# Municipal Corporation Of Greater ... vs Dr. Hakimwadi Tenants Association & Ors on 24 November, 1987

## Equivalent citations: 1988 AIR 233, 1988 SCR (2) 21, AIR 1988 SUPREME COURT 233, 1987 5 JT 448, 1988 SCC (SUPP) 55, (1987) 4 JT 448 (SC), (1988) MAH LJ 1, (1988) MAHLR 413, (1988) 1 SCJ 78, (1988) 1 BOM CR 578

## Author: A.P. Sen

## Bench: A.P. Sen, B.C. Ray

PETITIONER:
MUNICIPAL CORPORATION OF GREATER BOMBAY A

Vs.

RESPONDENT:
DR. HAKIMWADI TENANTS ASSOCIATION & ORS.

DATE OF JUDGMENT24/11/1987

BENCH:
SEN, A.P. (J)
BENCH:
SEN, A.P. (J)
RAY, B.C. (J)

CITATION:
1988 AIR 233 1988 SCR (2) 21
1988 SCC Supl. 55 JT 1987 (4) 448
1987 SCALE (2)1133

ACT:
Maharashtra Regional and Town Planning Act, 1966: s. 127-Limitation of six months-Failure to acquire land reserved for town planning within statutory period of ten years-Purchase notice served by owners-Limitation whether to reckon from date of notice.
Practice and Procedure: Waiver-Requirements of-Where there is no estoppel there is no waiver.

HEADNOTE:
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Section 127 of the Maharashtra Regional and Town Planning Act, 1966 provides that if any land reserved under the Act was not acquired by agreement within ten years from

the date on which a final regional plan or final development plan came into force or if proceedings for the acquisition of such land under that Act or under the Land Acquisition Act, 1894 were not commenced within such period, the owner or any person interested in the land may serve notice on the appropriate authority to that effect and if within six months from the date of the service of such notice, the land was not acquired or no steps as aforesaid were commenced for its acquisition, the reservation should be deemed to have lapsed.

The Planning Authority, the Municipal Corporation of Greater Bombay, published a draft development plan reserving the land in dispute for a recreation ground. The said plan was finalised and sanctioned by the State Government on January 6, 1967. It came into effect from February 7, 1967 and thereunder the land was again reserved for recreation ground. No action having been taken for acquisition of the land, the trustees of the land served a notice dated July 1, 1977 on the Commissioner for Municipal Corporation either to acquire the land or release it from acquisition. The same was received by the latter on July 4, 1977.

On July 28, 1977 the Corporation's Executive Engineer asked for information regarding the ownership of the land and the particulars of the tenants thereof from trustees-respondents Nos. 4-7, and stated that the relevant date under s. 127 cf the Act would be the date
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upon which this information was received. The trustees by their lawyer's letter dated August 3, 1977 conveyed that the period of six months stipulated by s. 127 has to be computed from the date of the receipt of the purchase notice by the Corporation, i.e. July 4, 1977 and stated that the Corporation had access to all the relevant records. The requisite information was also provided therein. The Executive Engineer wrote stating that the period of six months allowed by s. 127 of the Act would commence on August 4, 1977, the date when the requisite information was furnished. Thereafter the Executive Engineer by his letter dated November 2, 1977 inquired of the trustees whether they were prepared to sell the property in question to which the trustees quoted an overall rate of Rs.650 per square metre through their lawyer's reply dated November 18, 1977. They expressly stated that the offer was made without admitting the power and authority of the appellant to acquire the land or to initiate the proceedings for acquisition. Instead of accepting the same, the Executive Engineer by his letter dated January 11, 1978 asked the respondents to disclose the basis for the rate of Rs.650 per sq. metre. The Corporation had, in the meanwhile passed a resolution on January 10, 1978 for the acquisition of the land and made an application to the State Government dated January 31, 1978 for taking necessary steps. The State Government issued the requisite notification dated April 7, 1978 under s. 6 of the Land

Acquisition Act 1894 for acquisition of land.

