

RAJASTHAN URBAN IMPROVEMENT ACT, 1959

The Rajasthan Urban Improvement Act, 1959 1959 (Contents) Preamble (RTTGT)

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act is. expressed in language of a generality .which makes it capable, 'if read literally, of apply to matter beyond the relevant legislative powers, the Court will construe it in a more limited sense so as to keep it within power.—All Saints High School etc. vs. Government of Andhra Pradesh & Ors., etc. etc., AIR 1980 SC' 1042. at pp. 1083-1084 = 1980 (2) SCC 478

3. Statement of objects and reasons,—The facts stated in the preamble and the statement of objects and reasons appended to any legislation—are evidence of legislative judgment. They indicate the, thought process of elected Published in Rajasthan Gazette, Extraordinary, Part IV:A, dated 03.08.1959. 1959 representative of the people and their cognizance of the prevalent state of affairs impelling them to enact the law. These, therefore, constitute important factors which amongst others will be taken into consideration by the Courts in judging the reasonableness of any restrictions imposed on the Fundamental Rights of the individuals. The Court would begin with presumption of reasonability of the restrictions, more so when the facts stated in the Statement of Objects and Reasons and the preamble are taken to the correct and they justify the enactment of law for the purpose sought to be achieved.—State of Gujarat vs. Mirzapur Moti Kureshi Kasab Jamat & ors, AIR 2006 SC 212 at Page 232. The law is well settled that it is permissible to look into the circumstances which prevailed at the time when the law was passed and which necessitated the passing of that law to determine the purpose or object of the legislation. Ballarpur - Industries Ltd. vs. Union of India, AIR 1997 Del. 1 at 9. It was so stated in Shashikant Laxman kale vs. Union of India, AIR 1990 SC 2114 = 1990 (4) SCC 366, Paragraphs 16 and 17 of this judgment may be reproduced as under:— "16. For determining the purpose or object of the legislation, it is permissible to look into the circumstances which prevailed at the time when the law was • passed and which necessitated the passing of that law. For the limited purpose of appreciating the background and the antecedent factual matrix leading to the legislation, it is permissible to look into the Statement of Objects and Reasons of the Bill which actuated the step to provide a remedy for the then existing malady. In A.. Thangal Kunju Musaliar vs. M. Venkatachalam Potti, AIR 1956 SC 246 = 1955 (2) SCR 1196, the Statement of Objects and Reasons was used for judging the reasonableness of classification made in an enactment to. see if it infringed or was contrary to the Constitution. In that decision for determining the question, even affidavit on behalf .of the State of "the circumstances which prevailed at the time when the law there under consideration had been passed and which necessitated the passing of that law" was relied on. It has reiterated in State of West Bengal v}. Union of India, AIR 1963 SC 1241 1964 (1) SCR 371, that the statement of objects and reasons accompanying a Bill, when introduced in Parliament, can be used for 'the limited purpose of understanding the background and the antecedent state of affairs leading up to the legislation'. Similarly, in Pannalal Binraj vs. Union of India, AIR 1957 SC 397 = 1957 SCR 233, a challenge to the validity of classification was repelled placing reliance on an affidavit filed on behalf of the Central Board of Revenue disclosing the true object of enacting the impugned provision- in the Income Tax Act. '17. Not only this, to sustain the presumption of constitutionality, consideration may be had even to matters of common knowledge; the history of the times; and every conceivable state of facts existing of at the time of legislation which can be assumed. Even though for the purpose of construing the meaning of the enacted provision, it is not permissible to use these aids, yet it is permissible to look into the historical facts and surrounding circumstances for ascertaining the evil sought to be remedied. The distinction between the purpose or object of the legislation and the legislative intention, indicated earlier, is significant in this exercise to emphasise the availability of larger material to the Court for reliance when determining the purpose or object of the legislation as distinguished from the meaning of the enacted provision." 3-A. Statement of objects • and reasons—Admissibility in construing a statute.—Be it noted that the Statement of Objects and Reasons is not otherwise admissible as an aid to the construction of a Statute but the same simply assists as to the necessity of introduction of such a law and since the decision of this Court in Aswini Kumar Ghosh & Another vs. Arabinda Bose & Anr., (1953 SCR 1), the law seems to be well settled without a contra note being sounded till now that while construing the clear terms of an Act the Court is not required to ascertain the object of the enactment. Court, however, hasten to add that though, in case of an urgent need of the situation by reason wherefor the intent of the legislature is to be assessed, the Statements and Objects can be looked into for the limited purpose of ascertaining the conditions prevailing at the time which prompted or actuated the proposer of the Bill to introduce the same and the extent of remedying the existing evil of the society.—Subhash Ram Kumar Bind @ Vakil and Anr. vs. State of Maharashtra, 2003 CrLJ 443 at pages 450-451 (DB)

4. Expressions in an Act.—It is not a sound principle of construction to interpret expressions used in one Act with reference to their use in another Act. The decisions rendered with reference to construction of one Act cannot apply to the provisions of another Act unless the two Acts are *pari materia*.—Ashok Maniklal Harkut vs. Collector of Amravati, AIR 1988 Bom 207 (FB). 5.. General and Special Laws.—When there is a general law and a special law dealing with a particular matter, the special excludes the general.—Kedar Lal Seal vs. Hari Lal seal, AIR 1952 SC 47 = 1952 SCR 179 = 1952 (1) MLJ 431. The general rule and the 'special rule should relate to the same subject. Bengal Community Co. Ltd. vs. State-of Bihar, AIR 1955 SC 661 = 1955 (2) SCR 603 = 1955 SCJ 672

6. Regulations.—The constitutionality of the impugned regulations has to be adjudged only by a three-fold test, namely— (1) whether the provisions of such regulations fall within the scope and ambit of the power conferred by the statute on the delegate; (2) whether the rules/ regulations, framed by the delegate, are to any extent inconsistent with the provisions of the parent enactment; and (3) whether they infringe any of the fundamental rights or other restrictions or limitations imposed by the Constitution.—Maharashtra State Board of Secondary and Higher Secondary Education vs. Paritosh Bhupesh Kumar Shethi, AIR 1984 SC 1543 (2 Judges) = 1984 (4) SCC 27 = 1984 (86)- Bom LR 428. 7. and Scope.—It is one of the cardinal principles of interpretation of statutes that a repeal means a complete obliteration of the Act repealed unless it is otherwise expressed.—R.P. Jain & Anr. vs. The State of Bihar, 1977 crLJ 1758 at p. 1761 (Pat.). Whenever there is a repeal of an enactment, the consequences laid down in Section 6 of the General Clauses Act though it has been specifically mentioned in the repealing Act or not, will follow, unless, as the section itself -says, a different intention appears—T. Barai vs. Henry, AIR 1983 SC 150 at p. 156 = 1983 UJ 132 (SC) = 1983 (1) SCC 177 = 1983 SCC (Cr) 143. In State of Punjab vs. Mohar Singh, AIR 1955 SC 84, the Supreme Court has elaborately dealt with the effect of repeal. In the case of a simple repeal, if followed by fresh legislation on the same subject, the Court would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining. whether they indicate a different intention.—T. Barai vs. Henry, AIR 1983 SC 150 at p. 156 = 1983 UJ 132 (SC) = 1983 (1) SCC 177 = 1983 SCC (Cr) 143

8. Entries in Legislative List.—The Courts must always give the most liberal construction to the words conferring legislative power. 1959 They must give such meaning so that those words may have effect in their widest amplitude. None of the legislative items in the List should be read in a narrow restricted sense, and each general word should be held to extend to all ancillary and [matters which can fairly and reasonably be said to be subsidiary comprehended—R.S. Joshi vs. Ajit Mills Ltd., AIR 1977 SC 2279 at p. 2295; H. Puttappa vs. State of Karnataka, AIR 1978 Kam. 148 (FB) = ILR 1978 (1) Kam. 605 = 1978 (1) Ker LJ 302. The Entries in the Lists should be construed broadly and must be given wide possible interpretation, and not in a narrow pedantic sense.—Waverly Jute Mills co. Ltd. vs. Raymon & co. (India) Private Ltd, AIR 1963 SC 90 = 1963 (3) SCR 209; Commissioner of Commercial Taxes vs. Ramkishan, AIR 1968 SC 59 = 1968 (1) SCR 142.—The utility of the preamble diminishes on a conclusion as to clarity of enacting provisions. It is therefore, said that the preamble is not to influence the meaning otherwise ascribable to the enacting parts unless there is a compelling reason for it. If in an Act preamble is general or brief statement of the main purpose, it may well be of little value. Mudholkar J. had observed in Burakar Coal Co. Ltd. vs. Union of India, AIR 1961 SC 954, -"It is one of the cardinal principles of construction that' where the language of an Act is clear, the preamble must be disregarded though, where the object meaning of an enactment is not clear the preamble may be resorted to explain it. Again where very general language is used in an enactment which, it is clear must be intended to have 'limited application, the preamble may be used to indicate to what particular instances, the enactment is intended to apply. We cannot, therefore, start with the preamble for construing the provisions of an Act, though we could be justified in resorting to it Inay we will be required to do so if we find that the language used by Parliament is ambiguous or is too general though in point of fact Parliament intended that it should have a limited application. In Coal Bearing Areas (Acquisition and Development) Act, 1957 the Court was construing a Notification issued under Section 4 (1) of the said Act and as in the represent case the preamble of that Act was to the effect "An Act to establish in the economic interest of India greater public control over the coal mining industry and its development by providing of the acquisition by the State of unworked land containing or likely to contain coal deposits or of right in or over such land, for the extinguishment or modification of such rights accruing by virtue of any agreement, lease license or

otherwise, and for matters connected therewith." Repelling an argument advanced on behalf of the Mine owners that the Act intended to apply only to virgin land and not on the land which are being worked or were worked in the past because of the use of the words 'unworked land' in the preamble, this Court held that the language of the enacting provisions was clear and therefore not controlled by the preamble. (See : *Burrakur Coal co. vs. Union of India*, AIR 1961 SC 954 at p. 957). *Union of India vs. Elphinstone Spinning & Weaving co. Ltd.*, AIR 2001 SC 724 = 2001 (4) SCC 139 = 2001 (1) rr 536 = 2001 (1) scc 537

9. Principles Interpretation.—A rule as it exists must be construed in the light of the Act, the purpose for which the rule is enacted a serious general inconvenience resulting to persons concerned if it is construed in one way or another are relevant considerations. Of course any alteration in the statute has to be the notice of but that be a sole basis of construction of a statutory provision.— *Mahtand Balvant Risaldar vs. Chhaganlal Ambalal Gandhi & Ors.*, 1978 CrLR (Guj.) 204 at p. 208 = 1978 GLIR 487 = 1978 crLJ 1032. The cardinal principle of interpretation of statutes is that words should be read in their ordinary, natural and grammatical meaning unless such a reading leads to absurdity. If the words are susceptible of another meaning the Court may adopt the same.—*Ajai Singh vs. Nathi Lal & Ors.*, 1978 CrLJ 629

10. Rule of Interpretation.—It is well-settled rule of interpretation that a word occurring in the same Act is usually to be given the same meaning unless a different intention is expressed by the provisions of the Act. As such the word "contravention" has been interpreted in Section 6-A and in Section 7 to mean that the provision of any order framed under Section 3 of the Act has been contravened intentionally. On the other hand, if it is found that the contravention was unintentional and the person concerned has taken all reasonable care and was carrying on the business in a bona fide manner, then even for Section-6-A of the Act, it has to be interpreted that in the eye of law there has been no contravention so as to visit the dealer with the consequences of confiscating the articles which has been seized.—*Mewalal Kapiladeo Pd. (M/s.) vs. State of Bihar*, 1978 crLJ 873 at p

876. Sections of statutes calling for construction by Courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional sympathy for the weaker sections like women and children must inform interpretation if it has social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advance the cause of the derelicts.—*Ramesh Chander. Kaushal [Capt.] vs. Mrs. Veena Kaushal & ors.*, 1978 CrLR (SC) 348 at p. 350 = AIR 1978 SC 1807 = 1978 (4) SCC 70 = 1978 SCC (Cr) 508. The words of the statute, when there is doubt about their meaning, are to be understood in the sense, in which they best harmonise with the aspect of the enactment and the object which the Legislature had in view. The Court has to seek aid from other provisions of the statute in order to arrive at the proper meaning of the words and that interpretation should be accepted, which would result in properly carrying out the intention of the Legislature.—*Bhuneshwar Singh & ors., vs. State of Bihar & ors.*, 1978 Bih. LJR 372 at p

374. A word occurring in the same Act is usually to be given the same meaning unless a different intention is expressed by the provisions of the Act.—*Mewalal Kapiladeo Prasad (M/s) vs. state of Bihar & ors.*, 1978 Bih. LJ 206 at p. 212 = 1978 Pat. LJR315 = 1978 crLJ 873. It is a settled rule of interpretation that a statute must be construed as a whole and any interpretation of particular which would render other material provisions nugatory, is to be avoided, if possible,—*Gurbaksh Singh Sibia vs. State of Punjab*, 1977 crLJ 322 = 1977 crLJ 240. The normal rule of interpretation, of course is that the words of statute should be given their literal and grammatical meaning. But if such a literal interpretation leads to an anomalous and absurd situation and if this literal interpretation leads to a conflict between two provisions of law on the subject the Court has to find out the real intention of the Legislature. If two views are possible, one which results in any anomaly and the other not, the duty of the Court is to adopt the latter and the former.—*Rnm Adhin vs. Shyama Devi*, 1977 All CrC 10 at p. 12 = 1977 All LJ 382 = 1977 crLJ 453

11. Intention of Statutory Provision.—In order to arrive at true intendment of a statute, the Court should pose to itself the following questions:— (1) What was the situation prior to the provisions under consideration; (2) What mischief or defect was noticed before introducing the provision; (3) Whether it was remedial; and (4) the reason for the remedy.—*Babaji Kondaji Garad vs. Nasik Merchants CQ-operative Bank Ltd.*, AIR 1984 SC 192 (3 Judges) = 1984 UJ 239 (SC) = 1984 (2) scc 50

12. Interpretation of Constitutional provision—Object oriented approach must be adopted.—The framers of the Constitution did not visualise that a non-legislator can be repeatedly appointed as Minister

for a term of six months each time, without getting elected because such a course strikes at the very root of parliamentary democracy. According to learned Counsel for the respondent, there is no bar to this course being adopted on the plain language of the Article', which does not 'expressly' prohibit re-appointment of the Minister, without being elected, even repeatedly, during the term of the same Legislative Assembly. We cannot persuade ourselves to agree. Constitutional provisions are required to be understood and interpreted with an object oriented approach. A Constitution must not be construed in a narrow and pedantic sense. The words used may be general in terms but; their full import and true meaning, has to be appreciated considering the true context in which the same are used and the purpose which they seek to achieve. Debates in the Constituent Assembly referred to in an earlier part of this judgment clearly indicates that non-member's inclusion in the cabinet was considered to be a 'privilege' that extends only for six months', during which period the member must get elected otherwise he would cease to be a Minister. It is a settled position that debates in the Constituent Assembly may be relied upon as an aid to interpret a constitutional provision because it is the function of the Court to find out the intention of the framers of the Constitution. We must remember that a Constitution is not just a document in sole form, but a living framework for the Government of the people exhibiting a sufficient degree of cohesion and its successful working depends upon the democratic spirit underlying it being respected in letter and in spirit. The debates clearly indicate the 'privilege' to extend "only" for six months.—S.R. Chaudhuri vs. State of Punjab, AIR 2001 SC 2707 = 2001 (7) scc 126 (sc) 2001 (6) rr 446

13. Interpretation of Flexibility—The law, howsoever rigid it may be, has to be interpreted in a flexible manner so as to see that the rule of law is not abrogated and merely on technical grounds a party is not deprived of being heard as regards the merits of the case.—Balu Ram vs. Arjun Lal, AIR 1978 All 243 14. Interpretation of Judgments.—Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute; it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define, Judges interpret statutes they do not interpret judgment. They interpret words of statutes; their words are not to be interpreted as statutes.—Amar Nath vs. State of Punjab, AIR 1985 SC 218 at p. 227 = 1985 (1) scc 345

15. Value of History in interpretation—The interpreter of the statute must take note of the well known historical facts. In conventional language the interpreter must put himself in the arm chair of those who were passing the Act i.e. the Member of the Parliament.' It is the collective will of the Parliament with which the Supreme Court is concerned.—D0ypack. System Pvt. Ltd.(M/s.) vs. Union of India, AIR 1988 SC 782 at p. 797 1988 (2) UJ 54 (SC) = 1988 (2) SCC 299 = 1988 (1) JT (SC) 304. 16; Central and State Acts.—Article 14 of the Constitution does not authorise the striking down of a law of one State on the ground that, in contrast with a law of another State on the same subject, its provisions are discriminatory. Nor does it contemplate a law of the Central or of the State dealing with similar subjects being held to be unconstitutional by a Process of comparative study of the provisions of the two enactments. The sources of authority for the two statutes being different, Article 14 has no Karan Nair vs. State of Tamil Nadu, AIR 1987 SC 2117; Chapadgaon Vividh Karyakari Seva Sahakari Society vs. Collector of Ahmednagar, 1989 (3) Bom. CR 641

17. Courts cannot Legislate.—The function of the Courts is to apply the law as it stands. May be the Courts notices the anomalies. But it is not for the Court to re-write. the 'law even though the Court considers the provisions as they stand to be unreasonable. Of course Courts do resort to the device of reading words into the provisions of the statute purporting to bring it in accord with what is evidently the intention of the legislature. But where it is evident that there is an omission on the part of the legislature to make an amendment which it ought to have made, even if such omission appears to be inadvertent, the Courts cannot supply the omission, for then it would be arrogating to itself legislative functions which it does not possess.—Dakshayani vs. Madhavan, AIR 1982 Kant 126. 18, Inaccurate regulation—Inaccuracies therein—Strict construction not proper.—By a second Resolution dated 24.04.1995 the State Government sanctioned a list of buildings and precincts of historical, aesthetical, architectural or cultural value as per the scheduled annexed to that resolution. The schedule contains in all 633 items as Heritage buildings or precincts with their "location" described in the next column. Many of the items are overlapping. For example item 633 pertains to Fort Precinct which includes 14 sub-precincts. Within those precincts there are several buildings which have been separately listed including the Bombay High Court at item 77. Again item 107 mentions "all buildings at Dadabhai Naroji Road with a special focus on Fort House" This

is followed by items 108 to 127 each of which relate to building/ structure on the Dada Bhai Naor.oji Road. There is apparently no Consistency in the way that the list has been prepared. Not only is there overlapping but there are, at times; inaccuracies.' For example against item 442 under the heading, 'location' in respect of several buildings within the Mahalaxmi Precinct, the word-appearing is "deleted" : If one were to read the list as. is, one would have to come to the absurd conclusion that the location of the éeveral buildings mentioned in.. 442 was. "deleted" Therefore a strict or literal construction .of the list would be misplaced. It is true as far as Mahalaxmi Precinct is concerned, although there is a separate map indicating the precinct along with all other precincts. It does not appear under the colurrm "Nature of Monuments Building, Precincts etc." but in the column headed "location". Against serial Nos. 441 and 442. But locations have generally been indicated in the Isit with reference to roads. A precinct cannot be a "location" since it is really an area. In -such circumstances it is reasonable to ascertain the intention of the State Government from the map annexed to the list. The fact that no map of any other location has been given coupled with fact that only maps of heritage precincts have -been given in our opinion -would certainly indicate that Mahalaxmi precinct is indeed -a listed heritage precinct against Serial No. 442 as mentioned in the map. The list also refers to five precincts, namely Banganga Precincts mentioned against Serial No. •384, Opera House Precincts, Serial No. 401, Gamdevi Precinct, Serial No. 432, Mahalaxmi Precinct, Serial No. 442, }Gotachiwadi precinct, Serial 1959 No. 508, Matharpakhadi Precinct, Serial No. 522 and Bandra Precinct Serial No

612. There is no other precinct which is mentioned as a location.The MHCC has taken into consideration the nature of the list, particularly the maps annexed thereto, to come to the conclusion that the mentioning the Mahalaxmi Precinct under the heading of "location" was clearly not the intention of the State Government, but the intention was to treat the precinct along with-all other precincts of which maps are given as heritage precincts.—Mass Holdings Private Ltd. vs. Municipal Corporation of Greater Mumbai & Anr., AIR 2006 SC 749 at Pages 751-752 (DB)

19. Interpretation of Statutes—Procedural provision should not be allowed to defeat substantive right to cause injustice.—Non-complian"ce with any procedural requirement. relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. The well recognized exceptions to this principle are:— (i) Where the Statute prescribing the procedure, also prescribes specifically the consequence of non-compliance; (ii) where the procedural defect is not rectified, even after it is pointed out and due opportunity is given for rectifying it; (iii) where the non-compliance or violation is proved to be' deliberate or mischievous; (iv) where the rectification of defect would affect the case on merits or will affect the jurisdiction of the Court; (v) in case of Memorandum of Appeal, there is complete absence of authority and the appeal ispresented without the knowledge, consent and authority of the appellant.—Uday Shankar Triyar vs. Ram Kalewar Prasad Singh & Anr., AIR 2006 SC 269 at Page 274 (FB) 20. Precedent—Stare decisis—Not a dogmatic rule allergic to logic and reasons.—The trend of judicial opinion is that stare decisis is not a dogmatic rule allergic to logic and reason, it is a flexible principle of law operating in the province of precedents providing room to collaborate with the demands of changing times dictated by social needs, State policy and judicial conscience. The doctrine of stare decisis is generally to. be adhered to, because well settled principles of law founded on a series of authoritative pronouncements ought to be followed yet, the demands of the changed facts and circumstances dictated by forceful factors supported by logic, amply justify the need for a fresh look.—State of Gujarat vs. Mirzapur Moti Kureshi Kassab Jamat & Ors., AIR 2006 SC 212 at Pages 243-245 (F.B.) 21. Precedents having binding force.—When the allegation is of cheating or deceiving, whether the alleged act is wilful or not depends upon- the circumstances of the concerned case and there cannot be any strait jacket formula. The High Court unfortunately did not discuss the factual aspects and by merely placing relian_ ce on earlier decision of the Court held that pre-requisite conditions were absent. Reliance on the decision without looking in to the factual background of the case before it is clearly impermissible. A decision i9 d precedent on its own fact.s. Each case presents its own features. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is- decided and for this reason it is

important to analyse a decision and isolate from it the ratio decided. According to the well-settled theory of precedents, every decision contains three • basic postulates — (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts;(ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. *State of Orissa vs. Sudhan.su Sekhar Misra & Ors.*, AIR 1968 SC 647, and *Union of India & Ors. vs. Dhan.wanti Devi & Ors.*, 1996 (6) SCC 44.. A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not -to be read as if they are words ii1 Act of Parliament. In *Quinen vs. Leathem*, 1901 AC 495 (HL), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be' proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expreséions are found and a case is only an authority for what it actually decides.—*State of Orissa & Ors.*, vs. *Mohammad Illiyas*, AIR 2006 SC 258 at Pages 261-262 (DB) 22. Requirement of procedure in Foreign .Act be fair, reasonable, just does not apply—Procedure in Foreigners Act does not violate Article 21.— submitted that in view of the clear mandate of Article 21 that no person shall be deprived of his 'life or personal liberty except according to procedure established by lawn there has to be a fair procedure for expulsion of foreigners. According to the learned Counsel, the IMDT Act lays down a fair procedure, namely determination by a judicial Tribunal of the question, of citizenship of a person and his deportation. It has thus been submitted that the IMDT Act which seeks to achieve this object meets the requirements of Article 21 of the Constitution and thus its validity cannot be impugned. The learned Additional Solicitor General and Shri K.K. Venugopal, during the course of their arguments, have also laid great stress on the fact that the IMDT Act has been enacted to give protection to genuine Indian citizens and to save their harassment. It is not possible to accept the submission made. The view taken by this Court is that in a criminal trial where a person is prosecuted and punished for commission of a crime and may thus be deprived of his life or liberty. It is not enough that he is prosecuted in accordance with the procedure prescribed by law but the procedure should be such which is just, fair and reasonable. nüs principle can have no application here for the obvious reason that in the matter of identification of a foreigner and his deportation, he is not being deprived of his life or personal liberty. The deportation proceedings are not proceedings for prosecution where a man may be convicted or sentenced. The Foreigners Act and the Foreigners (Tribunals) Order, 1964 are applicable to whole of India and even to the State of Assam for identification of foreigners who have entered Assam between 01.01.1966 and 24.03.1971 in view of the language used in Section 6-A of Citizenship Act. It is, therefore, not open to Union of India or State of Assam or for the matter anyone to contend that the procedure prescribed in the aforesaid enactment is not just, fair and reasonable and thus violative of Article 21 of the Cönstitution. The procedure : under the Foreigners Act and the Foreigners (Tribunals) Order, 1964 is just, fair and reasonable and does not offend any U-IO 1959 constitutional provision.—President *Pooranathrayisha Seva Sangathan Thripunithura vs. K. Tillaka,q Kavanal & ors.*, AIR 2005 SC 2918 at Page 2954 (DB) 23. Construction of statutes—Two interpretation possible which interprtation be adopted.—*B. Banerjee vs. Smt. Anita Pan*, AIR 1975 SC 1146, the Supreme Court in the said decision has held, in the facts and circumstances therein, that whéré two interpretations are possible that which validates the statute and shortens litigation should be preferred to the one which, invalidates or proliferates. Their Lordships therein were satisfied that, as far as possible, Courts must avoid multiplicity of litigation. Any interpretation of a statute which will obviate purposeless proliferation of litigation, without whittling down the effectiveness of the protection for the parties sought to be. helped by the Legislation, should be preferred to any literal, pedantic, legalistic or technically correct alternative. Their Lordships were conscious that in shortening litigation, in the mannur directed therein they were straining language to the extent of interpreting the expression ."institution of the suit" as amounting to filing fresh pleadings. By that construction no violence to the language was done, but, on the other hand, public justice and social gain was promoted. It has further been observed as follows in the said decision: "Ruinous protraction of litigation, who-ever. may temporarily seem to benefit by delay, bankrupts both in the end and inflicts

wounds on society by sterile misuse of money. Tenant passengers who prolong their expensive flight on the litigation rocket, are buying tickets for financial crash! dugged though they be by the seeming blessings of law's delays. Courts, by interpreting the expression 'institution of suits' cannot authorize reincarnation, all over again, of litigation for eviction. We save the tenant by applying it to pending cases and save him also from litigative waste".—Shanti Swarup Sarkar vs. Pradip Kumar Sarkar & Ors., AIR 1997 Cal. 197 at Page 201

24. Court can neither assume role of legislature nor can prescribe procedure different from one prescribed in statute.—It is well settled law that in the course of interpretation of a statutory provision the Courts cannot assume the role of Legislature, nor can it appropriate to itself the legislative powers, nor can, under the guise of interpretation, prescribe a procedure different from the one prescribed under the statute for the trial civil proceedings.— Bar Council of Maharashtra and Goa and Ors., vs. Shamrao Vishnu Kunjir and Ors., AIR 2006 Bom. 167 at Page 169 (DB)

25. Duty of Court—Merely 'because law causes hardship it cannot be interpreted in a manner so as to defeat the object.—It is well settled law that merely because a law causes hardship, it cannot be interpreted in a manner so as to defeat its object. It is also to be remembered that the Courts are not concerned with the legislative policy or with the result, whether injurious or otherwise, by giving effect to the language used nor it is the function of the Court where the meaning is Clear not to give effect to it merely because it would lead to some hardship. It is the duty imposed on the Courts in interpreting a particular provision of law to ascertain the meaning and intendment of the Legislature and in doing so, it should presume that the provision was designed to effectuate a particular object or to meet a particular requirement. (Re : Firm Amar Nath Basheshar Dass vs. Tek Chand [1972 (1) SCC Easlgnd Combines, Coimbatore vs. Collector of Central Excise Coimbatore, AIR 2003 SC 843 at Page = 2003 AIR SCW 294 = 2003 (1) ACE 148 = 2003 (1) Suprme 374 = 2003 (1) Scale 123 = 2003 (1) SLT 361 = 2003 (1) SCR 98 = 2003 (3) SCC 410 = 2003 (1) LIU 163 = 2003 (1) JT 106 = 2003 (2) Ind. LD 876 = 2003 (152) ELT 39 (DB). U-11 26. Interpretation of Statutes Deprivation of Legal right.—Such a valuable right, having regard to the legal position as obtaining in common law as also under the provisions of the Transfer of Property Act, must be deemed to have been known to the Parliament. Thus, while enacting the Companies Act, the Parliament cannot be held to have intended to deprive the first charge holder of the said right. Such a valuable right, therefore, must be held to have been kept preserved. [See: Workmen of M/s. Firestone Tyre and Rubber Co. of India (P.) Ltd. vs. Management & Ors. (1973) 1 SCC 813]. If the Parliament while amending 2 the provisions of the Companies Act intended. to take away such a valuable right of the first charge holder, we see no reason why it could not have stated so explicitly. Deprivation of legal right existing in favour of a person cannot be presumed in Q)nstruing the statute. It is in fact the other way round and thus, a contrary presumption shall have to be raised.—ICIC Bank Ltd. vs. SIDCO Leathers Ltd., AIR 2006 SC 2088 at Page 2099

27. Equality—Theory of guided power explained.—The gravamen of Article 14 is equality of treatment. Article 14 confers a personal right by enacting a: prohibition which absolute. By judicial decisions, the doctrine of classification is read into Article 14. Equality of treatment under Article 14 is an objective test. It is not the test of intention. Therefore, the basic principle underlying Article 14 is that the law must operate equally on all persons under like circumstances. [Emphasis added]. Every discretionary power is not necessarily discriminatory. According to the Constitutional Law of India, by H. M. Seervai, 4th Edn. 546, equality is not violated by mere conferment of discretionary power. It is violated by arbitrary exercise by those on whom it is conferred. This is the theory of 'guided power'. This theory is based on the assumption that in the event of arbitrary exercise by those on whom the power is conferred would be corrected by the Courts. This is the basic principle behind the enabling provisions which are incorporated in Articles 16 (4A) and 16 (4B). Enabling provisions are permissive in nature. They are enacted to balance equality with positive discrimination. The constitutional law is the law of evolving concepts. Some of them are generic others have to be identified and valued. The enabling provisions deal with the concept, which has to be identified and valued as in the case of access vis-a-vis efficiency which depends on the fact-situation only and not abstract principle of equality in Article 14 as spelt out in detail in Articles 15 and 16. Equality before the law, guaranteed by the first part of Article 14, is negative concept while the second part is a positive concept which is enough to validate equalizing measures depending upon the fact-situation.—M. Nagaraj and Ors. vs. Union of India and ors., AIR 2007 SC 71 at Page 101 (SC) (FB)

