

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

MISC. CIVIL APPLICATION (W) NO.1118 OF 2016

In

WRIT PETITION NO.2695 OF 2015 (DECIDED ON 15-9-2016)

1. Akbar Malik,
Aged about 52 years,
Occupation – Business,
At Malik Decor House,
Abhyankar Road, Sitabuldi,
Nagpur-440 012.
2. Atmaram Pinjomal Vajrani,
Aged about 64 years,
OccupatioOn – Business,
At Heera Sweets,
Abhyankar Road,
Sitabuldi, Nagpur-440 012.
3. Anwar H. Vali,
Aged about 69 years,
Occupation – Business,
At M/s. Altaf H. Vali,
Near Variety Square,
Sitabuldi, Nagpur-440 012.

... Applicants

Versus

1. M/s. Bombaywala,
a partnership firm, having its
place of business at Sitabuldi Main
Road, Nagpur-440 012,
acting through and represented
by its Partner, Shri Govind Gehimal

Mirpuri,
R/o Mound Road, Sadar, Nagpur.

2. M/s. Bala Shoes,
a partnership firm, having its place of
business at Sitabuldi Main Road,
Nagpur-440 012,
acting through and represented by
its Partner, Shri Ashit Chakravarty,
R/o Anant Nagar, Katol Road,
Nagpur.
3. M/s. Samrat Garments,
a partnership firm having its
place of business at Sitabuldi Main
Road, Nagpur-440 012,
acting through and represented by
its Partner, Shri Prasanna Modi,
R/o Mahal, Nagpur.
4. Shri Satish Sharma,
Aged adult, Occupation – Business,
Proprietor, M/s. Kids Point,
a proprietary concern, having its
place of business at Sitabuldi Main
Road, Nagpur-440 012,
R/o Bajaj Nagar, Nagpur.
5. Shri Pramod Palkar,
Aged adult, Occupation – Business,
Proprietor, M/s. Chafekar Dugdha Mandir,
a proprietary concern, having its place
of business at Sitabuldi,
Main Road, Nagpur-440 012,
R/o Tilak Nagar, Nagpur.
6. M/s. Selection House,
a partnership firm, having its
place of business at Sitabuldi

Main Road, Nagpur-440 012,
acting through and represented
by its partner, Shri Mahendra Jain,
R/o Ladpura, Itwari, Nagpur.

7. M/s. Rajkamal Readymade Stores,
a partnership firm, having its place
of business at Sitabuldi Main Road,
Nagpur-440 012, acting through and
represented by its partner,
Shri Vimal Kumar Jain,
R/o Parwarpura, Itwari, Nagpur.
8. M/s. Dream Shoppe,
a partnership firm, having its place
of business at Sitabuldi Main Road,
Nagpur-440 012, acting through and
represented by its Partner, Shri Raju
Rajkumar Jain, R/o Dhantoli, Nagpur.
9. M/s. Victory Watch Company,
a partnership firm, having its place
of business at Sitabuldi, Main Road,
Nagpur-440 012, acting through and
represented by its Partner,
Shri Amirali Neemuchwala,
R/o Mankapur, Nagpur.
10. Shri Sanju Kipte,
Aged Adult, Occupation – Business,
Proprietor, M/s. Vijay News Agency,
a proprietary concern, having its
place of business at Sitabuldi Main
Road, Nagpur-440 012,
R/o Deonagar, Nagpur.
11. Dr. Shri Pradeep V. Rajderkar,
Aged about 48 years,
Occupation – Medical Practitioner,

having his Clinic at Sitabuldi
Main Road, Nagpur-440 012,
R/o Hindustan Colony,
Wardha Road, Nagpur.

12. M/s. Fashion Bazaar,
a partnership firm, having its place
of business at Sitabuldi Main Road,
Nagpur-440 012, acting through and
represented by its Partner, Shri Madan
Kalra, R/o Wathoda, Nagpur.
13. M/s. Gaysons,
a partnership firm, having its place
of business at Sitabuldi Main Road,
Nagpur-440 012, acting through and
represented by its partner, Shri Ravindra
Shyam Agrawal, R/o Ramdaspath,
Nagpur.
14. Shri Kishore Meshram,
Aged adult, Occupation – Business,
Proprietor, M/s. Breakfast Juice Centre,
a proprietary concern having its place
of business at Sitabuldi Main Road,
Nagpur.
15. Shri Sadanand Meshram,
Aged adult, Occupation – Business,
Proprietor, M/s. Sadanand Snacks and
Juice Centre, a proprietary concern,
having its place of business at
Sitabuldi Main Road, Nagpur-440 012,
R/o Sitabuldi, Nagpur.
16. M/s. A.S. Balasubramanian,
Aged about 63 years,
Occupation – Business,
Partner, M/s. Vishranti Gruha,

a partnership firm, having its place of business at Sitabuldi Main Road, Nagpur-440 012, R/o Dharampeth, Nagpur.

17. M/s. S. Ramchand,
proprietary concern, having its place of business at Sitabuldi Main Road, Nagpur-440 012, acting through and represented by its authorised representative, Shri Mitesh Rambhia, R/o Laxmi Nagar, Nagpur.
18. Shri Jagdish Waswani,
Aged adult, Occupation – Business, Proprietor, M/s. Quality Fashions, a proprietary concern, having its place of business at Sitabuldi Main Road, Nagpur-440 012,
R/o Jaripatka, Nagpur.
19. State of Maharashtra,
through its Secretary,
Urban Development Department,
Mantralaya, Mumbai 400 032.
20. Nagpur Improvement Trust,
a statutory body constituted under the Nagpur Improvement Trust Act, 1936, having its office at Station Road, Sadar, Nagpur 440 001, through its Chairman.
21. Divisional Officer (West),
Nagpur Improvement Trust,
Nagpur, having its office at Station Road (West), North Ambazari Road,

Nagpur-440 033.