On July 17, 1978, respondent No. 1, the tenants' association, filed a petition in the High Court under Art. 226 of the Constitution for quashing the impugned notification. The High Court held that the most crucial step was the application to be made by the Corporation to the State Government under s. 126(1) of the Act for acquisition of the land within the period of six months commencing from July 4, 1977, the date of service of the purchase notice, and that upon the expiry of the said period on January 3, 1978, the reservation of the land had lapsed and it was released from such reservation. It took the view that all that was required was that the owner or the person interested in the land must inform the Authority that the land reserved for any plan under the Act had not been acquired by agreement within ten years from the date on which plan came into force and the proceedings for acquisition of such land under the Land Acquisition Act had not been commenced within that period. Consequently it struck down the impugned notification as invalid, null and void.

In the appeal to this Court by special leave it was contended that there was waiver or abandonment of right by respondents Nos. 4-7,

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the trustees, to question the validity of the acquisition proceedings, and that there was inordinate delay or laches on the part of respondent No. 1 which disentitled it to grant of relief under Art. 226 of the Constitution.

Dismissing the appeal,

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HELD: 1. Section 127 of the Maharashtra Regional and Town Planning Act, 1966 is a fetter upon the power of eminent domain. By enacting it the legislature has struck a balance between the competing claims of the interests of the general public as regards the rights of an individual. [30B-C]

2. The condition pre-requisite for the running of time under 127 of the Act is the service of a valid purchase notice. In the instant case, the purchase notice dated July 1, 1977 was a valid notice. The appellant having failed to take any steps for acquisition of the land within a period of six months therefrom the reservation of the land in the development plan for a public purpose lapsed and consequently the impugned notification dated April 7, 1978 issued by the State Government under s. 6of the Land Acquisition Act must be struck down as a nullity. [29A-B; 31D-F]

3.1 The question whether the reservation has lapsed due to the failure of the planning authority to take any steps within a period of six months of the date of service of the notice of purchase as stipulated by s. 127 is a mixed question of fact and law. A rule of universal application

cannot, therefore, be laid down. [28G-H]

In the instant case the High Court found that the planning authority had failed to acquire the land reserved for the plan under the Act by agreement within ten years from the date on which the plan came into force and proceedings for acquisition of the land under the Land Acquisition Act had not been commenced within the period of six months from the receipt of notice from respondents Nos. 4 to 7, the trustees. The Municipal Corporation had been assessing the trust properties to property tax and issuing periodic bills and receipts therefor and obviously could not question the title or ownership of the trust. Accordingly, it struck down the impugned notification under s. 6 of the Land Acquisition Act and declared that the reservation of the land under the development plan had lapsed. [28E, 29F, 28B]

3.2 There was no question of the period of six months being
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reckoned from the date of receipt from respondents of the information requisitioned. Section 127 of the Act does not contemplate an investigation into the title by the officers of the Planning Authority, nor can the officers prevent the running of time if there is a valid notice. The Executive Engineer of the appellant Corporation was not justified in addressing the letter dated July 28, 1977 calling upon respondents 13 Nos. 4-7, the trustees, to furnish information regarding their title and ownership, and also to furnish particulars of the tenants, the nature of user of the tenements and the total area occupied by them. The Corporation had the requisite information in their records. The Planning Authority was the Municipal Corporation. The said letter was, therefore, just an attempt to prevent the running of time and was of little or no consequence.[29A, B-E]

4. In order to constitute waiver, there must be voluntary and intentional relinquishment of a right. The essence of a waiver is an estoppel and where there is no estoppel, there is no waiver. Estoppel and waiver are questions of conduct and must necessarily be determined on the facts of each case. [34B]

In the instant case, respondents Nos. 4-7 had without admitting that the appellant had the authority or power to initiate the proceedings for acquisition, signified their willingness to sell the property subject to certain terms. But the appellant did not accept the offer. On the contrary, the appellant took further steps for the acquisition of the land by moving the State Government under s. 126(1) of the Act to initiate acquisition proceedings by the issuance of a notification under s. 6 of the Land Acquisition Act. It cannot, therefore, be said that the conduct of respondents Nos. 4-7 was such as warrants an inference of relinquishment of a known existing legal right. [34B-D]

5. The tenants were not parties to the earlier proceedings. They were, therefore, not disentitled from maintaining the writ petition. The objection that there was undue delay in moving the High Court cannot prevail. [34E-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4139 of 1986.

From the Judgment and order dated 18.6.1986 of the Bombay High Court in Appeal No. 874 of 1983.

