Shrirampur Municipal ... vs Satyabhambai Bhimaji Dawkher & Ors on 1 April, 2013

Equivalent citations: AIR 2013 SUPREME COURT 3757

Author: G. S. Singhvi

Bench: Ranjana Prakash Desai, H.L. Gokhale, G.S. Singhvi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2733 OF 2013
(Arising out of SLP(C) No. 9934 of 2009)

Shrirampur Municipal Council, Shrirampur …Appellant

Versus

Satyabhamabai Bhimaji Dawkher and others …Respondents

WITH

CIVIL APPEAL NO.2735 OF 2013
(Arising out of SLP(C) NO. 8756 of 2009)

CIVIL APPEAL NO.2736 OF 2013
(Arising out of SLP(C) NO. 9617 of 2009)

CIVIL APPEAL NO.2739 OF 2013
(Arising out of SLP(C) NO. 13280 of 2009)

CIVIL APPEAL NO.2741 OF 2013
(Arising out of SLP(C) NO. 34943 of 2012)

CIVIL APPEAL NO.2742 OF 2013
(Arising out of SLP(C) NO. 36117 of 2012)

CIVIL APPEAL NO. 2747 OF 2013
(Arising out of SLP(C) NO. 36213 of 2012)

CIVIL APPEAL NO.2748 OF 2013
(Arising out of SLP(C) NO. 25742 of 2012)

CIVIL APPEAL NO.2749 OF 2013
(Arising out of SLP(C) NO. 26103 of 2012)

CIVIL APPEAL NO.2750 OF 2013
(Arising out of SLP(C)13014 CC NO. 17030 of 2012)

J U D G M E N T

G. S. Singhvi, J.

1. Leave granted.

2. The question which arises for consideration in these appeals is whether reservation of the parcels of land owned by the respondents in the Regional plans/Development plans prepared under the Maharashtra Regional and Town Planning Act, 1966 (for short, 'the 1966 Act') will be deemed to have lapsed because the same were not acquired or no steps were commenced in that respect within six months of the service of notice under Section 127 of that Act.

3. For the sake of convenience, we shall first notice the facts from the record of the appeal arising out of SLP(C) No. 9934/2009.

3.1 Respondent Nos. 1 to 5 are the owners in possession of the land comprised in Gat Nos. 44/1/2 and 44/1/4, CTS No. 2141 measuring about 2 hectares and 40 ares situated at Shrirampur Taluka, Shrirampur (Maharashtra).

3.2 In the Development plan prepared for Shrirampur under the 1966 Act, which was sanctioned by Director of Town Planning, Maharashtra vide order dated 9.8.1991 and enforced with effect from 31.10.1991, the land of respondent Nos. 1 to 5 was shown as reserved for primary school and playground. However, the same was not acquired in accordance with the provisions of Section 126 of the 1966 Act read with the Land Acquisition Act, 1894 (for short, 'the 1894 Act').

3.3 After eleven and a half years of the reservation of their land, respondent Nos. 1 to 5 issued purchase notice dated 29.5.2003 under Section 127 of the 1966 Act, which was duly served upon the Chief Officer of the appellant – Shrirampur Municipal Council, Shrirampur. The relevant portions of the notice are extracted below:

> "PURCHASE NOTICE UNDER SECTION 127 Date:- 29.5.2003 To, Hon. Chief Officer, Nagar Parishad, Shrirampur, Dist. Ahmednagar Reference:-Development Plan (R) Shrirampur approved Subject:- Purchase Notice Under Section 127 of Maharashtra Regional and Town Planning Act, 1966.

We, the undersigned 1] Shrimati Satyabhamabai Bhimaji Dawkhar, Age - 70, Occupation

- Farming, House work,

2) Alka Shivaji Dawkher, age 47 years, Occupation - household 86 Agril

3) Sudhil Shivaji Dawkher, age 28 years, Occupation : Agril

4) Vijay Shivaji Dawkher, age 26 years, Occupation : Agril

5) Rushikesh Shivaji Dawkher, age 24 years, Occupation: Agril All R/o Mahadeo Mala, Shrirampur, Ward No. 7, Dist. Ahmednagar.

Hereby give notice under Section 127 of the above stated Act that, the land located within the city limits of Shrirampur out of Gat No.44 admeasuring approx. 2.5 Hectare is owned by me and it has been reserved as Reservation No.40 in Town Planning Scheme No.4. This reservation has been reserved approx. 1 Acre for play ground. The sanctioned Development Plan (R) Shrirampur of Shrirampur City has been granted final sanction by the Director, Town Planning (State) Pune vide their notification no. D. P. Shrirampur (Part) R/TPV 4-2837 Dated 31/12/91 and although more than 10 years duration has passed after getting the final sanction to the Development Plan the Nagar Parishad has taken no action to acquire the said land.

Through this notice you are being notified that, in case of your failure to take suitable action to acquire the said land within 6 months of the receipt of the said notice the land under reservation in Gat no. 44 shall become free from reservation. Please take note. The said notice is being issued in this behalf." 3.4 The notice issued by respondent Nos.1 to 5 was considered in the meeting of the General Body of the appellant held on 30.8.2003 and the following resolution was passed:

"It is seen from the note submitted on the above subject that the land bearing Gat No. 44, CTS No.2141 (part) within the Municipal Limit is owned by Smt. Satyabhamabai Davkhar, out of which 4815 sq.mtr. of area is reserved for Play Ground, vide reservation No.40 and for Primary School & Play Ground, vide reservation No.41. Since the Municipal Council has not acquired the land under said reservations after 10 years of sanction of Development Plan, the land owner Smt. Davkhar has served the purchase notice under section 127 of Maharastra Regional and Town Planning Act, 1966.

The above referred lands are included in Town Planning Scheme No.IV. But the above reservations are not included in Draft sanctioned Town Planning Scheme No. IV. And hence the notice served by the owner is tenable and also if the land acquisition proposal is not submitted to the Collector within the period of Six months from the date of issue of notice the land will be released from reservations.

> Therefore, by passing this Resolution the sanction is given to initiate the land acquisition process for the above two reserved sites. And accordingly the proposal should be submitted immediately to the Collector, Ahmednagar. The expenses that would be required for the land acquisition and to take possession and the allied expenses are also hereby allowed." 3.5 In furtherance of the aforesaid resolution, the President of the appellant sent communication dated 24.12.2003 to Collector, Ahmednagar and requested him to take action for the acquisition of land comprised in Gat No. 44, CTS No. 2141 (part). The Collector sought clarification on some issues. The appellant did the needful vide letter dated 9.2.2004.

Thereafter, land was got measured through City Survey Officer and proposal dated 25.1.2007 was submitted to the Collector for its acquisition. The Collector passed order dated 17.4.2007 under Section 52-A of the 1894 Act and authorized Sub-Divisional Officer, Shrirampur to take the necessary steps.

3.6 In the meanwhile, respondent Nos. 1 to 5 filed Writ Petition No. 4774/2006 for grant of a declaration that the reservation of their land stood lapsed in November, 2003 because the same had not been acquired within six months of the service of notice under Section 127 of the 1966 Act. In support of their plea, respondent Nos. 1 to 5 relied upon the judgment of this Court in Girnar Traders v. State of Maharashtra and others (2007) 7 SCC 555 (hereinafter referred to as 'Girnar Traders II') and of the Division Bench of the Bombay High Court in Shivram Kondaji Sathe and others v. State of Maharashtra and others 2009 (2) ALL MR 347.

