HIGH COURT OF JUDICATURE AT BOMBAY
सत्यमेव जयते

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION No. 881 of 2015

1) Jagdishprasad M. Poddar]
]
2) Sitaram M. Poddar]
]
3) Yogendra J. Poddar]
]
4) Pawan J. Poddar]
]
All the petitioners, residing at]
Poddar Baug, M.G. Road,]
Kandivali (West),]
Mumbai 400 063]....**PETITIONERS.**

Versus.

1) State of Maharashtra]
Through its Department of Urban]
Development, Mantralaya,]
Mumbai.]

2) Municipal Corporation]
of Greater Mumbai]
through : its Legal Officer]
Mahapalika Marg,]
Mumbai 400 001.]

3) Maharashtra Dnyan Prasarak]
Mandal,]
Y.B. Chavan High School,]
Mathuradas Road, Irani Wadi,]
Kandivali (West),]

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Mumbai 400 067.]....**RESPONDENTS.**

ALONG WITH
WRIT PETITION No. 1126 of 2015

Maharashtra Dnyan Prasarak Mandal]
A Public Trust registered under Bombay]
Public Trust Act, bearing Registration]
No. F-1184/1964, having address]
at Y.V. Chavan High School, Mathuradas]
Road, Irani Wadi, Kandivali (West),]
Mumbai-400 067.]
through its Secretary]
Mr. Prasad B. Hiray, Age 47 years,]
residing at 26, Lotus Court, J. Tata Road,]
Mumbai-400 020.]....**PETITIONER.**

Versus.

1) Mumbai Municipal Corporation for]
Greater Mumbai, through its Legal]
Officer, Mahapalika Marg,]
Mumbai-400 001.]
]
]
2) State of Maharashtra]
through its Department of Urban]
Development Maharashtra Mumbai.]
]
]
3) Shri Makhanlal K. Poddar]
since deceased through his legal]
heirs :-]
]
3(a) Mr. Jagdishprasad M. Poddar]
]
3(b) Mr. Sitaram M. Poddar]
]

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3(c) Mr. Yogendra J. Poddar]
]
3(d) Mr. Pawan J. Poddar]
All residing at Poddar Baug,]
M.G. Road,]
Kandivali (West),]
Mumbai 400 067]....**RESPONDENTS.**

Dr. Birendra Saraf a/w Dr. Abhinav Chandrachud and Mr. Rohan Sawant i/by Mr. Yogesh Adhia for the petitioner in WP/881/2015 and for Respondent Nos. 3 (a) to 3 (d) in WP/1126/2015.

Mr. V.M. Thorat i/by Mr. M.V.Thorat for the Petitioner in WP/1126/2015 and for respondent No.3 in WP/881/2015.

Sukanta Karmarkar, AGP for Respondent No.1 in WP/881/2015.

Mr. Rajiv J. Mane, AGP for Respondent No.2 in WP/1126/2015.

Mr. Rajshekar Govilkar a/w Ms. Vandana Mahadik for the Respondent No.2 in WP/881/2015 and Respondent No.1 in WP/1126/2015

CORAM : S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

RESERVED ON : 11th MARCH, 2019.

PRONOUNCED ON : 20th MARCH, 2019.

JUDGMENT [PER: B. P. COLABAWALLA, J.]

1. Rule. Respondents waive service. By consent of parties, rule made returnable forthwith and heard finally.

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2. Writ Petition No. 881 of 2015 has been filed by the petitioners who are the owners *inter alia* of the plot of land bearing CTS No. 1192-C in village Kandivali, Taluka Borivali, admeasuring 1195.80 square meters (for short **"the suit property")**. Respondent No.1 in this petition is the State of Maharashtra and respondent No.2 is the Municipal Corporation of Greater Mumbai who is also the "Planning Authority" under the Maharashtra Regional and Town Planning Act, 1966 (for short, **"the MRTP Act"**). Respondent No.3 is an educational trust and is the petitioner in Writ Petition No. 1126 of 2015.