R.P. Bhatt and D.N. Misra for the Appellant.

L.C. Chogale, M.N. Shroff, K.M.M. Khan, R.F. Nariman, R. Karanjawala, Hardeep Singh, Mrs. Manek Karanjawala, S.V. Deshpande, A.S. Bhasme and A.M. Khanwilkar for the Responlents .

The Judgment of the Court was delivered by SEN, J. By s. 127 the Maharashtra Regional & Town Planning Act, 1966 enacts:

> " 127. 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, 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 the 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 or otherwise, permissible in the case of adjacent land under the relevant plan."

The short point involved in this appeal by special leave from a judgment of a Division Bench of the Bombay High Court dated June 18, 1986, is whether the period of six months specified in s. 127 of the Act is to be reckoned from the date of service of the purchase notice dated July 1, 1977 by the owner on the Planning Authority i.e. the Municipal Corporation of Greater Bombay here, or the date on which the requisite information of particulars furnished by the owner.

The late Dr. Eruchshaw Jamshedji Hakim was the former owner of a double-storeyed building situate on land admeasuring 3645.26 square metres bearing the cadastral survey no. 176 of Tardeo, Bombay known as Dr. Hakimwadi. The property is located at the junction of Falkland Road and Eruchshaw Hakim Road. It consists of several structures housing 24 small-scale industries, 13 shops

on the ground floor and 26 residential tenements on the first floor, facing the Falkland Road. On the rear side of this building, there are several structures housing about 24 small-scale industries. The said Dr. Eruchshaw Jamshedji Hakim created a trust in respect of the properties and respondents nos. 6-9 i.e. respondents nos. 4- 7 in the High Court, herein described as such are the present trustees appointed under the deed. The Planning Authority published a draft Development Plan in respect of 'D' ward where the property in dispute is situate. In the Development Plan property of Dr. Eruchshaw Jamshedji Hakim was reserved for a recreation ground. The Development Plan was finalised and sanctioned by the State Government on January 6, 1967. The final development scheme came into effect from February 7, 1967 and thereunder the land was again reserved for recreation ground. No action having been taken for acquisition of the land until January 1, 1977, the owners thereof i.e. the trustees served a purchase notice dated July, 1, 1977 on the Commissioner for Municipal Corporation of Greater Bombay either to acquire the same or release it from acquisition, and the same was received on July 4, 1977. On July 28, 1977 the Corporation's Executive Engineer wrote to respondents nos. 4-7 and asked for information regarding the ownership of the land and the particulars of the tenants thereof. The letter stated that the relevant date under s. 127 of the Act would be the date upon which this information was received. The trustees for the time being the landlords of the property known as Hakimwadi by their lawyer's letter dated August 3, 1977 conveyed that the date of six months stipulated by s. 127 of the Act has to be computed from the date of the receipt from them of the information required. Further, they stated that as the Planning Authority for Greater Bombay was the Municipal Corporation of Greater Bombay, it had p access to all the relevant records including the records pertaining to cadastral survey no. 176. It was also appointed out that the Corporation had been assessing them to property tax in respect of the said property and issuing bills and receipts therefor and could not now question their title to ownership of the property.

It was further said that as regards the number of tenants, the inspection registers maintained by the Corporation's Assessment Department, upon which the assessment of the rateable value of the various tenements was based, bear ample testimony. It was next stated that the property was partly residential, partly commercial and partly meant for storage. The trustees went on to say that they were not aware of any rule framed under the Act whereby the Planning Authority could make an inquiry at that stage without taking a decision on the material question and thereby attempt to extend the time limit of six months stipulated in s. 127. The said letter was received by the Executive Engineer on August 16, 1977 and presumably the information required was furnished on August 16, 1977. The Executive Engineer wrote to respondents nos. 4-7 stating that the period of six months allowed by s. 127 of the Act would accordingly commence on August 4, 1977, the date when the requisite information was furnished. Next, the Executive Engineer by his letter dated November 2, 1977 intimated respondents nos. 4-7 that the Municipal Corporation had accorded sanction to initiate acquisition proceedings in respect of the property in question under the Land Acquisition Act. Thereafter, the Corporation passed a resolution dated January 10, 1978 for the acquisition of the land and made an application to the State Government dated January 31, 1978 for taking necessary steps. The State Government being satisfied that the land was required for a public purpose issued the requisite notification dated April 7, 1978 under s. 6 of the Land Acquisition Act, 1894 for acquisition of the land. On July 17, 1978 respondent no. 1 Dr. Hakimwadi Tenants Association filed a petition in the High Court under Art. 226 of the Constitution for quashing the

impugned notification.