3.7 The appellant contested the writ petition and pleaded that in terms of resolution dated 30.8.2003, a proposal had been sent to the Collector for the acquisition of land belonging to respondent Nos. 1 to 5 and vide order dated 17.4.2007, the latter authorised the Sub-Divisional Officer to do the needful.

3.8 The Division Bench of the High Court relied upon the judgments in Shivram Kondaji Sathe and others v. State of Maharashtra and others (supra) and Satyabhamabai v. State of Maharashtra and others (2008) 1 ALL MR 399 as also the judgment of this Court in Girnar Traders (II) and held that reservation of the land in question will be deemed to have lapsed because no steps were taken for acquisition thereof within six months of the receipt of purchase notice. The High Court also directed the appellant to de-reserve the land so as to enable the respondents to develop the same.

4. We may now briefly notice the facts from the other appeals.

Appeal arising out of SLP(C)No.8756/2009 4.1 Respondent Nos. 1 to 4 are the owners in possession of land comprised in Gat No.92 (part) admeasuring 45,983 square meters situated at Shirasgaon within the municipal boundary of the appellant. In the Development plan, 6,360 square meters land belonging to respondent Nos.1 to 4 was shown as reserved for playground. They issued purchase notice dated 20.6.2002 under Section 127 of the 1966 Act. Thereafter, the General Body of the appellant passed resolution dated 3.8.2002 for sending a proposal to the District Collector for initiation of the acquisition proceedings. After six months, the appellant sent detailed proposal

dated 6.12.2002 to the District Collector for acquiring the land, but no concrete step was taken in that regard.

4.2 Writ Petition No. 3626/2006 was filed by respondent Nos. 1 to 4 for de-reservation of their land on the ground that the same had not been acquired within ten years of enforcement of the Development plan and expiry of six months counted from the date of receipt of purchase notice. The Division Bench of the High Court referred to the judgment of this Court in Girnar Traders (II) and allowed the writ petition by making the following observations:

> "In face of clear dictum of the Supreme Court we have no hesitation in rejecting the contention raised on behalf of Respondents that they started acquisition proceedings after receipt of purchase notice under Section 127 of the said Act within time. In fact when the present Writ Petition came up for admission after long period from the date of filing, counsel appearing on behalf of Respondents informed that till this date acquisition proposal is pending with the Collector. To that effect we can safely rely on letter dated 21/7/2006 from -Respondent No.5 to Respondent No.2 forwarding some documents for the purpose of starting acquisition proceedings in respect of Petitioners' plot of land. Said letter is at page 36 in the present Petition. Even though Respondent No.5 filed their affidavit in reply dated 21/11 /2006 nowhere they stated that they complied the notice under Section 127 of the said Act issued by the Petitioners. Therefore, it is crystal clear that the Respondents failed to acquire the Petitioners' property in question within particular time as per MRTP Act." Appeal arising out of SLP(C)No.9617/2009

5. The facts of this appeal are identical to the appeal arising out of SLP(C) No.9934/2009. The only difference is that this appeal pertains to the land comprised in Gat No.44/2 admeasuring 5,536 square meters.

Appeal arising out of SLP(C)No.13280/2009

6. Delay condoned.

6.1 In the Development plan for Greater Mumbai, which was sanctioned on 23.12.1991, land comprised in CS 231 and 1/231, Byculla Division, Maulana Azad Road, E-Ward, Mumbai admeasuring 2,526.78 square meters was shown as reserved for recreation ground.

6.2 Respondent No.1 Prabhat (Stove and Lamp) Products Company Pvt. Ltd., which owns the land, issued purchase notice dated 7.12.2005 to the Planning Authority, i.e., Municipal Corporation of Greater Mumbai (MCGM) under Section 127 of the 1966 Act. There is some dispute about receipt of the notice by the competent authority but it is an admitted position that vide letter dated 15.12.2005, the Municipal Commissioner of MCGM asked the Improvement Committee to initiate the acquisition proceedings. On 3.6.2006, the Planning Authority submitted a proposal to the State Government for taking action in accordance with Section 126(1)(c) of the 1966 Act. The State Government issued notification dated 19.1.2007 under Section 126(2) and (4) of the 1966 Act read

with Section 6 of the 1894 Act.

6.3 Writ Petition No. 2303/2007 filed by respondent Nos. 1 and 2 for quashing Notification dated 19.1.2007 was allowed by the High Court by relying upon the judgment of this Court in Girnar Traders (II).

Appeal arising out of SLP(C)No.34943/2012 7.1 In the Development plan sanctioned for Pune Municipal Corporation, which was notified on 5.1.1997, Plot No. 59, Gat No.17 situated at Kondhwa Khurd, Pune admeasuring 4,400 square meters was shown as reserved for construction of children's park.

7.2 Respondent – Sahyadri Land Development Corporation, which owned the land, issued purchase notice dated 17.6.2010 under Section 127 of the 1966 Act, but the Planning Authority did not take steps for the acquisition of land. Writ Petition No. 4457/2011 filed by the respondent was allowed by the High Court by relying upon the judgment of this Court in Girnar Traders (II) and the respondent was allowed to develop the land.

Appeal arising out of SLP(C)No.36117/2012 8.1 In the Development plan sanctioned for Pune Municipal Corporation, plot bearing CTS No.1135 (old 54) owned by respondent Nos.1 and 2 situated at Sadashiv Peth was shown as reserved for children's playground. After three years, the Commissioner inspected the site and opined that the same was not suitable for the purpose for which it was shown as reserved. Thereupon, the Corporation passed resolution dated 19.4.1990 for de- reservation of the plot. The State Government sanctioned the de-reservation in September, 1992 and directed the Commissioner of the Corporation to take necessary action under Section 37 of the 1966 Act. The latter issued notice dated 18.5.1995 and invited objections against the proposed de-reservation of the plot and its inclusion in the residential zone. However, no final decision was taken in the matter in view of circular dated 21.12.1995 issued by the State Government.

8.2 After 14 years, the Standing Committee of the Corporation, in its meeting held on 2.6.2009, decided to take steps for the acquisition of land belonging to respondent Nos. 1 and 2. This decision was approved by the General Body of the Corporation vide resolution dated 23.7.2009. In compliance of that resolution, Deputy Chief Engineer of the Corporation sent letter dated 10.8.2009 to the Special Land Acquisition Officer to sanction initiation of the acquisition proceedings. On 20.5.2010, respondent Nos. 1 and 2 issued purchase notice under Section 127 of the 1966 Act. Thereafter, they filed Writ Petition No.9895/2011 for grant of a declaration that reservation of their plot has lapsed because the same was not acquired within six months of the receipt of purchase notice. The Division Bench of the High Court allowed the writ petition and declared that reservation of land belonging to respondent Nos. 1 and 2 will be deemed to have lapsed because steps were not taken for acquisition thereof.

Appeal arising out of SLP(C)No.36213/2012

9. The facts of this appeal are substantially similar to that of the appeal arising out of SLP (C) No. 36117/2012 except that the plot owned by respondent Nos.1 to 5 is CST No.1134, Sadashiv Peth,

Pune admeasuring 567.72 square meters whereas the plot which is subject matter of the other SLP is CST No.1135, Sadashiv Peth, Pune. The reservation of CST No.1134 was for children's playground. The High Court allowed Writ Petition No.9895/2011 filed by respondent Nos.1 to 5 on the ground that the land had not been acquired within six months of the receipt of purchase notice issued under Section 127 of the 1966 Act.