28. Internal aid—use of Article "and" "the" and "a"—Effect.—Section 138 provides that where any cheque drawn by a person on an account by him with a 'banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by "the bank" unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made With that bank, such person shall be deemed to have committed an offence punishable with imprisonment as prescribed therein subject to the• conditions mentioned in Clauses (a), (b) and (c) of the proviso. Section 3 of the Act defines the "banker" to include any person acting as a banker and any post office saving bank. Section 72 of the' Act provides that a cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relations between the drawer and his banker has been altered to the prejudice of the drawer. U-12 1959 The use of the words "a bank" and "the bank" in the section is indicator of the intention of the Legislature. The former is indirect Article and the latter is pre- fixed by direct article. If the Legislature intended to have the same meanings for "a bank" and "the bank", there was no cause or occasion for mentioning it distinctly and differently by using two different articles. It is worth noticing that the word "banker" in Section 3 of the Act is pre-fixed by the indefinite article "a" and the word "bank" where t.he cheque is intended to be presented under Section 138 is pre-fixed by the definite article "the". The same section permits a person to issue a cheque on an account maintained by him with "a bank" and makes him liable for criminal prosecution if it is returned by; "the bank" unpaid. The payment of the cheque is contemplated by "the bank" meaning thereby where the person issuing the cheque has an account. "The" is the word used before nouns, with a specifying of particularising effect opposed to the indefinite or generalising force of "a" or "an". It determines what particular thing is meant; that is, what particular thing we are to assume to' be meant. "The" is always mentioned to denote particular thing or a person. 'The' would, therefore, refer implicitly to a specified bank and not any bank. "The bank" referred to in Clause (a) to the proViso to Section 138 of the Act would mean the drawee-bank on which the cheque is drawn and not all banks where the cheque is presented for collection including the bank of the payee, in whose favour the cheque is issued. It, however, does not mean that the chèque is always to be presented to the drawers bank on •which the cheque is issued. The payee of the cheque in any bank including the collecting bank where he has his account-but to attract the criminal liability of the drawer of the cheque such collecting bank is obliged to present the cheque in the drawee or payee bank on which the cheque is drawn within the period of six months from the date on which it is shown to have been issued. In other words a cheque issued by (A) in favour of (B) drawn in a bank named (C) where the drawer has an account can be presented by the payee to the bank upon which it is drawn i.e. (C) bank within a period of six months or present it to any other bank for collection of the cheque amount provided such other bank including the collecting bank presents the cheque for collection to the (C) bank. The non-presentation of the cheque to the drawee-bank within the period specified in the section would absolve the person issuing the cheque of his criminal liability under Section 138 of the Act, who shall otherwise may be liable to pay the cheque amount to the payee in a civil action initiated under the law. A combined reading of Sections 2, 72 and 138 of the Act would leave no doubt-in our mind that the law mandates the cheque to be presented at the bank on which it is drawn if the drawer is to be held criminally liable. Such presentation is necessarily to be made within six months at the bank on which the cheque is drawn, whether presented personally or thtough another bank, namely, the collecting bank of the payee.—Shri IShar Alloys Steels Ltd. vs. Jayaswals NECO Ltd., AIR 2001 SC 1161 at Pages 1164-1165 = 2001 (2) UJ (SC) 1093 = 2001 (2) Supreme 61 = 2001 (2) Scale 173 = 2001 (3) SRJ 441 = 2001 (1) SCJ 487.2001 (3) SCC 609 = 2001 (1) RLW 161 = 2001 (2) Mah LR 439 = 2001 (2) 272 = 2001 (1) LRI 760 = 2001 (2) Kent LT 148 = 2001 (2) JT 114 = 2001 (1) crimes 284 = 2001 crLJ 1250

29. Interpretation of Statute—inaccuracies in Government regulation strict construction not proper.—Location has been generally Indicated in the list with reference to roads. A precinct cannot be a 'llocationt' since it is really an area. In such circumstances it is reasonable to ascertain the intention of the State Government from the map annexed to the list. The fact that no map of any other locatiön- has been given coupled with the fact that only maps of heritage U-13 precincts have been given would certainly indicate that Mahalaxmi precinct is indeed a listed heritage precinct against serial No. 442 as mentioned in the map. The list also refers to five precincts, namely Banganga Precincts mentioned against Sl. No. 384, Opera

House Precincts, Sl. No. 401, Gamdevi Precinct, Sl. No. 432, Mahalaxmi Precinct, Sl. No. 442, Khotathiwadi Precinct, Sl. No. 508, Matharpakhadi Precinct, Sl. No. 522 and Bandra precinct Sl. No

612. There is no other precinct which is mentioned as a location. The MHCC has taken into consideration the nature of the list, particularly the maps annexed thereto, to the conclusion that the mentioning of the Mahalaxmi Precinct under the heading of "location" was clearly not the intention of the State Government, but the intention was to treat the precinct along with all other precincts of which maps are given as heritage precinct. There is also no question of amendment of the list appended to the Resolution dated 24.04.1995. The intention of the State Government as has been culled out by the MHCC and affirmed by the Bombay High Court and as found by us is that the list as it exists includes Mahalaxmi Precinct as a heritage precinct.—*Mass Holdings Pvt. Ltd. vs. Municipal Corporation of Greater Mumbai and Anr.*, AIR 2006 SC 749 at Page 752

30. Harmonious be made that each provision in statute will have its interpreting a statute the Court should try to sustain its validity and give such meaning to the provisions which advance the object sought to be achieved by the enactment. The Court cannot approach the enactment with a view to pick holes or to search for defects of drafting which make its working impossible. It is a cardinal principle of construction of a statute that effort should be made in construing the different provisions so that each provision will have its play and in the event of any conflict a harmonious construction should be given. The well-known principle of harmonious construction is that effect shall be given to all the provisions and for that any provision of the statute should be construed with reference to the other provisions so as to make it workable. A particular provision cannot be picked up and interpreted to defeat another provision made in that behalf under the statute. It is the duty of the Court to make such construction of a statute which shall suppress the mischief and advance the remedy. While interpreting a statute the Courts are required to keep in mind the consequences which are likely to flow upon the intended interpretation.—*M/s. British Airways Plc. vs. Union of India and ors.*, AIR 2002 SC 391 at Pages 393-394 = 2001 AIR SCW 5197 = 2001 (94) DLT 662 = 2002 (139) ELT 6 = 2001 (9) JT 544 = 2002 (2) SCC 95 = 2001 (8) Scale 73 = 2001 (8) Supreme 138

31. Intention behind provision cannot be used to defeat express words of provision.—The alleged intention behind a provision, can not be used to defeat the express words of the provision. Once a statutory rule is made, without providing any exceptions, it is not possible to carve out exceptions to such rule, by judicial interpretation. Nor can an exemption from application of a clear and specific rule be claimed on the ground of hardship or similar reasons. The proviso to Rule 27 (a) of the Rules is categorical and applies to all employees transferred on own request. It does not make distinction between employees whose promotion post is State-wise post and those where the promotion posts are District-wise posts.—*K.P. Sudhakaran and Ann vs. State of Kerala and Ors.*, AIR 2006 SC 2138 at Page 2144

32. Narrow and pedantic construction may not always be given effect to.—It is now well settled principle of law that the Court cannot enlarge the scope of legislation or intention when the language of the statute is plain and unambiguous. Narrow and pedantic construction may not always be given effect U-14 1959 to. Courts should avoid a construction, which would reduce the legislation to futility. It is also well settled that every statute is to be interpreted without any violence to its language. It is also trite that when an expression is capable of more than one meaning, the Court would attempt to resolve the ambiguity in a manner consistent with the purpose of the provision, having regard to the great consequences of the alternative constructions.—*A.N. Roy, Commissioner of Police and Any. vs. Suresh Sham Singh*, AIR 2006 SC 2677 at page 2681

33. Applicability of non-obstante clause be considered in consideration of Act and Object and Reasons for which Act is made.—There is no doubt that by non-obstante clause the Legislature devices means which are usually applied to give -overriding effect to certain provisions over some contrary provisions, that may be found either in the same enactment or some other statute. In other words such a clause is used to avoid the operation and effect of all contrary provisions. The phrase is equivalent to showing that the Act shall be no impediment to measure intended. To attract the applicability of the phrase, the whole of the section, the scheme of the Act and the Objects and Reasons for which such an enactment is made has to be kept in mind.—*Vishin N. Khan Chandani and Anr. vs. Vidya Lachman Das Khan Chandani and Anr.*, AIR 2000 SC 2747 at page 2752 = 2000 AIR SCW 2932 = 2000 (4) Bom. CR

626 = 2000 (3) SCJ 120 = 2000 (2) UJ (SC) 1300 - 2000 (9) JT 321 = 2000 (3) LRI 612 = 2000 (8) SRJ 182 = 2000 (b) scale 592 = 2000 (5) Supreme 574 = 2000 (6) SCC 724 = 2000 (Ke LJ (Tax.) 507. 34, Non-obstante clause must be given effect to extent Parliament intended and not non-obstante nature of a provision although may be of wide amplitude, the interpretative process thereof must be kept confined to the legislative policy. Only because the dues of the workmen and the debt due to the secured creditors are treated pari passu with each other, the same by itself, in our considered view, would not lead to the conclusion that the concept of inter se priorities amongst the secured, creditors had thereby been intended to be given a total go-by. A non-obstante clause must be given effect to, to the extent the Parliament intended and not beyond the same.—ICICI Bank Ltd. vs. SIDCO Leather Ltd. and ors., AIR 2006 SC 2088 at Page 2098

35. Term "Police Station".—Finally, Court, in the case of Gangadharachari, (1975 (2) Kant LJ SN No. 91 P. 47), held : "According to Notification HD 83 PEG. 69, dt 13.02.70, Sub-Inspector of Police, CID, is deemed to be an officer in charge of the police station whenever he investigates at any place in the State an offence within the limits of which such place is situate, . Therefore, for the purpose of investigation of particular crimes on the direction of the State Government or the Superior Competent Police Officer, the aforesaid unquestionable material placed on record makes the position of C.I.D./C.O.D. to be a "Police Station" within the meaning of Section 2 (s) and that every Police Officer attached to this organisation of the rank of Sub-Inspector and above is a "Police Officer in charge of a Police Station" within the meaning of Section 156 (1), CrPC. Therefore, there is no flaw in the competence of the I.O. (C.W. 75) to act as a Police Officer in charge of a police station within the meaning of Section 2 (s) and 156, and in the investigation carried out by him resulting in submission of the charge-sheet Section 173, CrPC (See: also State of Bihar vs. J.A.C. Saldanna (1980 crLJ 98 = (AIR 1980 SC 326) (SC)) and R. P. Kapur vs. Sardar Pratap Singh Kairon, AIR 1961 SC 1117 = 1961 (2) crLJ 167). Hence, I find no legal force, whatever, in the objection of Mr. C. V. Nagesh raised in this behalf.—Narsimhaiah vs. State of Karnataka and Anr., 2002 CrLJ 4795 at Page 4801 (Kar). ETINT 2 U-15 Chapter I Preliminary Section 1. Short title and extent.—(1) This Act may be called the Rajasthan Urban Improvement Act, 1959. (2) It extends to the whole of the State of Rajasthan. 1959 f Section 2. Interpretation.—(1) In this Act, unless there is something repugnant in the subject or context.— (i) "amenity" includes road, water supply, street-lighting, drainage, sewerage, public works and such other convenience as the State Government may, by notification in the Official Gazette, specify to be normally an amenity for all or any of the purposes of this Act; (ii) "building" includes any structure or erection or part of a structure or erection which is intended to be used for residential, industrial, commercial or other purpose, whether in actual use or not; (iii) "building operations" includes rebuilding operations, structural alterations of or additions to buildings and other operations undertaken in connection with the construction of buildings; (iv) "Chairman" means the Chairman of a Trust; (v) "Collector" means the Collector of a district and includes an Additional Collector appointed to a district as well as any officer specially appointed by the State Government to perform the functions and exercise the powers of a Collector under this Act; Ins. Clause (iv-a) by Section 2(1) of Rajasthan Act No. 10 of 1973, published in the Rajasthan Gazette, Extraordinary, Part IV-A, dated 28.03.1973. (w.e.f. 02.12.1972). U-16 1959 (iv) "Engineering operations" includes the formation or laying out of means of access to a road or the laying out of means of water-supply, electricity or drainage; (v) "improvement" with its grammatical variations means the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in any building or land [or making provision for any amenity in, on, over or under any building or land] and includes re-improvement; (vi) "master plan" means the master plan prepared and approved for any urban area in accordance with the provisions of Chapter 11; (vii) "Trustee" means a member of a Trust, including its Chairman, appointed or elected, under and in accordance with the provisions of Section 9; (viii) the expression "land" and the expression "person interested" have the meanings respectively assigned to them in Section 3 of the Rajasthan Land Acquisition Act, 1953 (Rajasthan Act 24 of 1953); 1953 (1953 q. 24) 3 (x) "urban area" means the urban area notified under Section 3 or, as the case may be, under Section 8; (xi) "zone" means any one of the divisions in which an urban area may be divided for the purposes of improvement under this Act; Ins. by Section-0(2) of Rajasthan Act No. 10 of 1973, published in the Rajasthan Gazette, Extraordinary; Part IV-A, dated 28.03.1973. (w.e.f. 02.12.1972). (xii) all references to any thing done,

required, authorised, permitted, forbidden or punishable, or to any power vested under this Act, shall include anything done, required, authorised, permitted, forbidden or punishable or any power vested (a) by any provision of this Act; or (b) by any rule or scheme made under the provision of this Act; or (c) under any provision of the Municipal law for the time being in force which the Trust has by virtue of this Act power to enforce. (xii) former trust (qy) GIRT; CT) (xiii) "former trust" means anybody, by whatsoever name designated, whether statutory or non-statutory and whether corporate or otherwise, functioning in any area within the State immediately before the establishment of an Improvement Trust under this Act for such area for the improvement or development thereof.] (xiv) (2) All words and expressions not defined in the Act have, wherever used therein, the same meanings as are assigned to them by the Municipal law for the time being in force. Provided that the expression "Municipal Board" wherever used in this Act shall be deemed to include a Municipal Corporation, a Municipal Council or any other Municipal authority. Definition clause.—A definition clause in a statute is a legislative device with a view to avoid making different provisions of the statute to be cumbersome. Where a word is defined in the statute and that word is used in a provision to which that definition is applicable, the effect is that wherever the word defined as used in that provision, the definition of the word gets substituted. Per H.R. Khanna, J., in the case of Indira Nehru Gandhi (Smt.) vs. Raj Narain, AIR 1975 SC 2299 (5 Judges) = 1975 supp SCC I = 1976 (2) SCR 347. Ins. Clause (xiii) by Section 2 of Rajasthan Act No. 6 of 1962, published in the Rajasthan Gazette, Extraordinary Part IV-A, dated 21.04.1962. (w.e.f. 30.12.1961). U-18 1959 When the Act defines a particular term, it is that definition which has to be taken for that term wherever it occurs in the Act, and it would not be permissible to construe the said term in any other manner. Vide Maxwell on Interpretation of Statutes, Edition page 29().—Sadashiv Vishnu Nagarkar vs. Maruti Baloba Vyevahare, AIR 1970 Bom 93 71 Bom LR 519; Bhaskar Narayan Herdikar vs. S.G. (DB) = 1969 Mah LJ 740 - Dailhankar, AIR 1971 Bom 188 (DB) = 1970 Mah LJ 953 = 73 Bom LR 851. A definition which first tells us what a thing meant and then goes on to say what it includes, can use the inclusive device for three entirely different purposes viz., (i) by way of illustration, or of enumeration of the forms the thing defined commonly assumes, by naming things that clearly come within the meaning; given; (ii) for roping in things that, either partly or in whole, would not come within the meaning; (iii) by way of abundant caution, so as to put it beyond doubt that certain things do come within the meaning.—Krishnan Nair vs. Perumbalath Kizhakkiniyakath Manakkal, AIR 1967 Ker 270 (F'B) = 1967 Ker LJ 84 = ILR 1967 (1) Ker 262. It was held in case of Bala Krishna Rao (K) vs. Haji Abdulla Saib, AIR. 1980 SC 214 (2 Judges) at P. 224 1980 (1) RCj (SC) 179 at p. 195 = 1980 (1) SCC 321 = 1980 (1) SCJ 104 = 1980 (1) SCR 875 = 1979 Rent LR 412 = 1980 (1) RCR 374, that: (a) a definition clause does not necessarily in any statute apply in all possible contexts in which the word which is defined, may be found therein: (b) the opening clause of the definition section itself suggests that any expression defined in that section should be given the meaning assigned to it therein unless the context otherwise requires. It was laid down in the Andhra Pradesh case of Commissioner of Income-tax vs. Dredging Corporation of India, 1988 (714) ITR 682 (DB) that— 1. It is a cardinal principle in construction of enactments that, unless the context otherwise requires the definition of an expression contained in the Act should prevail throughout the Act

2. Therefore, whenever a different meaning is sought to be given to that expression occurring at different places in the Act, it is necessary to point out why the context requires different meanings to be given to the same expression occurring at different places in the Act. Chapter 11 Master Plans Section 3. Power of State Government to order preparation of master plan.— [1(1) The State Government may, by order, direct that in respect of and for any urban area in the State specified in the order, a civil survey shall be carried out and a master plan shall be prepared, by such officer or authority as the State Government may appoint for the purpose]. Substituted Sub-section (1) by Section 2 of Rajasthan Act No. 3 of 1964, published in the Rajasthan Gazette, Extraordinary, Part IV-A, dated 29.03.1963, prior to amendment Sub-section (1) was as follows, (1) The State Government may, by order notified in the Official Gazette, direct that in respect of and for any urban area in the State specified in the notification, a civil survey shall be carried out; and a master plan shall be prepared, by such officer or authority as the State Government may appoint for the purpose. URT 5 UT-19 31E.UIU—2 + G--vq,--eb uT GIRT, fhT (2) For the purpose of advising the officer or authority appointed under Sub-section (1) on the preparation of the master plan, the State Government may constitute an advisory council consisting of a Chairman and such number of other members as the State Government may deem fit. Section 4. Contents of master

plan.—The master plan shall. (a) define the various zones into which the urban area for which the plan has been prepared may be divided for the purposes of its improvement and indicate the manner in which the land in each zone is proposed to be used, and (b) serve as basic pattern of framework within which the improvement schemes of the various zones may be prepared.

Section 5. Procedure to be followed.—(1) Before preparing any master plan officially the officer or authority appointed to prepare it shall publish a draft of the master plan by making a copy thereof available for inspection and publishing a notice in such form and manner as may be prescribed by rules made in this behalf inviting objections and suggestions from every person with respect to the draft master plan before such date as may be specified in the notice. (2) Such officer or authority shall also give reasonable opportunity to every local authority within whose local limits any land touched by the master plan is situated to make any representations with respect to the master plan. (3) After considering all objections, suggestions and representations that may have been received, such officer or authority shall finally prepare the master plan. (4) Provisions may be made by rules made in this behalf with respect to the form and contents of a master plan and with respect to the procedure to be followed and any other matter in connection with the preparation of the master plan.

Section 6. Submission of master plan to Government.—(1) Every master plan shall, as soon as may be after its preparation, be submitted to the State Government for approval in the prescribed manner. (2) The State Government may direct the officer or authority appointed for the preparation of a master plan to furnish such information as it may require for the purpose of approving any master plan submitted to it under this section. (3) The State Government may either approve the master plan without modifications or with such modifications as it may consider necessary or reject it with directions for the preparation of a fresh master plan.

Section 7. Date of operation of master plan.—Immediately after a master plan has been approved by the State Government, it shall publish in the prescribed manner a notice stating that the master plan has been approved and naming a place where a copy of the same may be inspected during office hours; and upon the date of the first publication of the aforesaid notice the master plan shall come into operation.

Section 8. Establishment and incorporation of Trusts. The State Government may, by notification in the Official Gazette, establish, for the purpose of carrying out improvement of any urban area in the State, whether a master plan in respect thereof has or has not been prepared, a Board of Trustees to be called the Improvement Trust of the place where its principal office is situated, hereinafter called 'the Trust'. (2) Every such Trust shall be a body corporate by the aforesaid name having perpetual succession and a common seal with power to acquire, hold and dispose of property both movable and immovable and to contract and shall by the said name sue and be sued.

Section 9. Constitution of Trusts.—(1) The Trust shall consist of. (a) Chairman, (b) two members of the Municipal Board, if any, having authority in the urban area, (c) such number of other persons, as may be determined by the State Government for each Trust, of whom one shall be a person belonging to Scheduled Tribe or Scheduled Caste, if no person of such caste or tribe is represented in the Trust by virtue of Clause (a) or Clause (b). (2) The Chairman and the persons referred to in Clause (c) of Sub-section (1) shall be appointed by the State Government by notification. (3) The members of the Municipal Board referred to in Clause (b) of Sub-section (1) shall be elected by the said Board. (4) If the said Board does not, by such date as may be fixed by the State Government, elect two of its members to be Trustees, the State Government shall appoint two members of the said Board to be Trustees and every person so appointed

shall be deemed to be a Trustee as if he had been duly elected by the Municipal Board. (5) If the said Board shall have been superseded or dissolved in accordance with the provisions of the Municipal law for the time being in force, it shall be represented in the Trust by person appointed or elected, as the case may be, by the officer or authority appointed under the said law to discharge the functions and exercise the powers of the Board during the period of its supersession or dissolution. (6) Of the person referred to in Clause (c) of Sub-section (1) at least one shall be a person in the service of the State Government. (7) The names of all persons appointed or elected to the Trust shall be notified by the State Government in the Official Gazette. 9. 7Td+(1) XXX Omitted Clause (bb) by Section 2 (i) of Rajasthan Act No. 7 of 1972, published in the Rajasthan Gazette, Extraordinary, Part IV-A, dated 19.04.1972. 2 Substituted Clause (c) by Section 2 of Rajasthan Act No. 8 of 1975, published in the Rajasthan Gazette, Extraordinary, Part IV - A, dated 15.03.1975.—prior to amendment it was as follows:— "(c) Other persons not less than two and not exceeding six in number of whom one shall be a person belonging to a Scheduled Caste or Scheduled Tribe." 3 Deleted proviso by Section 2(iii) of Rajasthan Act No. 7 of 1972, published in Rajasthan Gazette, Part IV-A, Extraordinary, dated 19.04.1972. Prior to amendment it was as follows:— "Provided that, where the State Government is of the opinion that it is not expedient to establish a Trust consisting of six or more members for any urban area, it may, by order, direct that the Trust for such area shall consist of— (a) a Chairman, (b) One member of the Municipal Board, if any, having authority in the urban area, and (c) Not more than three other members of whom one shall be a person belonging to a Scheduled Caste or - Scheduled Tribe. 4 Omitted words "and in Clause (c) of the proviso thereto" by Section 2 (iii) of Raj. Act No. 7 of 1972 12 (xxx) (2) (1) (IT) (xxx) GTUITT (6) A3-q—ETIRT (1) (VT) Comments U-23 —A look at the award will show that it has not been stated that the buildings structures or houses are existing and all that has been stated is that in case any buildings are existing on the land of amount of compensation will be determined separately. There being no material that any such claim was filed under Section 9 of U.I.T. Act, it cannot be said that the award is incomplete.—Sheo Narain & Ors. vs. State of Rajasthan & ors., 1993(1) WLC 536 (Raj) 3R0f 2.-7?rq 1993 (1) WLC 536 (Raj). Section 10. Resignation of Trustee.—Any Trustee may at any time resign his office, Provided that his resignation shall not take effect until accepted by the State Government. Engr 10. Section 11. Term of office of Chairman.—The term of office of the Chairman shall ordinarily be three years

11. I Section 12. Term of office of other Trustees.—Subject to the foregoing provisions, the term of office of every Trustee elected under Clause (b) of Sub-section (1) of Section 9 shall be three years or until he ceases to be a member of the Municipal Board, U-24 1959 ETINT 12 whichever period is less, and of every Trustee appointed under Clause (c) of the said sub-section shall be three or in the case of such Trustee being in the service of the State Government, until he ceases to hold the office by virtue of which he was appointed Trustee, whichever period is less. 12. 9 (1) (u) u-ca* (71) -S1 fr5 -q Section 13. Commencement of term of office of first Trustees shall commence on such date as shall be notified in this behalf by the State Government. (2) A person ceasing to be a Trustee by reason of the expiry of his term of office shall, if otherwise qualified, be eligible for re-appointment or re-election. 13. \$5 3Té-a-ru-r?-r R-g -qh-ry Section 14. Remuneration of Trustees.—(1) The Chairman [may be paid from] out of the trust fund such salary or allowances as may from time to time be proposed by the Trust and approved by the State Government. (2) Other Trustees may be paid from out of the trust fund such allowance, if any, as may be proposed by the Trust and approved by the State Government

14. Comments Removal of Trustee—Appointment as member of UIT and withdrew the nomination order and cancelled the appointment order.—Challenged on the ground that no opportunity of being heard was given. Violation of principle of natural justice. Complaint against the petitioner with regard to criminal cases pending against him. State Government has power to appoint and remove the trustee. Held, Since the order has been cancelled on complaint the State Government should issue show cause notice to call for explanation with regard to complaint submitted against the Saini vs. State of Rajasthan, 2003 (3) CDR 2216 (Raj) = 2003 (2) RLW 1377 (Raj) = 2003 (2) DNJ 959 (Raj) = 2003 (1) RLR 364 (Raj) = 2003 (2) WLC (Raj) 47 = 2003 (2) Civ. Times (Raj) 892. Substituted for words "shall receive" by Section 4 of Rajasthan Act No. 3 of 1963, published in the Rajasthan Gazette, Extraordinary, Part IV-A, dated 29.03.1963. Be-rur U-25 Nö-q 3fl-q YTQ. ff 2003 (3) CDR 2216 (Raj) = 2003 (2) RLW 1377 (Raj) = 2003 (2) DNJ 959 (Raj) = 2003 (D RLR 364 (Raj) = 2003 (2) WLC (Raj) 47 = 2003 (2) Civ. Times 892 (Raj). [Section 14-A Termination of appointment and re-constitution. Notwithstanding anything contained

in Sections 11, 12 or 15, the State Government may, if it thinks fit' in 'public interest so to do, terminate the appointment -of Chairman or. any Trustee of a Trust or reconstitute the same at any time.] 14—05. 11, 12 ur 15 Comments Termination of appointment without giving opportunity of hearing.— Section 14-A does not require an opportunity of hearing. The order by which various persons were removed from the five Trusts also incorporates the name of the •officials who have been appointed as Chairman and the Trustees, and they are all Government servants. No member of the Congress Party was appointed. The District Collector, Executive Engineer, P.H.E.D., Executive Engineer, R.S.E.B., and Senior Town Planner Bikaner were already the trustees. The action cannot be considered to be malafide.—Narain Singh Charan vs. State, 1995 (1) WLC (Raj) 176. RaR-q.—uiqr RfiF 1995 (1) WLN 176 (Raj). Inserted New Sec. 14-A by Section 3 of Rajasthan Act No. 7 of 1972, published in the Rajasthan Gazette. Extraordinary, Part IV-A, dated 19.04. L 972 This amendment may be read with Section 4 of the said Act, which quoted as followings:— "4. Cessation of office by existing trustees.—Notwithstanding anything contained in Sections 11, 12, 13 and 14 of the Rajasthan Urban Improvement Act, 1959 as it stood before the commencement of the Rajasthan Urban Improvement (Amendment) Ordinance, 1972 (Rajasthan Ordinance I of 1972), the Chairman and trustees of the existing trusts shall, upon the commencement of the said ordinance cease to hold their-respective offices. " U-26 1959 15 Section 15. Removal of) The State Government may remove from the Trust any "Trustee, who. (a) refuse to act, or becomes incapable of acting or absents himself for more than three consecutive months from the meetings of the Trust or of any committee of which he is a member and is unable to explain such absence to the satisfaction of the Trust. or (b) is an undischarged insolvent or has compounded with his creditors, or (c) has been convicted by a criminal Court of an offence involving moral turpitude, such conviction not having subsequently been set aside, or (d) has knowingly acquired or continued to hold without the permission in writing of the State Government, directly or indirectly or by a partner, any share or interest in any contract or employment with, by or on behalf of the Trust, or (e) has knowingly acted as a Trustee in a matter other than a matter referred to in Clause (c) of Sub-section (2) in which he or a partner had, directly or indirectly, a personal interest, or in which he was professionally interested on behalf of a client, principal or other person, or (f) has acted in contravention of Section 23, or (g) being a legal practitioner, in any suit or other proceedings acts or appears on behalf of any other person against the Trust, or acts or appears on behalf of any other person in any criminal proceeding instituted by or on behalf of the Trust. (2) A person shall not. be deemed for the purpose of Sub-section (1) to acquire, or continue . to have, any share or interest in a contract or employment by reason only of (a) having a share or interest in any lease, sale or purchase of land or building or in any agreement for the same provided that such share or interest was acquired before he became a Trustee, or (b) having a share or interest in a newspaper in which an advertisement relating to the affairs of the Trust is inserted, or (c) holding a debenture or otherwise being interested in a loan raised by or on behalf of the Trust, or (d) having a share or interest in the occasional rate of an article, in which he regularly trades, to the Trust to a value not exceeding, in any one year, such amount as the Trust, with the sanction of the State Government, may fix in this behalf. (3) The State Government may remove from the Trust a Trustee who in its opinion has so flagrantly abused in any manner his position as a Trustee as to render his continuance as a Trustee detrimental to the public interest. (4) When the State Government propose to take action under the foregoing provisions of this section an opportunity of explanation shall be given to the Trustee concerned, and, when such action is taken, the reasons there for shall be placed on record and communicated to him in writing. 15. u-IRT 15 @ ft-a-ffäNT •uT (71) we.T, (e.) (2) (71) 24T AT AT Q.TT, (a) 23 ..3F:q 312.BT •3-i?T ZIT -\$ (71) fib--ä •fö-q-ä (3) g--vq-\$[\$5 2, ft-g Comments Removal of Trustee—Appointment as member of UIT and withdrew the nomination. order and cancelled the appointment order.—Challenged on the U-28 1959 u-RT 1 5 ground that no opportunity of being heard was given. Violation of principle of natural justice. Complaint against the petitioner with regard to criminal cases pending against him, State Government has power to appoint and remove the trustee. Held, Since the order has been cancelled on complaint the State Government should issue show cause notice to call for explanation with regard to complaint submitted against the petitioner.—Yogesh Saini vs. State of Rajasthan, 2003 (3) CDR 2216 (Raj) = 2003 (2) RLW 1377 (Raj) = 2003 (2) DNJ 959 (Raj) = 2003 (1) RLR 364 (Raj) 2003 (2) WLC (Raj) 47 = 2003 (2) Civ. Times (Raj) 892. Q5T 71NT I aq 2003 (3) CDR 2216 (Raj) = 2003 (2) RLW 1377 (Raj) = 2003 (2) DNJ 959 (Raj) = 2003 (1) UR 364 (Raj) = 2003 (2) WLC (Raj) 47 = 2003 (2) Civ. Times 892 (Raj). Section 16. Disabilities of Trustees removed under

Section 15.41) A Trustee removed under Clause (a) or Clause (c) of Sub-section (1) of Section 15, or under Sub-section (3) of that section, shall not be eligible for further appointment or election for a period of three years from the date of his removal except when removed for continued absence. (2) A trustee removed under Clause (b) of Sub-section (1) of Section 15 shall not be so eligible until he has obtained his discharge or has paid his creditors in full, as the case may be. (3) A Trustee removed under any other provisions of Section 15 shall not be so eligible until he is declared to be no longer ineligible, and he may be by an order of the State Government.