A learned Single Judge (Pendse, J.) by his judgment dated September 21, 1983 allowed the writ petition on the ground that the Planning Authority having taken no steps for acquisition of land under s. 126(1) of the Act read with s. 6 of the Land Acquisition Act within 10 years from the date on which the final Development Plan came into force, the acquisition proceedings commenced by the State Government under sub-s. (2) of s. 126 at the instance of the Planning Authority were not valid inasmuch as the issuance of the impugned notification under s. 6 of the Land Acquisition Act for the reservation of the property under the final Development Plan for a recreation ground was not within the period of six months as-required under s. 127. According to the learned Single Judge, the period of six months prescribed under s. 127 of the Act begin to run on the date of service of the purchase notice on the Corporation and therefore the Corporation had to take steps to acquire the property before January 4, 1978. The Corporation not having taken any steps till the expiry of the period of six months, the resolution dated January 10, 1978 passed to acquire the property and the consequent notification dated April 7, 1978 were invalid and of no legal consequence In other words, he held that the commencement of the statutory period of six months was not dependent upon the directions issued by the officers of the Planning Authority, nor could the officers extend the period fixed under s. 127. As regards the practice prevalent in the Corporation to compute the period of six months from the date of receipt of the information sought, he held that it was wholly unwarranted and entirely illegal. He accordingly struck down the impugned notification under s. 6 of the Land Acquisition Act and declared that the reservation of the land under the Development Plan had lapsed and it was open to the tenants of the property to claim that due to the lapse of reservation, the Planning Authority and the State Government had no jurisdiction to acquire the land in exercise of the powers under s.126 of the Act.

Aggrieved, the appellant carried an appeal to a Division Bench under s. 15 of the Letters Patent. Bharucha, J. speaking for himself and Desai, J. upheld the view of 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 s. 126(1) of the Act for acquisition of the land, it ought to have been taken within the period of six months commencing from July 4, 1977, the date of service of the purchase notice. That decision proceeds upon the view that the details of ownership or particulars of tenants are not required to be furnished in the purchase notice served by the owner or any person interested in the land. All that is required is that the owner or the person interested in the land must inform the authority that the land reserved for any plan under the Act had not been acquired by agreement within 10 years from the date on which the plan came into force and that proceedings for acquisition of such land under the Land Acquisition Act had not been commenced within that period. It was accordingly held that the purchase notice dated July 1, 1977 served by respondents nos. 4-7, the trustees, was a valid notice under s. 127 of the Act and therefore the period of six months specified in s. 127 commenced running from July 4, 1977, the date of service, and came to an end on January 4, 1978. That being so, it was held that upon the expiry of the period of six months on January 3, 1978, the reservation of the land for recreation ground lapsed and it was released from such reservation.

According to the plain reading of s. 127 of the Act, it is manifest that the question whether the reservation has lapsed due to the failure of the Planning Authority to take any steps within a period

