REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1607 OF 2018
(ARISING OUT OF SLP (C) NO.3633 OF 2015)

Chhabildas … Appellant

Versus

The State of Maharashtra & Ors. … Respondents

J U D G M E N T

R.F. NARIMAN, J.

1. Leave granted.

2. The present case concerns a purchase notice issued under Section 49 of the Maharashtra Regional Town Planning Act, 1966 (hereinafter referred to as "the Act") and, in particular, the effect of Sub-section (7) thereof. The aforesaid Section 49 along with other

relevant provisions of the Act, as they stood at the relevant time, are reproduced hereunder:

> **Section 49 - Obligation to acquire land on refusal of permission or on grant of permission in certain cases. -** (1) Where--
>
> (a) any land is designated by a plan as subject to compulsory acquisition, or
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> (b) any land is allotted by a plan for the purpose of any functions of a Government or local authority or statutory body, or is land designated in such plan as a site proposed to be developed for the purposes of any functions of any such Government, authority or body, or
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> (c) any land is indicated in any plan as land on which a highway is proposed to be constructed or included, or
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> (d) any land for the development of which permission is refused or is granted subject to conditions, and any owner of land referred to in clause (a), (b), (c) or (d) claims--
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> (i) that the land has become incapable of reasonably beneficial use in its existing state, or
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> (ii) where planning permission is given subject to conditions that the land cannot be rendered capable of reasonably beneficial use by the carrying out of the permitted development in accordance with the conditions; or
>
> (e) the owner of the land because of its designation or

allocation in any plan claims that he is unable to sell it except at a lower price than that at which he might reasonably have been excepted to sell if it were not so designated or allocated, the owner or person affected may serve on the State Government within such time and in such manner, as is prescribed by regulations, a notice (hereinafter referred to as "the purchase notice ") requiring the Appropriate Authority to purchase the interest in the land in accordance with the provisions of this Act.

(2) The purchase notice shall be accompanied by a copy of any application made by the applicant to the Planning Authority, and of any order or decision of that Authority and of the State Government, if any, in respect of which the notice is given.

(3) On receipt of a purchase notice, the State Government shall forthwith call from the Planning Authority and the Appropriate Authority such report or records or both, as may be necessary, which those authorities shall forward to the State Government as soon as possible but not later than thirty days from the date of their requisition.

(4) On receiving such records or reports, if the State Government is satisfied that the conditions specified in sub-section (1) are fulfilled, and that the order or decision for permission was not duly made on the ground that the applicant did not comply with any of the provisions of this Act or rules or regulations, it may confirm the purchase notice, or direct that planning permission be granted without condition or subject to such conditions as will make the land capable of reasonably beneficial use. In any other case, it may refuse to confirm the purchase notice, but in that case, it shall give the applicant a reasonable opportunity of being heard.

(5) If within a period of six months from the date on which a purchase notice is served the State Government does not pass any final order thereon, the notice shall be deemed to have been confirmed at the expiration of that period.

(6) Omitted.

(7) If within one year from the date of confirmation of the notice, the Appropriate Authority fails to make an application to acquire the land in respect of which the purchase notice has been confirmed as required under section 126, the reservation, designation, allotment, indication or restriction on development of the land shall be deemed to have lapsed; and thereupon, the land shall be deemed to be released from the reservation, designation, or, as the case may be, allotment, indication or restriction and shall become available to the owner for the purpose of development otherwise permissible in the case of adjacent land, under the relevant plan.

Section 50 - Deletion of reservation of designated land for interim, draft of final Development plan - (1) The Appropriate Authority (other than the Planning Authority), if it is satisfied that the land is not or no longer required for the public purpose for which it is designated or reserved or allocated in the interim or the draft Development plan or plan for the area of Comprehensive development or the final Development plan, may request--

(a) the Planning Authority to sanction the deletion of such designation or reservation or allocation from the interim or the draft Development plan or plan for the area of Comprehensive development, or

(b) the State Government to sanction the deletion of such designation or reservation or allocation from the final Development plan.

(2) On receipt of such request from the Appropriate Authority, the Planning Authority, or as the case may be, the State Government may make an order sanctioning the deletion of such designation or reservation or allocation from the relevant plan:

Provided that, the Planning Authority, or as the case may be, the State Government may, before making any order, make such enquiry as it may consider necessary and satisfy itself that such reservation or designation or allocation is no longer necessary in the public interest.

(3) Upon an order under sub-section (2) being made, the land shall be deemed to be released from such designation, reservation, or, as the case may be, allocation 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.