Appeal arising out of SLP(C)No.25742/2012

10. In the Development plan of Shrirampur (part) (revised), land bearing Gat No.108 (74 Are) belonging to respondent No.1 was shown as reserved for garden and he was given alternative plot in Gat No.92 (part). However, that Gat was also reserved for playground/stadium. After nine years, the State Government in exercise of the power vested in it under Section 86 (1) of the 1966 Act sanctioned the Town Planning Scheme. Respondent No.1 issued notice dated 5.1.2002 under Section 127 of the 1966 Act. The same was received in the office of the appellant on 8.1.2002. The General Body of the appellant passed resolution dated 2.5.2002 whereby approval was accorded to the acquisition of land comprised in Gat No.92 (part). Accordingly, letter dated 28.6.2002 was sent to District Collector, Ahmednagar for initiation of the acquisition proceedings. Writ Petition No.3399/2007 filed by respondent No.1 for grant of a declaration that reservation of his plot had lapsed on account of the Planning Authority's failure to take steps for the acquisition of land within six months of the receipt of purchase notice was allowed by the Division Bench of the High Court vide order dated 27.7.2012.

Appeal arising out of SLP(C)No.26103/2012

11. In the Development plan of Shrirampur, Gat Nos. 91 and 92 (part) belonging to respondent Nos.1 to 4 were shown as reserved for vegetable market and shopping centre and also for library and cultural centre. The Town Planning Scheme was sanctioned by the State Government on 22.9.1999. Some of the owners issued purchase notice dated 2.8.2002. Thereupon, the General Body of the appellant passed resolution dated 14.10.2002 for commencement of the acquisition proceedings. On 27.1.2003, the appellant sent requisition to the District Collector for the acquisition of land owned by respondent Nos.1 to 4. Writ Petition No.1314/2012 filed by them was allowed by the Division Bench of the High Court on 26.7.2012 and it was declared that the reservation of their land had lapsed because of the Planning Authority's failure to acquire the land within six months of the receipt of purchase notice.

Appeal arising out of SLP(C).....CC No.17030/2012

12. Delay condoned.

12.1 The factual matrix of the case is similar to the appeal arising out of SLP (C) No.26103/2012. Respondent Nos.1 and 2 issued purchase notice, which was received by the competent authority sometime in December, 2007. In the next six months no steps were taken for the acquisition of land. Therefore, by applying the ratio of Girnar Traders (II), the High Court declared that the reservation of the land belonging to respondent Nos.1 and 2 has lapsed.

Arguments

13. Shri Shekhar Naphade, learned senior counsel appearing for some of the appellants, argued that the majority judgment in Girnar Traders (II) deserves to be considered by a larger Bench because the same is contrary to the plain language of Section 127 of the 1966 Act and the earlier judgment in Municipal Corporation of Greater Bombay v. Dr. Hakimwadi Tenants' Association 1988 (Supp) SCC 55. Learned senior counsel then referred to the order reported as Poona Timber Merchants and Saw Mill Owners Association v. State of Maharashtra and others 2008 (4) SCALE 737 and other orders by which directions were given for hearing of some of the special leave petitions along with Civil Appeal No.3703/2003 and Civil Appeal No. 3922/2007 and argued that in view of the judgment of the Constitution Bench in Girnar Traders v. State of Maharashtra (2011) 3 SCC 1 (hereinafter referred to as 'Girnar Traders (III)'), the question arising in these appeals should be referred to a Constitution Bench. Shri Naphade further argued that the reservation of the respondents' land cannot be treated to have lapsed on the expiry of six months from the date of receipt of purchase notices because in the meanwhile, the appellants had passed resolutions and sent communications to the District Collector to commence the acquisition proceedings and this amounted to taking of steps within the meaning of Section 127 read with Section 126(1)(c) of the 1966 Act. Learned senior counsel submitted that the expression "no steps as aforesaid are commenced" appearing in Section 127 must take their colour from Clause

(c) of Section 126(1) and, therefore, making of an application by the Planning Authority or sending of a communication to the District Magistrate to start the acquisition proceedings must be treated as sufficient to avert the consequence envisaged under Section 127 of the 1966 Act. Shri Naphade relied upon the Constitution Bench judgment in Girnar Traders (III) and argued that in view of the proposition laid down therein that Section 11A of the 1894 Act, which provides that the acquisition proceedings will lapse if the award is not passed within two years from the date of publication of the declaration made under Section 6(1) of that Act, is not applicable to the scheme of the 1966 Act, the period of six months specified in Section 127 of that Act cannot be treated as sacrosanct and there cannot be deemed lapsing of the reservation merely because the State Government and/or its delegate fails to initiate proceedings for the acquisition of land covered by the Regional plan/Development plan. Other learned counsel adopted the arguments of Shri Naphade.

14. Learned counsel for the private respondents supported the impugned orders and argued that the majority view in Girnar Traders (II) cannot be ignored on the ground that it is inconsistent with the earlier judgment in Dr. Hakimwadi Tenants' Association (supra) because that judgment had been considered and explained in the subsequent judgment.

Relevant Provisions

15. Section 2 of the 1966 Act contains definitions of various terms including 'Development Authority', 'Development plan', 'local authority', and 'Planning Authority'. Section 21(1) imposes a duty on every Planning Authority to carry out a survey, prepare an existing land-use map and a draft Development plan for the area within its jurisdiction in accordance with the provisions of a Regional plan, where there is such a plan and submit the same to the State Government for sanction. Section

21(2) lays down that every Planning Authority constituted after the commencement of the Act shall prepare a draft Development plan within a maximum period of three years. Section 21(4) provides that if the Planning Authority fails to perform its duty in accordance with Section 21(1) or (2), an officer appointed by the State Government shall do the needful and recover the cost thereof from the funds of the Planning Authority. Section 22 enumerates the contents of a Development plan. Clauses (b) and (c) of that section read as under:

> "22. Contents of Development Plan.- A Development plan shall generally indicate the manner in which the use of land in the area of the Planning Authority shall be regulated, and also indicate the manner in which the development of land therein shall be carried out. In particular, it shall provide so far as may be necessary for all or any of the following matters, that is to say,-
>
> (b) proposals for designation of land for public purpose, such as schools, colleges and other educational institutions, medical and public health institutions, markets, social welfare and cultural institutions, theatres and places for public entertainment, or public assembly, museums, art galleries, religious buildings and government and other public buildings as may from time to time be approved by the State Government;
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> (c) proposals for designation of areas for open spaces, playgrounds, stadia, zoological gardens, green belts, nature reserves, sanctuaries and dairies;" Sections 23 to 31 lay down the procedure to be followed in the preparation and sanction of Development plans. Section 25 prescribes the outer limit of six months, counted from the date of the declaration of intention of a Planning Authority to prepare a Development plan for the purpose of carrying out a survey of the lands within its jurisdiction and preparation of an existing land-use map. Section 26 prescribes an outer limit of two years from the date of publication of notice under Section 23 for preparation of a draft Development plan and publication of notice in the Official Gazette. In either case, the State Government can extend the time prescribed by the statute subject to the condition that the time specified in Section 26 cannot be extended for more than six months in aggregate.