3. As far as W.P. No. 881 of 2015 is concerned, the petitioners, who are the owners of the suit property, are seeking a writ of mandamus directing respondent No.1 (the State) to publish an order in the Official Gazette notifying the lapsing of the reservation of "Extension of Secondary School" in respect of the suit property, in accordance with Section 127 (2) of the MRTP Act. This relief is sought on the basis that the reservation on the suit property which was earmarked in the Development Plan for "Extension of Secondary School" lapsed on the expiry of the statutory period

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prescribed under Section 127 of the MRTP Act. Despite a notice dated 9th October, 2013 being served upon respondent No.1 as well as respondent No.2, (under Section 127) [for short the **"said notice"**], no steps for commencement of acquisition were taken within 12 months from the date of service of the purchase notice, and hence the reservation is deemed to have lapsed. It is in this light the reliefs are sought in this writ petition.

4. As far as W.P. No.1126 of 2015 is concerned, this petition has been filed by the petitioners (respondent No.3 in W.P. No. 881 of 2015) *inter alia* seeking a direction to the respondent-authorities, namely, respondent Nos. 1 and 2 to forthwith take possession of the suit property and to hand over the same to the petitioner. A further direction that is sought, is that the respondent-Municipal Corporation be directed to forthwith take steps for acquisition of the suit property and after completing the same, to hand over possession of the suit property to the petitioner.

5. Since common questions of fact and law arise in both these petitions, they are being disposed of by this common order and judgment. For the sake of convenience, we shall refer to the facts as

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well as the parties, as they are arrayed in W.P. No.881 of 2015.

6. The facts that are relevant for the purposes of deciding the controversy in both these petitions are that in 1993, the suit property was reserved for "Extension of Secondary School" under the sanctioned Development Plan for "R" ward. On 14th December, 1993 the authorities under the Urban Land Ceiling (Ceiling & Regulation) Act, 1976 (for short "**the ULC Act"**), issued an order/no objection under Section 20 of the ULC Act in respect of the suit property and other adjoining properties of the predecessor-in-title of the petitioners granting an exemption from the provisions of Chapter III of the ULC Act. Though initially there was a condition imposed which stated that land under Development Plan reservations were to be transferred to the Government / the Municipal Authority without charging any consideration either before the work actually commences or at a later date as will be prescribed in that regard, the authorities under the ULC Act, vide their order dated 21st December, 1996, withdrew and nullified their earlier order dated 14th December, 1993 passed under Section 20 of the ULC Act. According to the petitioners, therefore, all conditions mentioned in the earlier order dated 14th December, 1993 including

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the condition regarding the transfer of the lands under reservation to the Government / Municipal Authorities free of cost, stood withdrawn and the petitioners were no longer required to hand over the suit property to the Government / Municipal Authorities.

7. In the meanwhile, on 26th February, 1995, respondent No.3 (the petitioner in W.P. No. 1126/2015) addressed a letter to the 2nd respondent-Corporation requesting that it be allotted the suit property. On 17th July, 1996, respondent No.2 addressed a letter to respondent No.3 *inter alia* stating that the request of respondent No.3 could be considered on certain conditions and only if respondent No.3 was agreeable to pay a security deposit of Rs.11,96,000/- and submit an undertaking to the effect that it was ready to pay the cost of the land at the market value immediately. It appears that respondent No.3 vide its letter dated 24th September, 1996 informed respondent No.2 that it was ready to pay the market value of the suit property. Thereafter various letters were exchanged between respondent No.2 and respondent No.3 during the period 1996 to 2008 requiring respondent No.3 to pay the said sum of Rs.11,96,000/- and submit the undertaking for payment of the cost of the suit property as per the market value. It is not in

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dispute that it is only in the year 2008 that respondent No.3 paid the sum of Rs.11,96,000/- to the 2nd respondent-Municipal Corporation.

8. Be that as it may, in the meanwhile, the petitioners being entitled to Transferable Development Rights (**TDR**) in respect of the suit property [under the Development Control Regulations for Greater Mumbai, 1991 (**DCR**)], made an application dated 28th July, 1995 to respondent No.2 for grant of TDR in respect of the suit property. The authorities under the ULC Act also issued their NOC dated 24th August, 1998 for grant of TDR to the petitioners in respect of the suit property. Pursuant thereto, on 1st July, 1999, respondent No.2 issued a Letter of Intent (**LOI**) in favour of the petitioners for grant of TDR subject to certain conditions stipulated thereunder. According to the petitioners, all the said conditions of the said LOI were complied with by the petitioners in due course and the same was accordingly informed to respondent No.2. Despite this, no TDR was granted to the petitioners and in fact the said LOI also lapsed in the year 2000 and the same has not been renewed by respondent No.2 thereafter.