22. Superintending Engineer,
Nagpur Improvement Trust,
Nagpur, having its office at
Station Road, Sadar,
Nagpur 440 001.
23. Assistant Director,
Town Planning,
Nagpur Improvement Trust,
Nagpur, having its office at
Station Road, Sadar,
Nagpur 440 001.
24. Smt. Madhuribai Ramchandrarao Buty,
Aged Adult, Occupation – Not Known,
R/o Laxmi Vilas, Jail Road,
Rahate Colony, Nagpur.
25. Shri Girish s/o Shri Ramchandrarao Buty,
Aged Adult, Occupation – Not Known,
R/o Laxmi Vilas, Jail Road,
Rahate Colony, Nagpur.
26. Shri Yogeshwar s/o Shri Ramchandrarao
Buty,
Aged Adult, Occupation – Not Known,
R/o Laxmi Vilas, Jail Road,
Rahate Colony, Nagpur.
27. Shri Aniruddha @ Dilip s/o
Shri Mukundrao Buty,
Aged Adult, Occupation – Not Known,
R/o Laxmi Vilas, Jail Road,
Rahate Colony, Nagpur.
28. Ku. Purnima d/o Shri Vishwanathrao Buty,
Aged Adult, Occupation – Not Known,

R/o Sukh Niwas,
Near Ramkrishna Aashram,
Dhantoli, Nagpur.

29. Shri Pushkar s/o Shri Vishwanathrao Buty,
Aged Adult, Occupation – Not Known,
R/o Sukh Niwas, near Ramkrishna
Aashram, Dhantoli, Nagpur.

30. Goel Ganga Infrastructure & Real Estate
Private Limited,
A Company incorporated and registered
under the Companies Act, 1956,
having its Registered Office at
Bombay Mutual Building, Third Floor,
Office No.17/18, 148 P.M. Road,
Fort, Mumbai 400 001;
at San Mahu Commercial Complex,
3rd Floor, 5 Bund Garden Road,
Pune 411 001 and its local office at
Plot No.92, Near Golhar Hospital,
Lendra Park, Ramdaspath,
Nagpur 440 012.

31. Shri Jaiprakash s/o Shri Sitaram Goel,
Aged Adult, Occupation – Business,
Director, Goel Ganga Infrastructure &
Real Estate Private Limited,
R/o San Mahu Commercial Complex,
3rd Floor, 5 Bund Garden Road,
Pune 411 001 and at Plot No.92,
Near Golhar Hospital, Lendra Park,
Ramdaspath, Nagpur 440 012.

32. Shri Atul s/o Shri Jaiprakash Goel,
Aged Adult, Occupation – Business,
Director, Goel Ganga Infrastructure &
Real Estate Private Limited,
R/o San Mahu Commercial Complex,

3rd Floor, 5 Bund Garden Road,
Pune 411 001 and at Plot No.92,
Near Golhar Hospital, Lendra Park,
Ramdaspath, Nagpur 440 012.

33. Shri Ajay Radeshyam Tajpuriya,
Aged Adult, Occupation – Business,
Director, Goel Ganga Infrastructure &
Real Estate Private Limited,
Plot No.N-1, 8 Cross Road, Rani Laxmi
Nagar, Nagpur 440 032.

34. Shyam Wardhane,
Aged about 62 years,
Occupation – Executive Director,
M.S.E.D.C. Ltd., G-9,
Prakashgad, Bandra (E),
Mumbai-51.

... Non-Applicants

Shri R.L. Khapre with Shri R.G. Kavimandan, Advocates for
Applicants.

CORAM : R.K. DESHPANDE & S.B. SHUKRE, JJ.

Date of Reserving the Order : 8th December, 2016

Date of Pronouncing the Order : 16th December, 2016.

ORDER (Per R.K. DESHPANDE, J.) :

1. In Writ Petition No.2685 of 2015, which we decided on
15-9-2016 ("the said writ petition"), the challenge was to the

identically worded individual notices issued to 18 petitioner-shopkeepers by the NIT on 24-4-2015, calling upon them to vacate the portion of their shops, leaving 8-meter depth from Sitabuldi Main Road so as to facilitate demolition and construction of commercial complex in Khasra Nos.315 (Part) and 320 along with building permit, revised on 11-12-2014. The notices were issued under the pretext of implementing the Government Resolution dated 7-10-1997 and the compromise accepted by the Apex Court on 8-4-2002 in Special Leave Petition No.4846 of 2002 filed by the present review petitioners.

2. There was a dispute in the said writ petition as to the existence of 50 feet (15 meters) wide road (“internal road”) joining Mahatma Gandhi Road on the north to Abhyankar Road on the west in “Abhyankar Road Widening and Buty Mahal Street Scheme” (“the Scheme”, for short) prepared by the Nagpur Improvement Trust and published under Section 45 of the Nagpur Improvement Trust Act, 1936 (“NIT Act”) (which is equivalent to Section 6 notification under the Land Acquisition Act, 1894) on 23-9-1964. Initially, the Nagpur Improvement Trust (“NIT”), which

is the acquiring body and also the local authority constituted under the provisions of the NIT Act itself took the stand in the said writ petition that there existed no such internal road in the Scheme, but subsequently it was admitted by filing an affidavit, and this fact is also not disputed in the present petition for review.

3. The petitioners in the said writ petition, though challenged the entire action, conceded to the position that if the Scheme is implemented with the provision for internal road which gave some of the shopkeepers facing to the road, they shall not have any objection. This was opposed by the respondents in the said writ petition. It was the stand taken by the respondents therein, including the NIT, which is also the planning authority constituted under the provisions of the Maharashtra Regional and Town Planning Act, 1966 ("MRTP Act"), that in the first development plan brought into force on 3-6-1976 and revised on 4-5-1989 and 7-1-2000, the internal road was not shown in the Scheme and by virtue of Section 39 of the MRTP Act, the provision of internal road subsisting in the Scheme published under Section 45 of the NIT Act automatically came to an end and, therefore, the petitioners in the

said writ petition could not insist for such internal road in the final layout plan sanctioned on 15-5-2012 and the building permit granted on 27-6-2012 and revised on 11-12-2014, to challenge the notices impugned. We did not consider in the said writ petition, the other provisions in the sanctioned layout and plan with the building permit.

