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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2093 OF 2015

Satish Prakash Rohra & Anr. ...Petitioners
vs.

Municipal Corporation of
Greater Mumbai & Ors. ...Respondents

ALONG WITH
WRIT PETITION NO.2169 OF 2015

Satish Prakash Rohra & Anr. ...Petitioners
vs.

Municipal Corporation of
Greater Mumbai & Ors. ...Respondents

Mr.Girish Godbole a/w Mr.Amit S. Pradhan a/w Trupti
Talati I/b Pradhan & Rao for the Petitioners
Mr.A.Y.Sakhare, Senior Counsel a/w Ms Pallavi
Thakar for the respondent-Mumbai Municipal
Corporation
Mr.U.S.Upadhyay, AGP for the State

CORAM : A.S.OKA, & RIYAZ.I.CHAGLA,JJ.
DATE : AUGUST 2, 2018

ORAL JUDGMENT: (PER A.S.OKA,J.)

1 These petitions were finally disposed of by
this Court. However, the Apex Court by order dated
24th August 2017 proceeded to set aside the
Judgments and orders passed in these petitions and
has remanded both the petitions to this Court. The
order of the Apex Court reads thus:

"Delay condoned.

Leave granted.

Heard learned counsel for the parties.

Appeals have been preferred by the Municipal Corporation, Greater Mumbai and others aggrieved by the Order dated 2.3.2016 and 1.3.2016 in W.P.No.2093 of 2015 and 2169 of 2016 respectively. Prayer was made by the appellants in the writ petitions that duration of reservation of the area for the garden under Municipal Regional Town Planning Act,1966 has lapsed. Certain documents have been filed. Considering the nature of the documents filed i.e agreement dated 12th June 1994, we feel that the High Court should have called for the return and thereafter ought to have decided the individual matters considering the facts and circumstances. In view of the aforesaid, considering the various submissions which require examination individually in the said case, we deem it proper to remit the matters to High Court. After pleadings are completed, let the High Court decide the aforesaid cases individually and as expeditiously as possible.

The Judgment and order in aforesaid cases is set aside.

The appeals are partly allowed. No costs."

(underline added)

2 As there is a direction of the Apex Court to decide both the petitions as expeditiously as possible, that we have given out of turn priority to the hearing of these petitions. After remand,

there are affidavits filed by way of reply by the Brihanmumbai Municipal Corporation by placing additional material on record.

3 The factual controversy involved in both the petitions needs to be stated before we deal with the submissions. As far as Writ Petition No.2093 of 2015 is concerned, it is not in dispute that the petitioner is the owner of the land bearing CTS No.424 (corresponding to Survey No. 60 Hissa 8) admeasuring 5798 sq meters situated at village Borivali, Taluka Borivali, Mumbai Suburban District. As far as Writ Petition No.2169 of 2015 is concerned, there is no dispute that the petitioners therein are the owners of the land bearing CTS No.455/1 admeasuring 3808 sq meters situated at village Borivali, Taluka Borivali, Mumbai Suburban District.

4 We may note here that one Hiranman Sitaram Deorukhkar is the owner of the plot bearing CTS Nos.456-458 of the same village. We may note here that the lands subject matter of these two petitions (for short 'the subject lands') and the lands bearing CTS No.456-458 were part of the same acquisition proposal initiated by the Brihanmumbai Municipal Corporation (for short 'the said Corporation') which is the Planning Authority within the meaning of the Maharashtra Regional and Town Planning Act,1966 (for short 'the MRTP Act'). It is not in dispute that the lands subject matter

of the two petitions and the lands held by the said Deorukhkar were reserved in the sanctioned Development Plan of 1967 for the purpose of "public garden". The said Development Plan underwent a revision in the year 1993 in which the reservation of the said lands for garden was retained.