Section 126 - Acquisition of land required for public purposes specified in plans. - (1) Where after the publication of a draft Regional Plan, a Development or any other plan or Town Planning Scheme, any land is required or reserved for any of the public purposes specified in any plan or scheme under this Act at any time the planning Authority, Development Authority, or as the case may be, any Appropriate Authority may, expect as otherwise provided in section 113A acquire the land,-

(a) by agreement by paying an amount agreed to, or

(b) in lieu of any such amount, by granting the land-owner or the lessee, subject, however, to the lessee paying the lessor or depositing with the Planning Authority, Development Authority or Appropriate Authority, as the case may be, for payment to the lessor, an amount

equivalent to the value of the lessor's interest to be determined by any of the said Authorities concerned on the basis of the principles laid down in the Land Acquisition Act, 1894(I of 1894), Floor Space Index (FSI) or Transferable Development Rights (TDR) against the area of land surrendered free of cost and free from all encumbrances, and also further additional Floor Space Index or Transferable Development Rights against the development or construction of the amenity on the surrendered land at his cost, as the Final Development Control Regulations prepared in this behalf provide, or

(c) by making an application to the State Government for acquiring such land under the Land Acquisition Act, 1894(I of 1894),and the land (together with the amenity, if any so developed or constructed) so acquired by agreement or by grant of Floor Space Index or additional Floor Space Index or Transferable Development Rights under this section or under the Land Acquisition Act, 1894(I of 1890), as the case may be, shall vest absolutely free from all encumbrances in the Planning Authority, Development Authority, or as the case may be, any Appropriate Authority.

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

contained in the said Act, be deemed to be a declaration duly made under the said section:

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

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

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

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

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

Provided that, nothing in this sub-section shall affect the date for the purpose of determining the market value of land in respect of which proceedings for acquisition commenced before the commencement of the

Maharashtra Regional and Town Planning (Second Amendment) Act, 1972 (Mah. XI of 1973):

Provided further that, for the purpose of clause (ii) of this sub-section, the market value in respect of land included in any undeveloped area notified under sub-section (1) of section 40 prior to the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972 (Mah. XI of 1973), shall be the market value prevailing on the date of such commencement.

(4) Notwithstanding anything contained in the proviso to sub-section (2) and sub-section (3), 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, 1993 (Mah. X of 1994), the State Government may make a fresh declaration for acquiring the land under the Land Acquisition Act, 1894 (1 of 1894), in the manner provided by sub-sections (2) and (3) of this section, subject to the modification that the market value of the land shall be the market value at the date of declaration in the Official Gazette, made for acquiring the land afresh.

Section 127 - Lapsing of reservations. - 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 the proceedings for the acquisition of such land under this Act or under the Land Acquisition Act, 1894 (1 of 1894), are not commenced within such period, the owner or any person interested in the land may serve notice on the Planning Authority, the Development Authority or, as the

> case may be, the Appropriate Authority to that effect; and if within twelve months[1] 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.

3. On 11th February, 2002, the Development Plan of Jalgaon City was sanctioned by the State Government. The Appellant's land bearing Gut No.37/1 adm. 42-R, situated at Mauje Pimprala, was reserved for primary school and play ground.

4. On 7th May, 2007, the Appellant issued a purchase notice under Section 49(1)(e) of the Act stating that as their land was reserved for the aforesaid purposes, the owner was unable to sell it, except at a price lower than that at which it could reasonably be expected to sell, if it was not so designated.

5. On 12th December, 2007, the State Government confirmed the aforesaid purchase notice and stated that proceedings for acquisition

[1] `Twelve months' was substituted in place of `six months' by Act 16 of 2009.

of land shall be initiated within one year i.e. before 12th December, 2008 as per Section 49(7) of the Act.

6. Within the aforesaid period, the Commissioner, Jalgaon, submitted a proposal for acquisition of the aforesaid land to the Collector, Jalgaon on 26th September, 2008. This was followed by a letter dated 28th January, 2009 issued by the Collector, appointing the SDO, Jalgaon, to complete the acquisition process as laid down by the Act. Since nothing further transpired, the owner of the land wrote a letter to the Commissioner, Jalgaon on 15th January, 2014, stating that since no action has taken place in furtherance of the acquisition proposal, the said proposal has lapsed and that, therefore, the land should be returned to the owner. On 28th March, 2014, the Assistant Director, Town Planning, Jalgaon Municipal Corporation, wrote back to the owner stating that the land acquisition proposal by the Municipal Corporation “is in process” and stated that, as Section 49(7) was satisfied on the facts of the present case, there was no lapse. A writ petition dated 2nd May, 2014 was then filed by the owner before the Aurangabad Bench of the Bombay High Court, which came to be dismissed by the impugned judgment dated 5th

December, 2014, stating that Section 127 of the Act alone deals with lapsing of reservation, and that as the purchase notice was issued under Section 49, the said Section would apply only when a person needs to develop his land immediately. In the present case, the Appellant failed to make out any such urgent need and since the Municipal Corporation had already moved the State Government for acquisition of the Appellant's land, the writ petition was dismissed.