4. In the said writ petition, we have decided the question of the locus of the petitioners and the delay caused in filing the petition apart from the following two questions, which were framed for the decision :

“(1) Whether mere absence of proposal of “Internal road” in the final development plan under sub-section (6) of Section 31 of the Maharashtra Regional and Town Planning Act and its existence in the Scheme, published under Section 45 of the Nagpur Improvement Trust Act, can be termed as 'variation' or 'modification', as contemplated by Section 39 of the MRTP Act?, and

(2) Whether the impugned notices of demolition,

based upon final layout plan sanctioned on 15-5-2012 and the building permit granted on 27-6-2012 and revised on 11-12-2014, need to be set aside for want of Internal road, which was the part of the Scheme sanctioned under Section 44 of the NIT Act?”

We have held that the petitioners have established their locus, there was no delay in filing the petition, and the questions framed are answered by holding that (i) mere absence of proposal of internal road in the final development plan under sub-section (6) of Section 31 of the MRTP Act and its existence in the Scheme published under Section 45 of the NIT Act, cannot be termed as “violation” or “modification”, as contemplated by Section 39 of the MRTP Act, and (ii) the impugned notices based upon the final layout plan sanctioned on 15-5-2012 and the building permit granted on 27-6-2012 and revised on 11-12-2014 need to be set aside for want of internal road, which was the part of the Scheme sanctioned under Section 44 of the NIT Act.

5. The operative portion of the judgment delivered by us in

the said writ petition is reproduced below :

“89. *In the result, we allow this petition and pass order as under :*

(1) All the notices of demolition dated 24-4-2015 issued by the Nagpur Improvement Trust, at Annexure-W (Collectively) to the petition, are hereby quashed and set aside.

(2) We leave it open for the Nagpur Improvement Trust to issue fresh notices of demolition to the petitioners after the sanctioned layout plan dated 15-5-2012, the building permit granted 27-6-2012 and revised on 11-12-2014 as well as the construction, if any, carried out are brought in conformity with the Scheme published under Section 45 of the NIT Act on 23-6-1964.

90. *Rule is made absolute in above terms. No order as to costs.”*

6. Shri R.L. Khapre, the learned counsel for the review petitioners, submits that the judgment delivered by this Court in the said writ petition is challenged by the NIT and others by filing different special leave petitions, one of being Petition for Special Leave to Appeal (C) No.32089 of 2016, in which the Apex Court has passed an order on 25-11-2016 as under :

“ List the matters on 7th February, 2017.

The respondents shall maintain the status quo as on today, with regard to possession.

We may further clarify that as of now the impugned judgment of the High Court would be binding inter-parties only.”

Shri Khapre submits that the clarification given by the Apex Court that the impugned judgment of the High Court would be binding inter-parties only, was at the instance of the review petitioners and pursuant to it, the present review petition has been filed. We do not find any reason to doubt such statement made before us.

7. This review petition was listed before us initially for the first time on 2-12-2016, and after hearing Shri Khapre for review petitioners for quite some time, we adjourned the matter to 8-12-2016 with a clear understanding that this Court shall hear the review petitioners not only on the maintainability of this review petition, but also on the merits of their claim for recall of the judgment delivered by this Court in the said writ petition.

8. This review petition was accordingly listed before us for admission and hearing on 8-12-2016. Shri Khapre for the review petitioners urged that unless the said judgment is recalled, the review petitioners cannot be called upon to argue the matter on merits, as it would amount to post-decisional hearing, which cannot be a substitute to a pre-decisional hearing. For this purpose, he has relied upon the following decisions of the Apex Court.

- (1) *Prabodh Verma and others v. State of U.P. and others*, reported in **AIR 1985 SC 167**.
- (2) *Institute of Chartered Accountants of India v. L.K. Ratna and others*, reported in

AIR 1987 SC 71 – [Para 17].

- (3) *H.L. Trehan and others v. Union of India and others*, reported in **AIR 1989 SC 568**.
- (4) *Asit Kumar Kar v. State of W.B. and others*, reported in **AIR 2009 SC (Supp) 282**.

9. It is not necessary for us to consider and deal with the aforesaid decisions of the Apex Court, for the reason that the review petitioners were not parties to the writ petition, which we have decided, and the Apex Court has made it clear that our judgment would be binding inter-parties only. We, therefore, clearly expressed in the open Court that we are going to examine the rights of the review petitioners independently, and if we find that the interest of the review petitioners is required to be protected in any manner, then nothing can prevent us from taking a view – even contrary to one which we have already taken in the said writ petition, but if we do not find the merit in the contentions raised, then the decision rendered by us in the said writ petition shall obviously bind the review petitioners also. We also made it clear to Shri Khapre that we shall not restrict his arguments to the principles of review or recall of the judgment, but shall consider

the contentions raised on their own merits. We also asked Shri Khapre to formulate the written propositions on facts and law both in advance so that all the points on merits can be dealt with independently. Accordingly, such written propositions are given to us in the pursis dated 8-12-2016, which is marked as "X" for identification.

10. Shri Khapre took us through the provisions of Sections 39, 44, 45, 46, 58 and 59 of the NIT Act, and the provisions of Section 37(2) and 65 of the MRTP Act. He also invited our attention to the Government Resolution dated 7-10-1997, the award passed for acquisition of 1,14,079.36 square feet of land on 16-12-1997 as against the area of 2,71,552.60 square feet of land covered by the notification under Section 45 of the NIT Act issued on 23-9-1964, and the event of taking possession of the land by the NIT on 31-12-1997. He also invited our attention to the notification published under sub-section (2) of Section 37 of the MRTP Act on 22-6-2007.