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9. We must mention here that in the meanwhile, the ULC Act was repealed with effect from 29th November, 2007. Even though respondent No.3 paid the sum of Rs.11,96,000/- (after a lapse of almost 12 years) respondent No.3 did not take any further steps for another period of three years. On 8th July, 2011 the Town Planning Department prepared a valuation report valuing the suit property at Rs. 2.69 crores as of 2008. Despite such a valuation being given, respondent No.3 did not immediately pay the cost of the suit property. It is only in January, 2012 that respondent No.3 paid the said sum of Rs. 2.69 crores to respondent No.2 and which was the valuation of the suit property as of the year 2008. After this payment was made, respondent No.3, by their letter dated 10th October, 2012 called upon respondent No.2 to insert their name in the Property Register Card directly instead of inserting name of respondent No.2 so as to avoid "procedural hardship" of getting approvals of the Standing Committee, Improvements Committee, etc.

10. As mentioned earlier, despite the petitioners' complying with all the conditions of the LOI for grant of TDR, respondent No.2 did not issue any TDR / DRC (Development Rights Certificate) to the

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petitioners. In fact, the said LOI was not even renewed by respondent No.2. In these circumstances, finally on 9th October, 2013, the petitioners served a notice (the said notice) under Section 127 of the MRTP Act on respondent No.2 (which is the Planning Authority) and on respondent No.1 (the Urban Development Department, State of Maharashtra) to acquire the suit property.

11. It appears that thereafter a meeting was held by the officers of respondent No.2 on 30th November, 2013 where representatives of respondent No.3 were also present. At this meeting, the said notice of the petitioners was discussed in their absence. In the said meeting, respondent No.2 decided to issue a letter to the petitioners contending that the suit property was required to be handed over to respondent No.2 free of cost as part of the lay out condition and that the said notice issued under Section 127 was not binding upon it. However, at the same time, respondent No.2 informed the representatives of respondent No.3 (who were present at the meeting) that the outcome of the said notice issued by the petitioners would be binding upon them.

12. Accordingly, and keeping in line with the aforesaid meeting, respondent No.2, by its letter dated 1st April, 2014,

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contended that the suit property was required to be handed over to respondent No.2 as a part of the layout condition. According to the petitioners, respondent No.2 also falsely contended that the said notice dated 9th October, 2013 issued under Section 127 was not binding upon it since secondary education was not an obligatory duty of respondent No.2. This letter of respondent no.2 was refuted by the petitioners vide their letter dated 25th April, 2014.

13. Even respondent No.1, in reply to the said notice, on 7th October 2014, addressed a letter to the petitioners stating that the Development Plan had been approved by the Urban Development Department and therefore the said notice could not be served on the said Department and ought to be served on the Appropriate Authority, namely the Education Department, since the reservation was in relation to "Extension of Secondary School".

14. In view of the stand taken by respondent Nos.1 & 2, they did not take any steps for acquisition of the suit property. The statutory period of 12 months (as mentioned in Section 127 of the Act) expired on 8th October, 2014. It is in these circumstances that the petitioners contend that the reservation on the suit property for

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"Extension of Secondary School" has lapsed as more particularly provided in Section 127 (1) of the MRTP Act, and are therefore seeking the relief that the aforesaid lapsing be notified in the Official Gazette in accordance with Section 127 (2) thereof.

15. In this factual backdrop, Dr. Saraf, the learned Counsel appearing on behalf of the petitioners, submitted that it is not in dispute that the suit property was reserved for "Extension of Secondary School" under the sanctioned Development Plan of 1993 for "R" ward. Though initially an order dated 14th December, 1993 was passed under Section 20 of the ULC Act granting exemption to the petitioners for development of the suit property subject to certain conditions, the said order was withdrawn by the ULC Authorities vide their order dated 21st December, 1996. This being the case, the condition stipulated in the ULC order dated 14th December, 1993 did not survive. Dr. Saraf submitted that though the petitioners on 28th July, 1995 had made an application to respondent No.2 to grant TDR in respect of the suit property, apart from issuing a Letter of Intent dated 1st July, 1999, nothing further was done by the Authorities. In fact, the said LOI expired in the year 2000 and was never thereafter renewed. This being the case, he submitted that merely because the petitioners had made an

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application to respondent No.2 for grant of TDR in respect of the suit property, would not carry the case of the respondents any further as the said transaction admittedly did not fructify.