16. (1) (M) -ur (71) (3) -§ (2) 15 \$1 (1) @ (3) 15 Section 17. Filling of casual vacancy when the place of a Trustee appointed by the State Government becomes vacant by his resignation, removal or death or otherwise, the State Government shall appoint a person to fill the vacancy. (2) When the place of a Trustee elected under Clause (b) of Sub-section (1) of Section 9 becomes vacant by his resignation, removal, death or otherwise the vacancy shall be filled within two months of the existence of such vacancy being notified soon after the occurrence thereof to the Municipal Board by the Trust in the manner provided by Sub-section (3) of the said section: provided that if the said Board fails to elect its members to fill the vacancy within the period prescribed above, the provisions of Sub-section (4) of Section 9 shall apply. (3) The term of office of a Trustee appointed or elected under this section shall be the remainder of the term of office of the Trustee in whose place he has been elected or appointed: Provided that no person elected or appointed under Sub-section (2) shall continue to be a Trustee after he has ceased to be a member of the Municipal Board.

17. (1) Be it ENACTED that the provisions of Section 17 of the U.I.T. Act are special provisions and whereas under Section 16 the possession of the Act can only be taken after an award has been made under Section 17 even if no award has been made after expiry of the 15 days of publication of notice mentioned in Section 9(1), if the State Government so directs, the Collector may take possession of any land needed for public purposes and such land shall thereupon vest absolutely in the State Government free from all encumbrances and there is no question of reverting or re-vesting of the land in the owner thereof even if the award may not have been made within two years and all the owner will be entitled in the determination of compensation.—*Sheo Narain & Ors. vs. State of Rajasthan & Ors.*, 1993(1) WLC 536 (Raj) -q.31 Té.â. .17 \$1 16 -a 17 -§ 9 (1) 15 a, ufi 1959 18 3Dv 1993 (1) WLC 536 (Raj). Chapter IV Proceedings of the Trust and Committees

Section 18. Conduct of Business by the Trust.—The Trust shall meet as and when necessary and its business shall be conducted in accordance with regulations made under Section 75.

18. GIRT -â-& 75 Section 19. Temporary association of members with the Trust for particular The Trust may associate with itself, in such manner and for such period purposes, as may be prescribed by regulation made under Section 75, any person whose assistance or advice it may desire in carrying out any of the provisions of this Act. (2) A person associated with itself by the Trust under Sub-section (1) for any Purpose, shall have a right to take part in the discussions of the Trust relative to the purpose, but shall not have a right to vote at a meeting of the Trust and shall not be a member of the Trust for any other purpose.

19. (1) m, 75 (2) fig (1) fäv -Q5T -a-a Bi-q-r I Section 20. Constitution of The Trust may from time to time appoint committees consisting of a Trustee or Trustees and such other person of any of the following classes as it may think fit, namely, (i) persons associated with the Trust under Section 19; (ii) other persons whose assistance or advice the Trust may desire as members of a committee. Provided that no committee shall consist of less than three persons. (2) The trustee appointed to a committee or where two or more than two Trustees are so appointed such one of them as may be nominated by the Trust shall be the Chairman of such committee.

20- (1) Gi-ft , (i) 19 21 U-31 (2) -q•fifâ -§1 Comments —A look at the award will show that it has not been stated that the buildings structures or hpuses are existing and all th has been stated is that in case any buildings are existing on the land of amount of compensation will be determined separately. There being no material that any such claim was filed under Section 9 of the U.I.T. Act, it cannot be say that the award is incomplete.—*Sheo Narain & Ors. vs. State of Rajasthan & ors.*, 1993(1) WLC 536 (Raj) TINT a, awf 1993 (1) WLC 536 (Raj). Section 21. Functions of committees.—(1) The Trust may. (a) refer to a committee appointed under Section 20, for inquiry and report, any matter relating to any of the purposes of this Act, and (b) delegate to such committee by specific resolution and subject to any regulation made under this Act any of the functions or duties of the Trust. (2) Every such committee shall conform to any instructions from time to time given to it by the Trust.

21. (1) — 20 \$1 Rqh-é Comments Order of removal — Trust cannot delegat its power.—From the reading of Section 91-A it will be ovident that the power to order removal vests in the Trust. The Trust may delegate any of its

functions or the duties to any of the committees constituted under Section 21 of the Act. It may further delegate such of the functions as may be permissible under the regulation framed under Section 75 of the Act to the Chairman of the Trust and there is no provision in the Act empowering the Trust to delegate its power in regard to the order of removal of construction in favour of an officer of the Trust. It is true that under Section 27 of the Act the Chairman may be general or special order in writing delegate to any officer of the Trust any of his power, duties or functions under this Act or U-32 1959 ETINT 21 under the Rules made thereunder except the power to preside over the meeting of the trust. Such delegation by the Chairman is in regard to his own functions only. There is, however, no provision of such delegation in favour of officer so far as the trust is concerned. It, therefore, follows that the functions of the Trust can be delegated either in favour of the committee or in favour of the Chairman. In the case of Chairman delegation will be to the extent the regulation framed under Section 75 of the Act permits. It may be observed here that the delegation of power is permissible with the legislative permission and in absence of such legislative permission there can be no delegation of the functions of the trust in favour of the officer to the Trust or its Secretary. Any delegation may by the Trust under its resolution in regard to the removal of unauthorised construction cannot be said to be in consonance of the provision of the Act. Court is therefore, firmly of the opinion that the resolution of the UIT as far it delegates power of removal under Section 91 in favour of its Secy. is beyond the competence of the U.I.T. As a natural corollary thereof the Secretary of the Trust derives no power of ordering removal of unauthorised construction and is therefore wholly incompetent to pass the impugned order under Section 91 of the Act. It may be that the Trust may empower any office-officer for the purpose of Section 91 (C) and authorise any officer to stop the unauthorised building operations but from that it cannot be inferred that the Trust can by its resolution authorise its officer under Section 91(C) of the Act to order removal of unauthorised construction—Mohan Lal vs. Urban Improvement Trust, Jodhpur, 1978 RLW 72 (Raj) = AIR 1978 (Raj) 201 = 1978 VVLN 38 (Raj). 21 I 75 gg 27 -aa 31-q;fi ya-T YTQ.TF'f qa-T 75 uai æ.T11* 91 \$T 23 U -33 \$1 91 910) \$1 91 (QI) fäg 2.-*d 1978 RLW 72 (Raj) = AIR 1978 Raj 201 = 1978 WLN 38 (Raj). [Section 21-A. Delegation of powers, duties and functions of the Trust.—Any powers, duties and functions, which may be exercised, or performed by or on behalf of the Trust, may by a specific resolution of the Trust and subject to such restrictions, limitations and conditions as may be prescribed by rules or regulations, be delegated to the Chairman or the Secretary or any other officer of the Trust, without prejudice to any powers conferred on any committee by or under Section 21 of this Act.] 21—45 fiaiust, 21 GIRT Section' 22. Conduct of business of Committees.—A committee appointed under Section 20 shall meet as and when necessary and conduct its business in accordance with regulations made under Section 75. ETINT 22. VINT 20 -\$1 75 Section 23. Trustees and associated members of Trust or committee not to take part in proceedings in which they are personally interested.—(1) A Trustee who— (a) has directly or indirectly, by himself or by any partner, employer or employee, any such share or interest as described in Sub-section (2) of Section 15 in respect of any matter, or (b) has acted professionally in relation to any matter on behalf of any person having therein any such share or interest as aforesaid shall not vote or take any other part in any proceedings of the Trust or any committee relating to such matter. (2) If any Trustee or any person associated with the Trust under Section 19 or any other member of a committee appointed under this Act has, directly, or indirectly, any beneficial interest in any land situated in an area comprised in a scheme framed under this Act, or in any area in which it is proposed to acquire land for any of the purposes of this Act. Inserted new sec. 21-A by Section 2 of Rajasthan Act No. 9 of 1978, published in the Rajasthan Gazette, Part -IV-A, Extraordinary, dated 26.10.1978. (w.e.f. 15.06.1978). U-34 1959 (i) he shall. before taking part in any proceeding at a meeting of the Trust or any committee relating to such area, inform the person presiding at the meeting of the nature of such interest. (ii) he shall not vote at any meeting of the Trust or any committee upon any resolution or question relating to such land, and (iii) he shall not take any other part in any proceeding at a meeting of the Trust, or any committee relating to such area if the person presiding at the meeting considers it inexpedient that he should do so. 23. 15 \$1 (2) i, 3RT ZIT (2) uT 19 a-ft a-å -Q q-g-a -\$r \$1 (ii) (iii) -uT ävr, Section 24. Power to fix strength, salaries etc. of staff.—[Subject to any general or special direction issued by the State Government] every Trust shall, from time to time propose for the sanction of the State Government the strength of officers and servants to be appointed, setting forth the conditions of service and emoluments of each officer or servant. The State Government may sanction such proposal with or without amendment and no appointment shall be made otherwise than

in accordance with such sanction: 2 [Provided that the Trust may, subject as aforesaid, direct that one person shall be appointed to discharge the duties of any two or more officers.] 24. u--@--EF Inserted by Section 3 read with Second Schedule of the Rajasthan Act No. 21 of 1962, published in the Rajasthan Gazette, Part IV-A, Extraordinary, dated 15.12.1962. 2 Added proviso by. Section 3 read with Second Schedule of the Rajasthan Act No. 21 of 1962, published in the Rajasthan Gazette, Extraordinary, Part •IV-A, dated 15. i 2.1962. E.IRT 25 *Ifi7fäui U-35 Comments Transfer of employees from UIT to Municipal Corporation—Power of Transfer.—As per Section 24A of the Act of 1959, the employees of a Truist can be transferred by the State Government from one Trust to another or to the JDA, but it does not empower the State Government to transfer employees of the Trust to the Municipal Corporation and therefore, ili view of thus, the impugned transfer order dated 03.07.2003 issued by the Dy. Secretary, Local Self Government Department, Jaipur • transferring the petitioners from Trust to Municipal Corporation, which. is not permissible under the provisions of Section 24A of the Act of 1959 •is wholly illegal and in violation of the provisions of Section 24A of the Act of 1959 and thus, it cannot be sustained.—Amardeep Dube & Anr. vs. State Df Rnjasihan & Anr., 2003 (3) DNJ 1104 (Raj) = 2004 (1) RLW (Raj) 303 = 2003 (3) CDR 1801 (Raj). —1959 ETINT 24Q5 gg, 1959 24 a, 03.072003 1959 \$1 g? 2003 (3) DNJ 1 104 (Raj) = 2004 (1) RLW 303 (Raj) 2003 (3) CDR 1801 (Raj.) [Section 24-A. Power of, transfer.—The officer and employees of a Trust may be transferred, by the State Government from one Trust to another cr to the J.D.A. in accordance with the rules made under Section 74.1 24—45. 74 -t Section 25. Power of appointment etc.—Subject to the provisions of Section 24 and to any rules for the time being in force, the power of appointing and granting leave to officer and servants of the Trust and censuring, reducing, suspending or dismissing them for misconduct and dispensing with their services for any reason other than misconduct, shall be vested. (a) in the case of officers and servants drawing such monthly salary as may be specified by the State for each trust, in the Chairman, and Substituted Sec. 24-A by the Rajasthan Acc No. 18 of 1994, Published on 30.04.1994 Page 219. Prior it was added by Act, No. 16 of 1992 published in Rajasthan Gazette Extraordinary Part IV-A, dated 05.05.1992 Page 69. 1959 25 (b) in other cases, in the Trust: Provided that, in the case of Government servants whose services are lent to the Trust, the power of granting leave only will so vest and the other powers specified in this section will be exercisable by the State Government or by an appropriate authority of the State Government upon a complaint made by the Trust in that behalf or otherwise: [Provided further that officer may be appointed to administrative and technical posts in the Trust by the State Government either from amongst Staff holding posts ih the Trust with nomenclature and duties corresponding to posts in a department of the Government froin which promotions to similar posts are made or from amongst officers posts encadred in the Rajasthan Municipal Service, or the State services, and the strength of these services shall stand increased accordingly, if necessary.] 25. 24 (u) HI-q•öt -Ä, Section 26. Control by Chairman.—The Chairman shall exercise supervision and control over the acts and proceedings of all officers and servants of the Trust and, subject lo the foregoing sections, shall dispose of all questions relating to the service of the said officers and servants and their pay, privileges and allowance

26. Section 27.Delegation of Chairman's functions.—(1) The Chairman may, by general or special order in writing delegate to any officer of the Trust any of his powers, duties or functions under this Act or under *he rules made thereunder except the power to preside over the meetings of the Trust. Substituted proviso by Section 3 of Rajasthan Act No. 8 of 1975, published in the Rajasthan Gazette, Extraprdinary, Part IV-A, dated 15.03.1975- prior to amendment it was as followings:— "Provided further the administrative and technical officers of the Trust shall be appointed by the State Government from amongst the corresponding officers encadred in the Rajasthan Municipal Service and the strength of that Service shall be increased accordingly." 29 U-37 (2) The .exercise or discharge by any officer of any powers, duties or functions delegated under Sub-section (1) shall be subject to such conditions and limitations, if any, may be specified in the, said order to control and revision by the Chairman

27. Section 28.Supply of information and documents to the State Government.—(1) The Chairman- shall forward to the State Government a. copy of the -minutes of the proceedings of each meeting of the Trust within ten days from the date on which the .minutes of the proceedings of suchmeeting were signed as prescribed. (2) If the State Government so directs in any case, the Chairman shall forward to it a copy of all papers, which were laid before the Trust for consideration at any meeting. (3) The State Government may require the Chairman to furnish it with. (a) any return, statement, estimate, statistics or other

information regarding any matter under the control of the Trust, or (b) a report on any such matter, or (c) a copy of any document in the charge of the Chairman. (4) The Chairman shall comply with every such requisition without unreasonable delay. 28. (1) *ITT, -t 2.11 (3) *7tT— €5) -\$ -ö-\$ fü-q-q-o•r, AT Chapter V Framing of Schemes Section 29. Schemes : matters to be provided therein.—(1) The Trust shall, on the orders of the State Government or on its own initiative or on a representation made by the Municipal Board and subject to availability of financial resources, frame schemes for the improvement of the urban-area for which the Trust is constituted. 1959 E.TRT 29 (2) Such schemes may provide for all or any of the following matters, namely, other property necessary for, or effected by, the (a) the acquisition of any land or execution of the scheme; (b) the re-laying out of any land comprised in the scheme; (c) the construction and re-construction of buildings; (d) the formation, construction and alteration of streets; (e) the closure or demolition of dwellings or portions of dwellings unfit for human habitation; (f) the demolition of obstructive building or portions of buildings; (g) the draining.. water supply and lighting of streets; (h) the raising i [or levelling] of any land which the Trust may deem expedient to raise 2 [or level]; (i) the forming of open spaces for the benefit of the area comprised in the scheme or any adjoining area. (j) all or any of the sanitary • arrangements required for the area comprised in the scheme: (k) the establishment and construction of markets and other places of public requirement or convenience; (l) the limitation of areas within which special trades or industries may or may not be carried on or which are reserved exclusively for residential or other purposes; (m) the division of any land into plots for the erection of buildings for residential purposes; (n) the erection of buildings on any site. the restrictions and conditions in regard to the open spaces to be maintained in or around such buildings, the height and character of such buildings and the architectural features of the elevation or frontage thereof; (o) the amenities to be provided in relation to any site or building or buildings on such site whether before or after the erection of such buildings and the person or authority by whom or at whose expense such amenities are to be provided; (p) the construction of buildings for the accommodation (including shops) of the poor and the working classes or of any other class of the inhabitant of the area comprised in the scheme including such classes as are likely to be displaced by the execution of the scheme; (q) the provision of facilities for communications; (r) the reclamation or reservation of land for gardens, afforestation and the provision of fuel and gas supply and other needs of the population; (s) the planting and preservation of trees and plantations; (t) the sale, letting or exchange of any property or land comprised in the scheme; and (u) any other matter for which in the opinion of the State Government it is expedient to make provision with a view to the general efficiency thereof, inserted by Section 5(a) of Rajasthan Act No. 3 of 1963, published in the Rajasthan Gazette, Extraordinary, Part IV-A, dated 19.03.1963. 2 Inserted by Section 5(b) ibid. 29 U-39 •31t.ZIN—5 29. SINT -q-fää 31 e.-n-ä_ (g.) frg uT @TFT; (q) FINFT; (U) rnt@t (Zi) -æ-q-æ.TT (51) a-Y a:ß-qe-r; (e) qe_n-q-q-r ft-q-q-öt (G) fr5qh Ng-a \$5 U-40 '1959 E.o-q-r 29 -N.-q-R 1 Comments 1. Applicability of Section 29. 29 2. Resolution •to resolve land for educational institutions. R-g 3. Power of UIT.—Framing a scheme without master plan. (RTR 4. Allotment of land to hospital for public care. wat7)..... . 42 1. Applicability of Section. 29.—Construction for purpose other than covered. by Section 29. No scheme framed under Section 29, nor any pre-existing scheme in operation—Sections have no application since distinguishing features contemplated in Section 73-B not attracted. In respect of authority to levy conversion charges in the cases of, free old lands, use of which is not restricted by the title, under which such land is held, no conversion charges are leviable and in view of the fact that though under non-obstante provision of Section 73B the State Government has necessary authority to permit the use of the land for purposes other than; for purposes restricted under the Scheme framed under Section 29 in spite of the provision of Section 72, but there being no scheme framed under Section 29 or deemed to be • framed under Section 41 A under which the user of the land in question for commercial purposes was restricted, no demand for change in user could be •made on that basis also, and in view of the fact that Trust itself in resolution approving the plan as •referred to the fact that land in question was permitted -to be put to commercial use way-back in 1995, when the permission was sought no change in user •of the land for any restrictive purpose was to happen, which could entail levy of charges, and taking into consideration that land abutting on the road from Paota •to Mahamandir was factually used for commercial purposes is. not sustainable under the provisions of the Urban Improvement Act, 1958 in the present case.—Jawahar Sons Enterprises Pvt. Ltd. (Ms.) vs. State & Ors., 2002 (4) RLW (Raj) 2362 = 2002(1) DNJ (Raj.) 194 = 2002 (1) 459 (Raj) = 2002 (1) CDR 766 (Raj) = 2002 (2) RLR 465 (Raj) = 2002 (2) WLC (Raj) 627 = 2002 (2)

WLN 565 (Raj) = AIR 2002 (Raj) 206. 1. 29 29 29 73—QÄ 1 72 29 2, 29 2, 29 U-41 1995 \$f 2ft. 1985 2002 (4) RLW 2362 (Raj) = 2002(1) DNJ (Raj.) 194 = 2002 (1) RRT. 459 (Raj) = 2002 (1) CDR 766 (Raj) = 2002 (2) UR 465 (Raj) = 2002 (2) WLC 627 (Raj) = 2002 (2) WLN 565 (Raj) = AIR 2002 Raj 206

2. Resolution to resolve land for educational institutions.—Land reserved for educational institutions but UIT allotted half of plot to appellant and subsequent allotment made of rest of the plot in favour of respondent educational institution. Same was not invalid. Petition against such allotment by appellant belatedly. Not maintainable since appellant could not claim monopoly of allotment over entire plot—Besides since allotment was made and possession already given and entire amount was deposited by respondent. He could not be removed from said land,—St. Anne's School' Society vs. Urban Improvement Trust, Jodhpur Raj. & Anr. AIR 2000 Raj 422 2000 (3) RLW 1552 = 2000 (3) WLC 520 = 2000 (3) RLR 404 = 2000 (3) WLN 7. AIR 2000 Raj 422 = 2000 (3) RLW 1552 = 2000 (3) WLC 520 = 2000 (3) RLR 404 = 2000 (3) WLN 7

3. Power of UIT.—Framing a scheme without master plan.—Under Section 29 of the UIT Act the Trust on the orders of the State Government or its representative made by the Municipal Board and subject to availability of financial resources, may frame scheme for the improvement of the urban area for which the Trust is constituted. It can frame more than one scheme and there appears to be no bar to frame a scheme for a part of urban area. For framing a scheme under Chapter V of the UIT Act existence of a master plan is not a condition precedent. A look at Section 8(1) of the UIT Act will show that the State Government has power by notification in the Official Gazette to establish for the purpose of carrying improvement whether a master plan has or has not been prepared.—Bishambhar Dayal vs. State of Rajasthan & Ors., 1991 (1) WLC 709 (Raj). U-42 1959 29 1 8(1) 1991 (1) WLC 709 (Raj)

4. Allotment of land to hospital for public care.—UIT has power to prepare a scheme and to notify the various purposes for which the land let-out could be used. There is no scheme which shows the left out land to be used for park. It was described as open land. An open land can not be treated as a park. The allotment of the land to the Trust was eminently just and perfectly suited to the public cause. To interfere with that allotment order at the stage when construction worth lacs have already been made would result in doing injustice. The land measuring 956 sq. yards is still available for the purpose for which the appellant intends using it. The hospital has already been started functioning. In such a situation, to interfere with the allotment of the land made in favour of the Trust and directing the demolition of the building would harm the public interest instead of serving it. To interfere in such matter under the guise of the public interest litigation would result in great injustice and that no principles of law could justify the same—Suresh Mehta vs. State & ors., 1992 (2) WLN 81 = 1992 (1) RLW 468 1992 (1) RLR 185 = 1992 (3) WLC 267 = AIR 1993 Raj 61. 956 -i fä-g Ä5FTT @T8fTT qa-T -Qi-ft-er -*QTT 31k '3FVJ 1992 (1) RLW 468 = 1992 (1) UR 185 1992 (3) WLC 267 = AIR 1993 Raj 1992 (2) WLN 81 61. Section 3(). Matters to be considered when framing schemes.—When framing scheme in respect of any area, regard shall be had to. (a) the nature and the conditions of such area and of neighbouring areas as a whole; (b) the several directions in which its expansion appears likely to take place" .(c) the likelihood of schemes being framed for other parts of the area; and (d) such other matters as may be prescribed. 32 U-43 30. --q-rå — •q--v-fä Q-TI Ifi RI-a I Section 31. Scheme to conform to master plan.—(1) If for and in respect of the urban area for which the Trust is constituted a master plan has been prepared and approved and is in operation, every scheme framed by the Trust in accordance with 'the provisions of this Chapter shall conform to such master plan and shall not be framed so as to affect any alteration in the different zones by the master plan

31. Rig Section 32.Previous notification of area for which scheme is framed.—Duration and effect such notification—(1) Whenever the Trust decides to frame a scheme for any urban area, the State Government may, at the request of the Trust, issue a notification specifying such area and declaring that the Trust has decided to frame a scheme for such area. (2) A notification under Sub-section (1) shall remain in force for six months from the publication thereof: Provided that the State Government may, for sufficient reasons extend the said period by a further period not exceeding six months. [(2-A) Where in the opinion Of the State Government, it is necessary so to do in public interest, it may, by order published in the Official Gazette extend the period of the notification issued under Sub-section (1) for such further period as it thinks fit, notwithstanding that the period of the notification or the extended period thereof under the provisions of Sub-section (2) has expired. An order under this section may be made so as to be

retrospective with effect on and from a date next following the expiration of the period of the notification of the extended period thereof under Sub-section (2).] (3) If the sanction of a scheme is notified in accordance with Section 38 in respect of such area before the expiry of the notification under this section, such notification shall continue in force until the scheme is carried out. (4) During the period that a notification under this section remains in force in respect of any urban area, no building shall be erected, re-erected, altered or added within that area without the written sanction of Trust. E..TRT 32. •ft-f*-Rau - 2, -d -\$ Inserted new Sub-sec. (2-A) by Section 2 of Rajasthan Act No. 2 of 1976, published in the Rajasthan Gazette, Extraordinary. Part IV-A, dated 17.04.1976. (w.ef. 28.02.1976). U-44 44 1959 -qq-\$Tft I 38 t, Comments 1. Acquisition proceedings in absence of scheme framed. 3•TQ-Tß 2. Acquisition for Public Purpose. Ng G) 3. Duration of 3Tfi.).... 32 1. Acquisition proceedings in .absence of scheme the case of Pratap & Anr. vs. State, 1996 (2) Supreme 533, the Apex Court, after considering the law on the point', held that "even if there is no Scheme prepared or finalised under a Housing Board or Urban Improvement Act, acquisition could be validly made under the provisions of the Land Acquisition Act for a public purpose or under the Rajasthan Urban Improvement Act for the purpose of improvement or for any other purpose under the Act. The decision relating to Rajasthan Act is directly on the point.—UIT, Udaipur vs. Rama Shanker, 1996 DNJ (Raj) 366 = 1996 WLC (UC) 721. 1996 (2) Supreme 533 e.—7R 1996 DNJ 366 (Raj) = 1996 WLC (UC) 721

2. Acquisition for Public Purpose.—The purpose for which the acquisition of land was intended to be made or had been made was a public purpose. The public purpose is a purpose for the good of the public. That means that it is opposed to private purpose. The purpose of acquisition was for establishment of Sub City Centre.- The purpose by itself indicates that it is a public purpose. 33 U-45 The State Government irrespective of the Improvement Act could acquire the land for public purpose. For such acquisition the procedure provided by the Improvement Act is not necessary.—Himmat Jain vs. State & Ors., 1993 (2) WLN 717. 2. ft-g — ya—ft-a \$1 i 2—72-47 1993 (2) WLN 717 3. Duration of notification—Government is competent to extent duration of six months Of DayaZ & Ors., vs. State of Rajasthan, 1991 (1) WLC 686. —It would be in the interest of justice to permit the U.I.T. to produce the scheme because the planned development of City of Jaipur which is Capital of Rajasthan_ is of great public importance and omission and commissions by haphazard development and unauthorized constructions should not be ignored lightly—Kanhaiya Lal vs. u.I.T., Jaipur, 1987(1) RLR 830 (Raj) • = 1987 RLW 638 (Raj) = 1987 WLN 699(UC) 1991 .(1) WLC 686. —434T{ä. \$1 1987 (I) 830 (Raj) = 1987 RLW 638 (Raj) = 1987 WLN 699 (Raj). Section 33. Preparation, publication and transmission of notice as to schemes and supply of documents to applicants.—(l) When any scheme has been framed, the Trust shall prepare a notice stating.— (a) the fact that the scheme has been framed, (b) the boundaries of the area comprised in the scheme, and (c) the place at which particulars of the scheme, a map of the area comprised in the scheme, and a statement of the land which it is proposed to acquire may be seen at reasonable hours. (2) The Trust shall— (a) Publish the said notice in such manner as may be prescribed, inviting objections and suggestions from all persons with respect to the draft scheme before such date as may be specified in the notice, and (b) send a copy of the said notice to the Chairman of the Municipal Board. (3) The Chairman shall also cause copies of all documents referred to in Clause (c) of Sub-section (l) to be delivered to any applicant on payment of such fees as may be prescribed by regulations. 33. 1959 €5) -Of -r,-tl 33 (IT) 3 ü-V (3) (1) (71) Comments Trust empowered to take decision before sanction of scheme by Government Under Section 36.—Under Annexure 31 dated April 5, 1969, a decision was taken that the scheme shall not be executed. A reading of Section 40 of the Act will show that it relates to alteration of the scheme after sanction and it does not relate to abandonment or cancellation of the Scheme which has been sanctioned by the State Government. In Annexure R/ 3 it has been mentioned that the period of execution of the scheme was extended upto March 31, 1985 in exercise of the powers of the State Government under Section 39(1) of the Act. Though it cannot be said whether Annexure 31. dated April 5, 1969 was made by the Trust after the scheme had been sanctioned under Section 38(1) of the Act, but even if it may be assumed that it was made after the sanction of the Scheme under Section 38(1) of the Act, a decision was taken not to execute the scheme, but later on the period of execution of the scheme was extended under Section 39 of the Act. Therefore resolution of the Trust dated April 5, 1969 (Annexure 31) firstly will have no relevance to the present case and secondly the Trust having taken a decision not to execute the scheme and it was well within its power to extend the period of execution of the scheme and the State Government

was again within its rights to issue a notification under Section 39(1) of the Act to extend the period of execution of the scheme.—Hari Ram M. Dhanwani vs. State of Raj. & ors., 1988 (1) RLJR 371. 36 31 05.04.1969 \$1 40 -a \$1 39(1) 31.03. 1985 31 05.04.1969 38(1) 38(1) 36 U-47 ETRT 39 a-dTtT ITtf 05 04.1969 31) \$1 39(1) 1988 (1) RLR 371. Section 34. Transmission to Trust of representation by Municipal Board as to schemes.—The Chairman of any Municipal Board to whom a copy of a notice has been sent under Clause (b) of Sub-section (2) of Section 33 shall within a period of sixty days from the receipt of the said copy, forward to the Trust any representation which the Municipal Board may think fit to make with regard to the scheme