Section 28(4) (un-amended) contained a limitation of three months within which the Planning Committee was required to consider the report of the Planning Authority or the concerned officer including the objections and suggestions received by it or him. In terms of Section 30, the Planning Authority is required to submit the draft Development plan to the State Government within a period of twelve months. Section 31 (un-amended) laid down an outer limit of one year for sanction or return of the draft Development plan. Proviso to Section 31(1) empowered the State Government to extend the period for sanction of the draft Development plan or refusal thereof. Section 31(5) lays down that if a Development plan contains any proposal for the designation of any land for a purpose specified in Clauses

(b) and (c) of Section 22 and if such land does not vest in the Planning Authority, the State Government shall not include that land in the Development plan, unless it is satisfied that the Planning Authority will be able to acquire the same by private agreement or compulsory acquisition within a period of 10 years from the date on which the Development plan comes into operation. Section 32 postulates preparation of interim Development plan and Section 33 provides for plan or plans showing proposals for development of any area or areas. Section 34 postulates preparation of a Development plan for additional area. Section 35 contains a fiction and provides that a Development plan duly sanctioned by the State Government before the commencement of the 1966 Act shall be deemed to be a final Development plan. Section 37 contains the procedure for modification of the final Development plan. Section 38 lays down that the Development plan should be revised at least once in 20 years. If the State Government so directs, the Development plan can be revised even before the expiry of 20 years. Chapter IV of the 1966 Act (Sections 43 to 58) contains provisions relating to control of development and use of land included in the Development plans. Chapter V (Sections 59 to 112) deals with Town Planning Schemes and Chapter VII (Sections 125 to 129) contains provisions for compulsory acquisition of land needed for a Regional plan, Development plan or Town Planning Scheme.

16. Section 126, which provides for the acquisition of land required or reserved for any of the public purposes specified in any plan or scheme prepared under the 1966 Act and Section 127, which envisages lapsing of reservation in certain contingencies read as under:

> "Section 126. Acquisition of land required for public purposes specified in plans. - (1) When after the publication of a draft Regional Plan, a Development or any other plan or town planning scheme, any land is required or reserved for any of the public purposes specified in any plan or scheme under this Act at any time the Planning Authority, Development Authority, or as the case may be, any Appropriate Authority may, except as otherwise provided in section 113A acquire the land,-
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> (a) by an agreement by paying an amount agreed to, or
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> (b) in lieu of any such amount, by granting the land-owner or the lessee, subject, however, to the lessee paying the lessor or depositing with the Planning Authority, Development Authority or Appropriate Authority, as the case may be, for payment to the lessor, an amount equivalent to the value of the lessor's interest to be determined by any of the said Authorities concerned on the basis of the principles laid down in the Land Acquisition Act, 1894, Floor Space Index (FSI) or Transferable Development Rights (TDR) against the area of land surrendered free of cost and free from all encumbrances, and also further additional Floor Space Index or Transferable Development Rights against the development or construction of the amenity on the surrendered land at his cost, as the Final Development Control Regulations prepared in this behalf provide, or
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> (c) by making an application to the State Government for acquiring such land under the Land Acquisition Act, 1894, and the land (together with the amenity, if any, so

developed or constructed) so acquired by agreement or by grant of Floor Space Index or additional Floor Space Index or Transferable Development Rights under this section or under the Land Acquisition Act, 1894, as the case may be, shall vest in the Planning Authority. Development Authority, or as the case may be, any Appropriate Authority.

(2) On receipt of such application, if the State Government is satisfied that the land specified in the application is needed for the public purpose therein specified, or if the State Government (except in cases falling under section 49 and except as provided in section 113A) itself is of opinion that any land in any such plan is needed for any public purpose, it may make a declaration to that effect in the Official Gazette, in the manner provided in section 6 of the Land Acquisition Act, 1894 (1 of 1894), in respect of the said land. The declaration so published shall, notwithstanding anything contained in the said Act, be deemed to be a declaration duly made under the said section:

Provided that, subject to the provisions of sub-section (4), no such declaration shall be made after the expiry of one year from the date of publication of the draft Regional Plan, Development Plan or any other Plan, or Scheme, as the case may be.

(3) On publication of a declaration under the said section 6, the Collector shall proceed to take order for the acquisition of the land under the said Act; and the provisions of that Act shall apply to the acquisition of the said land, with the modification that the market value of the land shall be,-

(i) where the land is to be acquired for the purposes of a new town, the market value prevailing on the date of publication of the notification constituting or declaring the Development Authority for such town;

(ii) where the land is acquired for the purposes of a Special Planning Authority, the market value prevailing on the date of publication of the notification of the area as an undeveloped area; and

(iii) in any other case the market value on the date of publication of the interim development plan, the draft development plan, or the plan for area or areas for comprehensive development, whichever is earlier, or as the case may be, the date or publication of the draft town planning scheme:

Provided that, nothing in this sub-section shall affect the date for the purposes of determining the market value of land in respect of which proceedings for acquisition commenced before the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972 (Mah. XI of 1973):

> Provided further that, for the purpose of clause (ii) of this sub-section, the market value in respect of land included in any undeveloped area notified under subsection (1) of section 40 prior to the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972 (Mah. XI of 1973), shall be the market value prevailing on the date of such commencement.
>
> (4) Notwithstanding anything contained in the proviso to sub-section (2) and in subsection (3), if a declaration is not made within the period referred to in subsection (2) or having been made, the aforesaid period expired at the commencement of the Maharashtra Regional Town Planning (Amendment) Act, 1993, the State Government may make a fresh declaration for acquiring the land under the Land Acquisition Act, 1894 (I of 1894), in the manner provided by sub-sections (2) and (3) of this section, subject to the modification that the market value of the land shall be the market value at the date of declaration in the Official Gazette made for acquiring the land afresh.

Section 127. Lapsing of reservation – If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional plan, or final Development plan comes into force or if proceedings for the acquisition of such land under this Act or under the Land Acquisition Act, 1894 (1 of 1894), are not commenced within such period, the owner or any person interested in the land may serve notice on the Planning Authority, Development Authority or as the case may be, Appropriate Authority to that effect, and if within six months from the date of service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon, the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan." Analysis of Sections 126 and 127 of the 1966 Act

17. Section 126(1) lays down that when any land is required or reserved for any of the public purposes specified in any plan or scheme, the Planning Authority, Development Authority, or any Appropriate Authority can acquire the same by an agreement by paying an agreed amount, or by granting the landowner or the lessee Floor Space Index or Transferable Development Rights in lieu of the area of land surrendered free of cost and free from all encumbrances and further additional Floor Space Index or Transferable Development Rights against the development or construction of the amenities on the surrendered land at his cost, or by making an application to the State Government for acquiring such land under the 1894 Act. Once the land is acquired by an agreement under Section 126(1)(a) or by grant of Floor Space Index or additional Floor Space Index or Transferable Development Rights under Section 126(1)(b) or under the 1894 Act, the same vests in the Planning Authority, Development Authority or Appropriate Authority, as the case may be. Section 126(2) empowers the State Government to make a declaration under Section 6 of the 1894 Act. Proviso to this sub-section fixes the time limit of one year for making such declaration. Section 126(3) lays down that on publication of a declaration under Section 6 of the 1894 Act, the Collector shall proceed to take order for the acquisition of the land under the 1894 Act and the provisions of