11. The basic point urged by Shri Khapre for the review

petitioners is that the attention of this Court was not invited to the aforesaid provisions of the NIT Act, the MRTP Act and the effect of passing the Government Resolution dated 7-10-1997, and the notification issued under Section 37(2) of the MRTP Act. He submits that several factual and legal aspects were not brought to the notice of this Court while deciding the said writ petition, and if all these provisions and the facts having material bearing on the issues involved before this Court had been brought to the notice of this Court, the judgment in the said writ petition would have been different.

12. What we gather from the arguments of Shri Khapre is that the review petitioners wanted to oppose the said writ petition rather than asserting their own independent legal rights, if any. In fact, what we have done in the said writ petition is to see that the NIT discharges its statutory obligations to execute the Scheme as it is in the light of the compromise effected before the Apex Court on 8-4-2002. The NIT, owners and developers, under the pretext of following the terms of the Government Resolution dated 7-10-1997 and the compromise dated 8-4-2002, tried to alter

the Scheme in colourable exercise of power, which, according to us, was impermissible in law. This has resulted in granting the reliefs to the petitioners in the said writ petition. In our view, the review petitioners have no right to oppose the reliefs claimed in the original writ petition.

13. Shri Khapre is right in urging that the tenants, who are the shopkeepers, including the petitioners in earlier writ petition as well as the review petitioners, ceased to have the tenancy rights in respect of the land in question, which stood extinguished upon statutory vesting of the property in the NIT – free from all encumbrances. The rights of all the tenants flow from the terms of compromise dated 8-4-2002 accepted by the Apex Court. At the most, if there is violation of such terms, then the tenants can be said to have some right which accrued to them. The review petitioners are not coming before this Court with such a case. On the contrary, what they are saying is that the terms of compromise no longer bind them. This hostile attitude towards the terms of settlement disentitles them to any relief from this Court in this review petition.

14. In spite of the aforesaid position, we proceed to deal with the contentions raised before us on merits. Shri Khapre invited our attention to Section 46 of the NIT Act to urge that the Scheme published under Section 45 of the NIT Act can be altered before it has been completed and, according to him, the acquisition was complete only upon passing of award in respect of 1,14,079.36 square feet of land on 16-12-1977 and taking possession of it on 31-12-1977. He has pointed out to us that the area of land acquisition was reduced to 1,14,079.36 square feet in the award, as against the area of 2,71,552.60 square feet shown in the notification under Section 45 of the NIT Act. He submits that by the Government Resolution dated 7-10-1997, there was reconstitution of plots in the Scheme, which was approved by the State Government under Section 65 of the MRTP Act and it can operate as an order under Section 46-A of the NIT Act. He, therefore, submits that the entire Scheme stood modified by virtue of the Government Resolution dated 7-10-1997 and issuance of the notification under sub-section (2) of Section 37 of the MRTP Act was the another step. He submits that there was hardly any scope

for this Court to interfere in the notices impugned in the said writ petition.

15. In order to consider the basic argument of Shri Khapre, we have to see the provision of Section 27 of the NIT Act, which deals with the types of improvement schemes, and it is reproduced below :

“27. Types of improvement schemes.

An improvement scheme shall be of one of the following types or may combine any two or more of such types, or of any special features thereof, that is to say,-

- (a) a general improvement scheme;*
- (b) a re-building scheme;*
- (c) a re-housing scheme;*
- (d) a street scheme;*
- (e) a deferred street scheme;*
- (f) a development scheme;*
- (g) a housing accommodation scheme;*
- (h) a future expansion or improvement scheme;*
- (i) a drainage or drainage including sewage disposal*

scheme.”

We are concerned with a street scheme under clause (d) of Section 27 above. A street scheme is governed by Section 31 of the NIT Act, which is also reproduced below :

“31. Street Scheme.

(1) Whenever the Trust is of opinion that, for the purpose of-

- (a) Providing building sites, or*
- (b) remedying defective ventilations, or*
- (c) creating new or improving existing means of communications and facilities for traffic, or*
- (d) affording better facilities for conservancy and drainage,*

it is expedient to lay out new streets or alter existing streets (including bridges, causeways and culverts), the Trust may pass a resolution to that effect, and shall then proceed to frame a street scheme for such area as it may think fit.

(2) A street scheme may, within the limits of the area comprised in the scheme provide for-

(a) the acquisition of any land which will, in the opinion of the Trust, be necessary for its execution;

(b) the re-laying out of all or any of the lands so acquired, including the construction and re-construction of buildings by the Trust or by any other person and the laying-out, construction and alteration of streets and thoroughfares;

(c) the draining water-supply, and lighting of streets and thoroughfares so laid out, constructed or altered;

(d) the raising, lowering, or reclamation of any land vested in, or to be acquired by the Trust for the purposes of the scheme;

(e) the formation of open spaces for the better ventilation of the area comprised in the scheme;

(f) the acquisition of any land adjoining any street, thoroughfare, or open space to be formed under the scheme.”

The objects of formulating a street scheme, as specified in clauses (a) to (d) of sub-section (1) of Section 31, are to provide building sites, or remedying defective ventilations, or creating new or improving existing means of communications and facilities for traffic, or affording better facilities for conservancy and drainage. Such scheme may provide for acquisition of land necessary for its

execution, construction, re-construction of buildings by the Trust or by any other person and the laying-out, construction and alteration of streets and thoroughfares, formation of open spaces for better ventilation of the area comprised in the scheme, acquisition of any land adjoining any street, thoroughfare, or open space to be formed under the scheme, etc., as contained in sub-section (2) of Section 31 of the NIT Act.