34. Tr \$1 33 (2) (v) 60 Qh-a-q Section 35. Furnishing of copies of extracts from the assessment book of a local body.—The Chairman of the Municipal Board shall furnish the Chairman of the Trust, at his request, with a copy of, or extracts from, the assessment list on payment of such fees as may be prescribed

35. Section 36. Abandonment of scheme or application to Government to sanction it.—(1) After the expiry of the date referred to in Clause (a) of Sub-section (2) of Section 33 and of the period prescribed by Section 34 in respect of any scheme the Trust shall consider any objections, suggestions and representations received thereunder and after affording to all persons making such objections, suggestions or representations a reasonable opportunity of being heard, the Trust may either abandon the scheme or apply to State Government for sanction of the scheme with such modifications, if any, as the Trust may consider necessary. (2) Every application submitted under Sub-section (1) shall be accompanied by (a) a description of, and full particulars relating to the scheme, and complete plans and estimates of the cost of executing the scheme; (b) a statement of the reasons for any modification made in the scheme as originally framed; (c) a statement of objections, if any, received under Section 33; (d) any representation received under Section 34; and (e) a statement of the arrangements made or proposed by the Trust for the re-housing of persons likely to be displaced by the execution of the scheme, for whose re-housing provision is required. (3) When any application has been submitted to the State Government under Sub-section (1) the Trust shall cause notice of the fact to be published for two consecutive weeks in the Official Gazette and in a local newspaper. U-48 1959 36 36. 33 (2) -t -a-r -t 34 -a -qh-q--qr -q-q-öTT z:ft a, R*-TTT I ft-a-VT, -ah-q-q-r 3EHT7, (7T) 33 @ 34 ft-q-q-ÜT I Comments I. Trust empowered to take decision before sanction of scheme by Government Under Section 36. äRT fä-g 36

2. Acquisition of Land without prior sanction of scheme and no publication. (qtf). 48 . 49 1. Trust empowered to take decision before sanction of scheme by Government Under Section 36.—Under Annexure 31 dated April 5, 1969, a decision was taken that the scheme shall not be executed. A reading of Section 40 of the Act will show that it relates to alteration of the scheme after sanction and it does not relate to abandonment or cancellation of the Scheme which has been sanctioned by the State Government. In Annexure R/ 3 it has been mentioned that the period of execution of the scheme was extended upto March 31, 1985 in exercise of the powers of the State Government under Section 39(1) of the Act. Though it cannot be said whether Annexure 31 dated April 5, 1969 was made by the Trust after the scheme had been sanctioned under Section 38(1) of the Act, but even if it may be assumed that it was made after the sanction of the Scheme under Section 38(1) of the Act, a decision was taken not to execute the scheme, but later on the period of execution of the scheme was extended under Section 39 of the Act. Therefore resolution of the Trust dated April 5, 1969 (Annexure 31) firstly will have no relevance to the present case and secondly the Trust having taken a decision not to execute the scheme and it was well within its power to 37 U-49 extend the period of execution of the scheme and the State Government was again within its rights to issue a notification under Section 39(1) of the Act to extend the period of execution of the scheme.—Hari Ram M. Dhanwani vs. State of Raj. & ors., 1988 (1) IRLR 371. 36 31 05.04.1969 40 \$1 \$1 39(1) 31.03.1985 31 05.04.1969 GINT ?-TRT 38(1) 38(1) 3-1* \$1 39 -a 0504.1969 31) 39(1) -t Qh-g-ft-q 1988 (1) RLR 371

2. Acquisition of Land without prior sanction of scheme and no publication.—The acquisition of the land is not being made under the Urban Improvement Trust Act, but under the Land Acquisition Act and there is no bar in the Land Acquisition Act that the land cannot be acquired by the State Government for the development of residential colonies without prior sanction of any scheme and no publication. Then, acquisition of the land precedes the development and in the absence of any scheme, the acquisition can be made 1992 (1) under the Act.—Sunder Lal & Ors., vs. State and Ors., 1991 (2) RLR 61 — WLC 716.

Residential houses or places of business should be provided house site of shop site at reserve or reasonable price—Sunder Lal & Ors., vs. State of Rajasthan, 1991 (2) RLR 62. aq--cj:f-q •Q-q-q-r 3-Tffd GTT I ,3fifrT @5RkTT 3-1h -\$ 3Dv 1991 (2) RLW 61 = 1992 (1) WLC 716. 1991 (2) RLR 62. Section 37. Power to sanction, reject or return scheme.—(1) The State Government may sanction, or may refuse to sanction or may return for reconsideration any scheme submitted to it under Section 36. USO 1959 37 (2) If a scheme returned for reconsideration under Sub-section (1) modified by the Trust it shall be re-published in accordance with Section 33. (a) in every case in which the modification affects the boundaries of the area comprised in the scheme or involves the acquisition of any land not previously proposed to be acquired, and (b) in every other case, unless the modification is, in the opinion of the State Government, not of sufficient importance to require re-publication. 1(3) Notwithstanding anything in Section 29 or in any other provision of this Chapter, (a) it shall be lawful for the State Government to sanction any scheme framed by any Trust before the commencement of the Rajasthan Urban Improvement (Amendment) Act, 1963 comprising in part, any area lying beyond the area for which such Trust was established; (b) upon such sanction being given, all previous notification issued, notices as to scheme prepared, published and transmitted, objections, suggestions or representations, if any considered, application for sanction submitted and the notices regarding such submission published in respect of such scheme shall be deemed to have been duly issued, prepared, published and transmitted, considered and submitted and such area shall, notwithstanding anything in Section 8, be deemed to have been included in the area for which such Trust was established.] 37. 36 -e (2) •q—ETRT (1) 33 \$1 2ft, (3) 29 ZIT -i-ä gg 1963 Inserted Sub-sec. (3) by Section 6 of Rajasthan Act No. 3 of 1963, published in the Rajasthan Gazette, Extraordinary, Part IV-A dated 29.03.1963. 38 8 a-ft 'fi i3iTQ7TT Section 38. Notification of sanction of scheme.—(1) Whenever the State Government sanctions a scheme it shall announce the fact by notification, and the Trust shall forthwith proceed to execute the same. (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. 38. 52 -45T U-51 Comments I.' Trust empowered to take decision before sanction of scheme by Government Under Section, 36. 36 2. Acquisition of Land without prior sanction of scheme and no publication

1. Trust empowered to take decision before sanction of scheme by Government Under Section 36.—

Under Annexure 31 dated April 5, 1969, a decision was taken that the scheme shall not be executed. A reading of Section 40 of the Act will show that it relates to alteration of the scheme after sanction and it does not relate to abandonment or cancellation of the Scheme which has been sanctioned by the State Government. In Annexure R/ 3 it has been mentioned that the period of execution of the scheme was extended upto March 31, 1985 in exercise of the powers of the State Government under Section 39(1) of the Act. Though it cannot be said whether Annexure 31 dated April 5, 1969 was made by the Trust after the scheme had been sanctioned under Section 38(1) of the Act, but even if it may be assumed that it was made after the sanction of the Scheme under Section 38(1) of the Act, a decision was taken not to execute the scheme, but later on the period of execution of the scheme was extended under Section 39 of the Act. Therefore resolution of the Trust dated April 5, 1969 (Annexure 31) firstly will have no relevance to the present case and secondly the Trust having taken a decision not to execute the scheme and it was well within its power to extend the period of execution of the scheme and the State Government was again within its rights to issue a notification under Section 39(1) of the Act to extend the period of execution of the scheme.—Hari Ram M. Dhanwani vs. State of Raj. & ors., 1988 (1) RLR 371. 36 31 05.04.1969 40 312/3 ug \$1 39(1) 31.03.1985 31 U-52 1959 38 0504.1969 \$1 38(1) 38(1) \$1 39 I 05.04.1969 31) \$1 39(1) -a 1988 (i) RLR 371

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scheme.—(1) While notifying the sanction of a scheme under Section 38, the State Government shall also specify in such notification the period within which the scheme so sanctioned is required to be executed by the Trust. (2) If the Trust fails to complete the execution of the scheme within the period specified under Sub-section (1), it shall make an application to the State Government setting forth the reasons for which the scheme could not be executed within the specified period and praying for its extension. (3) The State Government, may in consultation with the Municipal Board concerned, either refuse to extend or may extend the period and the fact of such refusal or extension shall be notified in the Official Gazette. 39. 38 Q. frü uR (1) - \$ aft-a-q - \$ -a-üt -d -qjn--üfi -h -qj-q-ä -g•g, fr-a-* fig 40 GTIAT U-53 Comments Trust empowered to take decision before sanction of scheme by Government Under Section 36.—Under Annexure 31 dated April 5, 1969, a decision was taken that the scheme shall not be executed. A reading of Section 40 of the Act will show that it relates to alteration of the scheme after sanction and it does not relate to abandonment or cancellation of the Scheme which has been sanctioned by the State Government. In Annexure R/ 3 it has been mentioned that the period of execution of the scheme was extended upto March 31, 1985 in exercise of the powers of the State Government under Section 39(1) of the Act. 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Dhanwani vs. State of Raj. & ors., 1988 (1) RLR 371. 36 31 05.04.1969 40 \$1 39(1) 31.03. 1985 I 31 05.04.1969 \$1 38(1) - \$1 38(1) - \$5 39 05.04.1969 31) TT - \$ -afi 39(1) 1988 (1) RLR 371. Section 40. Alteration of Scheme after sanction.—At any time after a scheme has been sanctioned by the State Government and before it has been carried into execution, the Trust may alter it: U -54 1959 40 any alteration is estimated to increase the estimated net cost of executing a scheme by more than Rs. 50,000/- or 5 percent of such cost, whichever is the alteration shall not be made without the previous sanction of the State Government. 40. -0 -q-fi-\$rv-€f 50,000 — 5 å, TfZfTIT i Section 41. Combination of schemes.—Any number of areas in respect of which schemes have been or are proposed to be framed may, at any time, be included in one combined scheme. 41. a-ft [Section 41., A. Provision for previously sanctioned scheme.—Notwithstanding anything contained in this Chapter, all improvement and development schemes falling within the purview of this Act, framed by a former Trust or otherwise and sanctioned by the State Government in relation to any area within the State prior to the establishment of an Improvement Trust under this Act for that area, shall be deemed to be the schemes duly sanctioned and notified under and in accordance with the provisions of this Chapter. ETINT -i YÄETFT— Comments Applicability of Section 29.—Construction for purpose other than covered by Section 29. No scheme framed under Section 29, nor any pre-existing scheme in operation—Sections have no application since distinguishing features contemplated in. Section 73MB not attracted. In respect of authority to levy conversion charges in the cases of free old lands, use of which is not restricted by the title, under which such land is held, no conversion charges are leviable and in view of the fact that though under non- obstante provision of Section 73B the State Government has necessary authority to permit the use of the land for purposes other than for purposes restricted under the Scheme framed under Section 29 in spite of the provision of Section 72, but there being no scheme framed under Section 29 or deemed to be framed under Section 41 A under which the user of the land in question for commercial purposes was restricted, no demand for change in user could be made on that Inserted. new Sec. 41-A by Section 3 of Rajasthan Act No. 6 of 1962, published in Rajasthan Gazette, Extraordinary, Part IV-A, dated 21.04.1962. (w.e.f. 30.12.196 D. 42 U-55 basis also, and in view of the fact that Trust itself in resolution approving the plan as referred to the fact that land in question was permitted to be put to commercial use way-back in 1995, when the permission was sought no change in user of the land for any restrictive purpose was to happen, which could entail levy of charges, and taking into consideration that land abutting on the road from Paota to Mahamandir was factually used for commercial purposes is not sustainable under the provisions of the Urban Improvement Act, 1958 in the present case.—Jawahar Sons Enterprises Pvt. Ltd. (Ms.) vs. State & Ors., 2002 (4) RLW (Raj) 2362 =

2002(1) DNJ (Raj.) 194 2002 (1) RRT 459 (Raj) = 2002 (1) CDR 766 (Raj) = 2002 (2) RLR 465 (Raj) = 2002 (2) WLC (Raj) 627 = 2002 (2) WLN 565 (Raj) = AIR 2002 (Raj) 206. 29 GHT.—E4RT 29 29 73—u 72 29 t, 29 t 41—Q5 1995 \$1 \$1, 1985 31k 2002 (4) RLW 2362 (Raj) = 2002(1) DNJ (Raj.) 194 2002 (1) RRT 459 (Raj) = 2002 (1) CDR 766 (Raj) = 2002 (2) RLR 465 (Raj) = 2002 (2) WLC 627 (Raj) = 2002 (2) WI-N 565 (Raj) = AIR 2002 Raj 206. Chapter VI Powers and duties of the Trust where a scheme has been sanctioned Section 42, Transfer to Trust for purpose of scheme of building or. land vested in Municipal Board.—Whenever any building, or any street, square or other land or any part thereof which is vested' in the Municipal Board is required for executing any scheme, the Trust shall give notice accordingly to the Chairman of such Board, and such building, street, square, land or part shall thereupon vest in the Trust, subject, in the case of any building to the payment to the said Board of such sum as may be required to compensate it for actual loss resulting from the transfer thereof to the Trust. 31ülN—6 42. ur 3FtTVT— U-56 1959 42 -a fi-g Section 43. Nazul The State Government may by notification in the Official Gazette and upon such terms and conditions as may be agreed upon between it and the Trust, place at the disposal of the Trust all or any improved and unimproved lands in the urban area for which the Trust has been constituted and which may be vested in the State (known and hereinafter referred to as Nazul lands) for the purposes of improvement in accordance with a scheme framed and sanctioned under this Act. (2) NQ improvement of any Nazul land shall be undertaken or carried out except by, or under the control and supervision of the Trust after such land has been placed at the disposal of the Trust under Sub-section (1). (3) After any such Nazul land has been improved by, or under the control and supervision of the Trust, it shall be dealt with by the Trust in accordance with the rules made and directions given by the State Government in this behalf. (4) If any Nazul land placed at the disposal of the Trust under Sub-section (1) is required at any time thereafter by the State Government the Trust shall, by notification in the Official Gazette, replace it at the disposal of the State Government upon such terms and conditions as may be agreed upon between that Government and the Trust. 43- -q-t -t -eB * 3FTäT -\$1 eq-j-q-IFFiT @5Tä-qTä I Contnzents Altering the status of open space.—Petitioners filing writ petitions challenging the settlement entered into by the State Government by which it was decided that the land of Rambagh Complex, which was acquired. for the purposes of UIT (now JDA) for constructing administrative, commercial and residential building, will be used as city level park, golf course (including club- house) and polo ground. Petitioner and interveners that the State praying should 44 U-57 use the land either for commercial complex (as envisaged earlier) or, if not, then the entire area should be used as a city level part. Mala fide or bias not alleged No factual foundation laid in writ petitions as regards legality or validity of impugned decision/ settlement. Settlement arrived at was valid. Public interest litigation can be withdrawn in the interest of the public with leave of the court only. Petitioners, who were not parties to the earlier proceedings at any stage, have no locus standi to approach the Court in appeal even in public interest litigations. The State Government may utilize the axquired land for the purpose of Golf Course, Polo Ground and City level park in public interest. Authority has power to dispose of land by way of allotment, regularisation or auction. Rajasthan Polo Club vs. State of Rajasthan & Ors., State of Rajasthan & Anr. vs. S.C. Kabra, Ms. Rambagh Gold Club, K.K. Sharma & Ved Prakash Bishnoi vs. State of Rajasthan & Ors.; Jitendra Shrimali & Anr. vs. State of Rajasthan & Ors., 2001 (3) RLR 389. (Raj) 31k 2001 (3) RLR 389 (Raj) Section 44. Transfer of private street or square to Trust for purposes of scheme.—(1) Whenever any street or square or part there of which is not vested in the Municipal Board is required for executing any scheme, the Trust. shall. cause to be affixed in a conspicuous place in or near such street. square or part, a notice signed by the Chairman.— (a) stating the purpose for which the street, square or part is required, and (b) declaring that the Trust will, on or after a date to be specified in the notice, such date being not less than thirty days after the date of the notice, take over charge of such street, square or part from the owner thereof; and shall simultaneously send a copy of such notice to the owner of such street, square of part. (2) After considering and deciding all objection, if. any, received in writing before the date so specified, the Trust may take over -charge of such street, square or part from the owner thereof and the same shall thereupon vest in the Trust. U-58 1959 EIIX[44 (3) When the Trust alters or closes any street or square or part thereof which has vested in it under Sub-section (2), it shall pay reasonable compensation to the previous owner for the loss of his rights therein. (4) If the alteration or closing of any such street, square or part causes damage or substantial inconvenience, to owners of property adjacent thereto or to residents in the neighbourhood, the Trust.— (i) shall forthwith provide some other reasonable. means of access for the

use of persons who were entitled to use street, square or part as a means of access to any property or place, and (ii) if the provision of such means of access does, not sufficiently compensate any such owner or resident for such damage or inconvenience, shall also pay him reasonable compensation in money

44. MT t, fig G) gg, .3@fh t, -t gq5 I i, q-arq, (2) TOT, Fq -t 21, •\$1 *TIT, (ii) \$1 TV-IT I Section 45. Provisions of drain or waterwork to replace mother situated on land vested in the Trust under Section 42 or Section 43 or Section 44(241) When any building or any street, square or other land, or any part thereof, has vested in the Trust under Section 42 or Section 43 or Section 44, no drain or waterwork therein shall vest in the Trust until. another drain or waterwork, as the case may be, if required, has been provided by the Trust, to the satisfaction of the Municipal Board in place of the former drain or waterwork. 46 U-59 (2) If any question or dispute arises as to whether another drain or water work is required or as to the sufficiency of any drain or water work provided by the Trust under Sub-section (1) the matter shall be referred to the State Government whose decision shall be final. 45. 42 43 44 ur uT 42 43 44 araxe.7T I (1) q-rtr \$1 *711 Section 46. Power of Trust to turn or close street or square vested in it. • • —(1)The Trust may. (a) turn, divert, discontinue the public use of, or permanently close, any public street vested in it or any part thereof, or (b) discontinue the public use of, or permanently close, any public square vested in it or any part thereof. (2) Whenever the Trust discontinues the public use of, or permanently closes any public street vested in it or any part thereof. it shall by reasonable compensation to every person who was entitled otherwise than as a mere licensee, to use such or part as a means of access and his suffered damage from such discontinuance or closing. (3) Whenever the Trust discontinues the public use of, or permanently closes, any public street vested in it or any part thereof, it shall pay reasonable compensation to every person.— (a) who was entitled, otherwise than as a mere Licensee, to use such square or part as a means of access, or (b) whose immovable property was ventilated by such square or part, and who has suffered damage— (i) in case (a), from such discontinuance or closing, and (ii) in case (b), from the use of which the Trust has put such square or part. (4) In determining the compensation payable to any person under Sub-section (2) or Sub-section (3), the Trust shall make allowance for any benefit accruing to him from the construction, provision or improvement of any other public street or square at or about the same time. that the public street or square or part thereof, on account of which the compensation is paid, is discontinued or closed. (5) When any public street or square vested in the Trust, or any part thereof, is permanently Closed under Sub-section (1), the Trust may sell or lease so much of the same as is no longer required. 46- RT*IT, 1959 46 (-ah arq-æ-h Q-TFT i3-q-uh7T x:3Rff Q..IT -*71T_ Gi) (u) \$1 Q, I -Ä, fib--qfi Section 47. Power under the Municipal laws vested in the Trust. Such provisions of the Municipal law for the time being in force in any part of the State as may be prescribed in the case of each Trust, shall so far as may be consistent with the tenor of this Act, apply to I [the urban area for which the Trust is established under this Act and] all references in the said provisions to the Municipal Board, Council or Corporation shall be construed as references to the Trust which, in respect of any 2 [such urban area] may alone exercise and perform all or any of the powers and functions which under any of the said provisions might have been exercised and performed by the Municipal Board, Council or Corporation or by the Chairman or President or by any officer thereof: Provided that the Trust may delegate to the Chairman or to any officer of the Trust all or any of the powers conferred under this, section. to (5) Omitted by Rajasthan Act No. 26 of 1976.] Substituted for words, "all areas, in respect of which a scheme is in force, and for the period during which such scheme remains in force." by Section 3(i)(a) of Rajasthan Act No. 26 of 1976, published in the Rajasthan Gazette, Extraordinary, Part IV-A, dated 17.04. 1976. (w.e.f. 28.02.1976), Substituted for words, "such areas" Sub-sections 2 to 5 by Section (3)(i)(b) of Rajasthan Act No. 26 of 1976, published in the Rajasthan Gazette, Extraordinary, Part-A, dated 17.04.1976. (w.e.f. 28.02.1976). 3 Omitted by Section 3(i) of ibid, prior to amendment it was as follows:— "Sub-section 47(2) The Trust may make by-laws for any areas comprised in a scheme which is outside the limits of the Municipality generally for carrying out the purpose of the scheme. Sub-section 47(3) The power of the Trust to make bye-laws shall be subject to the condition of the bye- laws being made after previous publication and of their not taking effect until they have been confirmed by the State Government; and the State Government may— (a) in confirming a bye-law, make any change in its form that appears necessary, and 50 U-61 47. R+-TT* AT GINT uT (2) (5) xxx] Section 48. Transfer of duties etc. of Municipal Board to Trust.—The State Government may by notification in the Official Gazette transfer to the Trust any of the duties, powers, functions and

responsibilities of the Municipal Board and thereupon the "Trust shall carry out, exercise, perform and discharge such duties, powers, functions and responsibilities

48. NTE-qa GIRT -t -Tä--ai, --firqi Section 49.Power to make surveys or contribute towards their cost.—The Trust may (a) cause a survey of any land to be made Whenever it considers that a survey is necessary or expedient for carrying out any of the purposes of this Act, or (b) contribute towards the cost or any such survey made by any other local authority

49. Pag @ a:T27 Section 50.Vesting in Municipal Board. of street laid out or altered and open space provided by the Trust .under Scheme.—(1) Whenever the Municipal Board is satisfied (a) that any street laid out or altered by the Trust has been duly levelled, paved, metalled, flagged channelled, sewered and drained in the manner provided in the scheme sanctioned by the State Government under this Act, Con.rd.. (b) after previous publication- of its intention, rescind any bye laws which it has confirmed where upon such bye-laws shall cease to have effect. Sub-section 47(4) No alteration or rescision of a bye-law by the Trust shall have effect unless and until it has been confirmed by the State Government. Sub-section 47(5) In making a bye-law the Trust may direct that a breach of it shall be punishable with fine which may extend to five hundred rupees, and when the breach is a continuing one, with a further fine which may extend to five rupees for every day after the day of the first conviction during which the offender is proved to have persisted in the offence. " 1959 50 (b) that such lamps, Ian-IP-posts and other apparatus for the lighting of such street as ought LO be provided by the rrrrust have been so provided, and (c) that water and other sanitary conveniences have been duly provided in each street, the Municipal Board, after obtaining the assent of the Trust, or failing such assent, the assent of the State Government under Sub-section (3), shall, by a written notice affixed in some conspicuous position in such street, declare the street to be a public street; and the street shall thereupon vest in the Municipal Board and shall thenceforth be maintained, kept in repair, lighted and cleansed by the said Board. (2) When any open space for purposes of ventilation or recreation has been provided by the Trust in executing may scheme, it shall, on completion, be transferred to be Municipal Board by resolution of the Trust and thereupon vest in, and be maintained at the expense of the said Board: Provided that the said Board may require the Trust, before any such open space is so transferred, to enclose, -level, turf, drain and lay out such space and provide footpaths therein, and if necessary, to provide lamps and other apparatus for lighting it. (3) If any difference of opinion arises between the Trust and the Municipal Board in respect of any matter referred to in the foregoing provisions of this section, the matter shall be referred to the State Government; whose decision shall be final. 50. -O GINT RAT, (71) -\$1 y-@--€F -Q aqgfh, t -ust--q--q-r -ü -Ä gINT -a-g -TV* tg-e-qT2.T •a:rq-ve.rr 52 U-63 -t -a-aq .3h-q 34ü&7T Chapter Vil Acquisition and disposal of Land Section 51. Power to purchase or lease by agreement.—The Trust may enter into an agreement with any person for the purchase, leasing or exOhange by the Trust from such person; of any land which the Trust is authorised to acquire or any interest in such 31E.21N—7 51. Section 52. Compulsory acquisition of Where on a representation from the Trust I [or otherwise] it appears to the State Government that any land is required for the purpose of improvement or for any other purpose under this Act, the State Government rfiay acquire such land 2[under and in accordance with the provisions of the Land Acquisition Act, 1894 (Central Act I of 1894)]. 3 [(2) to (6) Omitted by Rajasthan Act No. 29 of 1987] Inserted by Section 3(i) of Rajasthan Act No. IO of 1973, published in the Rajasthan Gazette, Extraordinary, Part IV-A, dated 28.03.1973

2. Substituted for words, "by publishing in the Official Gazette a notice specifying the particular purpose föt Which such land is required and stating that the State Government has decided to acquire the land in VUtsuance of this section," by Section 2(a) of Rajasthan Act No.29 of 1987, Published in the Rajasthan Gazette, Extfdordinary,• 4 (Ka) dated 04.1 1.1987. (w.e.f. 01 3 Omitted Sub-sections (2) to (6) Section 2(b) of Rajasthan Act No. 29 of 1987, published in the Rajasthan Gazette, Extraordinary 4 (Ka) dated 04.11.1987. (w.e.f. 01.08.1987), prior to omission it were as followings:— "Sub-section 52(2) Before publishing a notice under Sub-section (1), the State Government shall by another notice call upon the owner of the land and any other person who in the opinion of the State Government may be interested therein to show cause', within such time as may be specified in the noticeJ why the land should not be acquired. Such notice shall be individually served upon the oyner of the land and any other person who in the opinion of the State Government may be interested therein. It shall also be published in the Official Gazette at least 30 days, in advance and shall be pasted on some conspicuous

place in the locality, where the land to be acquired is situate. Such publication and pasting of notice shall be deemed as sufficient and proper service of notice upon the owner of the land and upon all other persons who may be interested therein." Sub-Section 52 (3) Within the time specified in the notice, the owner of the land or any other person interested therein may show cause and make objections, why the land should not be acquired. Every such objection to the notice given under Sub-section (2) shall be made in writing to the officer on special duty, or any other officer appointed by the State Government for the purpose. Such officer shall give the objector an opportunity of being heard, either in person or by pleader, and after hearing all U-64 1959 52 1(2) After the Land has been acquired and its possession taken, the State Government shall, on payment of the amount of compensation as determined under 2 [Section 11 of the Land Acquisition Act, 1894 (Central Act I of 1894), the amount of interest thereon and of all other charges incurred by the State Government in this connection, transfer it to the Trust or to any other prescribed authority or department for the purpose for which it is acquired. [Provided that such transfer of the land may be made to the Trust or to any other prescribed authority or the department of the Government without recovering any amount,— (i) Where the State Government is satisfied that any such land is urgently needed by the trust, prescribed authority or department of the Government for carrying out improvement under Act immediately, or (ii) Where any such land is intended to be allotted free of charge to the Scheduled Castes, Scheduled Tribes or to person entitled under Section 31 of the Rajasthan Tenancy Act, 1955 (Rajasthan Act 3 of 1955) to possess a site for residential house in the 'abadi' of the urban area free of charge]. 52. 3T7VI fā-qṛ Contd... such objections and after making such inquiry, as he deems necessary, shall submit the case for the decision of the State Government together with the record of the proceedings held by him and a report containing his recommendations on the objections. Thereafter, the State Government may pass such orders as it deems fit. The decision of the State Government thereon shall be final). Previously Substituted by Section 3(3) of Rajasthan Act No. IO of 1973, published in the Rajasthan Gazette Extraordinary Part IV-A, dated 28.03.1973, Amendment shall come into force w.e.f. 02.12.1972, for the words: "(3) After considering the cause, if any, shown by the owner of the land and by any other person interested therein and after giving such owner and person an opportunity of being heard, the State Government may pass such orders as it deems fit. " "Sub-section 52(4) When a notice under Sub-section (1) is published in the Official Gazette, the land shall, on and from the date of such publication, vest absolutely in the State Government free from. "Sub-section 52(5) Where any land is vested in the State Government may by notice in writing, order any person who may be in possession of the land to surrender or deliver possession thereof to the State Government or any person duly authorised by it in this behalf within thirty days of the service of the notice. u "Sub-section 52(6) If any person refuses or fails to comply with an order made under Sub-section (5), the State Government may take possession of the land and may for that purpose use such force as may be necessary. " Sub-section (7) shall be re-numbered as Sub-section (2) by Section 2(c) of Rajasthan Act No. 29 of 1987, published in the Rajasthan Gazette Extraordinary 4(Ka) dated 04.11.1987. (w.e.f. 01.08.1987). 2 Substituted by Section for the expression "Section 53 3 Added by Section 4 of Rajasthan Act No. 26 of 1996, published in the Rajasthan Gazette, Extraordinary Part IV-A, dated 17.04.1976. (w.e.f. 28.02.1976). 4 Omitted by Section 2(d) of Rajasthan Act No. 29 of 1987, published in the Rajasthan Gazette, Extraordinary 4 (Ka) dated 04.11.1987. (w.e.f. 01.08.1987), prior to amendment it was as followings. [(8) Any notice issued published by the State Government under this section may also be issued or published for and on behalf of it by any officer, subordinate to it, so authorised.] Previously Sub-section (8) was inserted by Section 3(5) of Rajasthan Act No. IO of 1973, published in the Rajasthan Gazette Extraordinary, Part [V -A, dated 28.03.1973. 52 3TGiq 1894 (1894 NH. 1) (2) xxx (3) xxx (4) xxx (5) xxx (6) xxx 1894 (1894 qi. 1) 11 (i) q-g-f (ii) 1955 (1955 3Tfā. Qi. 3) 31 (8) xxx Comments k. Amendment—Applicability. -