of six months of the date of service of the notice of purchase as stipulated by s. 126, is a mixed question of fact and law. It would therefore be difficult, if not well nigh impossible, to lay down a rule of universal application. It cannot be posited that the period of six months would necessarily begin to run from the date of service of a purchase notice under s. 127 of the Act. The condition pre-requisite for the running of time under s. 127 is the service of a valid purchase notice. It is needless to stress that the Corporation must prima facie be satisfied that the notice served was by the owner of the affected land or any person interested in the land. But, at the same time, s. 127 of the Act does not contemplate an investigation into title by the officers of the Planning Authority, nor can the officers prevent the running of time if there is a valid notice. Viewed in that perspective, the High Court rightly held that the Executive Engineer of the Municipal Corporation was not justified in addressing the letter dated July 29, 1977 by which he required respondents nos. 4-7, the trustees, to furnish information regarding their title and ownership, and also to furnish particulars of the tenants, the nature and user of the tenements and the total area occupied by them at present. The Corporation had the requisite information in their records. The High Court was therefore right in reaching the conclusion that it did. In the present case, the Planning Authority was the Municipal Corporation of Greater Bombay. It cannot be doubted that the Municipal Corporation has access to all land records including the records pertaining to cadastral survey no. 176 of Tardeo. We are inclined to the view that the aforesaid letter dated July 28, 1977 addressed by the Executive Engineer was just as attempt to prevent the running of time and was of little or no consequence. As was rightly pointed out by respondents nos. 4-7 in their reply dated August 3, 1977, there was no question of the period of six months being reckoned from the date of the receipt from them of the information requisitioned. The Municipal Corporation had been assessing the trust properties to property tax and issuing periodic bills and receipts therefor and obviously could not question the title or ownership of the trust. We are informed that the building being situate on Falkland Road, the occupants are mostly dancing girls and this is in the knowledge of the Corporation authorities. The rateable value of each tenement would also be known by an inspection of the assessment registers. We must accordingly uphold the finding arrived at by the High Court that the appellant having failed to take any steps, namely, of making an application to the State Government for acquiring the land under the Land Acquisition Act within a period of six months from the date of service of the purchase notice, the impugned notification issued by the State Government under s. 6 of the Land Acquisition Act making the requisite declaration that such land was required for a public purpose i.e. for a recreation ground was invalid, null and void.

While the contention of learned counsel appearing for the appellant that the words 'six months from the date of service of such notice' in s. 127 of the Act were not susceptible of a literal construction, must be accepted, it must be borne in mind that the period of six months provided by s. 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 s. 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. An analysis of s. 126 would reveal that after 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 therein, the Planning Authority, Development Authority or as the case may be, any Appropriate Authority may, except as provided in s. 113A, at any time acquire the land

either by agreement or make an application to the State Government for acquisition of such land under the Land Acquisition Act, 1894. Sub-s. (2) thereof provides that the State Government may on receipt of the applications contemplated by s. 126(1) or if the Government (except in cases falling under s. 49 and except as provided in s. 113A) is itself of opinion that any land included in any such plan is needed for any public purpose, it may make a declaration to that effect in the final gazette, in the manner provided in s. 6 of the Land Acquisition Act in respect of the said land. The rule is subject to an exception. Proviso to s. 126(2) interdicts that no such declaration 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. Sub-s. (3) deals with the procedure to be followed for acquisition of the land covered by a declaration under s. 6 of the p Land Acquisition Act. Sub-s. (4) is of some relevance and reads as follows:

> "(4). If a declaration is not made within the period referred to in sub-section (2) or having been made, the aforesaid period expired on the commencement of the Maharashtra Regional and Town Planning (Amendment) Act, 1970, the State Government may make a fresh declaration for acquiring the land under the Land Acquisition Act, 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 market value at the date of declaration in the official Gazette made for acquiring the land afresh."

The conjoint effect of sub-ss. ( 1), (2) and (4) of s. 126 is that if no declaration is made within the period referred to in sub-s. (2), that is to say, before the expiry of three years from the date of publication of the draft regional plan, development plan or any other plan, the compensation payable to the owner of the land for such acquisition, in that event, shall be the market value on the date of the fresh declaration under s. 6 of the Land Acquisition Act i.e. the market value not at the date of the notification under s. 4(1) of the Land Acquisition Act but the market value at the date of declaration under s. 6. That is one of the safeguards provided under the Act.

Another safeguard provided is the one under s. 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 s. 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 s. 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 nos. 4-7 was valid notice and therefore 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 s. 6 of the Land Acquisition Act issued by the State Government must be struck down as a nullity.

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 s. 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 s. 126(1). The effect of a declaration by the State Government under sub-s. (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 s. 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 s. 126(2) that no such declaration under sub-s. (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-s. (4) of s. 126 that if a declaration is not made within the period referred to in sub-s. (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 s. 6 and not the market value at the date of the notification under s. 4, and thirdly, by s. 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.

There still remain the other two points raised, namely,

(i) There was waiver or abandonment of right by respondents nos. 4-7, the trustees, to question the validity of the acquisition proceedings; and (ii) There was inordinate delay or laches on the part of respondent no. 1 which disentitled it to grant of relief under Art. 226 of the Constitution. We find it difficult to give effect to these contentions.