16. This case is concerned with the sanction of a street scheme by the State Government under Section 44 of the NIT Act. Section 45 of the NIT Act deals with the notification of sanction of improvement scheme and other regarding vesting of property in Trust, and it is, therefore, reproduced below :

“45. Notification of sanction of improvement scheme and other regarding vesting of property in Trust.

(1) Whenever the State Government sanctions an improvement scheme, it-

(a) shall announce the fact by notification and, except in the case of a deferred street scheme,

development scheme, or future expansion or improvement scheme, the Trust shall forthwith proceed to execute the same;

(b) may order that any street, square, park, open space or other land, or any part thereof, which is the property of the Government and managed by the Central Government or the State Government, shall, subject to such conditions as it may impose, vest in the trust for the purpose of the scheme.

(2) The publication of a notification under sub-section (1) in respect of any scheme shall be conclusive evidence that the scheme has been duly framed and sanctioned.”

In this case, we are not concerned with deferred street scheme, development scheme or future expansion scheme or improvement scheme, referred to in sub-section (1)(a) of Section 45 above. We are concerned with the street scheme only. The effect of granting sanction to the street scheme under Section 44 is provided under Section 45 of the NIT Act, reproduced above. Clause (a) of sub-section (1) of Section 45 creates a statutory obligation upon

the NIT to forthwith proceed to execute such street scheme. The publication of notification under sub-section (1) of Section 45 is the conclusive evidence that *the* Scheme has been duly framed and sanctioned, as stipulated in sub-section (2) therein. Any alteration in *the* Scheme can be done only under Section 46 of the NIT Act by following the procedure prescribed under Sections 39, 41 and 43 therein.

17. In paragraphs 51, 52 and 53 of the judgment in the said writ petition, we have held as under :

“Provisions of the Scheme and the effect of its publication under Section 45 of the NIT Act :

51. *After taking survey of the relevant provisions of the NIT Act as well as the MRTP Act, we would like to crystallize the position for the purposes of deciding the controversy involved in the present case. The Nagpur Improvement Trust Act, 1936 was brought into force with effect from 1-1-1937, and the NIT is the local authority entrusted with the duty of carrying out the provisions of the NIT Act and it continues to operate as such till this date. On 29-10-1960, the Board of*

Trustees of NIT passed a resolution to frame a Scheme, i.e. "Abhyankar Road Widening & Buty Mahal Street Scheme" under Section 31 of the NIT Act, invoking acquisition of lands Khasra Nos.320 and 315 (Part) of Mouza Sitabuldi, Nagpur ("land in question") as per the list and the map enclosed therewith. The existing use of land in question on the date of such Scheme was essentially for residential purposes with Internal road, one cinema theatre and the peripheral area being used for shops-cum-office purposes.

52. *The objects of the Scheme published under Section 45 of the NIT Act to be achieved in terms of clauses (a) to (d) of sub-section (1) and the matters to be provided in the Scheme in terms of clauses (a) to (f) under sub-section (2) of Section 31 of the NIT Act, are reflected in the Scheme. The Scheme provided for the building sites, viz. the shops-cum-office complex covering the internal area of the Scheme, removing existing ugly and ill-ventilated premises on Mahatma Gandhi Road and Abhyankar Road, parking space open to sky, etc. It provides for creating new or improving existing means of communications and facilities for traffic by way of Internal road of 50 feet (15 meters) wide to join Mahatma Gandhi Road on the north and Abhyankar Road on the west to circulate the traffic*

from Variety Island at the junction of 50 feet road with Mahatma Gandhi Road and Abhyankar Road to avoid the congestion, apart from other roads.

53. *The said Scheme was sanctioned under Section 44 and published under Section 45 of the NIT Act on 23-9-1964, creating a statutory obligation upon the NIT to execute the Scheme as it is, unless it is altered and modified under Section 46 of the said Act. Shri Sunil Manohar, who led the arguments for the respondents, also stated in response to our query that the provision of Internal road could not be dispensed with, in the absence of exercise under Section 46 of the NIT Act. It is thus clear that in the absence of the development plan under Section 31 of the MRTP Act, the Scheme published under Section 45 of the NIT Act was required to be executed by the NIT as it is, with the provision of Internal road without any change, alteration or modification.”*

18. The argument of Shri Khapre is that the attention of this Court was not invited to Section 46 of the NIT Act dealing with alteration of improvement scheme after sanction, which is reproduced below :

“46. Alteration of improvement scheme after sanction.

At any time after an improvement scheme has been sanctioned by the State Government and before it has been completed, the Trust may alter it:

Provided as follows:-

(a) If any alteration is likely to increase the estimated net cost of executing a scheme by more than Rs.50,000 or 5 per cent. of such cost, such alteration shall not be made without the previous sanction of the State Government;

(b) If any alteration involves the acquisition, otherwise than by agreement of any land the acquisition of which has not been sanctioned by the State Government the procedure prescribed in the foregoing sections of this Chapter shall, so far as applicable, be followed as if the alteration were a separate scheme.

(c) if owing to changes made in the course of a scheme, any land not previously liable under

the scheme to the payment of a betterment contribution subsequently becomes liable to such payment, the provisions of sections 39, 41 and 43 shall, as far as they are applicable, be followed in any such case.”

Shri Khapre submits that after sanction of the Scheme under Section 45 of the NIT Act, the State Government decided to alter the Scheme in exercise of power under Section 46 above, by issuing the Government Resolution dated 7-10-1997 before completion of the Scheme and it is thereafter that the award was passed on 16-12-1977 in respect of acquisition of the reduced area of 1,14,079.36 square feet as against the total area of 2,71,552.60 square feet, shown in the notification under Section 45 of the NIT Act. He further submits that the Government Resolution dated 7-10-1997 was for reconstitution of plots under Section 65 of the MRTP Act, which has the effect of alteration of the Scheme, as contemplated by Section 46-A of the NIT Act.