7. Learned counsel appearing on behalf of Appellant before us has taken us through the aforestated provisions of the Maharashtra Regional Town Planning Act, 1966 and has argued that after the appropriate authority makes an application to acquire the land consequent upon the purchase notice issued under Section 49, either the land ought to be acquired within a reasonable time therefrom or should be released from the designation in the Development Plan as per Section 50 of the Act. The impugned judgment was wholly incorrect in stating that there was no urgent need. Besides, Section 49 applies to the purchase notice at hand, inasmuch as it is clear that the owner is unable to sell the land, thanks to the reservation made. This being the case, over 10 years having lapsed since the date of

the purchase notice, the owner's land should be declared to be free of the designation set out in the Development Plan.

8. On the other hand, learned counsel appearing on behalf of the Government specifically argued that the schemes of Sections 49 and 127 are totally different. No lapse can take place under Section 49 of the Act, once Section 49(7) stands satisfied and that, since the owner has not issued any fresh purchase notice under Section 127 of the Act, no lapsing can be said to have taken place.

9. The scheme of Section 49 of the MRTP Act is to lay down timelines within which the appropriate authority must make an application to acquire the land in respect of which a purchase notice has been confirmed. The moment any of the conditions specified in the sub-section (1) are met, the owner or person affected may serve on the State Government, within the time and manner prescribed by regulations, a purchase notice requiring the appropriate authority to purchase the interest in the land in accordance with the provisions of this Act.

10. On the receipt of the purchase notice as per sub-section (3), the State Government is to forthwith call from the planning authority or the appropriate authority such report or records as may be necessary, which the authority shall then forward to the State Government as soon as possible but not later than 30 days from the date of acquisition.

11. In sub-section (4), if the State Government is satisfied that the conditions specified in sub-section (1) are fulfilled, it may either confirm the purchase notice; refuse to confirm the purchase notice; or direct that planning permission be granted with or without conditions. Under sub-section (5), if the steps contemplated after service of purchase notice leads to a situation where the State Government does not pass any orders thereon, the notice shall be deemed to have been confirmed at the expiration of that period. And finally, under sub-section (7), if within one year from the date of confirmation of purchase notice, the appropriate authority fails to make an application to acquire the land in respect of which the purchase notice has been confirmed, the reservation, designation, allotment, indication or restriction on development of the land shall be deemed

to have lapsed. Section 49(6), which was deleted by Maharashtra Act 6 of 1976, read as follows:

> "Upon confirmation of the notice, the State Government shall proceed to acquire the land or that part of any land regarding which the notice has been confirmed, within one year of the confirmation of the purchase notice, in accordance with the provisions of Chapter VII."

It is clear that, under this provision, if within one year from the confirmation of the purchase notice, the State Government did not acquire the land, then the consequence would be that the acquisition shall be deemed to have lapsed. This was a salutary provision, but seems to have been deleted so that Section 49 cases are brought on par with Section 126 cases.

12. The object of Section 49 is thus clear that once a purchase notice is received by the authorities, there arises, as the marginal note to the Section also indicates, an obligation to acquire land. The timelines contemplated by the section also indicate that the owner or person affected cannot be left to hang indefinitely without a decision to follow up the purchase notice by acquisition of the land in question.

13. However, it has been argued on behalf of the State that Section 49 abruptly ends with sub-section (7), after which there are no

timelines indicated as to what is to happen after the appropriate authority makes an application to acquire the land within one year from the date of confirmation of the notice. In our view, this argument must be rejected, inasmuch as Section 49(1) itself states that the purchase notice must require the appropriate authority to purchase the interest in the land “in accordance with the provisions of this Act”. This being so, once the appropriate authority makes the necessary application to acquire the land within time under Section 49(7), we move over to Sections 126 and 127 of the Act.

14. Under Section 126(1)(c), when after the publication of a draft regional plan or development or other plan, any land is required or reserved for a public purpose, the appropriate authority may make an application to the State Government, for acquiring such land under the Land Acquisition Act. Under sub-section (2) thereof, on receipt of such application, if the State Government is satisfied that the land specified in the application is needed for the public purpose specified therein, then excepting the cases falling under Section 49, the State Government may make a declaration under Section 6 of the Land Acquisition Act, to that effect. However, such declaration under

Section 126(2) must be made within a period of one year from the date of publication of the plan in question.