In order to deal with these questions, a few facts are to be stated. The Executive Engineer of the Municipal Corporation by his letter dated November 2, 1977 addressed to the lawyer acting on be-

half of respondents nos. 4-7, the trustees, to inquire whether they were prepared to sell the property in question situate at Cadastral Survey no. 176 of Taradeo. In response thereto, respondents nos. 4-7 through their lawyer's reply dated November 18, 1977 intimated that they were prepared to consider

the sale of the property in its existing condition with all the structures tenanted or otherwise at an overall rate of Rs.650 per square metre. This response was without prejudice and they expressly stated that the offer was made without admitting the power and authority of the appellant to acquire the land or to initiate the proceedings for acquisition. Instead of accepting the same, the Executive Engineer by his letter dated January 11, 1978 wanted respondents nos. 4-7 to disclose the basis upon which they claimed price at the rate of Rs.650 per square metre. While keeping respondents nos. 4-7 in suspense, the Municipal Corporation had in the meanwhile on January 10, 1978 passed a Resolution that necessary steps be taken to move the State Government for acquisition of the land and thereafter actually moved the Government by their letter dated January 31, 1978 to make the requisite declaration under s. 6 of the Land Acquisition Act, 1894 i.e. the property in question was needed for, public purpose viz. a recreation ground under the Development Plan. The State Government accordingly on April 7, 1978 on being satisfied that the property was needed issued the requisite impugned notification under s. 6 of the Act. Thereafter, the Special Land Acquisition officer on January 18, 1979 issued a general notice under s. 9 of the Land Acquisition Act and the same was published at the site and also issued individual notices to the persons interested. The hearing was fixed for February 26, 1979. On February 22, 1979 i.e. four days before the hearing some of the tenants approached the Special Land Acquisition officer and applied for three months' adjournment and accordingly the bearing was adjourned to April 24, 1979. However, no claims for compensation were filed. Nobody remained present at the hearing. Accordingly, the Special Land Acquisition officer was constrained to issue fresh notices under s. 9 on May 25, 1981. Thereafter, the Municipal Corporation on the date fixed applied to the Special Land Acquisition officer to keep the proceedings in abeyance at the behest of some of the tenants who had applied to the Corporation for three months' time. In the circumstances, respondents nos. 4-7 moved the High Court under Art. 226 of the Constitution for a writ in the nature of mandamus requiring the Special Land Acquisition officer to make an award. On January 20, 1981, the learned Government Advocate gave an undertaking before the High Court that the Special Land Acquisition officer would declare the award within a period of six months and make payment of compensation within eight months. In view of this, the High Court dismissed the writ petition as not pressed.

On these facts, it cannot be said that there was any waiver or abandonment of rights by respondents nos. 4-7. In order to constitute waiver, there must be voluntary and intentional relinquishment of a right. The essence of a waiver is an estoppel and where there is no estoppel, there is no waiver. Estoppel and waiver are questions of conduct and must necessarily be determined on the facts of each case. In the present case, respondents nos. 4-7 had without admitting that the appellant had the authority or power to initiate the proceedings for acquisition, signified their willingness to sell the property subject to certain terms. But the appellant did not accept the offer. On the contrary, the appellant took further steps for the acquisition of the land by moving the State Government under s. 126(1) of the Act to initiate acquisition proceedings by the issuance of a notification under s. 6 of the land Acquisition Act. In view of this, it cannot be said that the conduct of respondents nos. 4-7 was such as warrants an inference of relinquishment by a known existing legal right.

There is no question of estoppel, waiver or abandonment. There is no specific plea of waiver, acquiescence or estoppel, much less a plea of abandonment of right. That apart, the question of waiver really does not arise in the case. Admittedly, the tenants were not parties to the earlier

proceedings. There is, therefore, no question of waiver of rights by respondents nos. 4-7 not would this disentitle the tenants from maintaining the writ petition. The objection that there was undue delay in moving the High Court cannot prevail. The reservation has lapsed, acquisition upon such reservation is bad and the delay in filing the petition, such as it is, can make no difference to this position in law.

In the result, the appeal fails and is dismissed with costs.

P.S.S. Appeal dismissed.