that Act shall apply to such acquisition with the modification regarding market value as specified in Clauses (i) to (iii) of that sub-section. Section 126(4) contains a non obstante clause and provides that if a declaration is not made within the period referred to in sub-section (2), or having been made, such period expired at the commencement of the Maharashtra Regional Town Planning (Amendment) Act, 1993, the State Government can make fresh declaration under the 1894 Act. This is subject to the rider that in such an event, market value of the acquired land shall be determined with reference to the date of fresh declaration. Section 127 speaks of lapsing of reservation. It lays down that if any land reserved, allotted or designated for any purpose specified in any plan prepared and sanctioned under the 1966 Act is not acquired by agreement within ten years from the date on which a final Regional plan or final Development plan comes into force or if proceedings for the acquisition of such land under the 1966 Act read with the 1894 Act are not commenced within that period, the owner or any person interested in the land may serve notice on the Planning Authority, Development Authority or Appropriate Authority to that effect. That section further lays down that if the land is not acquired or no steps are commenced for its acquisition within six months from the date of service of notice, the reservation etc. shall be deemed to have lapsed and the land shall be deemed to have been released from such reservation etc. so as to enable the owner to develop the same.

18. The scope of Sections 126 and 127 of the 1966 Act was considered by a two-Judge Bench in Dr. Hakimwadi Tenants' Association (supra). The facts of that case were that the Planning Authority had published a draft Development plan in respect of 'D' ward showing the property belonging to late Dr. Eruchshaw Jamshedji Hakim as reserved for recreation ground. The final Development plan was made effective from 7.2.1967. However, no action was taken for the acquisition of land. The owner served purchase notice dated 1.7.1977 on the Commissioner of the Corporation. After about six months, the Corporation passed resolution dated 10.1.1978 for the acquisition of land and sent an application to the State Government for taking necessary steps. Thereupon the State Government issued Notification dated 7.4.1978 under Section 6 of the 1894 Act. The writ petition filed by Dr. Hakimwadi Tenants' Association for quashing the notification was allowed by the learned Single Judge of the Bombay High Court, who held that the acquisition proceedings commenced by the State Government under Section 126(2) at the instance of the Planning Authority were not valid because steps were not taken for the acquisition of land under Section 126(1) of the 1966 Act read with Section 6 of the 1894 Act within the prescribed time. The learned Single Judge observed that the period of six months prescribed under Section 127 began to run from the date of service of purchase notice and the Corporation had to take steps to acquire the property before 4.1.1978, which was not done. The Division Bench of the High Court approved the view taken by the learned Single Judge and held that the most crucial step was the application to be made by the Corporation to the State Government under Section 126(1) of the 1966 Act for the acquisition of land and such step ought to have been taken within the period of six months commencing from 4.7.1977. This Court expressed agreement with the counsel for the Corporation that the words 'six months from the date of service of such notice' used in Section 127 of the 1966 Act were not susceptible to a literal construction, but observed:

> "8. .....it must be borne in mind that the period of six months provided by Section 127 upon the expiry of which the reservation of the land under a

Development Plan lapses, is a valuable safeguard to the citizen against arbitrary and irrational executive action. Section 127 of the Act is a fetter upon the power of eminent domain. By enacting Section 127 the legislature has struck a balance between the competing claims of the interests of the general public as regards the rights of an individual." (emphasis supplied) The Court then made detailed analysis of Section 127 of the 1966 Act and held:

"10. Another safeguard provided is the one under Section 127 of the Act. It cannot be laid down as an abstract proposition that the period of six months would always begin to run from the date of service of notice. The Corporation is entitled to be satisfied that the purchase notice under Section 127 of the Act has been served by the owner or any person interested in the land. If there is no such notice by the owner or any person, there is no question of the reservation, allotment or designation of the land under a development plan of having lapsed. It a fortiori follows that in the absence of a valid notice under Section 127, there is no question of the land becoming available to the owner for the purpose of development or otherwise. In the present case, these considerations do not arise. We must hold in agreement with the High Court that the purchase notice dated July 1, 1977 served by Respondents 4-7 was a valid notice and therefore with the failure of the appellant to take any steps for the acquisition of the land within the period of six months therefrom, the reservation of the land in the Development Plan for a recreation ground lapsed and consequently, the impugned notification dated April 7, 1978 under Section 6 of the Land Acquisition Act issued by the State Government must be struck down as a nullity.

11. Section 127 of the Act is a part of the law for acquisition of lands required for public purposes, namely, for implementation of schemes of town planning. The statutory bar created by Section 127 providing that reservation of land under a development scheme shall lapse if no steps are taken for acquisition of land within a period of six months from the date of service of the purchase notice, is an integral part of the machinery created by which acquisition of land takes place. The word "aforesaid" in the collocation of the words "no steps as aforesaid are commenced for its acquisition" obviously refer to the steps contemplated by Section 126(1).

The effect of a declaration by the State Government under sub-section (2) thereof, if it is satisfied that the land is required for the implementation of a regional plan, development plan or any other town planning scheme, followed by the requisite declaration to that effect in the official Gazette, in the manner provided by Section 6 of the Land Acquisition Act, is to freeze the prices of the lands affected. The Act lays down the principles of fixation by providing firstly, by the proviso to Section 126(2) that no such declaration under sub-section (2) shall be made after the expiry of three years from the date of publication of the draft regional plan, development plan or any other plan, secondly, by enacting sub-section (4) of Section 126 that if a declaration is not made within the period referred to in sub-section (2), the State Government may make a fresh declaration but, in that event, the market value of the land shall be the market value at the date of the declaration under Section 6 and not the market value at the date of the notification under Section 4, and thirdly, by

Section 127 that if any land reserved, allotted or designated for any purpose in any development plan is not acquired by agreement within 10 years from the date on which a final regional plan or development plan comes into force or if proceedings for the acquisition of such land under the Land Acquisition Act are not commenced within such period, such land shall be deemed to be released from such reservation, allotment or designation and become available to the owner for the purpose of development on the failure of the Appropriate Authority to initiate any steps for its acquisition within a period of six months from the date of service of a notice by the owner or any person interested in the land. It cannot be doubted that a period of 10 years is long enough. The Development or the Planning Authority must take recourse to acquisition with some amount of promptitude in order that the compensation paid to the expropriated owner bears a just relation to the real value of the land as otherwise, the compensation paid for the acquisition would be wholly illusory. Such fetter on statutory powers is in the interest of the general public and the conditions subject to which they can be exercised must be strictly followed." (emphasis supplied)

19. The same issue was again considered in Girnar Traders (II). S.P. Building Corporation was the owner of a piece of land bearing City Sy. No. 18/738 admeasuring about 5387.35 square yards situated at Carmichael Road, Malabar Hill Division, Mumbai. The Development plan prepared by Bomba Municipal Corporation was sanctioned by the State Government on 6.1.1967 and was enforced on 7.2.1967. The belonging to S.P. Building Corporation was notified as "open space and children's park". After coming into force of the 1966 Act, the landowners served notice under Section 127 of that Act for de-reservation of the land. Two similar notices were issued by S.P. Building Corporation on 18.10.2000 and 15.3.2002. after about eight months the State Government issued notification dated 20.11.2002 under Section 126(2) and (4) of the 1966 Act read with Section 6 of the 1894 Act. Writ Petition No.353/2005 filed by S.P. Building Corporation questioning the notification issued by the State Government was dismissed by the Division Bench of the High Court by observing that Resolution dated 9.9.2002 passed by the Improvement Committee of the Municipal Corporation would constitute a step as contemplated by Section 127 of the 1966 Act. The Division Bench further held that Section 11A of the 1894 Act, as amended, is not applicable to the proceedings initiated for the acquisition of land under the 1966 Act. Civil Appeal No.3922/2007 filed by S.P. Building Corporation was decided by the three Judge Bench along with Civil Appeal No.3703/2003 - Girnar Traders v. State of Maharashtra. Speaking for the majority, P.P. Naolekar, J., referred to the relevant provisions of the 1966 Act including Sections 126 and 127, and observed:

> "31. Section 127 prescribes two time periods. First, a period of 10 years within which the acquisition of the land reserved, allotted or designated has to be completed by agreement from the date on which a regional plan or development plan comes into force, or the proceedings for acquisition of such land under the MRTP Act or under the LA Act are commenced. Secondly, if the first part of Section 127 is not complied with or no steps are taken, then the second part of Section 127 will come into operation, under which a period of six months is provided from the date on which the notice has been served by the owner within which the land has to be acquired or the steps as aforesaid are to be commenced for its acquisition. The six- month period shall commence from the date the owner or any person interested in the land serves a notice on the planning authority, development authority or appropriate authority

> expressing his intent claiming dereservation of the land. If neither of the things is done, the reservation shall lapse. If there is no notice by the owner or any person interested, there is no question of lapsing reservation, allotment or designation of the land under the development plan. Second part of Section 127 stipulates that the reservation of the land under a development scheme shall lapse if the land is not acquired or no steps are taken for acquisition of the land within the period of six months from the date of service of the purchase notice. The word "aforesaid" in the collocation of the words "no steps as aforesaid are commenced for its acquisition" obviously refers to the steps contemplated by Section 126 of the MRTP Act.

If no proceedings as provided under Section 127 are taken and as a result thereof the reservation of the land lapses, the land shall be released from reservation, allotment or designation and shall be available to the owner for the purpose of development. The availability of the land to the owner for the development would only be for the purpose which is permissible in the case of adjacent land under the relevant plan. Thus, even after the release, the owner cannot utilise the land in whatever manner he deems fit and proper, but its utilisation has to be in conformity with the relevant plan for which the adjacent lands are permitted to be utilised." (emphasis supplied) Naolekar, J. then referred to the judgment in Dr. Hakimwadi Tenants' Association (supra) and proceeded to observed:

> "52. .....Thus, after perusing the judgment in Municipal Corpn. of Greater Bombay case we have found that the question for consideration before the Court in Municipal Corpn. of Greater Bombay case has reference to first step required to be taken by the owner after lapse of 10 years' period without any step taken by the authority for acquisition of land, whereby the owners of the land served the notice for dereservation of the land. The Court was not called upon to decide the case on the substantial step, namely, the step taken by the authority within six months of service of notice by the owners for dereservation of their land which is second step required to be taken by the authority after service of notice.
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> 53. The observations of this Court regarding the linking of word "aforesaid" from the wordings "no steps as aforesaid are commenced for its acquisition" of Section 127 with the steps taken by the competent authority for acquisition of land as provided under Section 126(1) of the MRTP Act, had no direct or substantial nexus either with the factual matrix or any of the legal issues raised before it. It is apparent that no legal issues, either with respect to interpretation of words "no steps as aforesaid are commenced for its acquisition" as stipulated under the provisions of Section 127 or any link of these words with steps to be taken on service of notice, were contended before the Court. Thus, observations of the Court did not relate to any of the legal questions arising in the case and, accordingly, cannot be considered as the part of ratio decidendi. Hence, in light of the aforementioned judicial pronouncements, which have well settled the proposition that only the ratio decidendi can act as the binding or authoritative precedent, it is clear that the reliance placed on mere general observations or casual expressions of the Court, is not of much avail to the respondents.

> 54. When we conjointly read Sections 126 and 127 of the MRTP Act, it is apparent that the legislative intent is to expeditiously acquire the land reserved under the Town Planning Scheme and, therefore, various periods have been prescribed for acquisition of the owner's property. The intent and purpose of the provisions of Sections 126 and 127 has been well explained in Municipal Corpn. of Greater Bombay case. If the acquisition is left for time immemorial in the hands of the authority concerned by simply making an application to the State Government for acquiring such land under the LA Act, 1894, then the authority will simply move such an application and if no such notification is issued by the State Government for one year of the publication of the draft regional plan under Section 126(2) read with Section 6 of the LA Act, wait for the notification to be issued by the State Government by exercising suo motu power under sub-section (4) of Section 126; and till then no declaration could be made under Section 127 as regards lapsing of reservation and contemplated declaration of land being released and available for the landowner for his utilisation as permitted under Section 127. Section 127 permitted inaction on the part of the acquisition authorities for a period of 10 years for dereservation of the land. Not only that, it gives a further time for either to acquire the land or to take steps for acquisition of the land within a period of six months from the date of service of notice by the landowner for dereservation. The steps towards commencement of the acquisition in such a situation would necessarily be the steps for acquisition and not a step which may not result into acquisition and merely for the purpose of seeking time so that Section 127 does not come into operation.
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> 56. The underlying principle envisaged in Section 127 of the MRTP Act is either to utilise the land for the purpose it is reserved in the plan in a given time or let the owner utilise the land for the purpose it is permissible under the town planning scheme. The step taken under the section within the time stipulated should be towards acquisition of land.

It is a step of acquisition of land and not step for acquisition of land. It is trite that failure of authorities to take steps which result in actual commencement of acquisition of land cannot be permitted to defeat the purpose and object of the scheme of acquisition under the MRTP Act by merely moving an application requesting the Government to acquire the land, which Government may or may not accept. Any step which may or may not culminate in the step for acquisition cannot be said to be a step towards acquisition.

57. It may also be noted that the legislature while enacting Section 127 has deliberately used the word “steps” (in plural and not in singular) which are required to be taken for acquisition of the land. On construction of Section 126 which provides for acquisition of the land under the MRTP Act, it is apparent that the steps for acquisition of the land would be issuance of the declaration under Section 6 of the LA Act. Clause (c) of Section 126(1) merely provides for a mode by which the State Government can be requested for the acquisition of the land under Section 6 of the LA Act. The making of an application to the State Government for acquisition of the land would not be a step for acquisition of the land under reservation. Sub- section (2) of Section 126 leaves it open to the State

Government either to permit the acquisition or not to permit, considering the public purpose for which the acquisition is sought for by the authorities. Thus, the steps towards acquisition would really commence when the State Government permits the acquisition and as a result thereof publishes the declaration under Section 6 of the LA Act.

58. The MRTP Act does not contain any reference to Section 4 or Section 5- A of the LA Act. The MRTP Act contains the provisions relating to preparation of regional plan, the development plan, plans for comprehensive developments, town planning schemes and in such plans and in the schemes, the land is reserved for public purpose. The reservation of land for a particular purpose under the MRTP Act is done through a complex exercise which begins with land use map, survey, population studies and several other complex factors. This process replaces the provisions of Section 4 of the LA Act and the inquiry contemplated under Section 5-A of the LA Act. These provisions are purposely excluded for the purposes of acquisition under the MRTP Act. The acquisition commences with the publication of declaration under Section 6 of the LA Act. The publication of the declaration under sub-sections (2) and (4) of Section 126 read with Section 6 of the LA Act is a sine qua non for the commencement of any proceedings for acquisition under the MRTP Act. It is Section 6 declaration which would commence the acquisition proceedings under the MRTP Act and would culminate into passing of an award as provided in sub-section (3) of Section 126 of the MRTP Act. Thus, unless and until Section 6 declaration is issued, it cannot be said that the steps for acquisition are commenced.