16. Dr. Saraf was also at pains to point out that in the year 1995-96 respondent No.3 had approached respondent No.2 for allotting the suit property for extension of its Secondary School on the adjoining plot. On 17th July, 1996 respondent No.2 had addressed a letter to respondent No.3 *inter alia* recording that the suit property shall be allotted to respondent No.3 on it paying the market value of the suit property to respondent No.2 and further directing respondent No.3 to pay the security deposit of Rs. 11,96,000/- (Eleven Lakhs, Ninety-Six Thousand Rupees Only) and submit an undertaking that respondent No.3 would be ready to pay the market value of the suit property immediately. Despite this, the security deposit was given by respondent No.3 only in the year 2008 and the purported market value of the suit property as on 2008 was paid by respondent No.3 to respondent No.2 only in or around January, 2012. Dr. Saraf submitted that admittedly, no acquisition of the suit property, either by agreement between the parties or by a declaration under 126(2) or 126(4), took place for more than 10

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years as contemplated under Section 127 of the MRTP Act. It is in these circumstances, the petitioners gave the said notice on 9th October, 2013 calling upon respondent Nos.1 and/or 2 to acquire the suit property within a period of 12 months from the date of service of the notice. Since the suit property was not acquired nor any steps were commenced for its acquisition, the reservation automatically lapsed and the suit property was deemed to be released from such reservation. This being the factual position, Dr. Saraf submitted that it was incumbent upon the Authorities to publish the aforesaid lapsing in the Official Gazette as contemplated and set out in Section 127 (2) of the MRTP Act.

17. On the other hand, the learned Advocate appearing on behalf of respondent No.2 (Municipal Corporation), submitted that it is true that as per the sanctioned revised Development Plan of "R" ward, the suit property was entirely reserved for public purpose for "Extension of Secondary School" and situated in the residential zone. The learned Advocate submitted that the suit property is a specially divided plot of the layout approved in Ch.E/1604/LOR dated 5th October, 2006. As per the registered terms and conditions submitted by the owners / developer under u/No. 1037/94 dated

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26th June, 1999 and as per condition No.12 therein the plot is reserved in the Development plan for "Extension of Secondary School" admeasuring 1176 square meters and is to be kept open and unencumbered and should be protected by constructing a compound wall along the reservation boundaries and is to be handed over to the Municipal Corporation whenever demanded. The learned Advocate submitted that the suit property is an extension to the existing Yashwantrao Chavan High School managed by respondent No.3 and it was in these circumstances that respondent No.3 had requested respondent No.2 to hand over the said land to them for the extension of the said school as it is accessible through the existing Secondary School plot.

18. The learned Advocate for respondent No.2 then submitted that respondent No.2 is not the "appropriate authority" in relation to the suit property which is reserved for "Extension of Secondary School" and it was in these circumstances that the proposal mooted by the petitioners for grant of TDR in respect of the suit property was proposed to be processed. The learned Advocate submitted that in any event that the purchase notice served by the petitioners on respondent No.2 cannot be held to be valid as the

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proposal of the petitioners requesting to grant compensation in lieu of TDR was already processed by respondent No.2 and further only primary education was the obligatory duty of the Corporation under Section 61(q) of the Mumbai Municipal Corporation Act (for short "**MMC Act"**) and secondary education and other further education fell under their discretionary duties as per Section 63 of the MMC Act. This being the position, the learned Advocate submitted that respondent No.2 was not the "appropriate authority" on which the said notice could have been served and therefore was invalid. If this be so, then there was no question of the reservation lapsing as the notice is to be served on the correct authority before it can be said that the lapsing takes effect, was the submission.

19. The learned Advocate appearing on behalf of respondent No.1 adopted the arguments canvassed by the learned Advocate for respondent No.2. Respondent No.1 also submitted that under Section 127 of the MRTP Act, a notice under Section 127 is to be served on the "appropriate authority". In the present case, the "appropriate authority" would be the Education Department of the Government of Maharashtra. No notice was served on the Education Department of the Government of Maharashtra but was in fact

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served on the Urban Development Department. This being the case, the said notice served by the petitioners on the Government could not be construed as a valid notice as it was not served on the "appropriate authority" as mentioned in Section 127 of the MRTP Act. This being the case, there was no question of the reservation lapsing and consequently for issuing a notification in that regard, was the submission.