5 As no steps were taken by the said Corporation being the Planning Authority for the acquisition of the subject lands within a period of 10 years from the date of the last sanctioned Development Plan, notices under sections 127 of the MRTP Act were issued by the petitioners. The notice in relation to the subject matter of Writ Petition No.2093 of 2015 was issued on 18th January 2014 which was addressed to the Municipal Commissioner of the said Corporation. As far as the land subject matter of Writ Petition No.2169 of 2015 is concerned, such notice was issued on 14th March 2016. Another admitted position is that both the notices were admittedly served in the office of the said Corporation on the respective dates of the notices. Another admitted position is that even as of today, a declaration under sub-section (2) or sub-section (4) of section 126 of the MRTP Act read with section 6 of the Land Acquisition Act,1894 (for short 'the old Land Acquisition Act') or a declaration under section 126 read with section 19 of the Right to Fair Compensation and Transparency in Land

Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the new Land Acquisition Act') have not been issued and published. Thus, in both the petitions, the contention of the writ petitioners is that on the failure of the Municipal Corporation to take steps for acquisition of the subject lands within the time stipulated under sub-section 1 of section 127 of the MRTP Act, the reservation of the subject lands for garden shall be deemed to have lapsed. There is one more factual aspect which is relevant as far as the reservation is concerned, in the revised Development Plan No. TPB-4317/629/CR0118/2017/DP/UD-11 dated 8th May 2018, the subject lands have been shown reserved for the purpose of garden. In the said plan, the subject lands are also shown as affected by 13.40 meter wide proposed D.P.Road.

6 We may note here that both the writ petitions were allowed by a Division Bench of this Court by holding that on the failure of the respondents to take steps for acquisition of the said lands within the time stipulated under sub-section 1 of sections 127, the reservation for garden provided under 1993 sanctioned Development Plan has lapsed. This Court while allowing the writ petitions relied upon the decision of the Apex Court in the case of *Shrirampur Municipal Council vs. Satyabhamabai Bhimaji Dawkher*¹.

1 (2013) 5 SCC 627

7 Another factual aspect which needs to be noted is about the land owned by Shri Hiranman Sitaram Deorukhkar which we have referred above, which was also reserved for garden. Writ Petition No.2535 of 2008 was filed by the said Deorukhkar in this Court by relying upon a notice dated 25th July 2007 issued under section 127 of the MRTP Act. The said petition was decided by this Court by Judgment and Order dated 17th June 2013 by which it was held that the reservation stands lapsed. The said Judgment was challenged before the Apex Court by the said Corporation by filing civil Appeal No.11258 of 2017. By the Judgment and Order dated 24th August 2017, the Apex Court accepted the finding of this Court that the reservation has lapsed by virtue of the operation of section 127 of the MRTP Act as correct. It is an admitted position that even in the said case, no steps for acquisition were taken within the meaning of section 127 within the period provided therein. The contention of the said Corporation was that the proposal dated 21st January 2008 was submitted by the said Corporation to the District Collector for initiating acquisition proceeding. However, no steps were taken by the State Government for the publication of a declaration under section 126 read with section 6 of the old Land Acquisition Act. However, the Apex Court observed that the land subject matter of the petition is still required for a public park and

therefore, directed that the land subject matter shall continue to be reserved for public garden, and compensation shall be determined in accordance with the provisions of the new Land Acquisition Act and shall be paid to the owner. The compensation was to be paid to the owner within six months. It is not in dispute that the compensation has not been paid by the said Corporation. As can be seen from the order of the Apex Court by which the petitions were remanded, the final Judgments passed by this Court in these two petitions were set aside on the same day by the same Bench of the Apex Court by passing an order of remand.

8 As observed earlier, after remand, there are affidavits filed on record. We may briefly refer to the said affidavits for the purpose of indicating the stand taken by the said Corporation. On 28th March 2018, the said Corporation filed an affidavit-in-reply of Shri Mahendra Mulay, Executive Engineer, Development Plan which is a common reply for both the petitions. Subsequently, the same Officer filed an additional affidavit-in-reply dated 5th June 2018 which is a common affidavit in both the petitions. Thereafter, in both the petitions, separate affidavits have been filed by the said Officer on 11th July 2018. The stand of the said Corporation in brief is that in view of the decision of the Apex Court in Civil Appeal No.11258 of 2017 (for short `the said case of

Deorukhkar') which holds that the reservation continues to exist, these two petitions will be governed by the said decision. Hence, the reservation cannot be treated as lapsed. The second contention is that in both the cases, notices under section 127 of the MRTP Act were issued to the Municipal Commissioner and not to the Municipal Corporation. Therefore, the said notices are not legal and valid. Thirdly, a stand is taken that in view of the subsequent reservation imposed on the subject lands by the revised Development Plan 2034 which was sanctioned by the notification dated 8th May 2018, the reservation for garden continues to exist. As far as Writ Petition No.2169 of 2015 is concerned, there is an additional contention raised on the basis of the undertaking given by the petitioners. The contention raised on the basis of the said undertaking/Agreement dated 12th June 1994 is that the petitioners had agreed to surrender the land subject matter of the said Writ Petition against grant of Transferable Development Rights (for short 'TDR'). It is urged that the undertaking has been given as a condition for sanction of the layout plan.

