any beating on the question whether the lands in question are vacant lands or not for purposes of the ceiling law contained in the Act. When the lands in question or bulk of them are likely to be acquired under the ceiling law by paying compensation as provided therein, it would not be proper to compel the Government to acquire them under the provisions of the Land Acquisition-Act, 1894. As already stated the Act has the overriding effect on all other laws."

In view of the foregoings discussion, we find no merit in these writ petitions and they are accordingly dismissed. There shall, however, be no order as to costs.

G .N. Petitions dismissed.
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