20. As far as respondent No.3 is concerned, the learned Advocate appearing on behalf of respondent No.3, submitted that he has paid the consideration of Rs.11,96,000/- (as security deposit) as well as the market value of the suit property (Rs. 2.69 crores). According to respondent No.3, this was all done because respondent No.3 was the body for which the acquisition was to take place. The learned Advocate appearing on behalf of respondent No.3 submitted that since the acquisition was for the benefit and purpose for extension of the school run by respondent No.3, respondent No.3 was the "appropriate authority" on which the said notice ought to have been served. Admittedly, no such notice was served on respondent No.3 and therefore there cannot be any lapsing of the reservation, was the submission of respondent No.3. As far as

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respondent No.3's petition is concerned, (W.P. No. 1126/2015) the learned Advocate submitted that if the reservation has not lapsed and considering that respondent No.3 has paid valuable consideration to respondent No.2 in relation to the suit property, respondent Nos.1 and 2 ought to take possession of the suit property from the petitioners and hand over the same to respondent No.3. In the alternative, it was submitted that the Respondent-Corporation be directed to forthwith take steps for acquisition of the suit property and after completing the same hand over possession of the suit property to respondent No.3.

21. We have heard learned Counsel for the parties at length and have perused the papers and proceedings in both the writ petitions. The entire controversy in both the petitions revolves around Section 127 of the MRTP Act. It reads thus :-

> **"127. Lapsing of reservations :-**
>
> **(1) 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 a declaration under sub-section (2) or (4) of section 126 is not published in the Official Gazette within such period, the owner or any person interested in the land may serve notice, along with the documents showing his title or interest in the said land, on the Planning Authority, the Development Authority or,**

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> **as the case may be, the Appropriate Authority to that effect; and if within twelve 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 as otherwise, permissible in the case of adjacent land under the relevant plan.**
>
> **(2) On lapsing of reservation, allocation or designation of any land under sub-section (1), the Government shall notify the same, by an order published in the Official Gazette."**

22. Section 127 (1) stipulates that if any land reserved, allotted or designated for any purpose specified in any plan under the MRTP 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 a declaration under sub-section (2) or (4) of Section 126 is not published in the Official Gazette within such period, the owner or any person interested in the land may serve a notice along with documents showing his title or interest in the said land, on the Planning Authority, the Development Authority or, as the case may be, the Appropriate Authority calling upon them to acquire it. If within twelve months from the date of the service of such notice, the land is not acquired or no steps as aforesaid are

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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. In other words, what Section 127 (1) *inter alia* provides is that if any land is reserved for any purpose (in a final Regional plan, or final Development plan) and the same is not acquired by agreement or by a declaration published under Section 126 (2) or 126 (4), then the owner of the land would be entitled to give a notice to the Planning Authority, the Development Authority or, as the case may be, the Appropriate Authority asking them to acquire the said land. If the land is not acquired by the concerned authority within twelve months from the date of service of such notice, the reservation is deemed to have lapsed. Section 127 (2) of the MRTP Act stipulates that on the lapsing of reservation, allocation or designation of any land under sub-section (1), the Government shall notify the same, by an order published in the Official Gazette.

23. In the interpretation that we have taken with reference

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to Section 127, we are supported by a decision of the Supreme Court in the case of **Girnar Traders vs. State of Maharashtra [(2007) 7 SCC 555].** The Supreme Court in this decision, has very eloquently set out the spirit and purpose of Sections 126 and 127 of the MRTP Act. The relevant observations and the conclusions of the Supreme Court on this issue read thus:

> ***"36.*** *It is contended by Shri Soli J. Sorabjee and Shri U.U. Lalit, learned Senior Counsel appearing for the appellants, that the intent and purpose of Section 127 of the MRTP Act is the acquisition of land within six months or the steps are taken for acquisition of the land within six months, which could only be when a declaration under Section 6 of the LA Act is published in the Official Gazette. It is submitted by the learned Senior Counsel that the words "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" are not susceptible of a literal construction and the words have to be given a meaning which safeguards a citizen against arbitrary and irrational executive action which, in fact, may not result in acquisition of the land for a long period to come. It cannot be doubted that the period of 10 years is a long period where the land of the owner is kept in reservation. Section 127 gives an opportunity to the owner for dereservation of the land if no steps are taken for acquisition by the authorities within a period of six months in spite of service of notice for dereservation after the period of 10 years has expired.*
>
> ***37.*** *While interpreting the purpose of Section 127, this Court in Municipal Corpn. of Greater Bombay v. Dr. Hakimwadi Tenants' Assn. [1988 Supp SCC 55] has said: (SCC p. 63, para 11)*
>
> > "*11*. … 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

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> 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."

The Court also said: (SCC p. 61, para 8)

> "8. While the contention of learned counsel appearing for the appellant that the words 'six months from the date of service of such notice' in Section 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 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."

****

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 [1988 Supp SCC 55] . 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*

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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.

55. *Providing the period of six months after the service of notice clearly indicates the intention of the legislature of an urgency where nothing has been done in regard to the land reserved under the plan for a period of 10 years and the owner is deprived of the utilisation of his land as per the user permissible under the plan. When mandate is given in a section requiring compliance within a particular period, the strict compliance is required therewith as introduction of this section is with legislative intent to balance the power of the State of "eminent domain". The State possessed the power to take or control the property of the owner for the benefit of public cause, but when the State so acted, it was obliged to compensate the injured upon making just compensation. Compensation provided to the owner is the release of the land for keeping the land under reservation for 10 years without taking any steps for acquisition of the same.*

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*

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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.*

****

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)*

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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).***"**

24. It appears that keeping in line with the decision of the Supreme Court in **Girnar Traders**, the legislature amended Section 127 by Mah. 16 of 2009. Though the Supreme Court was analysing the unamended section, the purpose and spirit (as set out by the Supreme Court in the aforesaid decision) of Section 126 and 127 would continue to apply even after the amendment.

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25. Having analysed the aforesaid provision, we have to, therefore, now examine whether the reservation on the suit property (for "Extension of Secondary School") has lapsed keeping in mind the provisions of Section 127 of the MRTP Act. As mentioned earlier, it is not in dispute and it is nobody's case that the suit property has been acquired either by an agreement or by a declaration under sub-section (2) or sub-section (4) of Section 126 within a period of ten years from the date on which the final Regional plan, or the final Development plan came into force. This is an admitted position. This being the case, what we are really called upon to examine is whether the said notice issued by the petitioners is valid or otherwise. If it is found to be valid and the suit property is not acquired or no steps for its acquisition are commenced [as contemplated under section 127(1)] within twelve months from the date of service of the said notice, the reservation on the suit property would automatically lapse.

26. We shall first deal with the contention of respondent No.3 that it is the "appropriate authority" and therefore the said notice ought to have been served on it failing which there is no

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question of any lapsing. To understand this argument one has to understand who is the "appropriate authority". The words "appropriate authority" have been defined in Section 2 (3) of the MRTP Act, to mean any public authority on whose behalf land is designated for a public purpose in any plan or scheme and which it is authorised to acquire. Respondent No.3 is the Maharashtra Dnyan Prasarak Mandal which is running the Y.B. Chavan High School, Mathuradas Road, Irani Wadi, Kandivali (West), Mumbai 400 067. It is an educational trust registered under the Bombay Public Trusts Act, 1950 in the year 1964 and is running a Primary and Secondary School in Marathi medium and is imparting education to approximately 1000 students. The school run by respondent No.3 is housed in a three-storied building on a plot owned by the respondent No.3-Trust. Respondent No.3 being a public educational trust, certainly does not fall within the definition of the words "appropriate authority" as defined in Section 2 (3) of the MRTP Act. It is not a public authority at all and this being the case, it can never be the "appropriate authority" as defined under the MRTP Act. This being the case, we find that the said notice dated 9th October, 2013 cannot be invalidated on the ground that the same was not served on respondent No.3. This argument of respondent

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No.3 therefore has to be rejected at the outset.