9 We have heard the submissions of the learned counsel for the petitioners and the learned senior counsel representing the said Corporation. Both the parties have also submitted written arguments. The submission of the learned counsel for the

petitioners is that as far as the issue of the validity of notice served to the Municipal Commissioner is concerned, law is fairly well settled. He placed reliance on the decision of a Division Bench of this Court in the case of C.V.Shah and A.V.Bhat vs State of Maharashtra² by pointing out that the issue is very well settled that a notice under section 127 of the MRTP Act served to the Municipal Commissioner is valid. He further stated that the decision in the case of C.V.Shah and A.V.Bhat (supra) has been affirmed by the Apex Court.

10 The submission of the learned counsel for the petitioner is that the decision in the case of Deorukhkar categorically holds that the reservation on the said land stands lapsed in view of section 127 of the MRTP Act. However, after finding that the subject land was required for the same public purpose, the Apex Court exercised its extraordinary power under Article 142 of the Constitution of India and directed that the said land shall be acquired under the provisions of the New Land Acquisition Act. He would, therefore, submit that the direction issued by the Apex Court invoking power under section 142 of the Constitution of India cannot apply to the subject lands. His submission is that sub section (1) of section 127 of the MRTP Act introduces a deeming fiction and once there is a failure of the

2 2006 (3) Bombay Cases Reporter 216

Authorities to take steps for acquisition of the lands within the stipulated period provided under the said provision, the lapsing of reservation is automatic. He accepted that in the terms and conditions incorporated by the said Corporation while sanctioning layout plan, it was provided that when the said Corporation demands possession of the land subject matter of Writ petition No.2139 of 2015, the petitioners should hand over the same to the said Corporation against grant of TDR. Firstly, he submitted that the effect of legal fiction under section 127 of the MRTP Act is that there is an automatic lapsing of reservation. Even assuming that the petitioners were called upon to hand over possession of the subject land by invoking such a condition and that they failed to do so, the lapsing of reservation will not be affected. He submitted clause 20 of the terms and conditions provided for consequences of not abiding by any of the terms and conditions including the Condition No.12 and 31 providing for the surrender of land against TDR. He submitted that notwithstanding the said terms and conditions, the said Corporation moved the Government for the acquisition of the said land in the year 2007-2008. He would, therefore, submit that in both the cases, the reservation has lapsed.

11 The learned senior counsel appearing for the said Corporation while dealing with Writ Petition

No.2169 of 2015 submitted that condition Nos.12 and 31 of the terms and conditions annexed to the Undertaking/Agreement of the petitioners registered on 13th June 1994 clearly provided that as and when Municipal Corporation requires the said land, the petitioners were under an obligation to give vacant possession of the said land against TDR which may be granted by the said Corporation. He invited our attention to the letter dated 18th January 2016 addressed by the Chief Engineer (Development Plan) to the petitioners in the said Writ Petition by which the said Corporation invoked condition Nos.12 and 31 forming part of the terms of the conditions which were duly registered. He relied upon Outward Register maintained by the said Corporation to show that the letter dated 18th January 2016 was issued.

12 He invited our attention to the definition of the Appropriate Authority and the Planning Authority under sub sections (15) and (19) of section 2 of the MRTP Act. Relying upon clause (b) of section 3 of the Mumbai Municipal Corporation Act,1888, he submitted that the Corporation is defined to mean the Municipal Corporation of Brihan Mumbai. He submitted that admittedly the Planning Authority is the said Corporation which is also the Appropriate Authority and therefore, a notice under section 127 of the MRTP Act ought to have been served to

the said Corporation and not to its Commissioner. He submitted that even section 152 of the MRTP Act does not permit service of notice under section 127 on the Municipal Commissioner. He submitted that sections 136 of the MRTP Act deals with the manner in which service of notice shall be effected. Relying upon the decision of the Division Bench of this Court in the case of Perfect Machin Tools Limited vs. State of Maharashtra³, he urged that a notice under section 127 has to be strictly construed considering the drastic consequences of non compliance of the said notice. He, would, therefore submit that there is no question of lapsing of reservation as notices under section 127 were itself invalid in both cases. The learned senior counsel further relied upon the decision of the Apex Court in the case of Deorukhkar and submitted that this Court cannot hold that the reservation has lapsed.