2. Objection—interest on Compensation. — 3. After the award Amendment came into force—Applicability. (A@TZ 4. Acquisition Proceedings. (34Giq . Constitutional validity of Section 52 and 53. (ETRI@ 52 53 5

6. Notice to be served individually.(TAT)....

7. Notice—Territorial jurisdiction. — 8. Altering the status of open space

9. Right of allottee of alternative land.3T@qR)..

10. Opportunity of later hearing.3@NHR).. 11. Notice.

12. Vesting of land.(afr . 65 66 .67 .. 68 68 70 71) 70 71 1. Amendment—Applicability.—Where the proceedings were pending betk)le {he date of the introduction of the Amendment Act and the date of the commencement of the Amendment Act before the Land Acquisition Officer or before the reference Court enhanced solatium would be payable.—Umed Industries & Land Development Co. and Ors. vs. State Of Rajasthan & ors., 1995 (1) RLW 1 12 (SC). U -66 1959 1. -\$ ARRTTfi.--d -fi ft-Ä 1995 (l) RLW 112 (SC) 2. Objection—Interest on Compensation.—The use of the word "therein after the expression "person interested" indicates that only a person having an interest in the land is entitled to raise objections against the acquisition of land under Section 52 of the Act and a person who only claims interest in the compensation but has not interest in the land, cannot be said to be a person who is entitled to raise any objection to the acquisition proceedings. In the absence of acquisition of title by prescription, possession, by 'itself, does not confer and title on the person in possession over the property in his possession.—Grace Harris vs. State of Rajasthan, 1981 RLW 620 (Raj). 52 1981 RLW 620 (Raj)

3. After the award Amendment came into force—Applicability.—Payment of additional amount is independent of the compensation determined for the value of the land. They are not part of the component of the compensation for value of the acquired land. They are in addition to and independent of the component of the compensation under Section 23(1) of Central Land Acquisition Act for Section 52 of the Act. The payment of solatium, interest and additional amount under Sections 23(2), 28 and 23(1A) is in addition to the payment of the compensation in terms of the provisions of the Act under which the property came to be acquired. Admittedly, the Act does not provide for payment of solatium and additional benefits except interest @ 6% per annum from the date of taking possession. The Amendment Act 68 of 1984 would be applicable prospectively from August 1, 1987 to the land acquired thereafter Act, 68 of 1984 would be applicable under Section 60A to the pending cages as on August 1, 1960 to determine compensation. It would be seen that under the Central Amendment Act payment of additional amount under Section 23(1-A) and of solatium under Section 23(2) cannot be applied to the award made prior to coming into force of the Rajasthan Amendment Act, 29 of 1987. Section 60A provides that notwithstanding anything contained in sub-section (1) of Section 52 of the Act, where any matter relating to acquisition of land is pending on the date of the commencement of the Amendment Ordinance, viz. , August 1, 1987 such matters being conducted or action -taken, shall be subject to the provisions of the Central LA Act.—Urban Improvement Trust Jodhpur vs. Gokul Narain & Anr., 1996 (2) RLW 122 SC. 52 U-67 3. -G a-vrq-fFf ZbQtTT -a -a fä-g cp i 52 23(1) 3-1Tfh ETIRT3fi 23(2) 28 -a 1984 G. 68 1, 1987 1984 q. 68 01,08.1960 60 I 23(19 23 (2) 29 @TTk GTT 52 \$1 (1) gq_ 01.08.1987 1996 (2) RLW 122 (SC)

4. Acquisition Proceedings.—Chaturvedi Digest 2002-20030—Land under agreement of sale by Khatedars to Housing Cooperative Society. Land sough to be acquired by UIT. Acquisition proceedings coming to end and Members of society depositing conversation charges. Regulation of allotment to Members pending with JDA. Subsequent Notification by- State under Section 6 but under further policy decision. Circular issued for regularisation of land in cönsequence of which society finalising Agreement by partial deposit of conversion charges. Court ordered status quo be maintained. JDA approving scheme for construction, and construction of bypass declared to be free of cost following which petitioner society depositing conversion charges. After having duly executed the agreement between the parties vide the sale- deed, it was not open either to the Housing Board or to JDA to take a contrary stand and in view of this agreement having arrived at between the parties, no intermeddling or any unauthorised activity can be permitted over the land in question which already stood allotted to the petitioners.—Indu Bala Jain & Ors., state of Rajasthan, 2002 (2) RLW Raj. 1047 = 2002 (1) RLR 527 (Raj) = 2002 (2) WLC (Raj) 407 = 2002 AIHC 3537 (Raj). 1959 É.ITQT 52 3%81R, -rrföfi-fä 478T 3-1k 3FV 2002 (2) RLW 1047 (Raj) = 2002 (l) RLR 527 (Raj) = 2002 (2) WLC 407 (Raj) = 2002 AIHC 3537 (Raj)

5. Constitutional validity of Section 52 and 53.—The provisions of Sections 52 and 53 of the Act do not offend Articles 14, 19 and 31 A of the Constitution and the powers are not unfettered or unguided. A look at Section 52(2) of the Act will show that before publishing a notice under Sub-section (1), the State Government shall by another notice call upon the owner of the land and any other person who in the opinion of the State Government may be interested therein to show cause, within such time as rmay be specified in the notice why the land should not be acquired. Thé said notice has to be individually served upon the owner of the land and any other person who in the opinion of the State Government may be interested therein. It shall be published in the Official Gazette atleast 30 days in advance and shall be

pasted on some conspicuous place in the locality, where the land to be acquired is situate. Under Section 52(3) of the Act the owner of the land or any other person interested therein may show cause and make objections, why the land should not be acquired. The objector has to be given an opportunity of being heard and has a right to be presented by a pleader and only after hearing the objections and after making such inquiry as deem necessary, he has to submit the case for decision to the State Government and thereafter the State Government has to pass the orders as it deem fit. Therefore, sufficient safeguards are contained in Sub sections (2) and (3) of Section 52 of the Act and it cannot be said that no guide lines are provided.—Hari Ram M. Dhanwani vs. State of Raj. & ors., 1988 (1) RLR 371. 5. 52 53 52 53 14, 19 qti I \$1 52(2) (1) -\$1 fü-«-q-q I 30 aR 2, 52(3) Rq-e-g \$f 52 \$1 (2) (3) ug 1988 (1) 37 1

6. Notice to be served individually.—Notices under Sub-section (2) of Section 52 required to be served individually on the owners. It is only when the owners are served individually then the owness would be in a position to show 52 cause against the intended acquisition. If notices are not served individually, then the owners would be deprived of their valuable right to raise objections against the acquisition.—Jit Singh vs. State, 1988 W LN (UC) 258. 6. 52 -a 1988 WLN (UC) 258

7. Notice—Territorial jurisdiction.—Notice issued under Section 52(2) by Spl. Officer, Town Planning Deptt. against respondents- at Calcutta. Held, no cause of action arose within territorial jurisdiction of Calcutta High Court and it could not issue rule nisi or ex-parte interim stay order.—State of Raj. & Ors. vs. Ms. Swaica Properties & Ann, 1985 (1) WLN 560 (Raj). 7. — 52 31k 1985 (1) WLN 560 (Raj)

8. Altering the status of open space.—Petitioners filing writ petitions challenging the settlement entered into by the State Government by which it was decided that the land of Rambagh Complex, which was acquired for the purposes of UIT (now JDA) for' constructing administrative, commercial and residential building, will be used as city level park, golf course (including club- house) and polo ground. Petitioner and interveners that the State praying should use the land either for commercial con-plex (as envisaged earlier) or, if not, then the entire area should be used as a city level part. Mala fide or bias not alleged. No factual foundation laid in writ petitions as regards legality or validity of impugned decision/ settlement. Settlement arrived at was valid. Public interest litigation can be withdrawn in the interest of the public with leave of the court only. Petitioners, who were not parties to the earlier proceedings at any stage, have no locus standi to approach the Court in appeal even in public interest litigations. The State Government may utilize the axquired land for the purpose of Golf Course, Polo Ground and City level park in public interest. Authority. has power to dispose of land by way of allotment, regularisation or auction.—Rajasthan Polo Club vs. State of Rajasthan & Ors., State of Rajasthan & Anr. vs. S.C. Kabra, Ms. Rambagh Gold Cl.ub, K.K. Sharma & Ved Prakash Bishnoi vs. State of Rajasthan & Ors.; Jitendra Shrimali & Anr. vs. State of Rajasthan & Ors., 2001 (3) RLR 389 (Raj) 8. GIRT -\$1 g-r-q-r AT2.ftT \$1 q?i, 1959 52 \$1 3-qqfä \$1 3Dv 3Dv 3Dv 2001 (3) RLR 389 (Raj)

9. Right of allottee of alternative land.—Notification dated 08.07.1987 issued under Section 52 of the Urban Improvement Trust Act was quashed by the Court. Fresh notification issued by the Government under Section 4 of the Land Acquisition Act. Question of any revival of proceedings under Section 60A Urban Improvement Trust Act could not arise. Allottee of alternative land qua earlier acquisition proceedings has no right to enforce the allotment. Moreso, when the date on which the writ petition was filed a civil suit was barred by limitation.—Sudharskana Devi (Smt.) & Ors. vs. State of Rajasthan & Ors., 2001 (2) WLN (Raj) 352 = 2000 (4) RLW 688 (Raj) = 2001 (1) WLC (Raj) 730 = 2001 (2) RLR 302 (Raj) = 2001 (1) RRT 620 (Raj) = 2001 RRD 268 (Raj) = 2001 AIHC 251 (Raj). 9. \$1 52 08.07.1987 I -\$1 (4tqat) 31k 2001 (2) WLN 352 (Raj) = 2000 (4) RLW 688 (Raj) = 2001 (1) WLC 730 (Raj) - 2001 (2) RLR 302 (Raj) = 2001 (1) RRT 620 (Raj) = 2001 RRD 268 (Raj) = 2001 AIHC 251 (Raj)

10. Opportunity of later hearing.—Opportunity of hearing not later given does not violate principles of natural justice—Bishambhar Dayal & Ors. vs. State of Rajasthan, 1991 (1) WLC 686 10. u-<F-f 1991 (1) WLC 686

11. Notice.—Notices containing wrong particulars of owners and issued against dead persons—Held, it is sufficient to quash notice,—Bishambhar Dayal & ors., vs. State & ors., 1991 (1) WLC 686. Notification issued, challenged and disposed of. Held, petitioners cannot be allowed to challenge notice issued under Sub-section (5) or (6)—Bishambhar DayaZ & ors., vs. state & ors., 1991 (1) WLC 688. Officer on Special

duty has jurisdiction to issue notice under Sub-section (5) or Daym & ors., vs. State & ors., 1991 (1) VVLC 686. 11. 1991 (1) WLC 686. 52 UDI 1991 (1) WLC 686. 1991 (1) WLC 686

12. Vesting of land.—State Government cannot be said to be divested of land—Bishambhar Dayal & ors., vs. State & ors., 1991 (1) WLC 686. — If the land had vested in the State Government free from all encumbrances after the publication of the notification under Sub-section (1) of Section 52 of the U.I.T. Act, by virtue of that section there can be no divesting of the land.—Sheo Narain & Ors. vs. State of Rajasthan & Ors., 1993(1) WLC 536 (Raj) —If the Society allots the plots to its members, the petitioners even after the award cannot be said to have acted fairly and bonafide. The petitioners have no locus standi and they have no case for interference by this Court—Sheo Narain & Ors. vs. State of Rajasthan & ors., 1993(1) WLC 536 (Raj) —Even if the conversion charges have been deposited or some constructions have been raised, this cannot be a ground to hold that State Government can be divested of the land which vested in it under Sub-section (4) of Section 52 of U.I.T. Act—Sheo Narain & Ors. vs. State of Rajasthan & Ors., 1993(1) WLC 536 (Raj) —In a case where the land has absolutely vested in the State Government free from all encumbrances by virtue of Sub-section (4) of Section 52 of the U.I.T. Act after publication of the notification under Sub-section (1) of Section 52 of the U.I.T., if the amount of compensation has not been determined within two years of the extension of the Act to this State, the State Government will be divested of the land and possession has to be re-delivered to the owners of the land.—Sheo Narain & Ors. vs. State of Rajasthan & ors., 1993(1) WLC 536 (Raj.) —Notification under Section 52(2) of the Urban Improvement Act was issued on 30. 04.1987 and was published in the Rajasthan Gazette dated 09.07.1987. With the coming into force of the Rajasthan Urban Improvement Amendment Act, 1987 the provisions of the Land Acquisition Act, 1894 became applicable to those proceedings. Report was submitted by the competent officer to the Government on 11.07.1988 and a Notification was published on 30.07.1988. •It is, thus, clear that the Notification under Section 6 was published after the expiry of the period of one year counted from the date of publication of the notice.—Damodar Lal Sharnm & Ors. vs. State of Rajasthan & Ors., 1994 (1) WLC 294 (Raj) —There is delay of about two years in challenging the award and in view of the notification under Sub-section (2) of Section 52 of U.I.T. Act, it cannot be said that the petitioner had no knowledge of the acquisition proceedings. He shall be deemed to have the knowledge of acquisition proceedings.—Sheo Narain & Ors. vs. State of Rajasthan & Ors., 1993(1) WLC 536 (Raj) When transfer could not taken place, even agreements to sell could not be executed as in all such cases they had to be followed by the execution of sale- deeds. Therefore, also such transfer of lands in relation to which acquisition proceedings had been initiated by issuing notification under Section 52(2) of the U.I.T. Act was not permissible as it was against the provisions of 1976 Act and U-72 3fifi-u-q, 1959 52 ao reenlel"lt- to sell will nol confer any ricrht on the purchasers.—Sheo Narain & Ors. vs. Sfa{e of Rajasthan & 1993(1) WLC 536 (Raj.) If the land had vested in the State Government free from all encumbrances after the publication of the notification under Sub-section (1) of Section 52 of the U.I.T. Act, by virtue of that section there can be no divesting of the land.—Sheo Narain & (Drs. vs. State of Rajasthan & ors., 1993(1) WLC 536 (Raj) Even if the conversion charges have been deposited or some constructions lhave been raised, this cannot be a ground to hold that the State Government can be d {vested of the land which vested in• it under Sub-section (4) of Section 52 of U.I. l'. Act.—Sheo Narain & Ors. vs. State of Rajasthan & Ors., 1993(1) WLC 536 (Raj) In a case where the land has absolutely vested in the State Government free from all encumbrances by virtue of Sub-section (4) of Section 52 of the U.I.T. Act/ after publication of the notification under Sub-section (1) of Section 52 of the U.I.T., if the amount of compensation has not been determined within two years of the extension of the Act to this State,. the State Government will be divested of the land and possession has to, be re-delivered to the owners- of the Narain vs. State of Rajasthan, 1993(1) WLC 536 (Raj). —Such persons, who not come to this Court . with clean hands, do not deserve any interference in the equitable jurisdiction of this Court, the exercise of which jurisdiction should be confined to honest, bona fide and law abiding citizens.—Sheo Narain & Ors. vs. State of Rajasthan & Ors., 1993 (1) WLC 536 (Raj). 12 1991 (1) WLC 686. 52 (1) 1993 (1) WLC 536 (Raj). ufQ qt•i 1993 (1) WLC 536 (Raj). 52 (4) 7NT.-"/?/W (f) 536 (Raj). 52 (1) 52 \$1 (4) - Q •q-fQ-fiQ 1993 (i) WLC 536 (Raj). 52 (2) 30.04.1987 09.07.1987 I 1987 Ø.n-* 1894 -a-ilk 11.07.1988 30.07.1988 53 I 48 6 1994 (1) WLC 294 (Raj). -a. -QT 52 3Dv 1993 (1) WLC 536 (Raj). 52 (2) 31fäNt43T gg 3TIF-T e.tr, 1976 1993 (1) WLC 536 (Raj). -\$1 52 (1) 1993 (1) WLC 536 (Raj). 52 (4) 1993 (1) WLC 536 (Raj). __.-å -q--gi \$1 52 (1) wré.ÉT. 52 (4) Qh-a-q -fi -d, -a ZbQTIT 1993 (1) WLC 536 (Raj). qlfrg.

3Dv 1993 (I)-WLC 536 (Raj). I[Section 53 Omitted by Rajasthan Act No. 29 of 1987] Omitted Section 53 by 'Section 3 of Rajasthan Act No. 29 of 1987, published in the Rajasthan Gazette Extraordinary IV (Ka) dated 04.11.1987. (w.e.f. 01.08.1987) prior to amendment it was as follows: "53. Compensation of compulsory acquisition. of Where any land is acquired by the State Government under this Act, the State Government shall pay for such acquisition compensation the amount of which shall be determined in accordance with the provisions of this Section. (2) Compensation payable' under Sub-section (1) shall be deemed to be due as from the date of (absolutely vesting of the land in the State Government under Sub-section (4)) of Section 52 and shall carry simple interest the rate of six percent per annum from that day up to the date of payment: Provided that no interest shall be payable on any amount of compensation which remains unpaid for any default of the person entitled to receive it or his agent or representative-in-interest or for any of the reasons specified in Sub-section (3) of Section 57. (3) Where the amount compensation can be determined by agreement between the State Government and the person be compensated, Shall be determined in accordance with such agreement. (4) Where no such agreement can be reached, the State Government shall refer the case to the Collector for determination the amount of compensation to be paid for such acquisition as also the person or persons to whom such compensation shall be paid. U-74 1959 54 59—u [Section 54. to 59-B. by Rajasthan Act 29 of 1987]. Comd.. (5) Before finally determining the amount of compensation, the Collector shall give an opportunity to every person to be compensated to state his case as to the amount of compensation. (6) In determining the amount of compensation, the Collector shall be guided by the following principles, namely— (a) no allowance shall be made on account of the acquisition being compulsory; (b) the value of the land shall be taken to be the market value of the land on the date on which the notice calling upon the owner to show cause why the land should not be acquired is issued under Sub-section (2) of Section 52 hereinafter referred to as "the date of notice" such market value being determined on the basis of the use of the land on that date; (c) the special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it would be applied only in pursuance of statutory powers, or for which it would be applied only in pursuance of statutory powers, or for which there is not a market apart from the special needs of a particular purchaser or the requirements of any Department of Government or any local or public authority; (d) Where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any Court, or is contrary to law, or is detrimental to the health of the inmates of the premises, or to public health, the amount of that increase shall not be taken into account. (7) For the purpose of determining the amount of compensation— (a) the Collector shall have the power to require any person to deliver to him such returns and assessments as he considers necessary; (b) the Collector shall also have the power to require any person known or believed to be interested in the land to deliver to him a statement containing, as far as may be practicable, the name of every other person having any interest in the land as co-owner, mortgagee, tenant or otherwise, and the nature of such interest, and of the rents and profits, if any, received or receivable on account thereof for three years next preceding the date of the statement.. (8) Every person required to deliver a return, assessment or statement under Sub-section (7) shall be deemed to be legally bound to do so within the meaning of Section 175 and Section 176 of the Indian Code, 1860 (Central Act 45 of 1860). (9) The Collector may hear expert witnesses if it be necessary to do so in any particular case. (10) The Collector shall be entitled to enter on and inspect any land which is the subject of proceedings before him. (11) The Collector shall dispose of every case referred to him under Sub-section (4) for determination of compensation as expeditiously as possible and in any case within such time as may be prescribed. 45 of 1860) 176 of the Indian Penal Code, 1860 (Central Act 45 of 1860) under Sub-section (7) shall be deemed to be legally bound (12) The Collector shall determine the amount of costs incurred in any case disposed of by him under this section, and by what parties and in what proportions they are to be paid. (13) in determining the amount of costs under Sub-section (12) the Collector shall also decide what portion, if any, of the costs so determined shall be paid by the State Government. Omitted by Section 3 of Rajasthan Act No. 29 of 1987, published in the Rajasthan Gazette Extraordinary IV (Ka) dated 04.11.1987, prior to Amendment it was as following:—"54. Appeal to the District Judge against decision of the Collector.— Any party aggrieved by the decision of the Collector determining the amount of compensation may within sixty days from the date of such decision appeal to the Court of the District Judge having jurisdiction. "55. Disputes as to apportionment of compensation.—If any dispute arises as to the apportionment of

compensation among persons claiming to be entitled thereto the State Government shall refer such dispute for the decision of the Court of the District Judge having jurisdiction. " 56. Appeals to the High Court.— An appeal shall lie to the High Court from the decision of the District Judge under Section 55 and the provisions of the Code of Civil Procedure, 1908. (Central Act V of 1908—u Co. 1908) with respect to appeals from original decrees shall, so far as may be, apply to appeals under this section. " 57 Payment of compensation or deposit of the same in Court. (1) Where the amount of compensation is determined by agreement, the State Government shall pay such amount together with interest thereon to the persons entitled thereto. (2) Where the amount of compensation is determined by the Collector under the provisions of Section 53 the State Government shall tender payment of the compensation determined together with interest thereon to the persons entitled thereto according to such determination and shall pay to them unless prevented by some or more of the contingencies mentioned in the next sub-section. (3) 'If' the persons entitled to compensation according to the decision of the Collector do not consent to receive it, or if there be no person competent to alienate the land or if there be any dispute as to the title to receive the compensation, the State Government shall deposit the amount of the compensation, in the Court of the District Judge having jurisdiction: Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount of compensation: Provided further that nothing herein contained shall affect the liability of any person who may receive the whole or any part of any compensation determined under this Act to pay the same to the person lawfully entitled thereto. It " 58. Investment of the amount of compensation deposited in Court.—Where any amount of compensation has been deposited in Court under Section 57 the Court may either of its own motion or on the application made by or on behalf of any party interested or claiming to be interested in such amount, order the same to be invested in such Government or other approved securities as it may think proper, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as will, in its opinion give the parties interested therein the same benefit therefrom as they might have had from the land in respect whereof such amount has been deposited or as near thereto as may be." 59. Reference of disputes as to sufficiency or otherwise of compensation payable by the Trust under other provisions.—(1) If any question of disputes arises as to the sufficiency of the compensation paid or proposed to be paid under any provision of this Act otherwise than under the foregoing provisions of this Chapter, the matter shall be determined by the District Judge having jurisdiction upon a reference made to him either by the date on which the said person was informed of the decision of the Trust fixing the amount of compensation to be paid to him or of the rejection of his claim to compensation by the Trust: Provided that the District Judge shall not entertain the application of any claimant who has not applied to the Trust for compensation within three months of the date on which his claim for compensation accrued. (2) If a reference to the District Judge be not made within the period prescribed by Sub-section (1), the decision of the Trust shall be final". Omitted Section 59-A by Section 3 of Rajasthan Act No. 29 of 1987, published in the Rajasthan Gazette Extraordinary IV (Ka) dated 04.11.1987, prior to Amendment it was as follows:— "[59. A. Provisions of the Rajasthan Land Acquisition Act not to apply to acquisition under this Act.—(1) Notwithstanding anything contained in the Rajasthan Land Acquisition Act, 1953 (Rajasthan Act. XXIV of 1953), hereinafter referred to as the Acquisition Act, no proceedings shall be taken thereunder for the acquisition of land required for the purpose of improvement or for any other purpose under this Act: Provided that nothing herein contained shall apply to any proceeding for the acquisition of land for purposes of improvement or for any other purpose under this Act instituted under the Acquisition Act on or after the 02.12.1972 and pending on the date of the commencement of the Rajasthan Urban Improvement (Amendment) Act, 1976, and all such proceedings shall be continued and completed under and in accordance with the Acquisition Act subject to the condition that references to the word "compensation", wherever occurring in the Acquisition Act shall as from 20.04.1972, be construed as references to the word "amount" as if for the word "compensation" the word "amount" were substituted. 59-B. Construction of certain references in the Act.—In the Chapter V 11, in Section 51 to 59 both inclusive, and in all other provisions of this Act, references to the word "compensation" wherever occurring shall as from the 20.04.1972, be construed as references to the word "amount" as if for the word "compensation", the word "amount" were substituted". 31st April, 1959 154 1987 29 Section 60. Disposal of land by the Trust.—(1) The Trust may (a) with the sanction of the State Government, dispose of [by way of allotment, regularization or auction] any land acquired by the State Government, and

transferred to the Trust without undertaking or carrying on any improvement thereon, or] (b) Subject to any directions given by the State Government dispose of any such land after undertaking, or carrying on such improvement as it thinks fit, to such persons, in such manner and subject to such terms and conditions as it considers expedient for securing the improvement of the urban area concerned according to the [master plan or the scheme or both]. (2) The power of the Trust with respect to the disposal of land under Sub-section (1) shall be so exercised as to secure, so far as practicable, that persons who are living or carrying on business or other activities the land shall, if they desire to obtain accommodation on land belonging to the Trust and are willing to comply with any requirements of the Trust as to its improvement and use have an opportunity to obtain thereon accommodation suitable to their reasonable requirements on terms settled with due regard to the price at which any such land has been acquired from them: Provided that where the Trust proposes to dispose of by sale any land without any improvement having been undertaken or carried out thereon, it shall offer the land in the first instance to the persons from whom it was required, if they desire to purchase it, subject to such requirements as to its improvement and use as the Trust, may think fit to impose. [(3) Nothing in this Act shall be construed as enabling the Trust to dispose of land by way of gift but subject as aforesaid references in this Act to the disposal of land shall be construed as references to the disposal thereof in any manner, whether by way of sale, exchange, mortgage or lease or by the creation of any easement, right or privilege or otherwise.] 4 [(4) All lands which are deemed to have been placed at the disposal of the Trust under Section 90-13 of the Rajasthan Land Revenue Act, 1956 (Act, No. 15 of 1956) upon resumption or surrender of tenancy rights and interest of khatedars thereof, as the case may be, shall be available for allotment or regularization preferably to the persons having possession over such land or part thereof, as the case may be, on the basis of allotment made or Patta given to them by the Housing Co-operative Society or on the basis of any other document of transfer of land to them either by tenant or any other person claiming through the tenant, whose tenancy right have been resumed or surrendered, under the said provision, on such terms and conditions and subject to payment to the Trust of such charges or premium or both, as the case may be, and at such rates as may be prescribed by the State Government in this behalf: Provided that no allotment or regularization of any land shall be made which has been duly earmarked for public utilities/services such as park, nursery, civil or military aviation, bus stand, transport terminal, railways, public roads, highways, footpath, Inserted by Act No. 21 of 1999. Substituted for words, "master plan and the scheme." by Section 7 of Rajasthan Act No. 3 of 1963, published in the Rajasthan Gazette, Extraordinary, Part IV-A, dated 29.03.1963 3 Subs. Sub-section (3) of Section 60 by Rajasthan Act No. 11 of 2004. Inserted New Sub-section (4) & (5) of Section 60 by Rajasthan, Act No. 21 of 1999. 60 U-77 sewage lines, water supply, electricity supply, telephone lines, hospital, educational institution, university, crematorium ground, graveyard and for such other purposes as State Government may specify by notification in the Official Gazette. (5) The charges realised under Sub-section (4) shall be credited to the Consolidated Fund of the State and the fund of the Trust as may be determined by the State Government.] 60. GINT (1) ₹5 VF34 \$1 F ₹ fāg (3) ept G-qq-₹ I (4) Qfr-qi 1956 (1956 Ni. 15) GINT -t A-ft -Qi Q.TBT, a-ft U-78 . 78 1959 E.TINT 60 Wi-vRlē -₹ fā-g 7T4T, ₹r NfÄ I Comments I. Acquisition Proceedings. (3-1Gfq

2. Cancellation of allotment of plot. 78 3. Regularisation and conversion of land when once ordered. (₹ MT Gili) 78 1. Acquisition Proceedings.—Conversion charges in respect of land deposited and accepted without demur. No justification after accepting regularisation charges not to consider application for regularisation. Held, once regularisation charges accepted in pursuance of the compromise arrived at between the parties, respondents are bound to regularise the land in accordance with law and rules—Directed to regularise the land within 8 weeks.—Akha Ram & Anr, vs. state of Rajasthan, 2001 (4) RLW 292 (Raj) 2002 (5) WLC 663 (Raj) = 2001 (2) RLR 470 (Raj). 2001 (4) RLW 292 (Raj) = 2002 (5) WLC 663 (Raj) 2001 (2) RLR 470 (Raj)