27. This now leaves us to deal with the contention of respondent No.2 that respondent No.2 is not the "appropriate authority" on which the said notice ought to have been served and therefore, is invalid. We find no force in this argument either. Respondent No.2 is admittedly a Planning Authority as defined in Section 2 (19) of the MRTP Act. Section 2 (19) stipulates that a "Planning Authority" means a local authority; and includes; (a) a Special Planning Authority constituted or appointed or deemed to have been appointed under Section 40; or (b) in respect of the slum rehabilitation area declared under Section 3C of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short "**the SRA Act**"), the Slum Rehabilitation Authority appointed under Section 3A of the said Act. In other words, a Planning Authority means the local authority as defined in Section 2(15) of the MRTP Act and includes a Special Planning Authority constituted or appointed under Section 40, or the Slum Rehabilitation Authority, if the development is in respect of a slum rehabilitation area as declared under Section 3C of the SRA Act. In turn, "local authority" is defined in Section 2 (15) to mean; (a) the

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Bombay Municipal Corporation constituted under the Bombay Municipal Corporation Act, or the Nagpur Municipal Corporation constituted under the City of Nagpur Municipal Corporation Act, 1948, or any Municipal Corporation constituted under the Bombay Provincial Municipal Corporation Act, 1949; (b) a Council and a Nagar Panchayat constituted under the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965; (c) (i) a Zilla Parishad constituted under the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, (ii) the Authority constituted under the Maharashtra Housing and Area Development Act, 1976, (iii) the Nagpur Improvement Trust constituted under the Nagpur Improvement Trust Act, 1936, and which are permitted by the State Government for any area under its jurisdiction to exercise the powers of a Planning Authority under this Act.

28. On a conjoint reading of Sections 2(19) and 2(15), it is clear that in the facts of the present case, respondent No.2 is the "Planning Authority". This is also explicitly clear from the Notification dated 28th February, 1991 issued by the Urban Development Department which also brought into force the Development Control Regulations for Greater Mumbai, 1991. In

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fact, Regulation 2 of these Regulations clearly stipulates that these Regulations shall apply to building activity and development work in areas under the entire jurisdiction of respondent No.2 (the Municipal Corporation of Greater Mumbai). This being the position, respondent No.2 is clearly the Planning Authority and in fact the same has not even been disputed before us.

29. Having said this, we may also take note of some of the other provisions of the MRTP Act. Chapter III of the MRTP Act deals with a Development Plan and the procedure to be followed regarding its preparation, submission and sanction. These provisions can be found from Section 21 to 42 of the MRTP Act. In fact, Section 21 stipulates that as soon as may be after the commencement of this Act, but not later than three years after such commencement, and subject, however, to the provisions of this Act, every Planning Authority shall carry out a survey, prepare an existing land-use map and prepare a draft Development Plan for the area within its jurisdiction, in accordance with the provisions of the Regional Plan. It is not in dispute that the Development Plan under which the reservation was clamped (namely, reservation for "Extension of Secondary School") was prepared by respondent No.2. This being

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the position, the said notice that was given by the petitioners to respondent No.2 was in its capacity as the "Planning Authority" and which had clamped the reservation. Merely because under Section 63 of the MMC Act, secondary education and such other further education falls under the discretionary duties of respondent No.2 will not in any way derogate from the fact that the reservation clamped on the suit property for extension of a Secondary School was done by respondent No.2 in its capacity as the Planning Authority. This being the case, we find that the arguments canvassed by respondent No.2 that it was not the "appropriate authority" on which the notice could have been served is wholly misconceived. As can be seen from a plain reading of Section 127 and which is reproduced earlier, the notice has to be served on the Planning Authority, the Development Authority or, as the case may be the Appropriate Authority. In the facts of the present case, there is no question of serving the notice on a Development Authority because a Development Authority is defined in Section 2(8) to mean a New Town Development Authority constituted or declared under Section 113 of the MRTP Act. In turn, Section 113 deals with the designation of a site for a new town and stipulates that where the State Government is satisfied that it is expedient in public interest