13 The learned counsel for the petitioner submitted that in any case, the said Corporation never invoked Condition Nos.12 and 31 of the terms and conditions registered on 13th June 1994.

14 We have carefully considered the submissions. As noted earlier, there is no dispute about the service of notice under section 127 of the MRTP Act in both the cases. There is also no dispute that not only before the expiry of period

3 2008 (6) Bom.Cases Reporter 200

stipulated in sub-section (1) of section 127 from the date of service of notices but even till today, there is no declaration of acquisition published in respect of the subject lands either under old or new Land Acquisition Act read with section 126 of the MRTP Act.

15 As far as the scope of the sections 127 is concerned, the law is fairly well settled by various decisions of the Apex Court. Section 127 reads thus:

“127.LAPSING OF RESERVATIONS -

(2) 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, alongwith the documents showing his title or interest in the said land, or the Planning Authority, the Development authority or, 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.”

16 The first such decision is in the case of *Girnar Traders (2) Vs. State of Maharashtra*⁴. The question before the Apex Court was what is the meaning of steps as contemplated by section 127 of the MRTP Act. The issue was whether an application made by the Appropriate Authority or the Planning Authority within the time provided under subsection (1) of section 127 of the MRTP Act to the Collector for initiating acquisition proceedings will amount to steps taken in the proceedings. The Apex Court categorically held that it cannot be said that any step is taken within the meaning of section 127 unless a declaration under section 126 of the MRTP Act is published. Paragraphs 31, 32, 56 to 58 of the said decision read thus:

"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

4 (2007) 7 SCC 555

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.

32. 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."

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 MRTTP Act. It is Section 6 declaration which would commence the acquisition proceedings under the MRTTP Act and would culminate into passing of an award as provided in sub-section (3) of Section 126 of the MRTTP Act. Thus, unless and until Section 6 declaration is issued, it cannot be said that the steps for acquisition are commenced."

(underlines supplied)

17 If paragraph 32 of the said decision is perused, the Apex Court has held that lapsing is automatic by a legal fiction. We must note here that the view taken in the said decision was approved by the larger Bench of the Apex Court in the case of Girnar Traders(3) vs. State of Maharashtra⁵. In the case of Poona Timber Merchants and Saw Mill Owners Association Vs. State of Maharashtra⁶, in paragraph 23, the Apex Court specifically held that in case of the failure of the Competent Authority to acquire the land within the time specified under section 127, the result is deemed lapsing of reservation. In the present case, admittedly, no steps as

5 (2011) 3 SCC 1

6 (2008) 17 SCC 357

contemplated by the aforesaid decision in the case of Girnar Traders(2) have been taken and therefore, if the notices under section 127 are valid, by a deeming fiction, there is an automatic lapsing of reservation.

18 As regards the argument that the notices are illegal by virtue of it being addressed to the Municipal Commissioner, the issue is no longer *res-integra*. In the case of C.V.Shah and A.V.Bhat (supra), this issue specifically arose for consideration of a Division Bench of this Court and the said issue has been dealt with and answered. The Division Bench proceeded to deal with the said issue from paragraph 21 onwards by quoting section 126 of the MRTP Act. Paragraphs 22 and 23 of the said decision read thus:

"22. Section 136 of the MRTP Act, 1966 provides, inter alia, that any notice required under the MRTP Act may be served upon the Principal Officer of the local authority and if such notice is addressed to the Principal Officer of the local authority that shall be deemed to be duly served on the local authority. It is not in dispute that the Commissioner is the Principal Officer of the Municipal Corporation. The contention that the expression "any person" in section 136 does not include the Planning Authority is wholly fallacious. The

expression "any person" is too wide and comprehensive and includes both natural and unnatural person. That would include the local authority is clear from Clause (a) of sub-section (1) of sections 136 itself. We may immediately notice here that the Planning Authority is defined as 'local authority' in section 2(19) and the 'local authority' in section 2(15) means, inter alia, the Municipal Corporation constituted under the Bombay Provincial Municipal Corporations Act, 1949. (For short, BMC Act). That the Pune Municipal Corporation is the Municipal Corporation constituted under the BMC Act is not in doubt.