2. Cancellation of allotment of plot.—Plot allotted to Ex-serviceman on recommendation of Government to Development Authority. Particulars regarding rate of land, handing over possession, etc. was also given. Allottee kept pressing for allotment. However allotment was cancelled by Development Authority without stating any reasons. Persons lower in priority list allotted plot. Order cancelling allotment is illegal in favour of allottee. Government saddled with costs of Rs. Suraj Bhan Singh Jodha vs. State of Rajasthan & Ann, AIR 1999 Raj 35. Q-ft qa-T 5,000/- AIR 1999 Raj 35 3. Regularisation and conversion of land when once ordered,—Once the regularisation charges deposited by the petitioner have been accepted by U-79

respondent (UIT/State Government) in pursuance of compromise arrived at between parties, there is no justification for the respondents in not passing necessary orders regularising land of the petitioner. Directions given to regularise the land by passing necessary orders.—Akha Ram & Anr. vs. State & ors., 2001 (2) RLR (Raj) 470 = 2001 (4) RLW 292 (Raj) = 2002 (5) WLC 663 CRP (AIT? 2001 (2) RLR 470 (Raj) = 2001 (4) RLW 292 (Raj) = 2002 (5) WLC 663 CRP (Raj). [Section 60-A'. Transitory provisions for pending matters relating to acquisition of land.—(1) Notwithstanding anything otherwise contained in Sub-section (1) of Section 52, where, in any matter relating to the acquisition of land pending on the date of commencement of the Rajasthan Urban Improvement (Amendment) Act, 1987 (Act No. 29 of 1987) (hereinafter in this section referred to as the date of Commencement), an action, thing or order has been taken, done Or made under and in accordance with the provisions of this Act as it stood before the date of commencement, such action, thing or order shall not be re-opened or reviewed or be liable to be challenged on the ground that such action, thing or order was at variance with that provided in the Land Acquisition Act, 1894 (Central Act' I of 1894) (hereinafter in this section referred to as the Land Acquisition Act) subject, hoWever, that any further proceeding, action or order in such matter conducted, taken or made on or after the date of commencement shall, subject to the other provisions of this section, be made under and in accordance with the Land Acquisition Act. (2) The amount of compensation or interest or that payable for any other reason shall, ina matter pending on the date of commencement, be payable under and in accordance with the provisions of the Land Acquisition Act and the money paid prior to the date of commencement shall be deducted from or adjusted against the said amount. (3) Where in a matter pending on the-date of commencement, a notice under Sub- section (2) of Section 52 or a notice under Sub-section (1) thereof has been issued or, as the case may be, published, -such notice shall be deemed to be the notification or declaration .published or made respectively under Sub-section (1) of Section 4 or, as the case may be, under Sub-section (1) of Section 6 of the Land Acquisition Act and the declaration or award in such a matter shall be made respectively within a period of one year or, as the case may be, two years from the date of commencement. (4) Where any land has. prior to the date of commencement, vested in the State Government or its possession has been taken in accordance with the provisions of this Act as it stood before the date of commencement, such vesting or possession of land shall not be liable to be challenged on the ground that no amount of compensation was tendered and paid in accordance with Sub-section (3-A) of Section 17 of the Land Acquisition Act subject, however, the such amount shall be tendered and paid within a period of six months from the date of commencement. Inserted New Section 60-A by Rajasthan Act No. 29 of 1987, (w.e.f. 01.08.1987). 1959 60—ü5 (5) In determining the amount of compensation to be awarded in a matter pending on the date of commencement, the market value of the land of the date of which the notice was published in the Official Gazette under Clause (b) of Sub-section (6) of Section 53, as il stood before the date of-commencement, shall be taken into consideration. (6) An appeal filed under Section 54 or Section 56 or a dispute referred under Section 55 or Section 59 and pending on the date of commencement shall be decided having-regard to the provisions of the Land Acquisition Act. (1) 52 \$r (1) gg (qi*IF) 1987 (1987 29) a, zrg 1894 (1894 31m. 1) (g&q (3) 52 (2) t, 4 •\$1 vq—ETRT (1) a-fr 17 (35 \$1 -\$1 R-fü. 53 \$1 (6) g) (6) 54 56 55 59 61 U..81 Comments — Scuh persons, who do not come to this Court with clean hands, do. not deserve any interference in the equitable jurisdiction of this Court, the exercise of which jurisdiction should be confined to honest, bQnafide and law abiding citizens.—Sheo Narain & Ors. vs. State of Rajasthan & Ors., 1993(1) WLC 536 (Raj.) 1993 (1) WLC 536 (Raj). Chapter Finance Section 61. Improvement Fund.—(1) A fund to be called the' "Improvement Fund", of the place where the principal office of a Trust .is situated shall be constituted for each Trust as soon as it isformed. (2) There shall be created to this Fund. (i) such sums as may be placed by the State Government at the disposal of the Trust, from time to time, either by way of loan or as subside; (ii) such contribution from the Municipal Board as may, from time to time, be ordered by the State •Government tp be made, after considering the relief or addition to the resources of such Board accruing or -likely to accrue from the •schemes undertaken by the Trust; (iii) the rents, profits and sale proceeds of all lands, buildings, and other property vested or vesting in, or acquired by the Trust under this Act; (iv) sums borrowed by the Trust with the previous sanction of the State Government subject to the prescribed conditions, for any of •the purpos+ of the Trust; and (v) all fees and charges payable to or received by the Trust under this Act

61. GTrq-tTT, (ii) 34Tä?T (iii) 3-1TTfH, U-82 1959 61 (iv) \$1 —U Where as a Section 62. Power of Trust to levy betterment charges. consequence of any scheme having been executed by the Trust in any area, the value of any property in that area, in the opinion of the Trust, has increased or will increase, the Trust shall, with the sanction of (he State Government, be entitled to levy upon the owner of the property or any person having interest therein a betterment charge in respect of the increase in the market value of the property resulting from the execution Of the scheme. (2) Such bettennent charge shall be an amount equal to one-forth of the amount by which the market value of the property on the completion of the execution of the scheme, estimated as if the property were clear of buildings, exceeds the market value of the property prior to such execution estimated in like manner. 62- Section 63. Assessment of betterment charge.—(1) Where it appears to the Trust that any particular scheme is sufficiently advanced to enable the amount of the betterment charge.to be determined, the Trust may, by an or.der made in this behalf, declare that, for the purpose of determining the betterment charge the execution of the scheme shall be deemed to have been completed and shall thereupon give notice in writing to the owner of the property or any person having an interest therein that the Trust proposes to assess the amount of the betterment charge in respect of the property under Section 62. (2) The Trust shall then assess the amount of the betterment charge payable by the person concerned after giving such person an opportunity to be heard and such person shall, within three months from the date of receipt of the notice in .writing of such assessment from the Trust, inform the Trust by a declaration in writing that he accepts the assessinent or dissents from it. (3) When the assessment proposed by the Trust is accepted by the person concerned within the period specified in Sub-section (2), such assessment shall be final. (4) If the person concerned dissents from the assessment or fails to give the Trust the information required by Sub-section (2) within the period specified therein, the matter shalf be determined by arbitrators in the manner provided in Section 64. 63. *IRiFIT Vf fhT 62 -G \$1 El} N T 64 (2) a:Tfriff -a Nv-i-q-q 3lf*-q aft-a-q (2) 64 Section 64. Settlement of betterment charge by . arbitrators.—(1) For the determination of, the matter referred to in Sub-section (4) of Section 63, the Stace Government shall appoint three arbitrators of whom one at least shall have special knowledge of the valuation of land. (2) Arbitrator shall follow such procedure as may be prescribed. (3) In the event. of any difference of, opinion among the arbitrators, the decision of Che majority shall prevail and that decision shall be the award of the arbitrators. (4) If any arbitrator dies, resigns, or is removed under Sub-section '(5) or refuses or neglects, in the opinion of the State Government to perform his duties or becomes incapable of performing the same, then the State Government shall forthwith appoint another fit person to take the place of such arbitrator. (5) If the State Government is satisfied after such inquiry as it thinks fit.— (a) that an arbitrator has misconducted himself, the State Government may remove him from his office; or (b) that the award of the arbitrator has been improperly procured or that any arbitrator has misconducted himself in connection with such award, •the State Government may set' aside the award. (6) An award which has not been set aside by the State Government under Clause (b) of Sub-section (5) shall be final and shall not be questioned in any Court. (7)' 'The provisions of the Arbitration Act, 1940 (Centtal- Act IO of 1940), shall not apply to the arbitration under this section. 64. 63 \$1 (4) fäqr, (3) \$1 *FTT „3-rq-å i, fäg (5) -a -a-arj •er- (05) fr5 frF U-84 1959 64 -rpqr, *FIT I (7) 1940 (1940 Qi. 10) Section 65. Payment of betterment charge.—(1) The betterment charge levied under this Act shall be payable in such number of instalments and each instalment shall be payable at such time and in such manner as may be fixed by regulations made in this behalf. (2) Any arrear of betterment charge shall be recoverable in the manner laid down in the Municipal law for the time being in force for the recovery of municipal claims

65. Section 66.Custody, investment and application of Trust Fund.—(1) All the moneys of the Trust shall be kept in a Government treasury or sub-treasury or a bank to which the Government treasury business has been made over. (2) Nothing in the foregoing sub-section shall be deemed to preclude a Trust from investing, with the previous sanction of the State Government, any such moneys which are not required for immediate expenditure,- in any of the securities described in Section 20 of the Indian Trusts Act, 1882 (Central Act 2 of 1882) or placing them in fixed deposit with a bank approved by the State Government. (3) The Trust Fund shall be applied towards meeting the expenses incurred by the Trust in the carrying out of schemes framed and sanctioned under this Act, and in the administrat ion of the other provisions of this Act and for no other purpose. 66. (2) 1882 (1882 2) 20 3@-fh AT 1 [Section 66-A. Power of the Trust to borrow.—The Trust may, with the previous approval of the State Government, borrow any rmoney for carrying out the purposes of this Act or for servicing any loan obtained by it, at such rates and on such

conditions as the State Government may determine at the time money is borrowed]. -n-ufRg fig -\$ ÜETQ -a I Inserted New Section 66-A by Rajasthan Act No. 11 of 2004. 71 U-85 Section 67. Budget of the Trust.—The Trust shall prepare in such form and at such time every year as may be prescribed a budget in respect of the financial year next ensuing, showing the estimated receipts and expenditure of the Trust and shall forward to the State Government such number of copies thereof as may be prescribed

67. Section 68.Accounts and Audit.—(1) The Trust shall maintain proper accounts and other relevant records and prepare an annual statement of accounts including the balance sheet in such form as the State Government may prescribe. (2) The accounts of the Trust shall be subject to audit annually by the Examiner of Local Fund Audit and the provisions of the Rajasthan Local Fund Audit Act, 1954 (Rajasthan Act 38 of 1954) shall apply. 68. ft-a 1954 (1954 qi. 38) Section 69. Annual Report.—The Trust shall prepare for every year a report of its activities during that year and submit the report to the State Government in such form and on or before such date as may be prescribed

69. Rqié—\$1 Section 70. Pension and Provident Funds.—(1) The Trust shall constitute for the benefit of, its officers and other employees, in such, • manner and subject to such conditions as may be prescribed, such pension and provident funds as it may deem fit. (2) Where any such pension or provident fund has been constituted, the State Government may declare that the provisions of the Provident Funds Act, 1925 (Central Act •19 of 1925) shall a ply to such fund as if it were a Government Provident Fund. 70. 1925 (1925 19) Section 71. Failure to repay loans or other dues.—If the Trust fails to repay any loan or any interest or costs in respect thereof, according to the conditions of the loan, the State Governrnt will attach the rents and other income of the Trust and apply the same in satisfaction of such loan and other dues. 71. 5CIJT kTå 3-FQl 1959 Chapter IX General provisions as to improvement 72 [Section 72. Restriction on improvement in urban areas.—(1) In an urban area, no improvement shall be undertaken or carried out by any person or department of the Government unless— (i) it is in accordance with the master plan where it is in operation: or (ii) it is in accordance with the scheme sanctioned and notified under Section 38; or (iii) where niether any master plan nor any scheme is in force, it is according to the general approval of the Trust. and unless permission for undertaking-or carrying out such improvement has been obtained in writing under the provisions of Section 73. (2) No person or department of Government shall use or p •rmit to be used any .land or. building in any urban area otherwise than in conformity with the master plan where it is in operation or with the scheme sanctioned and notified under Section 38 or with the general approval of the Trust, and unless the permission of the Trust for such use has been obtained under Section 73: Provided that subject to the provisions of Section 73-B, it. shall be lawful for any person or department to. continue to Lise, upon such terms and conditions, as may be prescribed by regulations made in this behalf, any land or building for the purpose and to the extent for and to which, it is being used upon the date on •which such plan or scheme comes into force or as the case may be, the area is declared as an urban area under this .31tzriu—9 72. Substituted by Section .7 of Rajasthan Act No. 26 of 1976, published in the Rajasthan Gazette, Extraordinary, Part IV-A, dated 17.04.1976. (w.e.f. to Amendment it was as followings:— "72. restrictions on improvement in certain areas.— (1) After the •coming into operation in any area of a master plan as provided . in Section 7 or the notifications of the sanction of a scheme as provided in Section 38— (i) no improvement shall be undertaken or carried out in that area unless it is in accordance with the rnaster plan or the scheme, as the case may be, and (ii) no improvement shall be undertaken or carried out in such area by any person' or department of Government unless permission for the same has been obtained in writing in accordance with the provisions of Section 73— (a) from the Trust in case a scheme relating thereto has been notified, or (b) in case a master plan relating thereto is in operation. froml the Municipal Board exercising jurisdiction therein or if no such Board exercises jurisdiction, from the Collector or such other officer or authority as may be authorised 'in this behalf by the State Government. (2) After the coming into operation of master plan or scheme, no person shali use or permit to be used any land or building in the area to which the plan or scheme related otherwise than in confirmity with that pla.n or scheme: Provided that it shall be lawful to-continue to use, upon such terms and conditions as may prescribed by regulations made in this behalf, any land or buildings for the purpose and to the extent for and to which it is being used.upon the date which such plan or scheme comes into force." 72 U-87 (ii) 38 a, (iii) t, \$1 73 a, 36 It-g 73 -t I Comments l, Permission to raise construction—Renewal of permission

2. Permission for raising constructions granted.. .87 88 1. Permission to raise construction—Renewal of permission.—Grant of permission to continue construction work of hotel in "No construction Zone' even after expiry of the extended period granted by the respondent UIT for completion of its second phase. Collector ordered to stop the work. Grant of permission is a statutory document. No provision of extension of time but such power is inherent in the authority granting permission. The case falls within exception carved in Para 23(vii) of the order of this Court.—E.I.H. Limited vs. State of Rajasthan & ors., 2001 (2) RLW (Raj) = 2001 (1) DNJ 364 (Raj) = 2001 (1) RLR 839 (Raj) = 2001 (2) WLC 249 (Raj) = AIR 2001 Raj 236 (4) 99 (Raj). Prohibition in Sub-sections (1) and (2) of Section 72 stands overridden by Section 73B. Land originally granted without restriction as to its user. Mere change of current use to commercial use cannot entail conversion charge. Section 72(2) only permits any alteration in continued use permitted under Section 72(2) whereas change in purpose of use of land can be permitted under Section 73-B—Ms. Jawahar Sons Enterprises Pvt. Ltd. vs. state & ors., 2002 (2) WLC (Raj) 627 = 2002 (2) RLR 465 (Raj) = 2002 (4) RLW 2362 (Raj) = 2002 (2) WLN 565 (Raj) AIR 2002 (Raj) 206. \$5 a-fi 23(vii) 1959 72 2001 (2) RLW (Raj) 260J (1) DNJ 364 (Raj) 2001 (1) RLR 839 (Raj) = 2001 (2) WLC 249 (Raj) = AIR 2001 Raj 236 2001 (4) WLN 99 (Raj). 72 \$1 (1) (2) 72(2) 72(2) 3Dv 2002 (2) WLC 627 (Raj) = 2002 (2) RLR 465 (Raj) 2002 (4) RLW 2362 (Raj) = 2002 (2) WLN 565 (Raj) = AIR 2002 Raj 206

2. Permission for raising constructions granted.—Subsequent order passed by Trust suspending permission in view of Government Order for enquiry. Owner filing suit against order of Trust but not against Government Order and on refusal of injunction in said suit, petitioner-owner, filing writ petition. For lack of bonafides and fact that owner having not sued against Order of Govt., writ petition is barred in view of Order 2, Rule 2 of CPC. Principle of constructive res judicata would also be attracted.—Sumer Mal vs. State of Rajasthan & Ors., AIR 1999 (3) RLW 1666 = 1999 (2) RLR 229 1999 (1) VVLN 407 (Raj) 2000 Raj 1. 2000 (1) WLC 217. —It is in evidence that sanctioned plan for the constructions of the building was available in the office of the Trust but whosoever submitted the complaint and appeared for the Trust in the Court of the learned Magistrate acted finally, no efforts were made either to produce a copy of the scheme or of the plan which was finally adopted by the Trust. Under these circumstances in a criminal case, the liability cannot be fastened on the accused petitioner.—Jitendra Kumar Rastogi vs. Urban Improvement Trust, 1980 RCC 353 (Raj) fi-F-G tr 3Tü?T 2 3Dv AIR 2000 Raj 1. 1909 (3) RLW 1666 1999 (2) RLR 229--1999 (1) WLN 407 (Raj) - 2000 (1) WLC 217. fäAJ e.t. go-TT å, i, m-å 21, I -e--K1)-fi 1980 RCC 353 (Raj). Section 73. Application for permission.—(1) Every person or department of the Government desiring to obtain the permission referred to in Section 72 shall make an application in writing in such form and containing such particulars in respect 'of the improvement to which the application relates as may be prescribed by regulations. (2) Every application under Sub-section (1) shall be accompanied by such fee as may be prescribed: 73 U-89 Provided that no such fee shall be necessary in the case of an application made by' a department of Government. (3) On the receipt of an application for permission under Sub-section (1), the officer or authority competent under Section 72 to grant the permission, after making such inquiry as may be considered necessary in relation to any matter, shall, by order in writing, either grant permission, subject to such conditions, if any, as may be specified in the order to refuse to grant such permission: Provided that, before making an order refusing such permission, the applicant shall be given a reasonable opportunity to show cause why the permission should not be refused. (4) Where permission is refused the grounds of such refusal shall be recorded in writifigand communicated to the applicant in the manner prescribed by regulations. (5.) A register of applications for permission under this section shall be kept in such form as may be prescribed by regulations. (6) The said register shall contain such particulars including information as to the manner in which applications for permission have been dealt with as may be prescribed by regulations and shall be available for inspection by any member of the public at all reasonable hours on payment of such fee not exceeding rupees five as may be prescribed by regulations. (7) Where permission is refused under this section, the applicant or any person claiming through him shall not be entitled to get refund of the fee paid on the application for permission but, on an application for refund being made within three months of the communication of the grounds of the refusal under Sub-section (4), such portion of the fee as may seem proper in the circumstances, of the case may be refunded. 1(8) Where in any urban area, an application for undertaking or carrying Oilt an improvelnent is made to the Trust in the prescribed form and with the prescribed fees and after the reteipt of the application the Trust neglects or omits for one month to grant permission or to reject the application

for reasons to be recorded by it, the applicant may, by a written communication, call the attention of the Trust to the omission or neglect. and if such omission or neglect continues for a further period of fifteen days from the date of such communication, the Trust shall be deemed to have permitted the proposed work absolutely and such work may be proceeded within the manner specified in the notice: Provided that nothing herein contained shall be construed to authorise any person to act in contravention of any other provision of this Act or the rules and regulations made thereunder, relating to any matter other than the requirement of obtaining permission of the Trust before undertaking or carrying out improvement under this Act. (9) Any person aggrieved by an order of the Trust giving permission subject to conditions imposed by it or refusing to give permission under this Act, may appeal to the Collector, within thirty days from the date of the order giving refusing such permission, exclusive of the time requisite for obtaining a copy thereof. No such order shall be called in question otherwise than by such appeal. (10) The appellate authority may, if it thinks fit for reasons to be recorded, extend the period allowed for appeal. The order of the appellate authority shall be final: Provided that no order under appeal shall be modified or set aside by the appellate authority until the appellant and the Trust have had a reasonable opportunity of being heard.]

Inserted Sub-Section 8 & 9 and '10 by Section 8 of Rajasthan Act No. 26 of 1976, published in the Rajasthan Gazette, Extraordinary, Part IV-A, dated 17.04.1976 (w.e.f. 28.02.1976). 1959 73 73. 72 -qq-q-em-q 2, 72 -tit fit-at Nj-qi äTQT 15 -\$T arafâ qFTT --\$t-â -\$ q-g-â Rfitfh, -Fq-â -+ -G 30 73—m U-91 (10) 3-1Tü?T Comments Permission to raise construction—Renewal of permission.—Grant of permission to continue construction work of hotel in "No construction Zone" even after expiry of the extended period granted by the respondent UIT for completion of its second phase. Collector ordered to stop the work. Grant of permission is a statutory document. No provision of extension of time but such power is inherent in the authority ' granting permission. The case falls within exception carved in Para 23(vii) of the order of this Court.—E.I.H. Limited vs. State of Rajasthan & Ors., 2001 (2) RLW (Raj) = 2001 (1) DNJ 364 (Raj) = 2001 (1) RLR 839 (Raj) = 2001 (2) WLC 249 (Raj) = AIR 2001 Raj 236 = 2001 (4) WLN 99 (Raj). R42. ff 1 23(vii) 3Dv 2001 (2) RLW (Raj) = 2001 (1) DNJ 364 (Raj) = 2001 (1) RLR 839 (Raj) = 2001 (2) WLC 249 (Raj) = AIR 2001 Raj 23.6 2001 (4) WLN 99 (Raj). [Section 73-A. Sanction for sub-division or re-constitution of plots.—(1) Any person who intends to sub-divide or re-constitute his plot lying in the area of a Trust established under Section 8 shall submit the lay out plan together with the prescribed particulars to the Trust for sanction. (2) Subject to any rules that may be made in this behalf the Trust may, within the prescribed period, sanction such plan either without. modification or subject to such modifications and conditions as it considers expedient or may refuse to give sanction, if the Trust is of opinion that such division or re-constitution is not in any way consistent with the proposals of improvement of the urban area of the Trust. (3) 'If any person does any work in contravention of Sub-section (1) or in contravention of the modifications and conditions of the sanction granted under Sub-section (2) or despite refusal for the sanction under Sub-section (2), the Trust may direct such person by notice in writing to stop any work in progress and after making an enquiry in the prescribed manner, remove or pull down any work or restore the land to its original condition. (4) Any expenses incurred by the Trust under Sub-section (3) shall be a sum due to the Trust under this Act from the person in default. 2[Deleted] Inserted Section 73-A by Section 8 of Rajasthan Act NQ. 3 of 1963, published in the Rajasthan Gazette, Extraordinary, Part IV-A, dated 29.03.1963. Deleted proviso by Section 3 of Rajasthan Act No. 9 of 1978, published in the Rajasthan Gazette, Extraordinary, Part IV-A, dated 26.10.1978—prior to Amendment it was as followings:— 1959 73—Ø (Lay out) qtt (4) (3) GTRT RTRT I I[Section 73-B. Restriction on change of use of land and power of State Government to allow change in use of land.—(1) Notwithstanding anything contained in Section 72 or 73-A (i) no person shall use or permit the use of any land situated in any urban area notified under Section 8, for the purpose other than that for which such land was originally allotted or sold to any person by the State Government, any Urban Improvement Trust, any other local authority or any other body or authority in accordance with any law for the time being in force or, otherwise than as specified under a Master Plan, wherever it is in operation; (ii) in the case of any land not allotted or sold as aforesaid and not covered under Clause (i), no person shall use or permit the use of Any such land situated in a Urban Area notified under Section 8, for the purpose other than that for which such land-use was or is permissible, in accordance with the Master Plan, wherever it is in operation, or under any law for the time being in force. (2) Notwithstanding anything contained in Sub-section (1), the State Government or any authority authorised by it, by notification in the Official Gazette, may allow the

owner or holder of any such land, to have change of use thereof, if it is satisfied so to do in public interest, on payment of conversion charges at such rates and in such manner as may be prescribed with respect to the following changes in use— (i) from residential to commercial or any other purpose; or (ii) from commercial to any other purpose; or (iii) from industrial to commercial or any other purpose; or Contd. . "Provided that the provisions of this section shall not apply to cases in Which plots have been allotted by the Trust or Government for residential purposes. " Inserted Section 73-B by Section 2 of Rajasthan Act No. 20 of 1974 and substituted by Act No. 19 of 2000 w.e.f.'20. I I .2000. EXIM. 73—u (iv) from cinema to commercial or any other purnose; or (v) from any existing permissible use of land to any other purposes, as the State Governrment may prescribe: Provided that rates of conversion charges may be different for different areas and for different purposes. (3) Any person who has already changed the use of land in violation of the provisions of this Act in force at the time of change of use, shall apply to the State Government or any authority authorised by it der Sub-section (2), within such period as may be prescribed, for regularisation of said use and upon regularisation of the change of use of land, he shall deposit the amount contemplated under Sub-section (2). (4) Where the State Government or the authority authorised by it is satisfied that a person who ought to have applied for permission or regularisation under this section, has not applied and that such permission can be granted or the use of land can be regularised, it may be proceed to determine the conversion charges after due notice and hearing the party/parties and the charges so determined shall become due to the Urban Improvement Trust and be recovefable under Sub-section (6). (5) The conversion charges so realised shall be credited to fund of the Urban Improvement Trust. (6) Charges under this section shall be the first charge on the interest of the person liable to pay such charges with respect of the land, the use of which has been changed and shall- be recoverable as arrears of land revenue.] 72 (i) -t -a, ft-ft-f& •gINT (ii) AT (i) (ii) (iii) 1959 AT tg @lfrg, -\$ •q-q YQ.._TH -43* zip-a Comments 1. Applicability of Section 29. 29

2. Change of user of Land.(fi 73—u 94 .95 1. Applicability of Section 29.—Construction for purpose other . than covered by Section 29. No scheme framed under Section 29, nor any pre-existing scheme in operation—Sections have no application since distinguishing features contemplated in Section 73-B not attracted. In respect of authority to levy conversion charges in the cases of free old lands, use of which is not restricted by •the title, under which such land is held, no conversion charges are leviable and in view of the fact that though under non- obstante provision of Section 73B the State Government has necessary authority to permit the use of the land for purposes other than for purposes restricted under the Scheme framed under Section 29 fnsptie tof the provision of Section 72, but there being no scheme framed under Section 29 or deemed to be framed under Section 41 A under which the user of the land in question for commercial purposes was restricted, no demand for change in user could be made on that basis also, and in view of _ the fact that Trust itself in resolution approving the plan as referred to the fact that land in question was permitted to be put to connmercial use way-back in 1995, when the permission was sought no change in user of the land for any restrictive purpsoa was to happen, which could entail levy of charges, and taking into consideration that land abutting on the road from Paota to Mahamandir was factually used for commercial purposes is not ETINT 73—QA U-95 sustainable under the provisions of the Urban Improvenment Act, 1958 in the [awahar Sons Enterprises Pvt. Ltd. (Ms.) vs. State & Ors.,. 2002 (4) present case. RLW (Raj) 2362 = 2002(1) DNJ (Raj.) 194 = 2002 (1) RRT 459 (Raj) = 2002 (1) CDR 766 (Raj) = 2002 (2) RLR 465 (Raj) 2002 (2) WLC (Raj) 627 = 2002 (2) WLN 565 (Raj) = AIR 2002 (Raj) 206. Prohibition in Sub-sections (1) and (2) of Section 72 stands overridden by Section 73-B. Land originally granted without restriction as to its user. Mere change of current use to commercial use caru.-ot entail conversion charge. Section 72(2) only permits any alteration in continued use permitted under Section 72(2) whereas change in purpose of use of land can be permitted under Section 73-B—Ms. Jazvahar Sons Enterprises Pvt. Ltd. vs. State & Ors., 2002 (2) WLC (Raj) 627 = 2002 (2) RLR 465 (Raj) = 2002 (4) RLW 2362 (Raj) = 2002 (2) WLN 565 (Raj) = AIR 2002 (Raj) 206. 1. 29 29 29 e, ft-Qh-q-a-rg: q-a 1 72 -t 29 2, 29 2, -äQ.u 1995 \$1 71-0 2ft, 1985 t—üt47äv W.R.@.) 3Dv 2002 (4) RLW .2362 (Raj) 2002(1) DNJ (Raj.) 194 = 2002 (1) RRT 459 (Raj). 2002 (l) CDR 766 (Raj) = 2002 (2) RLR 465 (Raj) 2002 (2) WLC 627 (Raj) = 2002 (2) WLN 565 (Raj) = AIR 2002 Raj 206. 72 (1) (2) 73-24 72(2) 72(2) 2, 73—2Ä e-å. • 2002 (2) WLC 627 (Raj) = 2002 (2) RLR 465 (Raj) 2002 (4) RLW 2362 (Raj) = 2002 (2) WLN 565 (Raj) = AIR 2002 Raj 206

2. Change of user of Land.—Land in question being used for commercial purpose since before commencement of any Master Plan. No permission required for its continued use for commercial purpose nor such continued use can be subjected to any conversion charge. Land originally granted without restriction as to its user. Mere change of current use to commercial use cannot entail conversion charge. Demand -for conversion charge quashed.—*Ms. Jawahar Sons Enterprises Ltd. vs. State*, 2002 (2) U-96 1959 WLC (Raj) 627 = 2002 (2) RLR 465 (Raj) = 2002 (4) RLW 2362 (Raj) = 2002 (2) WLN 565 (Raj) = AIR 2002 (Raj) 206. —A perusal of the Master Plan 1971-91 will show that Sansar Chandra Road has been shown as commercial and even if assuming for the sake of arguments, though not accepting, that the land use from cinema to commercial will change the land use, because in the Master Plan it has been the land use shown was commercial, it cannot be said that there was any deviation of the land use in contravention of the Master Plan. In such a situation, the provisions of Section 25 of Jaipur Development Authority Act, 1982 can hardly be attracted.—*Jaipur Cinema Karmchari Union & Ors. vs. Jaipur Development Authority*, 1993 (1) WLC 332 (Raj) = 1993 (1) 461 (Raj). 3-TRA-T 31ÄQU@5üT -a-tlT<TIR trfi.—*2002 (2) WLC 627 (Raj) = 2002 (2) RLR 465 (Raj) = 2002 (4) RLW 2362 (Raj) = 2002 (2) WLN 565 (Raj) = AIR 2002 Raj 206. 1971291 24T, 1982 -\$1 25 env 1993 (1) WLC 332 (Raj) = 1993 (1) WLN 461 (Raj).* Chapter X Rules and Regulations Section 74. Power of Government to make 1) The State Government may make rules consistent with this Act (a) as to the authority on which money may be paid from the Trust fund. (b) for prescribing the fees payable for a copy Of extracts from the assesment list under Section 35 or Section •73; [(bb) for prescribing standards for the sub-division or re-constitution of p.lots, lay- out of private streets etc, and, for provision of roads, lanes, water connections, electric connections and other amenities to be provided for the owner at his costs;] for prescribing the particulars to be submitted under Sub-section (1) of Section 73-A, and the period during which the plan shall be sanctioned or refused under Sub-section (2) of the same: (c) as to the conditions on which officers and servants of the Trust appointed to offices requiring professional skill may be appointed, suspended or dismissed; Inserted Clause (bb) by Section 9 of Rajasthan Act No. 3 of 1963, published in the Rajasthan Gazette, Extraordinary, Part IV-A, dated 29.03.1963. Inserted Clause (bbb) by Section 9 of Rajasthan Act No. 3 of 1963-ibid. 74 U-97 (d) as to the intermediate office or offices, if any, through which correspondence between the Trust and the State Government or officers thereof shall pass; (e) as to the manner and form in which the Trust shall maintain accounts and prepare an annual statement thereof including the balance sheet; (f) as to the authority by whom, the conditions subject to which and the mode in which contracts may be entered into and executed on behalf of the trust; (g) as to the form in which and the time at which the Budget shall be prepared; (h) as to the returns, statements and reports to be submitted by the Trust; (i) as to the mutual relations to be observed between the Trust and other local authorities in any matter in which they are jointly interested; (j) for regulating the grant of -leave allowances and acting allowances to the officers and servants of the Trust; [(jj) for prescribing the conditions under which the officers and employees of a Trust may, under-Section 24-A, be transferred from one Trust to another or to the J.D.A.] (k) for establishing and maintaining a pension, provident or annuity fund, for compelling all or any of the officers in the service of the Trust to contribute. to such fund at such rates and subject to such conditions as may be prescribed and for supplementing such contributions out Of the funds of the Trust. Provided that a Government servant employed as an officer or servant of the Trust -shall not be entitled to leave or leave allowance otherwise than as may be prescribed by the conditions of his service under the StateGovernment; (l) for determining the conditions under which the officer and servants of the Trust or any of them shall, on retirement, receive pensions or gratuities or compassionate allowances and the amount of such pensions, gratuities and compassionate allowances; (m) for regulating every matter which, under this Act, may be or is required to be prescribed; x x] (n) generally of the guidance of Trusts and public officers in all matters connected With the carrying out of the provisions of this Act3 L;] 4 for prescribing the rates of conversion charges; and (p) as to the. authority to. which, and the manner in which an application for permission for change of use of land shall be made; and the manner in, and the authority, which conversion charges, payable in respect thereof shall be fixed.] No rule made under Sub-section (1) shall take effect until it is published in the Official Gazette, and no such rule shall be made except after previous publication: Inserted Clause (jj) by Act No. 16 of 1992, published in Rajasthan Gazette Extraordinary 4 (Ka) dated 05.05.1992 Page 69 and sÜbstituted by Rajasthan Act No. 18 of 1994, Published on 30.04.1994 Pages 219-221. 2 Omitted the word "and" by Section 3(a) of Rajasthan Act, No.