19. Before we deal with the aforesaid arguments, we would like to note that the Government Resolution dated 7-10-1997 and

the notices of demolition issued to the review petitioners at that point of time, were challenged before this Court in Writ Petition No.798 of 2002. The said writ petition was dismissed by the Division Bench of this Court on 22-2-2002. The review petitioners preferred Special Leave Petition No.4846 of 2002, in which a compromise was entered into between the parties on 8-4-2002, and accepting it, the Apex Court disposed of the SLP on the very same date by observing that the compromise is voluntarily and lawfully arrived at between the parties, and the parties agree to abide by the terms of the compromise and the tenants and the landlords agree to vacate the area out of the property in their possession for the purposes of road widening of Sitabuldi Main Road-60 feet, Abhyankar Road-80 feet, internal road-50 feet, and the parking. The review petitioners, who are bound by it, cannot now urge that the provision of internal road-50 feet (15 meters), as was agreed to be maintained under the compromise, which is also binding upon the NIT, should not have been maintained by this Court in the decision rendered in the said writ petition.

20. Be that as it may, it was not the case even of the NIT

before us in the said writ petition that there was any proposal for alteration of the Scheme in terms of Section 46 of the NIT Act submitted to the State Government. The mandate of internal road and the effect of changes over a period are dealt with by us in paragraphs 70 and 71 of the judgment in the said writ petition, which are reproduced below :

“ “Internal road”, a soul or basic structure of the Scheme – cannot be altered :

70. In fact, as we see from the features of the Scheme provided to us by the NIT and the proposals in the development plan, two roads, viz. - (i) Mahatma Gandhi Road, and (ii) Abhyankar Road, which existed earlier, are shown in the development plan. Both the aforesaid roads are beyond the boundaries of the Scheme. The Internal road is inside the boundaries of the Scheme area, provided as thoroughfare to improve the existing means of communications and facilities for traffic and it does not find place in the development plan. Thus, the execution of the Scheme involves four major functions, viz. - (i) providing

huge commercial complex inside the Scheme area to accommodate the tenants apart from others, (ii) widening of Mahatma Gandhi Road and Abhyankar Road outside the Scheme area, (iii) providing 50 feet (15 meters) wide Internal road along with other two roads inside the Scheme area to ease out the traffic and removing congestion, and (iv) to provide space open to sky for parking. We agree with Shri Subodh Dharmadhikari for the petitioners that the Internal road constitutes the soul or basic structure of the Scheme, which cannot be altered or dispensed with. It has, therefore, to be held that the Scheme containing Internal road has to be executed as it is, unless it is altered or modified under Section 46 of the NIT Act.

Whether entire Scheme became non-existent by passage of time and the changes? :

71. *After the final development plan was brought into force, the NIT had passed a resolution on 31-12-1981 on page 685 of the paper-book to implement the said Scheme by immediately acquiring the lands in question. Such*

decision has been reiterated on 17-8-1984 in the meeting of the NIT, the minutes of which, are at page 679. In the affidavit filed by the NIT on 14-2-2002 in response to Writ Petition No.688 of 2002 filed by the tenants on Abhyankar Road, a specific stand is taken in para 9, which is reproduced below :

“9. ... Thus, in these circumstances, the petitioner cannot claim that the construction of the Abhyankar Road should be done as per the Development Plan. It is submitted that this respondent is executing the Abhyankar Road Widening and Buty Mahal Street Scheme, in which, the width of Abhyankar Road is shown as 24 meters. It is further submitted that this road is in the hub of main commercial activity. It is further submitted that due to traffic congestion, this road is utilized as one way road. That, by widening of this road, it will become two way road in addition to the considerable amount of parking space will also become available. Thus, in these circumstances, in the larger interest of the public at large, this respondent is implementing the scheme, to which, the consent of the land-owner is already accorded. Moreover, the land-owners themselves have submitted a proposal for

rehabilitation of all their tenants, who are in occupation of the premises, which is submitted to this respondent with their signatures. Thus, in these circumstances, all the occupants will not be thrown out of the business, as the land-owners have started constructing alternative accommodation to accommodate their tenants temporarily. It is further submitted that even many of the occupants have shown their willingness and started vacating the shops. ...”

Apart from above, there is ample material available on record to hold that the NIT continued to execute the Scheme and it is thus obvious that the NIT was very clear in its mind to implement the Scheme, even after revision to the development plan on 7-1-2000. In spite of widening of Abhyankar Road from 12 meters to 24 meters to accommodate two-way traffic, the stand of the NIT is clear to implement the Scheme in larger public interest. It is not the stand of the NIT that the Scheme no longer subsists or survives after coming into force of the development plan. The argument of Shri Sunil Manohar that there is evolution

of the Scheme over a period from 1960 to 2015, is neither supported by the NIT nor can be accepted for the reason that the evolution cannot be de hors the provisions of law. We, therefore, reject the contention of Shri Sunil Manohar for the respondents that after coming into force of the development plan, the said Scheme became non-existent or was completely eclipsed.”

21. The only stand taken by the NIT was that the road and the parking area shown in the Scheme are not shown in the development plan, and as per the Government Resolution dated 7-10-1997, the development has to be as per the development plan. In paragraphs 75 and 76 of the judgment in the said writ petition, we have held as under :

“75. It is surprising that without there being any proposal, discussion and decision of the NIT on the vital aspect of existence and continuation of Internal road in the Scheme published under Section 45 of the NIT Act, there is a sanction of the layout plan and building permit without the provision of Internal road. We also put a

specific question to Smt. Bharti Dangre for the NIT, and she fairly conceded that there was neither any such proposal nor any decision of the NIT thereon. Perusal of the Government Resolution shows that its object is only to grant relaxation under Rule 5(2) of the Nagpur Improvement Trust (Land Disposal) Rules, 1993 from auctioning the property and to allot reconstituted plots to the land-owners upon certain terms and conditions stipulated therein, and one of which being to accommodate all the tenants in the Scheme, which was not there in the earlier Scheme framed by the NIT. The land was allotted to the owners on 50% premium of the market rate so as to enable the land owners to make the Scheme viable or feasible and to accommodate all the tenants in it.”