23 Moreover, section 152 of the MRTP Act, 1966 also provides that the powers and functions of the Planning Authority shall inter alia for the purposes of section 136 be exercised and performed in the case of Municipal Corporation by the Municipal Commissioner or such other officer as he may be appointed in this behalf. Thus, the notice contemplated in section 127 of the MRTP Act, 1966 on the Planning Authority if served on its Principal Officer is a good service."

(underlines supplied)

notice under section 127 served upon the Principal officer of a Municipal Corporation is a good service. It cannot be disputed that the Municipal Commissioner of the said Corporation is the Principal Officer of the said Corporation. Therefore, the issue raised by the Municipal Corporation as regards the illegality in the notice is no longer res-integra. Reliance placed on the decision of this Court in the case of Perfect Machine Tools Company Limited (supra) is also misplaced for more than one reason. Firstly, by Judgment and Order dated 17th March 2016, the Apex Court has set aside the said decision. Secondly, this Court in the said decision was dealing with a case where the notice under section 127 was served not upon the Municipal Commissioner but upon the Chief Engineer (Development Plan). The said notice was accepted by the Apex Court as valid as there was a material placed on record to show that the said notice was placed before the Municipal Commissioner.

20 Now, we turn to the contention raised in the Writ Petition No.2169 of 2015 based on the condition Nos.12 and 31 incorporated while sanctioning the layout plan. In this petition, we are concerned with the question whether a notice under section 127 is legal and valid and whether it is lawfully served. As held earlier, the consequence of service of a legal notice and the failure of the Appropriate or Planning Authority,

as the case may be, to take steps for acquisition within the stipulated time is the deemed lapsing of the reservation. Even assuming that the petitioners were bound by the said conditions, we do not see how the deemed lapsing of reservation can be prevented. Even according to the case of the said Corporation, clause 12 was invoked for the first time in the year 2016 i.e several months after the time for taking steps on the basis of the Notice dated 14th March 2014 was over. If according to the Municipal Corporation, the petitioners have committed breaches of the conditions on which the lay out was sanctioned, the said Corporation can always take appropriate action in accordance with law for the said breach. Moreover, the lapsing of reservation will not prevent the said Municipal Corporation from invoking the said clauses, if it is otherwise permissible in law. At highest, the undertaking of the petitioners can be a factor which can be taken into consideration for determination of compensation in the event the said land is compulsorily acquired.

21 Therefore, in these two cases, the steps for acquisition were not taken within the time stipulated under section 127 of the MRTTP Act. Hence, the reservation for garden has lapsed.

22 Now, this takes us to the decision of the Apex Court in the case of Deorukhkar. We have

already noted earlier that in the said case, there is no dispute about the service of notice under section 127 and the fact that there was a failure of the Planning Authority to take steps for acquisition within the stipulated period. As noted earlier, this Court in the said case had held that reservation has lapsed.

23 We have carefully perused the decision of the Apex Court. On page 10 of the said decision, the Apex Court has held thus:

"It cannot be disputed that reservation made under section 127 of the MRTP Act stands lapsed. At the same time area had been reserved for garden. "

(underline supplied)

24 The Apex Court thereafter proceeded to discuss how there was a negligence on the part of the Planning Authority and the State Government to take steps for initiating acquisition proceedings. The Apex Court observed that no steps were forthcoming to act in the public interest as per the Development Plan. The Apex Court observed that the Authorities of the State ought to have published a declaration under the old Land Acquisition Act and ought to have completed the acquisition proceedings. After making this observation on pages 17 and 18, the Apex Court proceeded to observe thus:

"Be that as it may, since there is lapse of reservation, and the land is still required for public park, and since now the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short 'the 2013 Act') have come into force, obviously the compensation has to be paid in accordance with the provisions contained in the said Act. In the circumstances, we direct that the land shall continue to be reserved and to be used for the public garden. However, the compensation shall be determined and paid in accordance with the principles laid down in the 2013 Act.