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that any area should be developed as a site for a new town as reserved or designated in any draft or final Regional Plan, it may by notification in the Official Gazette, designate that area as the site for the proposed new town. After this publication under sub-section (1), by another notification, the State Government can constitute a New Town Development Authority which is the Development Authority defined in Section 2(8). This is also clear from the fact that Section 113(8) states that a Development Authority shall have all the powers and shall carry out all the duties of a Planning Authority under this Act including all powers and duties under Chapters III and IV and also under the other provisions of this Act. In other words, what Section 113(8) stipulates is that when a Development Authority is formed in relation to a New Town, for the purposes of the MRTP Act, it shall have all the powers of the Planning Authority in relation to that town. It is for this reason that the words "Development Authority" are used in Section 127. Even as far as the words "Appropriate Authority" used in Section 127 is concerned, the same can never apply to the facts of the present case as the "Appropriate Authority" is defined to mean any public authority on whose behalf land is designated for a public purpose in any plan or scheme and which it is authorized to acquire. In the

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present case, the suit property is not designated for any public purpose which that public authority could acquire so as to give notice to the "Appropriate Authority". In other words, when on behalf of a Public Authority any land is designated for any public purpose of which it has the power to acquire, then only can it be an "Appropriate Authority". This being the case and considering that respondent No.2 was the Planning Authority that had clamped the reservation on the suit property for "Extension of Secondary School", notice was correctly given to respondent No.2. Once this is the case, then the said notice dated 9th October, 2013 cannot be invalidated on the ground that it was not served on the correct authority.

30. Having said this, in the facts of the present case, admittedly no steps have been taken for acquisition of the suit property within a period of twelve months from the date of service of the said notice on respondent No.2 as contemplated under Section 127 (1) of the MRTP Act. This being the case, the reservation clamped on the suit property automatically lapses. Considering that the reservation lapses, then the State Government is duty bound under Section 127(2) to notify the same by an order published in

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the Official Gazette. In this factual situation, we find that the reliefs sought for in Writ Petition No.881 of 2015 ought to be granted.

31. We must mention that considering that we have held that the said notice is validly served on respondent No.2 and which is the Planning Authority, we are not deciding whether the Urban Development Department of the State of Maharashtra or the Education Department of the State of Maharashtra would be the "Appropriate Authority". Considering that the notice has been served on the Planning Authority in terms of Section 127 (1) of the MRTP Act, we are not required to go into this question and we leave it open to be agitated in an appropriate case.

32. As far as Writ Petition No. 1126 of 2015 is concerned, in view of the findings that we have given earlier, we are afraid that the reliefs claimed therein cannot be granted. In the facts of the present case, a direction against the respondent-authorities to take possession of the suit property and hand over the same to respondent No.3 can never be done without there being a proper acquisition under the provisions of the MRTP Act. In the facts of the present case, it is only when the suit property is acquired that possession of the same can be handed over by respondent No. 2 to

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respondent No.3. The fact that the suit property was never acquired is also clear from prayer clause (b) of this petition which seeks a direction against the respondent-Corporation to forthwith take steps in respect of acquisition of the suit property. In these circumstances and considering the findings given earlier, we are of the opinion that the reliefs claimed in Writ Petition No.1126 of 2015 cannot be granted.

33. In view of the foregoing discussion, rule is made absolute in Writ Petition No. 881 of 2015 and the same is granted in terms of prayer clauses (a), (b) and (c) which read thus :-

> "(a) this Hon'ble Court be pleased to issue a writ of mandamus and/or any other appropriate writ, order or direction, ordering and directing Respondent No.1 to publish an order in the Official Gazette notifying the lapsing of the Reservation of Extension of Secondary School in respect of the Subject Property, in accordance with Section 127 (2) of the Maharashtra Regional and Town Planning Act, 1966.
>
> (b) this Hon'ble Court be pleased to issue a writ of prohibition and/or any other appropriate writ, order or direction prohibiting and restraining Respondent Nos. 1 and/or 2 from in any manner treating the Subject Property as affected by any Reservation and/or taking any steps with respect to the Subject Property on the basis that the same is affected by any DP Reservation and/or including the Subject Property in the DP Plan as being affected by any such or other Reservation.
>
> (c) This Hon'ble Court be pleased to issue a declaration that the reservation of extension of secondary school in respect of the Subject Property has lapsed under section 127 of Maharashtra Regional and Town Planning Act, 1966."

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34. Writ Petition No.881 of 2015 is accordingly disposed of. As far as Writ Petition No.1126 of 2015 is concerned, rule is discharged and the Writ Petition is dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

(B. P. COLABAWALLA, J) **(S. C. DHARMADHIKARI, J)**

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