“76. In our view, the said Government Resolution cannot be construed to mean that the Scheme published under Section 45 of the NIT Act containing Internal road no longer survives. The provision of Internal road can be dispensed with only by having recourse to the provision of Section 46 of the NIT Act and that has not been done in the present case. As pointed out earlier, the NIT is playing dual role – one that of the local authority under the NIT Act, and the other that of the planning authority under the MRTP Act. The reference in the said

Government Resolution is to the Scheme framed under the NIT Act and not to the development plan under the MRTTP Act. In our view, the direction in the Government Resolution is for development as per the Scheme. At any rate, looking to the purpose of the Government Resolution, even if the reference is construed as to the development plan, it does not make any difference in view of an interpretation of various provisions.”

22. The Government Resolution dated 7-10-1997 refers to Rule 5(2) of the Nagpur Improvement Trust Land Disposal Rules, 1983. We reproduce below Rule 5 of the said Rules :

“

Part III

Manner of Disposal of Land

5. General.

(1) No piece of Government land vested in or managed by the Trust shall be transferred except with the general or special sanction of the Government given in that behalf.

(2) Except as otherwise provided in sub-rule(1) in Part VI of these rules, all other lands vested in and

acquired by the Trust shall be disposed of by the Trust by--

(i) holding public auction; or

(ii) inviting tenders by public advertisement; or

(iii) making offers to or accepting offers from any Government, Local Authority, Public Sector Undertaking or a body corporate which is owned or controlled by Government;

(iv) inviting applications from persons or bodies of persons who are eligible for allotment of plots under rule 4, by public advertisement to be published at least in one leading local newspaper each in Marathi, Hindi and English on the basis of predetermined premium or other considerations or both and deciding these applications by drawing lots, if necessary, as it may determine, from time to time, in accordance with the rules hereinafter appearing.

(v) Land for public amenities such as for primary school, vehicle stand, public latrine or urinal, public library, reading room, hospital, dispensary or such other purpose may be transferred to the Corporation of

the City of Nagpur either free of premium and ground rent or at nominal premium and ground rent as the Trust may determine in each case.

(3) Except as otherwise provided in sub-rule (1) and in Part VI of these rules, the buildings vested in and acquired by the Trust shall be disposed of by the Trust by--

(i) inviting applications; or

(ii) calling for public tenders; or

(iii) auction;

along with such land and on such terms as may be agreed to by the Trust and the transferee having regard to the use for which the building is intended, by public advertisement to be published at least in one leading newspaper each in Marathi, Hindi and English on the basis of predetermined premium or other considerations or both by deciding these applications by drawing of lots, if necessary.”

Upon perusing the aforesaid Rule, we do not find that it empowers

the State Government to alter the Scheme published under Section 45 of the NIT Act. We are also unable to accept the contention that issuance of this Government Resolution is an exercise of the power by the State Government for the purposes of alteration of Scheme under Section 46 of the NIT Act.

23. It is significant to note that the aforesaid rule operates only upon the vesting of the land in the NIT. Hence, before issuing the Government Resolution on 7-10-1997, the lands were treated as vested in the NIT and it cannot be said that the acquisition was not complete, as contemplated under Section 46 of the NIT Act. We have held that the object of issuing this Government Resolution dated 7-10-1997 is to make all the tenants as partners in the Scheme published under Section 45 of the NIT Act, and the approval of the State Government was for disposal of land in relaxation of Rule 5 of the Nagpur Improvement Trust Land Disposal Rules, 1983 by the NIT in favour of the land-owners, viz. Buty Family, by executing a registered lease-deed on 10-2-2010 in favour of the owners with an understanding that all the tenants/shopkeepers shall be accommodated in the Scheme to be

executed under the supervision of the NIT. In the absence of the Government Resolution dated 7-10-1997, the lease-deed dated 10-2-2010 and the compromise dated 8-4-2002, all the tenants could have been legally evicted in exercise of statutory power by the NIT.

24. So far as the reduction in the area of land acquisition from 2,71,552.60 square feet to 1,14,079.36 square feet in the award dated 16-12-1997 is concerned, Section 68 of the NIT Act regarding abandonment of acquisition in consideration of special payment is relevant and, therefore, it is reproduced below :

“68. Abandonment of acquisition in consideration of special payment.

(1) Wherever in any area comprised in any improvement scheme under this Act the State Government has sanctioned the acquisition of land which is subsequently discovered to be unnecessary for the execution of the scheme, the owner of the land, or any person having an interest therein may make an application to the Trust, requesting that the

acquisition of the land not required for the purposes of the scheme should be abandoned on his executing an agreement to observe conditions specified by the Trust in respect of the development of the property and to pay a charge to be calculated in accordance with sub-section (2) of section 69 of the Act.

(2) The Trust shall admit every such application if it-

(a) reaches it before the time fixed by the Deputy Commissioner under section 9 of the Land Acquisition Act, 1894, for making claims in reference to the land, and

(b) is made by any person who has an interest in the land or holds a lease thereof, with an unexpired period of seven years.

(3) On the admission by the Trust of any such application, it shall forthwith inform the Deputy Commissioner; and the Deputy Commissioner shall thereupon stay for a period of three months all further proceedings for the acquisition of the land, and the Trust shall proceed to fix the conditions on which the acquisition of the land may be abandoned.

(4) When an agreement has been executed in pursuance of sub-section (1) in respect of any land the proceedings for the acquisition of the land shall be deemed to be abandoned.