20 of 1974, published in the Rajasthan Gazette, Extraordinary, Part IV-A, dated 20.09.1974. 3 Substituted for by Section-3 (b) of Rajasthan Act No. 20 of 1974, published in the Rajasthan Gazette, Extraordinary, Part IV-A, dated 20.09.1974. 4 Inserted Clause (o) and (p) by Section 3 (c) — *ibid*. 5 Substituted by Section 9 of Rajasthan Act No. 26 of 1976, published in the Rajasthan Gazette, Extraordinary, Part IV-A, dated 17.04.1976. (w.e.f. 28.02.1976)—prior to Amendment it was as follows. 1959 74 Provided that any such rule may be made without previous publication if the State Government considers that it should, in public interest, be brought into force at once. I 10 74. -§ 35 73 (71) §1 (Gi) Rqsrä (31) 3i-q -fil-å--fil-er §1 e-ÉT Contd.. "(2) The power of the State Government to make rules under this section is subject to the condition of the rules being made after previous publication and of their taking effect until they have been published in the Official Gazette. " 75 U-99 frg, 3ifh ZIT lxxxI q-rrf-q-& 6) Q-fr -O -t -\$ ft-g ft-a-rR- -<T GTFT @TRg I Comments Execution of lease deed.—Land taken on lease from UIT—Right to get the sale deed/ lease deed executed by the UIT in accordance with the provisions of Rules 20 and 26, is a statutory right and not contractual right—Shanker Dutta vs. 111T, & Anr., 1998 (2) RLW 787 (Raj) — There is no provision either in the Act or in the Rules vesting any power of transfer of an employee of one U.I.T. to the other U.I.T.—Basudeo vs. U.I.T., Bharatpur & ors., 1989(2) RLR 365 (Raj) — 20 26 fa-nu 1998 (2) RLW 787 (Raj). q.34T{ÉT. {31V.et 1989 (2) RLR 365 (Raj). Section 75. Power of the Trust to make regulations.—(l) Every Trust may, from time to time make regulations consistent with this Act and with any rules made under this Act by the State Government. (a) for fixing the amount of security to be furnished by any officer or servant of the Trust from whom it may be deemed expedient to require security, (b) for associating members with the Trust under Section 19, (c) for appointing persons, other than Trustees and persons associated with the Trust under Section 19, to be members of committees under Section 20. (d) for regulating the delegation of power or duties of the Trust to committees or to the Chairman [or to the Secretary or any other officer of the Trust,] Inserted w.e.f. 15.06.1978 by Section 4 of Rajasthan Act No. 9 of 1978 published in the Rajasthan Gazette, Extraordinary, Part IV-A, dated 26.10.1978. U-IOO 1959 75 (e) for regulating, summoning and holding of meetings of the Trust and the committees appointed by it and the conduct of business thereat, (f) for the guidance of persons employed by it under this Act. (g) for prescribing the fees payable for copies of documents delivered under Sub-section (3) of Section 33 or under Section 76. [(h) for permitting under Section 73 the improvement in the urban area of the management, use and regulation of any land or building including its erection, re-erection and enlarging of its wall or any projecting portion, (i) generally for carrying out the purpose of this Act. (2) All regulations made under Sub-section (l) shall be subject to the sanction of the State Government and shall, when so sanctioned, 2 [come into force upon their publication in the Official Gazette.] 75. (qg) 19 CT) 19 20 (U) 33 §1 (3) 76 -t RAT, (q) 73 Q.@7, Q-Tm Comments Order of removal Trust cannot delegate its power.—From the reading of Section 91-A it will be evident that the power to order removal vests in the Trust. The Trust may delegate any of its functions or the duties to any of the committees constituted under Section 21 of the Act. It may further delegate such Substituted by Section IO(i) of Rajasthan Act No. 26 of 1976, published in the Rajasthan Gazette, Extraordinary, Part IV-A, dated 17.04.1976. (w.e.f. 18.02.1976)—prior to Amendment it was as follows:— "(h) for the management, use and regulation of building constructed under any scheme, and" 2 Substituted for words, "be notified in the Official Gazette. " by Section IO(ii)—*ibid* ETINT 75 U-IOI of the functions as may be permissible under the regulation framed under Section 75 of the Act to the Chairman of the Trust and there is no provision in the Act empowering the Trust to delegate its power in regard to the order of removal of construction in favour of an officer of the Trust; It is true that under Section 27 of the Act the Chairman may be general or special order' in writing delegate to any officer of the Trust any of his power, duties or functions under this Act or under the Rules made thereunder except the power to preside over the meeting of the trust. Such delegation by the Chairman is in regard to his own functions only. There is, however, no provision of such delegation in favour of officer so far as the trust is concerned. It, therefore, follows that the functions of the Trust can be delegated either in favour of the committee or in favour of the Chairman. In the case of Chairman delegation will be to the extent the regulation framed under Section- 75 of the Act permits. It may be observed here that the delegation of power is permissible with the legislative permission and in absence of such legislative permission there can be no delegation of the functions of the trust in favour of the officer to the Trust or its Secretary. Any delegation may by the Trust under its resolution in regard to the removal of unauthorised construction cannot be said to be in consonance of the

provision of the Act. Court is, therefore, firmly of the opinion that the resolution of the UIT as far as it delegates power of removal under Section 91 in favour of its Secy. is beyond the competence of the U.I.T. As a naturally corollary thereof the Secretary of the Trust derives no power of ordering removal of unauthorised construction and is therefore wholly incompetent to pass the impugned order under Section 91 of the Act. It may be that the Trust may empower any office-officer for the purpose of Section 91(C) and authorise any officer to stop the unauthorised building operations but from that it cannot be inferred that the Trust can by its resolution authorise its officer under Section 91(C) of the Act to order removal of unauthorised construction— Mohan Lal vs. Urban Improvement Trust, Jodhpur, 1978 RLW 72 (Raj) = AIR 1978 (Raj) 201 = 1978 WLN 38 (Raj). \$1 21 75 -a, -a qa-T gen gg \$1 27 75 I 31MT< uT U-102 1959 75 91 91 910) 91 CT) afr 1978 RLW 72 (Raj) = AIR 1978 Raj 201 = 1978 WLN 38 (Raj). Section 76. Printing and sale of copies of rules. and The Chairman shall cause all rules made under Section 74 and all regulations made under Section 75 and for the time being in force, to be printed and shall cause printed copies thereof to be delivered to any applicant on payment of such fees as may be prescribed by regulations. (2) Notice of the fact of copies of rules and regulations being obtainable at the said price and of the place where and the persons from whom the same are obtainable shall be given by the Chairman by advertisement in local newspaper. 76. 74 75 Section 77. Power of Government to cancel regulations made under Section 75.—The State Government may, after previous publication of its intention, rescind any regulations made by the Trust which it has sanctioned, and thereupon the regulations shall cease to have effect. 77. 75 err, Chapter XI Procedure and Penalties Section 78. Stamping signature on notices or notice or bill which is required under this Act to bear the signature of the Chairman or of any other Trustee or of any officer or servant of the Trust shall be deemed to be properly signed if it bears a facsimile of the signature of the Chairman or of such other Trustee or of such officer or servant as the case may be stamped thereupon. 78. 80 Section 79. Public notice how to U-103 be made known.—Every public notice given under this Act shall be in writing over the signature of any officer of the Trust authorised in this behalf and shall be widely made known in the locality to be affected thereby by affixing copies thereof in conspicuous public places within the said locality, or by publishing the same by beat of drum or by advertisement in local newspaper or by any two more of these means, and by any other means that the Trust may think fit. 79, GIRT Section 80. Service of notice, etc.—(1) 'All notices, orders and other documents required by this Act or any rule or regulation made thereunder to be served upon any person shall, save as otherwise provided in this Act or such rule or regulation, be deemed to be duly served— (a) where the person to be served is a company, if the document is addressed to the secretary of the company as its registered office or at its principal office or place of business and is either— (i) sent by registered post, or (ii) delivered at the registered office or at the principal office or place of business of the company; (b) where the person to be served is a partnership, if the document is addressed to the partnership at its principal place of business, identifying it by the name of style under which its business is carried on, and is either— (i) sent by registered post, or (ii) delivered at the said place of business; (c) where the person to be served is a public body of a corporation or society or other body, if the document is addressed to the secretary, treasurer or other head office of that body, corporation or society at its principal office, and is either— (i) sent by registered post, or (ii) delivered at that office; (d) in any other case, if the document is addressed to the person to be served and— (i) is given or tendered to him; or (ii) if such person cannot be found, is affixed on some conspicuous part of his last known place of residence or business, if within the State or is given or tendered to some adult member of his family or is affixed on some conspicuous part of the land or building to which it relates, or (iii) is sent by registered post to that person. (2) Any document which is required or authorised to be served on the owner or occupier of any land or building may be addressed to "the owner" or "the occupier", as the case may be, of that land or building naming that land or building, without further name of description, and shall be deemed to be duly served. U-104 1959 80 (a) if the document so addressed is sent or delivered in accordance with Clause (d) of Sub-section (1); or (b) If the document so addressed or a copy thereof so addressed, is delivered to some person on the land or building or where there is no person on the land or building to whom it can be delivered, is affixed to some conspicuous part of the land or building. (3) Where a document is served on a partnership in accordance with this section, the document shall be deemed to be served on each partner. (4) For the purpose of enabling any document to be served on the owner of any property, the Trust may, by notice in writing, require the occupier, if any, of the property to state the name and address of the owner thereof. (5) Where

the person on whom a document is to be served is a minor, the service upon his guardian or any adult member of his family shall be deemed to be service upon the minor. (6) A servant is not a member of the family within the meaning of this section. 80. zrr (ii) Tl-qf-a-q, •qq (ii) -d, ft) q-ra•r zn? RZFTZT, PT ur .3F:q a, ZIT — (ii) (i) ur m--qT -ar (iii) 80 t-gi Comments 1. Notice—authorisation to service. - •\$1 U-105 . 105 105 1. Notice—Authorisation to service.—The notice under Section 90 of the Act, cannot be said to be document which is required or authprised to be served on the owner or the occupier of any land or building. The notice under Section 90 -is to be given to a person who without the permission of the trust erects, or adds to or alters any building, and such the provision of clause (b) of Sub-section (2) of Section 80 cannot be applied in the case in hand.—llrban Improvement Trust vs. Narbada Devi, 1981 WLN 467 (Raj) = 1981 RLW 276 (Raj). 1. — \$1 90 90 2, t, 2, e, 80 (2) 1981 WLN 467 (Raj) = 1981 276 (Raj) 2. Notice-service of.—There is nQ provisions under Section 80 for serving such notice on. the husband in place of Narbada Devi herself. There is no provision for giving an authority to accept notice on behalf of a person when he or she is, present to accept the notice. There is a clear non-compliance of Section 80 of the Act in the matter of service of notice under Section 90 of the accused.—Urban Improvement Trust vs. Narbada Devi, 1981 WLN 467 (Raj) = 1981 RLW 276 (Raj). 1959 u-INT 80 80 90 80 1981 WLN 467 (Raj) = 1981 UW 276 (Raj). Section 81. Disobedience to act or to notice.—Where, under this Act or a notice given thereunder, the public or any person is required to do or to refrain from doing anything, a person who fails to comply with such requisition, shall, if such failure is not an offence punishable under any other section, be liable, on conviction by a Magistrate to a fine not exceeding five hundred rupees for every such failure and, in the case of a continuing breach to a further fine which may extend to five rupees for every day after the date of the first conviction during which the offender is proved to have persisted in the breach. 81. GT8i vg-å -\$1 -\$1 -Qi Section 82. Powers to Trust to execute works on failure to comply with notice.— If a notice has. been given under .this Act to a person requiring him to execute a work in respect of any property, movable or immovable, public or private, or to provide or do or refrain from doing anything within a time specified in the notice, and if such. person fails to comply with such notice, then the Trust may cause such work to be executed OT such thing to be provide or done, and may recover all expenses incurred by it on such account from the said person in the manner provided in the Municipal law for the time being in force for the recovery of municipal claims. 82. -Tl•-å Section 83. Liability of occupier to pay in default of owner.—(1) If the person to whom the notice mentioned in Section 82 has been given is •the owner of the property in respect of which it is given, the Trust may, whether any action or other proceeding has been brought or taken against such owner or nqt require the person, if any, whö occupies such property or a part thereof under such owner, to pay to the Trust instead of to the owner, the rent payable by him in respect of such property, as it falls due, up to the amount recoverable from the owner under Section 82; and any such payment made,by the occupier to the Trust shall be deemed to -have been made to the owner of the property. 85 U. 107 (2) For the purpose of deciding whether action should be taken under Sub-section (I) the Trust may require an occupier of property to furnish inforjnation as to the sum payable by him as rent on account of such property and as to the name and address of the person to whom it is payable and if the occupier refuses to furnish such information he shall be liable for the whole of the expenses as if he was the owner. (3) All moneys recoverable by the Trust under this (section shall be recoverable in the manner provided in the Municipal law for the time being in force for the recovery of municipal claims. 83. 82 a, GINT 82 Rfå I Section 84. Right of occupier to execute works in default of owner.—Whenever default is made by the owner of a building or land in the execution of a work required under this Act to be executed by him, the occupier of such building or land may, with the approval of the Trust, cause such work to be executed, and the expense thereof shall, in the absence of any contract to the contrary, be paid to him by the owner or the amount may be deducted out of the rent from time to time becoming. due from him to such owner. 84. -O @5NT - -ö -€-q-åx-q-q—q-rq--a I Section 85. Procedure upon opposition of execution .by occupier.—(1) If after receiving information of the intention of the owner of any building or land to take any action in respect thereof in compliance with a notice issued under this Act, the occupier refuses to allow such owner to take such action, the owner may appay to a Magistrate of the first class. (2) The Magistrate , upon proof of such refusal may make an order in writing requiring the occupier to allow the owner to execute all such works, with respect to such building or land, as •may be necessary for compliance with the notice, and may also, if he thinks fit, order the occupier to pay to the owner the Costs relating to such application or order. U-

108 1959 85 (3) If, after the expiration of eight days from the date of the Magistrate's order, the occupier continues to refuse to allow the owner to execute such work, the occupier shall be liable, upon conviction, to a fine which may extend to twenty-five rupees for every day during which he has so continued to refuse. (4) Every owner, during the continuance of such refusal shall be discharged from any penalties to which he might otherwise have become liable by reason of his default in executing such work. 85. (3) Rfäx Section 86. Recovery of cost of work by the occupier.—When the occupier of a building or land has, in compliance with a notice given under this Act, executed a work to which the owner of such building or land is responsible either in pursuance of the contract of •tenancy or bylaw he shall be entitled to recover from the owner, by deduction from the rent payable -by him or otherwise, the reasonable cost of stich work. 86. dTTT I Section 87. Relief to agents and Whén a person, by reason of his receiving or being efititled to receive, the rent of immovable trustee or agent of a person or society would, under this Act, be bound to discharge an obligation imposed by this Act on the owner of the proéerty and for the discharge of which money is required, he shall not be bound to discharge the obligation unless he has, or but for his own improper act or default, might have had, in his hands funds belonging to the owner sufficient for the purpose. (2) When an agentor trustee has claimed and established his right to relief under•this section, the trust may give him notice to apply to the discharge of such obligation as aforesaid the first •moneys which come to, his hands on behalf, or for the owner; and should he fail to comply with such notice, he shall be, deemed to be personally lia.ble to discharge suöh obligation. E..ITRT 89 U-109 87. q-gæ(l) fig Section 88. Application of provisions relating to recovery of municipal claims.— Whenever in -this Act or in any municipal' law for the time being' in force made applicable by Section 47 of this- Act, it is provided that any sum shall be recoverable in the manner érovided for fthe recovery of municipal claims, then in applying. those provisions, all references, to the Municipal Board •shall be construed as referring to the trust and all references to the Municipal Officer or the Municipal Fund shall be construed as referring to the offiâe of the Trust, to an officer of the trust and the funds of the trust respectively. 88. \$1 47 q-r --ö . 359kT: -em-u-f?f-q -er I Section 89. Penalty for removing fence etc. in street.—If any person. without lawful authority— (a) •remoVes any fence, or any timber used for propping or supporting any building, wall or other thing, or extiguishes any light set up at any place; where the surface of. street or other ground has been opened or broken up by the Trust for the purpose of carrying out any work, or (b) infrings any order given or removes any bar, chain or post fixed by the trust for the purpose of closing any street to traffic, he shall be punishable With fine which may extend to fifty ru ees

89. QT 8ZTöt ge.TFff -\$1 1959 I [Section 89-A. Penalty for improvements in contravention of the Act.—(1) Any person who whether at his own instance or at the instance of any other person, or any department of Government, undertakes or carries out any improvement of any land in any urban area, in contravention of the provisions of Sub-section (1) of Section 72 or in contravention of any condition subject to which permission for undertaking or carrying on any improvement has been granted under Section 73, shall be, punishable with fine which may extend to five thousand rupees and in the case •of a continuing offence, with further fine which may extend to one hundre& rupees for every day during which such offence continues after conviction for the first commission of the offence. (2) Any person who uses any land or building in contravention of Sub-section (2) of Section 72, or in contravention of the terms or conditions prescribed by regulations under the proviso to that sub-section, shall be punishable with fine which may extend to two thousand rupees. ETINT 89—Ø. Q, 72 \$1 (1) 73 (2) 72 (2) GIRT AT Section 90. Power to prevent or demolish building.—If any person without the permission of the Trust erects, adds to or alters any building or wall so as to make the same project beyond the street alignment or building line shown in any plan finally adopted by the Trust, x x) the Trust may, by a written notice— (a) direct that the erection, alteration or addition be stopped, and (b) require such building or wall to be altered or demolished, as it may deem necessary

90. Inserted Section 89-A by Séction• 11 of Rajasthan Act No.26 of 1976, published in che Rajasthan Gazette, Extraordinary, Part IV-A, dated 17.04.1976. (w.e.f. 28.02.1976). 2 Omitted the words "or erects or alters any building or wall in.an area specified in a scheme," by Section 12 of Rajasthan Act No. 26 of 1976, published in the Rajasthan Gazelle, Extraordinary, Part IV-A, dated 17.04.1976. (w.e.f. 28.02.1976). 90 Comments l. Notice—Authorisation to service. - All@vaq-l).

2. Notice—Service of. — . 3, Notice—Not property served. — -Q -a-ft-et a--ä) U-111 . Ill . Ill 4. Notice—Mere knowledge is not sufficient. — 2). . 111 1. Notice—Authorisation to service.-æ-The notice under

Section 90 of the Act, cannot be said to be document which required of authorised to be served on the owner or the occupier of any land or building. The notice under Section 90 is to be given to a person who without the permission of the trust erects, or adds to or alters any building, and such the provision of clause (b) of Sub-section (2) of Section 80 cannot be applied in the case in hand.—Urban Improvement Trust vs. Narbada Devi, 1981 WLN 467 (Raj) = 1981 RLW 276 (Raj). 1. — 90 e@fh I 90 -a 2, \$1 2, 2, 80 (2) 1981 WLN 467 (Raj) = 1981 RLW276 (Raj) 2. Notice—Service of.—There is no provisions under Section 80 for such -notice on the husband in place of. Narbada Devi herself. There is no provision for giving an authority to accept notice on behalf of a person when he or she is present to accept the notice. There is a clear non-compliance of Section 80 of the Act in the matter of service of notice under Section 90 of the accused.—Llrbn Improvement Trust vs. Narbada Devi, 1981 WLN 467 (Raj) = 1981 RLW 276 (Raj). 80 1 90 -a 80 2-777? 1981 WLN 467 (Raj) - - 1981 RLW276 (Raj)

3. Notice—Not properly served.—The accused had made constructions in violation of Scheme but .took the view that notice issued under Section 90 of the Act, was not properly servedon the accused and as such she could not be held guilty under Section 91 of the Act.—Urban Improvement Trust vs. Narbada Devi, 1981 VVLN 467 (Raj) = 1981 RLW 276 (Raj). 3. — qti.—3-fiF 90 91 1981 WLN 467 (Raj) = 1981 RLW 276 (Raj)

4. Notice—Mere knowledge is not sufficient.—Court see no force in this contention that mere knowledge is sufficient for the compliance of service of notice under Section 90 of, the Act.—urban Improvement T.rust vs. Narada Devi, 1981 WLN 467 (Raj) = 1981, RLW 276 (Raj). 1959 90 4. — a-a-a 90 1981 W LN 467 1981 RLW 276 (Raj). Section 91. Penalty for non-compliance with notice under Section 90.—If any person after due notice given under Section 90 does not, stop erection, alternation or addition, or does not demolish or alter any building or wall he shall be punishable with fine which may extend to five hundred rupees, or with simple imprisonment, for a period of six months or with both and the said unauthorised construction shall be demolished or altered by the order of the Magistrate dealing with the case if so requested by the Trust. 91. 90 90 87: Comments I. Service of Notice. mfröT).....

2. Notice—Authorisation to service. - yn@v«T).....

3. Notice—Not properly served. - . 112 . 112 . 1 13 4. Notice—Mere knowledge is not suffiéient. -I 2). 113 1. Service of Notice.—The notice under Section 90 of the Act, cannot be said to be a document which is required or authorised to be served on the owner or occupier of land or building. The notice under Section 90 is to be given to a person who without the permission of the trust erects, or adds to or alters any building, and as such the provision or Clause (b) of Sub-section (2) of Section 80 cannot be applied.—llrbn Improvement Trust, vs. Narbada Devi, 1981 WLN 467 (Raj) = 1981 RLW 276 (Raj) 1. \$1 90 90 e, 2, 2, 80 1981 WLN 467. (Raj) = 1981 RLW276 (Raj) 2. Notice—Authorisation to service.—The notice under Section 90 of the Act, cannot be said to be document which is required or authorised to be served on the owner or the occupier of any land or building. The notice under Section 90 is to be given to a person who without the permission of the trust erects, or adds to or alters any building, and such the provision of clause (b) of Sub-sectiOn (2) of Section 80 cannot be applied in the case in hand—urban Improvement Trust vs. Nhnbada Devi, 1981 WLN 467 (Raj) = 1981 RLW 276 (Raj). 2. — 90 @ I 90 t, 91 —m U-113 2, zrr a, 80 (2) 1981 WLN 467 (Raj) = 1981 RLW 276 (Raj) 3. Notice—Not properly served.—The accused had made constructions in violation of Scheme but took the view that notice issued under Section 90 of the Act, was not properly served on the accused and as such she could not be held guilty under Section 91 of the Act.—Urban Improvement Trust vs. Narbada Devi, 1981 WLN 467 (Raj) = 1981 RLW 276 (Raj). 90 91 1981- WLN 467 (Raj) = 1981 RLW 276 (Raj)

4. Notice—Mere knowledge is nöf sufficient—court see no force in this contention that mere knowledge is sufficient for the compliance of service of notice under Section 90 of: the Act.Alrban Improvement Trust vs. Narada Devi, 1981 VVLN 467 (Raj) = 1981 RLW 276 (Raj). —From the proceedings of the Urban Improvement Trust is clearly transpires that permission was granted to the petitioner for construction of the first floor, but it was made clear to the petitioner that he shall not be permitted to open the windows in the northern side. Thus, the Urban Improvement Trust can direct the petitioner to close the windows as the same has been opened without permission of the Urban Improvement Trust.—Arjun Ram vs. Additional Collector, Jodhpur, 1987(1) 'VVLN 453 (Raj). 90 2—7777 1981 WLN 467 (Raj) = 1981 RLW 276 (Raj). 2RT 1987 (1) WLN 453 (Raj). I[Section 91-A. Order of demolition of buildings Where

the erection of any building in any urban area has been commenced or is being carried on, or has been completed in contravention of the master plan or of any scheme sanctioned and- notified by the State Government or of the sanction of the Trust under Sub-section (1) of Section 72 or without the permission obtained under Section 73, or in contravention of any rules or conditions subject to which such permission has been granted, the Trust may, in addition to any prosecution that may be instituted under this Act, make an order directing that such erection shall be demolished by the owner thereof within such period not exceeding one month as may be specified in the order and on the failure of the owner to comply with the order, the Trust may itself cause the erection to be demolished and the

***Inserted Section. 91-A, B, C, D, E, F, G by Section 13 of Rajasthan Act No. 26 of 1976, Published on 17.04.1976 (w.e.f. 28.02.1976).**

2 Substituted for words "the officer may himself" by Section 5 of Rajasthan Act No. 9 of 1978, published in the Rajasthan Gazette, Extraordinary, Part IV-A, dated 26.10.1978, (w.e.f. 15.06.1978).

1959 expenses of such demolition shall be recoverable from the owner as arrears of land revenue: Provided that no such order shall be made unless the owner has been given a reasonable opportunity to show cause why the order should not be made. (2) Any person aggrieved by an order under Sub-section (1) may appeal to the Divisional Commissioner against the order within 30 days from the date of the order of the Trust and the Divisional Commissioner may after hearing the parties to the appeal either dismiss the appeal or may reverse or vary the whole or any part of the order. (3) The decision of the Divisional Commissioner in the appeal shall be final and shall not be questioned in any Court.

72 (1) 73 A-ft -rah, m--e-T 2, fhT Q-tröN - TROT ülfgr, Comments Order of removal — Trust cannot delegate its power.—From the reading of Section 91-A it will be evident that the power to order removal vests in the Trust. The Trust may delegate any of its functions or the duties to any of the committees constituted under Section 21 of the Act. It may further delegate such of the functions as may be permissible under the regulation framed under Section 75 of the Act to the Chairman of the Trust and there is no provision in the Act empowering the Trust to delegate its power in regard to the order of removal of construction in favour of an officer of the Trust. It is true that under Section 27 of the Act the Chairman may be general or special order in writing delegate to any officer of the Trust any of his power, duties or functions under this Act or under the Rules made thereunder except the power to preside over the meeting of the trust. Such delegation by the Chairman is in regard to his own functions only. There is, however, no provision of such delegation in favour of officer so far as the trust is concerned. It, therefore, follows that the functions of the Trust can be delegated either in favour of the committee or in favour of the Chairman. In the case of Chairman delegation will be to the extent the regulation framed under Section 75 of the Act permits. It may be observed here that the delegation of power is permissible with the legislative permission and in absence of such legislative permission there can be no delegation of the functions of the trust in favour of the officer to the Trust or its Secretary. Any delegation may by the Trust under its resolution in regard to the removal of unauthorised construction cannot be said to be in consonance of the provision of the Act. Court is, therefore, firmly of the opinion that the resolution of the UIT as far it delegates power of removal under Section 91 in favour of its Secy. is beyond the competence of the U.I.T. As a naturally corollary thereof the Secretary of the Trust derives no power of ordering removal of unauthorised construction and is therefore wholly incompetent to pass the impugned order under Section 91 of the Act. It may be that the Trust may empower any officer for the purpose of Section 91(C) and authorise any officer to stop the unauthorised building operations but from that it cannot be inferred that the Trust can by its resolution authorise its officer under Section 91 (C) of the Act to order removal of unauthorised construction— Mohan Lal vs. Urban Improvement Trust, Jodhpur, 1978 RLW n (Raj) = AIR 1978 (Raj) 201 = 1978 WLN 38 (Raj). —From the proceedings of the Urban Improvement Trust it clearly transpires that permission was granted to the petitioner for construction of the first floor, but it was made clear to the petitioner that he shall not be permitted to open the windows in the northern side. Thus, the Urban Improvement Trust can direct the petitioner to close the windows as the same has been opened without permission of the Urban Improvement Trust.—Arjun Ram vs. Additional Collector, Jodhpur, 1987(1) WLN 453 (Raj) Feup1 — klh 91--45 21 -ur 1 u-8 \$1 75 2 i 27 ü-u-@-q q-lq-a 75 \$1 I qa-T fQ5 91 2, 3TI-\$ -a U-116 1959 qTNT -g-e-rå -ö\$ 91 -a 91 CT) \$1 916) 1978 72 (Raj) = AIR 1978 Raj 201 1978 WLN 38 (Raj). 1987 (1) WLN 453 (Raj). Section 91-B. Power to stop improper use of land or buildings in urban areas.— (1) Whoever uses any land or, building in any urban area in contravention of the provisions of Sub-section (2) of Section 72, any officer of the Trust empowered in this behalf may, in addition to any prosecution that may be instituted under the Act for

such improper use make an order requiring such person to stop such - improper use immediately. (2) Where such improper use is not discontinued in pursuance of the requisition under Sub-section (1), the Trust or the officer empowered in this behalf may require any police officer to stop such improper use as may be specified in the requisition to the police and to remove from such land or building, any person, other than the owner, making the improper use, and such police officer shall comply with the requisition.