15. A purchase notice may be served under Section 49, after the expiry of one year from the date of publication of the plan in question, in which case Section 126(2) of the Act will not apply. Under Section 126(4), the State Government may make a declaration under Section 6 subject to the modification that the market value of the land shall be the market value at the date of the declaration in the official gazette made for acquiring the land. But this does not mean that the State Government has *carte blanche* to do as it pleases. Ordinarily, the State Government is bound to act under Section 126(4) within a reasonable time from the appropriate authority making an application to acquire the land. This should ordinarily be within a period of one year from the date such an application is made. However, if such declaration is not made within the aforesaid period, it will be open for the aggrieved person to move the Court to direct the State Government to make the requisite declaration immediately.

16. But the matter does not end here. Thereafter, Section 127 kicks in. If a declaration under Section 6 of the Land Acquisition Act is not made within a period of 10 years from the date on which a plan comes into force under sub-section (4) of Section 126, the owner or any person interested in the land may serve a purchase notice on the authorities, and if within one year from the date of service of such notice, the land is not acquired or no steps are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed.

17. The aforesaid scheme of Sections 126 and 127 has been the subject matter of several judgments of this Court. In **Girnar Traders v. State of Maharashtra,** (2007) 7 SCC 555, a three-Judge Bench, by a majority judgment delivered by Justice Naolekar, framed the question before the Court thus:

> "19. The question that requires consideration and answer in the present case is: Whether the reservation has lapsed due to the failure of the planning authority to take steps within the period of six months from the date of service of the notice of purchase as stipulated by Section 127 of the MRTP Act; and also the question as regards applicability of new Section 11-A of the LA Act to the acquisition of land under the MRTP Act."

18. After setting out Sections 126 and 127, this Court then laid down the scheme of Section 126, which makes it clear that the Section 6 notification under the Land Acquisition Act is to be issued, in cases where acquisition is made under Section 126(1)(c),in pursuance of an application by an appropriate authority to the State Government within one year from the publication of the plan in question, or by way of the State Government making a fresh declaration beyond a period of one year under Section 126 (4). This is stated by the Court in paragraph 28 as follows:

> "28. Sub-section (2) of Section 126 provides for one year's limitation for publication of the declaration from the date of publication of the draft plan or scheme. Sub-section (4), however, empowers the State Government to make a fresh declaration under Section 6 of the LA Act even if the prescribed period of one year has expired. This declaration is to be issued by the State Government for acquisition of the land without there being any application moved by the planning/local authority under Clause (*c*) of Section 126(1)."

19. Insofar as Section 127 is concerned, the Court went on to hold:

> "31. Section 127 prescribes two time periods. First, a period of 10 years within which the acquisition of the land reserved, allotted or designated has to be completed by agreement from the date on which a regional plan or development plan comes into force, or the proceedings for acquisition of such land under the MRTP Act or under

the LA Act are commenced. Secondly, if the first part of Section 127 is not complied with or no steps are taken, then the second part of Section 127 will come into operation, under which a period of six months is provided from the date on which the notice has been served by the owner within which the land has to be acquired or the steps as aforesaid are to be commenced for its acquisition. The six-month period shall commence from the date the owner or any person interested in the land serves a notice on the planning authority, development authority or appropriate authority expressing his intent claiming de-reservation 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 utilized.”

20. The Court then went on to consider **Municipal Corporation of Greater Bombay** v. **Dr. Hakimwadi Tenants Association & Ors.**, 1988 Supp. SCC 55, and was of opinion that, the observations on the expression “no steps as aforesaid are commenced for its acquisition” stipulated under Section 127 were obiter in nature. The majority then went on to state the law under Section 127 as follows:

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

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 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."

21. The scheme of Section 126(2) and (4) was again reiterated in paragraph 61 as follows:

"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)."

22. In **Shrirampur Municipal Council** v. **Satyabhamabai Bhimaji Dawkher,** (2013) 5 SCC 627, this Court reiterated the findings given in **Girnar's case** (supra) majority judgment, and held that there was no conflict between the judgment in **Dr. Hakimwadi Tenants Association** (supra) and the majority judgment in **Girnar's case** (supra). This Court thereafter went on to hold:

> "42. We are further of the view that the majority in *Girnar Traders (2)*, (2007) 7 SCC 555 had rightly observed that steps towards the acquisition would really commence when the State Government takes active steps for the acquisition of the particular piece of land which leads to publication of the declaration under Section 6 of the 1894 Act. Any other interpretation of the scheme of Sections 126 and 127 of the 1966 Act will make the provisions wholly unworkable and leave the landowner at the mercy of the Planning Authority and the State Government.