(5) The provisions contained in sections 70, 71, 72, 73 and 74 relating to the assessment, interest, recovery and payment of betterment charge and civil suits shall apply mutatis mutandis to the assessment, interest, recovery and payment of abandonment charge and civil suits in respect thereof.”

25. The reduction in the area or abandonment of the part of the land acquired can be done at the time of passing of an award also, which is apparent from the scheme of the provisions preceding Section 68 of the NIT Act above. The award in the present case was passed on 16-12-1997, i.e. after the decision contained in the Government Resolution dated 7-10-1997. In terms of Section 68 of the NIT Act, the NIT appears to have released the portion of the land under acquisition to the land owners upon certain terms and conditions included in the

agreement of lease dated 10-2-2010. Be that as it may, what is the bearing of this event on the question of alteration or modification of the Scheme published under Section 45 of the NIT Act, has not been demonstrated. It is after the award was passed on 16-12-1997 and the possession of the land was taken by the NIT, the compromise before the Apex Court was entered into between the parties on 8-4-2002, and what we have done in the said writ petition is to see that the Scheme, as has been settled between the parties by executing a compromise-deed accepted by the Apex Court, has to be implemented as it is.

26. The contention so far based upon Section 65 of the MRTP Act is concerned, the provision thereof need to be seen, and hence it is reproduced below :

“65. Reconstituted plot

(1) In the draft scheme, the size and shape of every reconstituted plot shall be determined, so far as may be, to render it suitable for building purposes, and where a plot is already built upon, to ensure that the buildings as far as possible comply with the provisions of the scheme

as regards open spaces.

(2) For the purpose of sub-section (1), a draft scheme may contain proposals--

(a) to form a final plot by reconstitution of an original plot by alteration of the boundaries of the original plot, if necessary;

(b) to form a final plot from an original plot by the transfer wholly or partly of the adjoining lands;

(c) to provide, with the consent of the owners, that two or more original plots each of which is held in ownership in severally or in joint ownership shall hereafter, with or without alteration of boundaries be held in ownership in common as a final plot;

(d) to allot a final plot to any owner dispossessed of land in furtherance of the scheme; and

(e) to transfer the ownership of an original plot from one person to another.”

The provision applies only where the scheme is framed under the

MRTP Act by the Planning Authority, which is at the stage of approval to the draft scheme. In the present case, it is not the scheme framed under the MRTP Act which is to be implemented, but the scheme published under Section 45 of the NIT Act which is required to be implemented. The Scheme was published on 23-9-1964 and at that time even the MRTP Act was not brought into force. Be that as it may, assuming that by the Government Resolution dated 7-10-1997 the plot was reconstituted in terms of Section 65, reproduced above, there is no explanation as to why the compromise dated 8-4-2002 subsequently entered into between the parties before the Apex Court should not be given effect to. It is not the case that the internal road was not shown to exist in the compromise accepted by the Apex Court. The provision of Section 65 of the MRTP Act is of no help to the review petitioners to urge that the Scheme stood modified by virtue of it.

27. So far as the question of change in the development plan is concerned, a notification under sub-section (2) of Section 37 of MRTP Act was issued on 22-6-2007 and this aspect is dealt with in paragraphs 56 and 57 of the judgment in the said writ petition,

which are reproduced below :

“Whether there is actual inconsistency – to what extent :

56. *Inconsistency and variation in the Scheme under Section 45 of the NIT Act and the development plan under Section 31 of the MRTP Act became apparent. The Scheme for shop-cum-office complex was to be executed in the area meant for residential use and though it was possible prior to coming into force of the development, it was not possible to execute such Scheme contrary to the provisions contained in the development plan. The construction of complex for commercial purposes was not possible in residential zone. The option was either to alter the Scheme for residential purpose or to carry out suitable modification to provide user for commercial purpose under Section 37 of the MRTP Act in the development plan.”*

“Removal of inconsistency :

57. *Accordingly, a notification under sub-section (2) of Section 37 of the MRTP Act was issued on 22-6-2007, and*

the relevant portion of it, is reproduced below :

“ Now therefore, in exercise of the powers conferred under subsection 2 of the section 37 of the said Act, Govt. hereby sanctions the said modification of the said lands and for that purpose amends the above referred notification dated 7th January, 2000 by inserting the following new entry in its appended schedule of modification.

“Abhyankar road passing through the land Kh.No.320, 315 (part) Mouza Sitabardi is widened from 12 mt. To 24 mt. and the area admeasuring 15028.29 sq.mt. of Kh. No.320, 315 (part) Mouza Sitabardi is deleted from Residential Zone and lands so released included in Commercial Zone and said lands are deleted from Congested boundary as shown on plan”. ”

In fact, the aforesaid notification brings out major changes, viz. - (i) widening of Abhyankar Road from 12 meters to 24 meters (40 feet x 80 feet), (ii) the internal area of the Scheme is deleted from residential zone and included in the commercial area, and (iii) the Scheme area is deleted from congested boundary and released in non-congested area. Thus, the inconsistency was removed. The proposals in the development were brought in tune with those in the Scheme

so that the Scheme is effectively implemented.”

28. It is not necessary for us to deal with other aspects of the matter, which are highlighted in the points of arguments, for the reason that we have left the issue to be decided by the NIT as to how and in what manner the sanctioned layout plan and building permit should be brought in conformity with the Scheme published under Section 45 of the NIT Act. The significance of the Scheme and internal road is also highlighted in the report of the Chairman of NIT, which we have noted in the said judgment. The notices issued to the original petitioners clearly indicate that to implement the terms of compromise, the notices of demolition were issued. Perusal of the compromise shows that the same takes care of all the situations, and it is for the NIT to see as to how and in what manner the sanction should be moulded by keeping the provision of internal road intact while sanctioning the layout plan and issuing the building permit.

29. For the reasons stated above, the review petition is dismissed.

(R.K. Deshpande, J.)

(S.B. Shukre, J.)

Lanjewar,
PS