59. There is another aspect of the matter. If we read Section 126 of the MRTP Act and the words used therein are given the verbatim meaning, then the steps commenced for acquisition of the land would not include making of an application under Section 126(1)(c) or the declaration which is to be made by the State Government under sub-section (2) of Section 126 of the MRTP Act.

60. On a conjoint reading of sub-sections (1), (2) and (4) of Section 126, we notice that Section 126 provides for different steps which are to be taken by the authorities for acquisition of the land in different eventualities and within a particular time span. Steps taken for acquisition of the land by the authorities under Clause (c) of Section 126(1) have to be culminated into Section 6 declaration under the LA Act for acquisition of the land in the Official Gazette, within a period of one year under the proviso to sub-section (2) of Section 126. If no such declaration is made within the time prescribed, no declaration under Section 6 of the LA Act could be issued under the proviso to sub-section (2) and no further steps for acquisition of the land could be taken in pursuance of the application moved to the State Government by the planning authority or other authority.

61. Proviso to sub-section (2) of Section 126 prohibits publication of the declaration after the expiry of one year from the date of publication of draft regional plan, development plan or any other plan or scheme. Thus, from the date of publication of the draft regional plan, within one year an application has to be moved under Clause (c) of Section 126(1) which should culminate into a declaration under Section 6 of the LA Act. As per the proviso to sub-section (2) of Section 126, the maximum period permitted between the publication of a draft regional plan and declaration by the Government in the Official Gazette under Section 126(2) is one year. In other words, during one year of the publication of the draft regional plan, two steps need to be completed, namely, (i) application

by the appropriate authority to the State Government under Section 126(1)(c); and (ii) declaration by the State Government on receipt of the application mentioned in Clause (c) of Section 126(1) on satisfaction of the conditions specified under Section 126(2). The only exception to this provision has been given under Section 126(4)." (emphasis supplied)

20. In our view, there is no conflict between the judgments of the two- Judge Bench in Dr. Hakimwadi Tenants' Association (supra) and the majority judgment in Girnar Traders (II). In both the cases, this Court emphasized that if any private land is shown as reserved, allotted or designated for any purpose specified in any Development plan, the same may be acquired within ten years either by agreement or by following the procedure prescribed under the 1894 Act, and if proceedings for the acquisition of land are not commenced within that period and a further period of six months from the date of service of notice under Section 127 of the 1966 Act, then the land shall be deemed to have been released from such reservation, allotment, etc. In Dr. Hakimwadi Tenants' Association (supra), notice under Section 127 was issued on 1.7.1977. The State Government did not take any steps for the acquisition of land within next six months. The learned Single Judge and the Division Bench of the High Court held that in terms of second part of Section 127, the reservation of land for recreation ground will be deemed to have lapsed. This Court unequivocally approved the view expressed by the High Court (paragraphs 10 and 11). The majority judgment in Girnar Traders (II) appears to suggest that the question considered and decided in Dr. Hakimwadi Tenants' Association (supra) was slightly different, but having carefully gone through paragraphs 10 and 11 of the first judgment, we are convinced that the question involving interpretation of Section 127 was very much considered and decided by the two-Judge Bench in favour of the landowner and there is no conflict in the opinion expressed in the two judgments.

21. We are further of the view that the majority in Girnar Traders (II) had rightly observed that steps towards the acquisition would really commence when the State Government takes active steps for the acquisition of the particular piece of land which leads to publication of the declaration under Section 6 of the 1894 Act. Any other interpretation of the scheme of Sections 126 and 127 of the 1966 Act will make the provisions wholly unworkable and leave the landowner at the mercy of the Planning Authority and the State Government.

22. The expression "no steps as aforesaid" used in Section 127 of the 1966 Act has to be read in the context of the provisions of the 1894 Act and mere passing of a resolution by the Planning Authority or sending of a letter to the Collector or even the State Government cannot be treated as commencement of the proceedings for the acquisition of land under the 1966 Act or the 1894 Act. By enacting Sections 125 to 127 of the 1966 Act, the State Legislature has made a definite departure from the scheme of acquisition enshrined in the 1894 Act. But a holistic reading of these provisions makes it clear that while engrafting the substance of some of the provisions of the 1894 Act in the 1966 Act and leaving out other provisions, the State Legislature has ensured that the landowners/other interested persons, whose land is utilized for execution of the Development plan/Town Planning Scheme, etc., are not left high and dry. This is the reason why time limit of ten years has been prescribed in Section 31(5) and also under Sections 126 and 127 of the 1966 Act for the acquisition of land, with a stipulation that if the land is not acquired within six months of the service of notice under Section 127 or steps are not commenced for acquisition, reservation of the

land will be deemed to have lapsed. Shri Naphade's interpretation of the scheme of Sections 126 and 127, if accepted, will lead to absurd results and the landowners will be deprived of their right to use the property for an indefinite period without being paid compensation. That would tantamount to depriving the citizens of their property without the sanction of law and would result in violation of Article 300A of the Constitution.

23. Before concluding, we may notice the judgment of the Constitution Bench in Girnar Traders (III) on which reliance was placed by Shri Shekhar Naphade. The main question decided in that case was whether Section 11A of the 1894 Act is applicable to the acquisition of land made under the 1966 Act. The Constitution Bench referred to the provisions of the 1966 Act (as amended) including Chapter VII thereof and held that Section 11A of the 1894 Act cannot be bodily lifted and read into the scheme of the 1966 Act. At the same time, it held that if any land is reserved, allotted or designated for any purpose specified in the Regional plan or Development plan and the same is not acquired by agreement within 10 years from the date of enforcement of such plan or the declaration under sub-section (2) or (4) of Section 126 of the 1966 Act is not published in the Official Gazette within that period, the owner or any person interested in the land may serve notice upon the Planning Authority etc. and if within 12 months of the service of notice the land is not acquired or no steps, as aforesaid are commenced for its acquisition, the reservation etc. will automatically lapse. All this is evinced from paragraphs 125-129, 132-134, 136 and 138 of the Constitution Bench judgment, which are extracted below:

> "125. In terms of Section 126(1)(c) of the MRTP Act, the application to the State Government has to be made for acquiring such land under the Land Acquisition Act. Such land refers to the lands which are required only under the provisions of the MRTP Act. Section 126(2) refers to Section 6 of the Land Acquisition Act only for the purpose of format in which the declaration has to be made. In terms of Section 126(3), on publication of the declaration, the Collector shall proceed to take order for acquisition of the land under the State Act i.e. for the purpose of acquisition of land; the procedure adopted under the Land Acquisition Act shall be adopted by the Collector and nothing more. The aforereferred provisions of the State Act clearly frame a scheme for planned development with limited incorporation of some of the provisions of the Land Acquisition Act.
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> 126. The provisions of the State Act were amended last in point of time and, therefore, the State Legislature was aware of the relevant existing laws including Section 11-A of the Land Acquisition Act. The intent of the legislature to exclude the application of Section 11-A clearly emerges from the fact that while amending Section 127 of the MRTP Act, it made no reference, generally or specifically, to the said provision rather it deleted reference to the provisions of the Land Acquisition Act from the unamended provisions of Section 127. Reference to Section 16 of the Land Acquisition Act in the State Act, under Section 128(3) of the State Act, is again relatable to the acquisition proceedings under the Land Acquisition Act, as under Section 83 of the State Act, the land could vest in the Planning Authority even at the threshold and it is vesting of a different kind than contemplated under Section 16 of

the Land Acquisition Act. The purpose and intent of Section 129 of the MRTP Act is akin to the provisions of Section 17 of the Land Acquisition Act and from linguistic point of view, there is similarity in the two sections but still the State Act has provided for a complete scheme with regard to possession and compensation payable to the owner of the land in cases of urgency. Thus, it is clear that there is no general reference to the provisions of the Land Acquisition Act and they shall not apply as such or even mutatis mutandis to the MRTP Act. On the contrary, reference to the Central Act, wherever is made in the State Act, is specific and for a definite purpose.