Thus, we set aside the order passed by the High Court. Let compensation be determined after hearing the interested parties and it shall be decided within a period of six months from today. The appeal is accordingly allowed. No order as to costs."

(underline supplied)

25 Thus, careful perusal of the decision of the Apex Court shows that the finding of this Court that the reservation had lapsed has been affirmed and in fact, the Apex Court has held that it cannot be disputed that the reservation has lapsed. However, after finding that the

reservation of the subject land was necessary for a public park, a direction has been issued by the Apex Court to acquire the said land by paying compensation in accordance with new Land Acquisition Land. After holding that the reservation has lapsed, the aforesaid direction has been issued by the Apex Court in exercise of its penary powers under Article 142 of the Constitution of India. The decision of the Apex Court in the case of Girnar Traders(2) (supra) and Shrirampur Municipal Corporation (supra) are of larger Benches. Therefore, we are unable to issue the same directions which are issued by the Apex Court. As observed earlier, the directions have been issued in exercise of power under Article 142 of the Constitution of India. There is no more reason why we have held that the said direction was in exercise of the power under Article 142. The day on which the Judgment in the case of Deorukhkar was delivered, Special Leave Petitions arising out of the Judgments of this Court in these two petitions were disposed of by the same Bench by passing an order of remand. Though the facts of these two cases were similar, the Apex Court has not chosen to issue similar directions in these two cases.

26 Notwithstanding the lapsing of reservation, the respondents can always acquire the land subject matter of these two petitions by taking recourse to the new Land Acquisition Act, though

the provisions of sections 125 and 126 of the MRTP Act will not be available for such acquisition in view of lapsing of the reservation. Therefore, while acceding to the prayer made by the petitioners, we propose to grant time of one year to the State Government to acquire the subject lands by directing that for the said period, the petitioner shall not carry on any development. In fact, in both the Writ Petitions, there is a statement made on oath by the petitioner without prejudice to the other contentions by the petitioners that if compensation as stated in the affidavit is paid within the reasonable period of six months, they have no objection for acquisition of the subject lands.

27 As regards subsequent reservations imposed by the notification dated 8th May 2018, the law is well settled. Once there is a lapsing of reservation imposed by the earlier Development Plan, the benefit of lapsing cannot be taken away by imposing the subsequent reservations. The said principle has been laid down by a Division Bench of this Court in the case of Baburao Dhondiba Salokhe vs. Kolhapur Municipal Corporation and another⁷. The Apex Court in the case of Godrej and Boyce Manufacturing Company Limited Vs. State of Maharashtra and others⁸ dealt with a case where after lapsing of reservation under section 127 of

⁷ (2003) (3) Mh.LJ.820

⁸ (2015) 11 SCC 554

the MRTP Act, an attempt was made to impose a reservation by modification of the sanctioned Development Plan by taking recourse to section 37 of the MRTP Act. The Apex Court held that statutory right accrued to the owners cannot be taken away by making an attempt to impose a fresh reservation. Therefore, subsequent reservation imposed on 8th May 2018 is of no consequence.

28 Accordingly, we dispose of the writ petitions by passing the following order:

(I) We hold that the reservation on the subject lands stands lapsed by virtue of the operation section 127 of the MRTP Act, 1966 and that the subject lands shall become available to the owners thereof for the purpose of development as otherwise permissible in the case of adjacent land under the relevant sanctioned Development Plan;

(II) We grant time of one year from today to the respondents to initiate and complete the proceedings for compulsory acquisition of the subject lands in accordance with the provisions of the new Land Acquisition Act. Therefore, for a period of one year from today, notwithstanding the directions issued under clause (a) above, the petitioners or the owners of the subject lands shall not carry out any development on the subject lands or shall not create any third party rights therein and shall not part with possession thereof;

(III) On the failure of the respondents to complete acquisition and to pay compensation to the persons interested within a period of one year from today, it will be open for the owners to deal with the subject lands as held in clause (a) above;

(IV) On the failure of the State Government to complete the acquisition and to pay compensation within a period of one year from today, the State Government shall forthwith issue a notification contemplated under sub-section 2 of section 127 of the MRTP Act;

(V) Rule is accordingly made absolute on above terms.

(RIYAZ.I.CHAGLA,J.)

(A.S.OKA,J.)