9144. 72 (2) Section 91-C. Power to stop building operations.—(1) Where the erection of any building in an urban area has been commenced in the master plan or any scheme sanctioned and notified by the State Government or of the general approval of the Trust "under. Sub-section (1) of Section 72 obtained under Section 73, or without such permission, approval or sanction has been granted but such erection has not been completed, any officer of the Trust empowered in this behalf may, in addition to any prosecution that may. be instituted under this Act, make an order requiring the building operations in relation to such erection to be discontinued on and from the date of service of the order. (2) Where such building operations are not discontinued in •pursuance of the tequisition under Sub-section (1), the Trust or the Officer empowered in this behalf may required any Police Officer to remove the person by whom the erection of the building 91 —V U-117 has been commenced and all his assistants and workmen from the place of the building within such time as may be specified in the requisition and such Police Officer shall comply with the requisition accordingly; (3) After a requisition under Sub-section (2) has been complied with, the officer empowered in this behalf may depute by a written order a Police Officer or an Officer or employee of the Trust to watch the place in order to ensure that the erection of the building referred to. in Sub-section (1) is not continued. (4) Any person failing to comply with an order under Sub-section (1) shall be punishable with fine which may extend to two hundred rupees for every day during which the non-compliance continues after-the service of the order. (5) No compensation shall be claimed by any person for any damage which he may sustain in consequences, of the discontinuation of the erection of any building. ft-fir \$1 73 72 (1) c, 3üa-fl gg Section 91-D. Offences by Companies.—(1) If the person committing an offence under this Act, is a company, every person, who was responsible to the company as well as the company, shall be deemed to be guilty of the offence and shall, be -liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render apy such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge. or that he exercised all due diligence• in preventing , the commission of such offence. (2) Notwithstanding anything contained in Sub-section (1) when an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part U-118 1959 of any Director, Manager, Secretary or other Officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against. and punished accordingly. Explanation.—For the purposes of this section (a) 'Company' means a body corporate and includes a firm or other association of individuals, and (b) 'director' in relation to a firm means a partner in the firm. 91—q. -cfi uT Section 91-E, Fines payable to the fines relaised in connection with thé prosecution under this Act shall be paid to the Trust concerned. 91—8. Section 91-F. Defaults in providing If the Trust after holding a local enquiry or upon report from any of its officers or other information in its possession is satisfied that the owner of any land in the urban area under its control has failed to provide anp amenity in relation to the land, which in the opinion of thé Trust ought .to be provided, or to carry. out any improvement of the land for which permission has been obtained under this Act, it may serve upon the owner a notice requiring him to provide the amenity or carry out the improvement within such time as may be specified •in the notice. (.2) If. any such amenity is not provide or any such improvement is not carried out within the time specified in the notice, then the Trust may itself provide the amenity or carry out the improvement or have it provided or carried out through such agency as it deems fit: •Pf10Vided that before taking any action- under-this sub-section the Trust shall afford reasonable opportunity to the .owner of the land to show cause as to why such .action should not be: taken. (3) All expenses incurred by the Trust or the agency employed by it in providing the amenity or carrying out the improvement together with interest at such rate as- •State 92 U-119 Government may by order fix, from the date on which a demand for the expenses is made till their payment may be recovered by the Trust from the owner as arrears of land revenue. 91—ü ur Rqh-é -t Qfr Rö-q Section 91-G., Power to require local authority to assume responsibility in certain cases.—Where any. urban area has been improved by the Trust, _the Trust may require the, municipality in whose local limits the area so improved

is situated to assume responsibility for the maintenance of the amenities which have been provided by the Trust or the amenities which have not been provided by the Trust but which in its opinion should be provided in the area on terms and conditions agreed upon between the Trust and such municipality, and where such terms and conditions cannot be so agreed upon, on terms and conditions settled by the State Government in consultation with the municipality on a reference of the matter to the State Government by the Trust.] 91—8- A8t TTAT -Q Section 92. Penalty for obstructing contractor or removing mark.—If any person:— (a) obstructs or molests any person with whom the Trust has entered into of contract in the performance:or executiorr by such person of his duty or anything which he is empowered or required to do under this Act, or U-120 1959 92 (b) removes any mark set up for the purpose of indicating any level or direction necessary to the execution of works authorised under this Act, he shall be punishable with fine which may extend to five hundred rupees or with imprisonment for a term which may extend to two months. 92. -a znfiæ ag Q, OAT. Q,' 1 [SeCtion 92.A. Encroachment or obstruction upon public land.— (1) Whoever— (a) makes or continues to makemny encroachment in any land or space not being private property, whether such. land. or space belongs to or vestsrin 'the Trust 'or not, except: Steps over-drain in any public su;eet, or (b) having made such encroachment before coming •Into force. of the Rajasthan Urban Improvement (Second Amendment) Act, 1991, fails to remove such encroachment within fifteen days from the date of service of a notice in writing calling upon him do so by the Trust, shall on conviction, be- punished with simple imprisonment which shall not be less than one month but which- may extend •tcHhiee years and with fine which may extend to twenty thousand •rupees: Provided that the Court may for .any adequate or special reason to be mentioned in the judgment impose a sentence of imprisönment for a term of less than one month. (2) Whoever (a) makes or- continues to make any obstruCtion in any land or space not being priv.ate property, whether such land or space belongs to or vests in the Trust or not, except Steps over drain in any public street; or (b) having made such obstruction before coming into force Qf the Rajasthan Urban Improvement (Second Amendment) Act; 1991. fails to remove such obstruction within fifteen days from the date of 'service of a notice in writing calling upon him to do so by the Trust, shall, On conviction, be punished with simple imprisonment which may extend •to one nonth or with fine which may extend to two thousand rupees or with both. (3) The Trust •or my, officer authorised by it in this behalf- shall have power to remove any such obstruction or encroachment and the expenses of such. removal shall be paid by the person who has caused the said obstruction or encroachment. (4) Whoeeüer• -not being duly authorised in that behalf removes earth,- send or other material from, space. as aforesaid, shall! be punished on conviction With Inserted Section 92-A vide Section 4 or Rajasthan Act No. 18 of 1991, published in Rajasthan Gazette, Extraordinary , Par€1V(A), dated. 19.104991 pages 65-73 (w.e.f. 27.08; 1991). ETINT U-121 imprisonment which may extend to six months or with fine which may extend to ten thousand rupees or with both. (5) Notwithstanding anything contained in. the foregoing provision, the Trust or the officer authorised by it in this behalf shall, in addition-to the action taken .as provided in this section, also have power to seize or attach any propeny found on the land or space referred to in this section or, as the case may be, attached to such land or space or permanently fastened to any thing attached to such land or space. (6) Where any property is seized or attached by an officer authorised by the Trust; he shall immediately make a report of -such seizure or attachment to the Trust. (7) The Trust may make such order. as it thinks fit proper custody of the property seized or attached, pending the conclusion of confiscation proceedings, and if the property is subject to speedy and natural decay, or. it is•otherwise expedient so to do, the Trust may order- it to be sold or otherwise disposed to. (8) Where any property is sold, as aforesaid, the sale proceed thereof •after deduction of the expenses of any sale or other incidental expenses relating thereto, •shall: (a) where no order of confiScation is ultimately passed by •the Trust; or (b) where an order passed in appeal so requires, be paid to owner thereof or the person from whom it is seized. (9) Where any property is seized or attached under. Sub-section (5), the Trust may order confiscationof such property. (IO) No order for confiscating a property shall be made under Sub-section (9) unless the owner of such property or the person from whom it is seized or attached is given. (a) a notice in writing informing him of the grounds on which it is proposed to confiscate the property; (b) an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation; and (c) a reasonable opportunity of being heard in the matter. (I I) The order of any confiscation under this section shall not prevent the infliction of any punishment to which the person affected thereby is liable under the Act. (12)

Any person aggrieved by an order made under Sub-section (7) or Sub-section (9), may, within one month from the date of the communication to him of such order, appeal against it to the District Judge of the District in which such property is seized or attached. (13) On such appeal the District Judge may, after giving an opportunity to the appellant and the respondent to be heard, direct the order to be stayed pending disposal of the appeal, or may modify, alter or amend the order and make any further orders that may be just. (14) Whenever any property is seized or attached pending confiscation under this section, the Trust or the District Judge shall have, and notwithstanding anything to the contrary contained in any other law for the time being in force, any other Court, Tribunal, other authority shall not have, jurisdiction to make orders with regard to the possession, delivery, disposal, release or distribution of such property. (15) Where any person is prosecuted of an offence under Sub-section (1) or Sub-section the burden of proving that he has not committed the offence shall be on him. (16) Whoever, being an employee of the Trust, specifically entrusted by an order of the Trust in writing with the duty to stop or prevent the encroachment or obstruction punishable under this section, wilfully or knowingly neglects or deliberately omits to stop or prevent such encroachment or obstruction, shall, on conviction, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to one thousand rupees or, with both: Provided that no Court shall take cognizance against such employee for the offence punishable under this sub-section except with the previous sanction of the Trust. (17) No investigation of an offence under this section shall be made by an officer below the rank of a Deputy Superintendent of Police.] g) 1991 15 gel* Ü, (QA) 1991 15 t, (3) AT A-fi E4TNT U-123 3TÄR&TT -t - qa--ö-tIT, -.q-R a, fib uT e-FQ...IT. I 3717TH: (10) (9) 6) q-rq-å I (11) (12) Ø-q—ETINT (7) G-q—ETRT (9) Q-fr (13) (14) AT 3fifäE AT ft-«-v0T -\$ -<-4ET •\$1 34@mTR-ät I (15) (1) (2) (16) Gil-q-å U-124 ... 124 125 1959 92—45 (17) t.RIRT 3ßRTET •3TdN#.Ttq Comments 1. Removal of Tresspasser in exercise of power under Section 92-A. (ETINT 92 124 2. Unauthorised occupation—Eviction.

3. Removal of unauthorised occupant.

1. Removal of Tresspasser in exercise of power under Section 92-A,—Competent Authority of U.I.T. can cause removal of unauthorised occupant from public land, public street or public amenities of public use, after adopting a just, fair and reasonable procedure. Unauthorised occupant can not insist to be dispossessed by taking recourse to some other law in force for the time being. Adjudication of such dispute is the procedural right, procedural right is not a vested right—Mohammed Yunus vs. urr, Jodhpur & ors., 1999 (3) RLW 1914 (Raj). 1999 (3) RLW 1714 (Raj).

2. Unauthorised occupation—Eviction,—Lease of land granted by UIT to respondent. Respondent inducted the petitioner as sub-tenant. • Lease of respondent terminated by UIT for violating conditions of lease. Notice by UIT to petitioner under Section 92A of 1959 Act to vacate premises. Right of petitioner, if any, stood extinguished with termination of lease in favour of respondent. Act of 1959 being a special law, Petitioner can not claim that he can be evicted only by recourse to the provisions of Rajasthan Public Premises (Eviction of Unauthorised Occupants) Act, 1964. Except that petitioner claims no right to protect his possession, Further, a civil suit in matter was pending before Civil Court in which an injunction had been obtained and the petitioner withdrew his application under Order 39 Rule 2-A CPC. Writ petition was also belated.— Mohd. Y unus vs. Urban Improvement Trust, Jodhpur & Ors., 1999 (3) RLW (Raj) 1633 1999 (1) VVLN (Raj) 523 = 1999 (3) WLC (Raj) 461. 1959 1959 1964 gg 39 U-125 .1999 (3) RLW 1633 (Raj) 1999 (1) WLN 523 (Raj) = 1999 (3) WLC 461 (Raj)

3. Removal of unauthorised occupant.—What the learned Single Judge meant by observing that the appellant-petitioner had abused the process of the Court, is that even if the order dated 04.03.1998, gave a fresh cause of action to the appellant-petitioner, he could have perused the remedy under Order 39 Rule 2-A, CPC on ground that the said order had been passed in violation of the interim injunction passed by the Court on 06.10.1997. The powers of the Civil Court under Order 39 Rule 2-A, CPC, are much wider than Court to punish a contemnor under the provisions of the Contempt of Courts Act, 1971. Under the Code of Civil Procedure, in such a situation, the Civil Court has been empowered to "order the property of a person, guilty of such disobedience or breach, to be attached", and also to "order such person to be detained in a civil prison" and in case of continuous breach or disobedience, to sell the property so attached and compensate the injured party from sale-proceeds. Thus, in such circumstances, appellant-

petitioner ought to have pressed his application- filed under Order 39 Rule 2-A, CPC. On reaching the inescapable conclusion that Competent Authority of the UIT, in exercise of its powers, under Section 92-A of the Act of 1959, can cause removal of trespasser/unauthorised occupant from public land, public street or public amenities of public use, after adopting a just, fair and reasonable procedure. Trespasser/unauthorised occupant cannot insist to be disposed by taking recourse to some other law in force for the time being, for the reason that adjudication of such a dispute is the procedural right to which no one has a vested right. While entertaining the writ petition, the Court should exercise the discretionary/ equity jurisdiction only in furtherance of the cause of justice after weighing the public interest vis-a-vis private interest.—*Mohd. Y. Unus vs. Urban Improvement Trust, Jodhpur & ors.*, 1999 (3) 645 (Raj) - 1999 (3) RLW (Raj) 1714 = 1999 (1) WLN (Raj) 552 = 2000 (1) RLR (Raj) 245 = AIR 1999 (Raj) 334. 04.03.1998 39 06.10.1997 39 1971 a-TGT @ I it, 39 2-Q5 1959. a 92-@5 -b 1959 92—m dāT 1999 (3) WLC 645 (Raj) - 1999 (3) RLW 1714 (Raj) = 1999 (1) WLN 552 (Raj) 2000 (1) RLR 245 (Raj) = AIR 1999 Raj 334. Chapter XII Supplemental Provisions Section 93. Trustees etc. deemed to be public servants.—Every Trustee and every officer and servant of the Trust shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code. 12 Y TOVFf 93. \$1 21 Comments Satisfaction of two sections.—Satisfaction of two conditions. Accused Chairman of UIT is a public servant and acted in discharge of duty. Held, cognizance of offence cannot be taken without previous sanction of State Government.—*Mansingh Deora vs. Daulat Rathi & Ors.*, 1984 WLN 559 (Raj) 1984 RLW 661 (Raj). -\$1 - O 31k 1984 WLN 559 (Raj) 1984 RLW 661 (Raj). [Section 93*A. Liability of Trustees and officers and servant of the Trust.— Every Trustee, officer, or servant of the Trust shall be liable for the mis-application of any money or other property owned by or vested in or placed at the disposal of the Trust to which he has been a party or for any loss or waste of such money or property which has been caused or facilitated by his misconduct. The Chairman, secretary or other officer or person to whom executive powers are conferred by or under this Act shall be liable for such loss, waste or mis-application, if it is a direct consequence of his neglect or has been caused or facilitated by his misconduct.] -ur a-TRI Inserted Section 93-A by Section 10 of Rajasthan Act No. 3 of 1963, published in the Rajasthan Gazette, Extraordinary, Part IV-A, dated 29.03.1963. 96 U-127 Section 94. Contribution by Trust towards leave allowance and pensions of Government servants.—The Trust shall be liable to pay 'such contributions for the leave allowance and pension of every Government servant employed as an officer or servant of the Trust as may be required, by the conditions of his service under the Government, to be paid by him or on his behalf. 94. gÉT Section 95. Authority otherwise expressly provided, no Court shall take cognizance of any offence punishable under this Act, except on the complaint of or upon information received from the Trust or some person authorised by the Trust by general or special order in this behalf. 95. fö-ÉT [Section 95-A. Cognizance of Court other than that of a Magistrate of the first class shall try any offence against this Act.] 2[Section 96. Power of the Trust as to legal proceedings— (a) institute, defend or withdraw from any legal proceeding; (b) compound any offence against this Act; (c) admit, compromise or withdraw any claim made in any legal proceeding or otherwise; and obtain such legal advice as may from time to time be considered necessary or expedient, for any of the purposes under this Act or for securing the lawful exercise or discharge of any power or duty vested in or imposed upon the Trust or any officer or servant of the Trust. Inserted Section 95-A by Section 11 of Rajasthan Act No. 3 of 1963, published in the Rajasthan Gazette, Extraordinary, Part IV-A, dated 29.03.1963. Substituted by Section 14 of Rajasthan Act No. 26 of 1976—published in the Rajasthan Gazette, Extraordinary, Part IV-A, dated 17.04.1976. (w.e.f. 28.02.1976), prior to Amendment it was as follows:—"96. Powers to Chairman as follows:— (a) institute, defend or withdraw from legal proceedings under this Act, (b) compound any offence against this Act, (c) admit, compromise or withdraw any claim made under this Act. and (d) obtain such legal advice and assistance as he may from time to time think it necessary or expedient to obtain or as he may be desired by the Trust to obtain for any of the purposes referred to in the foregoing clauses of this section or for securing the lawful exercise, or discharge of any power or duty vested in or imposed upon the Trust or any officer or servant of the Trust. " U-128 1959 UNT 96 (2) The Trust may delegate to any of its committees the power conferred on it under Sub-section (1) to be exercised by such committee subject to such conditions and restrictions as may be prescribed.] 96. (El) ZIT Section 97. Indemnity to Trustees etc.— No suit, prosecution or other legal proceeding shall be maintainable against the Trust or any Trustee, or

any officer or servant of the Trust, or any person acting under the direction of the Trust or the Chairman, or any officer or servant of the Trust in respect of anything lawfully and in good faith and with due care and attention done under this Act. 97. qr«, Section 98. Notice of suit against Trust etc.—(1) No suit shall be instituted against the Trust or any Trustee, or any person associated with the Trust under Section 19 or any member of a Committee appointed under Section 2() or any officer or servant of the Trust, or any person acting under the direction of the Trust, or of the Chairman or of any officer or servant of the Trust in respect of an act purporting to be done under this Act, until the expiration of two months next after notice in writing has been in the case of a Trust, left at its office and, in any other case, delivered to or left at the office or place, of the abode of the person to be sued, explicitly stating the cause of action, the nature of the relief sought, the amount of compensation claimed and the name and place of abode of the intending plaintiff, and the plaint shall contain a statement that such notice has been so delivered or left. (2) If the Trust or other person referred in Sub-section (1) shall, before the action is commenced have tendered sufficient amends to the plaintiff, the plaintiff shall not recover any sum in excess of the amount so tendered and shall also pay all costs incurred by the defendant after such tender. (3) No action such as is described, in Sub-section (1) shall, unless it is an action for the recovery of immovable property or of a declaration of title thereon, be commenced otherwise than within six months next after the accrual of the cause of action therefor. (4) Nothing in Sub-section (1) shall be construed to apply to a suit wherein the only relief claimed is an injunction of which the object would be defeated by the giving of the notice of the postponement of the commencement of the suit or proceeding. 99 98. 19 20 3Fzr q.ft *VIT I 3-F-T I Comments 0-129 —The purpose of notice is to inform the Government and the concerned public authority about the case of the plaintiff, his cause of action and the relief which he wants to claim. All these things find incorporated in the notice. Therefore, the Court do not agree with the findings of the trial Court that the plaintiff cannot rely upon the notice or that it was not a valid notice.—Man Mohan Dayal vs. state of Rajasthan, 1989(2) RLR 755 (Raj) = 1989(2) WLN 646 (Raj) 1989 (2) RLR 755 (Raj) = 1989 (2) WLN 646 (Raj). Section 99. Mode of proof of Trust records.—A copy of any receipt, application, plan, notice, order, entry in a register or other document in the possession of the Trust shall, if duly certified by the legal keeper thereof or, the Secretary of the Trust or any person authorised by the Trust in this behalf be received as prima facie evidence of the entry or document and shall be admitted as evidence of the matters and transaction therein recorded in every case where, and to the same extent as, the original entry or document would, if produced, have been admissible prove such matter. 99. U.130 1959 99 --«--Et-t-Å.--GT -a-a-r. Section 100. Restriction on the summoning of Trust servants to produce documents.—No trustee or officer or servant of the Trust shall in any legal proceeding to which the Trust is not a party be required to produce any register or document the contents of which can be proved under the preceding section by a certified copy, or to appear as a witness to prove the matters and transaction recorded therein unless by order of the Court made for special cause

100. GINT qr Section 101. Validation of acts and proceedings.—(1) No act done or proceeding taken under this Act shall be questioned on the ground merely of— (a) the existence of any vacancy in, Or any defect in the constitution of, the Trust or any committee; or (b) any person having ceased to be a trustee; or (c) any trustee, or any person associated with the Trust under Section 19 or any other member of a committee appointed under this Act having voted or taken part in any proceeding in contravention of Section 23; or (d) the failure to serve a notice on any person, where no substantial injustice has resulted from such failure, or (e) any omission, defect or irregularity not affecting the merits of the case. (2) Every meeting of the Trust shall be taken to have been duly convened and to be free from all defect and irregularity. 101. fö m--q•fi -a-r -\$1 _fö-QT (V) -q-g-h, CT) 19 23 g.) aft I Section 102. Power of entry.—(1) The Chairman or any other person who may be authorised in that behalf by the State Government may, with or without assistants or workmen, enter into or upon any land in order.— 102 (a) to make any inspection, survey, measurement, valuation or inquiry, (b) to take levels, (c) to dig or bore into the sub-soil, (d) to set out boundaries and intended lines of work, (e) to mark such levels; boundaries and lines by marks and cutting trenches, or (f) to do any other thing. Whenever it is necessary to do so for any of the purposes of this Act or any rule made or scheme sanctioned thereunder or any scheme which the Trust intends to frame thereunder: Provided as follows— (a) except when it is otherwise specially provided by rule, on such entry shall be made between sunset and sunrise; (b) except when it is otherwise specially provided by rule, no building which is used as a human dwelling shall be so entered, unless with the

consent of the occupier thereof, without giving the said occupier at least twenty-four hours previous written notice of the intention to make such entry; (c) SUFFICIENT notices shall, in every instance be given, even when any premises may otherwise be entered without notice, to enable the inmates of any apartment appropriated, to females to remove to some part of the premises where their privacy need not be disturbed; (d) due regard shall always be had, so far as may be compatible with the exigencies of the purpose for which the entry is made to the social and religious, usages of the occupants of the premises entered. (2) Whenever the Chairman enters into or upon any land in pursuance of Sub-section (1) he shall at the time of such entry pay or tender payment for all necessary damages to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the Trust whose decision shall be final. (3) It shall be lawful for any person authorised under Sub-section (1) to make an entry for the purpose of inspection or search to open or cause to be opened a door, gate or other barrier.— (a) if he considers the opening thereof necessary for the purpose of such entry, inspection or search, and (b) if the owner or occupier is absent or, being present, refuses to open such door, gate or barrier. 102. fig - \$ fā-g, 1959 ETINT 102 a-n-a-!RT -a-a 24 -\$T (71) a. *7TT, (3) (1) Ng 3.F4 -ā qq-r -Tq Section 103. General power of Trust to pay compensation.—In any case not otherwise expressly provided for in this Act, the Trust may pay reasonable compensation to any person who sustains damage by reason of the exercise of any of the powers vested under this Act in the Trustor the Chairman or any officer or servant of the Trust

103. Section 104. Compensation to be paid by offenders for damage caused by If, on account of any act or omission, any person has been convicted of an offence under this Act, and by reason of such act or omission, damage has occurred to any property of the Trust, compensation shall be paid by the said person for the said damage notwithstanding any punishment to which he may, been sentenced for' Mthe said offence. 105 U-133 (2) In the event of dispute, the amount of compensation payable by the said person shall be determined by the Magistrate before whom he was convicted of the said offence. (3) If the amount of any compensation due under this section be not paid, the same shall be recovered under a warrant from the said Magistrate as if it were a fine inflicted by him on the person liable therefor

104. GIRT (2) -\$1 GIRT Section.IOS. Ultimate dissolution of Trust and Transfer of its assets and liabilities to the Municipal Board.—(1) When all schemes sanctioned under this Act have been executed or have been so far executed as to render the continued existence of the Trust, in the opinion of the State Government, unnecessary, the State Government may by notification declare that the Trust shall be dissolved from such date as may be specified in this behalf in such notification and the Trust shall be deemed to be dissolved accordingly. (2) From the said date (a) all properties, funds and dues which are vested in or realisable by the Trust shall vest in and be realisable by the Municipal Board; (b) all liabilities which are enforceable against the Trust shall be enforceable against the Municipal Board; (c) for the purpose of completing the of any scheme sanctioned under this Act, which has not been fully executed by the Trust, and _ of realising properties, funds and dues referred to in Clause (a) the function of the Trust under this Act shall be discharged by the Municipal Board as if it were the Trust under this Act; and (d) the Municipal Board shall keep separate accounts of all moneys respectively received and expended by it under this Act, until all loans raised hereunder have been repaid and until all other liabilities to in Clause (b) have been duly met. 105. 3F<: U-134 1959 105 zrr fig, -t -aft (El) ..3T@fi-qq Comments Municipal Board has to discharge all functions of UIT on abolition of Urban Improvement Trust.—Bishambhar Dayal & Ors. vs. State of Rajasthan, 1991 (1) WLC 686. 31k 1991 (1) WLC 686. Section 106. Repeal, and Saving—I The Alwar State Town and Village Improvement Act, 1947, the City of Kota Improvement Act, 1946 and all other corresponding laws or rules, in force in any part of the State shall stand repealed in any area for which a Trust is constituted under this Act or for which a master plan is ordered to be prepared thereunder on and from the date on which such Trust is constituted or such order is made: Provided that such repeal shall not in any way affect anything done or action taken under the Act, law or rule so repealed, previously to such coming into force. As from the date of the establishment of an Improvement Trust under this Act for area within the State, hereinafter referred to as such establishment—the former Trust, if any, functioning in that area shall stand dissolved; (b)' all lands and buildings (together with all interests of whatsoever nature and kind therein) situated in such area and vested or vesting in such former Trust immediately before such establishment shall pass on to and vest in the Trust so established; (c) all stores, articles and other movable properties belonging to such former Trust immediately before such

establishment and utilised for or in connection' with such area shall pass on to and vest in the Trust so established; Renumbered and be deemed to have been renumbered from 30.12.1961 by Section 4(a) of Rajasthan Act No. 6 of 1992, published in the Rajasthan Gazette, Extraordinary, Part IV-A, dated 21.04.1962. - Inserted and be deemed LO have been inserted from 30.12.1961 by Section 106 U-135 (d) all appointments, notifications, orders, schemes, rules forms, notices or byelaws made or issued or any licence or permission granted by such former Trust immediately before such establishment in or in connection with such area shall in so far as they are not -inconsistent with the provisions of this Act, continue in force and •be deemed to have been made, issued or granted under the provisions of this Act unless and until they are superseded any appointment, notification, order, scheme, rule, form, notice or bye-law made-or issued or any licence or permission granted under the said provisions; (e) notwithstanding anything contained in this Act, the validity of any declaration, application,• publication notification, appointment, order proposal, award., proceeding, consultation, inquiry, certification, sanction, agreement, notice,- approval, decision, dispute, .draft or final scheme or held issued, entered into, given, taken, decided, drawn up or done, or purporting to have been made, held, issued entered into given, taken, decided, drawn up or done,; as the case may be, before such establishment in connection with such schemes shall not be liable to be called in question in any Court or before any Tribunal or authority: (f) all debts, obligations and liabilities, incurred all contractS entered into and all matters and things engaged to be done by, with or. for the former Trust immediately before such establishment for or in connection with such area shall be deemed to have been incurred, entered into and engaged to be done by, with or for the Trust so established: (g) all assessments, valuations, measurements or divisions made by the former Trust immediately before such establishment in or in connection with such area shall, in so far as they are not inconsistent with the provisions of this Act, continue in force and be deemed to have been made under the provisions of. this Act unless and until they are superseded by any assessment, valuation, measurement or division made by the Trust so established under the said provisions; (h) all rates, taxes, fees, rents and other sums of money due to the former Trust in, or in. relation to, such area immediately before such establishment shall be deemed to be due to the Trust so established; (i) all rates, fees, rents and other charges leviable in, or in relation to such area, shall unless and until they are varied by the Trust so established, continue to be levied at the same rate at which they were being levied' by the former Trust immediately before such establishment; (j) all suits, prosecutions and other legal proceedings instituted or which might have been instituted by or against such former Trust immediately before such establishment for any matter in relation to such area may be continued or instituted by or against the Trust so established; and (k) every officer or other employee. serving under such former Trust immediately before such establishment in connection with such area shall be required to give an option to become an officer or employee of the Trust so established, with such designation as the Chairman may determine and hold office by the same tenure and at the same remuneration and on the same terms and conditions of service as he would have held the same if the Trust had not been established, and shall continue to do so unless and until such tenure, remuneration and terms and conditions are duly altered by the Trust so established: 1959 ETINT 106 Provided that the tenure, remuneration and terms and conditions of service of any such officer or other employee shall not be altered to his disadvantage.] 106. 1947, 1946 AT t, q-q -Q g-qq-* a-ft fä-ü i3f13T, fr5AT GIFT, q-TUT GTZIT zfr \$1 fäg