127. Another argument which had been vehemently advanced on behalf of the appellant is that the reference to the provisions of the Land Acquisition Act in different provisions of the MRTP Act would require that the proceedings commence from Section 6 of the Central Act onwards and award is made in terms of Section 11 of that Act and as those provisions apply to these proceedings, Section 11-A would automatically come into play so would the other provisions of the Land Acquisition Act. The expression "under the said Act" in Section 126(3) of the MRTP Act is sufficient indication that it is a legislation by reference and, thus, all subsequent amendments would apply. It was also contended that on a bare reading of Sections 126 and 127 of the MRTP Act, it is clear that it does not exclude the application of Section 11-A of the Land Acquisition Act.

128. We certainly are not impressed by this argument advanced on behalf of the appellants. Firstly, if we examine the acquisition proceedings under the Land Acquisition Act, they commence only when a notification under Section 4 of the Land Acquisition Act is issued. Section 5-A of the Central Act makes it incumbent upon the authorities to invite objections and decide the same before issuing declaration under Section 6 of the Land Acquisition Act. All these proceedings have specifically been given a go-by under the MRTP Act, where notification is to be issued under Section 126(2) in the manner provided under Section 6 of the Land Acquisition Act. Secondly, specific reference to various sections of the Land Acquisition Act in the MRTP Act necessarily implies exclusion of the provisions not specifically mentioned therein. Lastly, acquisition proceedings under the MRTP Act are commenced by issuance of a declaration under Section 126(2) and then the procedure prescribed under the Land Acquisition Act is followed up to the passing of award under Section 11 of that Act.

129. Further, determination of compensation will again depend upon the principles stated in Sections 23 and 24 of the Land Acquisition Act but subject to Sections 128(2) and 129(1) of the MRTP Act. Statutory benefits accrued under Sections 23(1-A), 23(2) and 28 of the Land Acquisition Act would be applicable as held by this Court in U.P. Avas Evam Vikas Parishad.

Vesting, unlike Section 16 of the Land Acquisition Act which operates only after the award is made and compensation is given, whereas under the MRTP Act it may operate even at the initial stages

before making of an award, for example, under Sections 126(1)(c) and 83.

132. Besides this, another very important aspect of the present case is that if the provisions of Section 11-A of the Land Acquisition Act are applied or deemed to be incorporated by application of any doctrine of law into the provisions of the MRTP Act, it will have the effect of destroying the statutory rights available to the State Government and/or the Planning Authority. For instance, proviso to Section 126(2) of the State Act provides that where a declaration in the manner provided in Section 6 of the Land Acquisition Act in respect of the said land is not made within one year from the date of publication of draft regional plan, thereafter no such declaration shall be made. Section 126(4) makes an exception to the consequences stated in the proviso to Section 126(2) that the State Government, notwithstanding those provisions, can make a fresh declaration for acquiring the land under the Land Acquisition Act. However, the market value of the land shall be the market value at the date of declaration in the Official Gazette made for acquiring such land afresh. In other words, the rest of the machinery provided under the Act would not operate after the prescribed period.

133. However, in terms of Section 127 of the MRTP Act, if any land reserved, allotted or designated for any purpose specified is not acquired by agreement within 10 years from the date on which final regional plan or final development plan comes into force or if a declaration under sub- section (2) or (4) of Section 126 of the MRTP Act is not published in the Official Gazette within such period, the owner or any person interested in the land may serve notice upon such authority to that effect and if within 12 months from the date of service of such notice, the land is not acquired or no steps, as aforesaid, are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed and the land would become available to the owner for the purposes of development. The defaults, their consequences and even exceptions thereto have been specifically stated in the State Act. For a period of 11 years, the land would remain under reservation or designation, as the case may be, in terms of Section 127 of the MRTP Act (10 years + notice period).

134. However, if the provisions of Section 11-A of the Central Act were permitted to punctuate a scheme of the State Act and the award is not made within two years from the date of declaration under Section 6 of the Central Act, the acquisition proceedings will lapse which will frustrate the rights of the State as well as the scheme contemplated under Section 126 as well as Section 127 of the State Act and that would not be permissible in law. This being legislation by incorporation, the general reference to the provisions of the Land Acquisition Act shall stand excluded.

136. Section 126(2) of the State Act refers to the manner of declaration as contemplated under Section 6 of the Land Acquisition Act but the legislature intentionally avoided making any reference to other features contained in Section 6 of the Central Act as well as the time-frame prescribed under that Act. On the contrary, proviso to Section 126(2) of the MRTP Act spells out its own time-frame whereafter such declaration cannot be made subject to the provisions of Section 126(4). The unamended provisions of Section 127 of the State Act though refer to the acquisition under the Land Acquisition Act but without making any reference to the time- frame prescribed under the said Act. In this section also, the specific time-frame and the consequences of default thereof have been stated. Sections 128 and 129 of the MRTP Act relate to acquiring land for the purpose other than for which it is designated in any plan or scheme and taking of possession of land in cases of urgency

respectively.

138. The provisions relating to planned development of the State or any part thereof, read in conjunction with the object of the Act, show that different time-frames are required for initiation, finalisation and complete execution of such development plans. The period of 10 years stated in Section 127 of the MRTP Act, therefore, cannot be said to be arbitrary or unreasonable ex facie. If the provisions of Section 11-A of the Land Acquisition Act, with its serious consequence of lapsing of entire acquisition proceedings, are bodily lifted and read into the provisions of the MRTP Act, it is bound to frustrate the entire scheme and render it ineffective and uncertain. Keeping in view the consequence of Section 11-A of the Central Act, every development plan could stand frustrated only for the reason that period of two years has lapsed and it will tantamount to putting an end to the entire development process." (emphasis supplied)

24. In our view, the observations contained in paragraph 133 of Girnar Traders (III) unequivocally support the majority judgment in Girnar Traders (II).

25. As a sequel to the above discussion, we hold that the majority judgment in Girnar Traders (II) lays down correct law and does not require reconsideration by a larger Bench. We further hold that the orders impugned in these appeals are legally correct and do not call for interference by this Court. The appeals are accordingly dismissed.

……..…..……..J. [G.S. Singhvi] ……..…..……..J. [H.L. Gokhale] New Delhi, ...J. April 1, 2013. [Ranjana Prakash Desai] [pic]