> 43. The expression “no steps as aforesaid” used in Section 127 of the 1966 Act has to be read in the context of the provisions of the 1894 Act and mere passing of a resolution by the Planning Authority or sending of a letter to the Collector or even the State Government cannot be treated as commencement of the proceedings for the acquisition of land under the 1966 Act or the 1894 Act. By enacting Sections 125 to 127 of the 1966 Act, the State Legislature has made a definite departure from the scheme of acquisition enshrined in the 1894 Act. But a holistic reading of these provisions makes it clear that while engrafting the substance of some of the provisions of the 1894 Act in the 1966 Act and leaving out other provisions, the State Legislature has ensured that the landowners/other interested persons, whose land is utilised for execution of the development plan/town planning scheme, etc., are not left high and dry. This is the reason why time-limit of ten years has been prescribed in Section 31(5) and also under Sections 126 and 127 of the 1966 Act for the acquisition of land, with a stipulation that if the land is not acquired within six months of the service of notice under Section 127 or steps are not commenced for acquisition, reservation of the land will be deemed to have lapsed. Shri Naphade's interpretation of the scheme of Sections 126 and 127, if accepted, will lead to absurd results and the landowners will be deprived of their right to use the property for an indefinite period without being paid compensation. That would tantamount to depriving the citizens of their property without the sanction of law and would result in violation of Article 300-A of the Constitution.”

23. It is, thus, clear that the scheme of Sections 126 and 127 would leave nobody in doubt, for the reason that if a period of 10 years has

elapsed from the date of publication of the plan in question, and no steps for acquiring the land have been taken, then once a purchase notice is served under Section 127, steps to acquire the land must follow within a period of one year from the date of service of such notice, or else the land acquisition proceedings would lapse.

24. On a conspectus of the above authorities, the following position in law emerges:

(1) In all Section 49 cases, where a purchase notice has been served and is confirmed within the period specified, the appropriate authority must make an application to acquire the land within one year from the date of confirmation of the notice. If it does not do so, the reservation, designation, etc. shall be deemed to have lapsed.

(2) If within the period specified in Section 49(7), the appropriate authority makes the requisite application, then the State Government may acquire the land by making a declaration under Section 6 of the Land Acquisition Act as set out under Section 126(4), wherein the market value shall be the market value of the land as on the date of the Section 6 declaration.

Ordinarily, such declaration must be made within 1 year of the date of receipt of the requisite application. In case this not done, it will be open to the aggrieved person to move the Court to direct the State Government to make the requisite declaration immediately.

(3) If 10 years have passed from the date of publication of the plan in question, and a purchase notice has been served under Section 127,and no steps have been taken within a period of one year from the date of service of such notice, all proceedings shall be deemed to have lapsed. Thus, even in cases covered by Section 49, the drill of Section 126(4) and Section 127 will have to be followed, subsequent to the appropriate authority making an application to acquire the land within the period specified in Section 49(7).

25. The learned counsel appearing for the State has relied upon this Court's judgment in **Prakash R. Gupta v. Lonavala Municipal Council and others**, (2009) 1 SCC 514, wherein this Court held that the scheme contemplated by Section 49 is totally different from that

of Section 127, for the reason that there is no period of 10 years in Section 49 as mentioned in Section 127.

26. This judgment does not carry the matter any further as it is clear that, once an application is made within the requisite period contained in Section 49(7), land acquisition must follow in terms of Section 49(1) to purchase the interest in the land, in accordance with the provisions of the MRTP Act, as indicated above.

27. This Court, in **Hasmukhrai V. Mehta v. State of Maharashtra & Ors.,** (2015) 3 SCC 154, held that where an inordinately long delay takes place from the date on which the appropriate authority makes an application to acquire the land (in that case 20 years), the land in question stands released from reservation.

28. In the aforesaid judgment, the purchase notice under Section 49 of the Act was dated 17th August, 2000. The Director, Town Planning, wrote a letter to the Chief Officer of the Khopoli Municipal Council stating that proceedings for land acquisition for an Agricultural Produce Market Yard would be initiated within one year from 16th March, 2001. Consequently, the Khopoli Municipal Council

wrote a letter on 23rd April, 2001 to the Agricultural Produce Market Committee to initiate acquisition proceedings. As nothing was done, the Appellant ran from pillar to post and ultimately filed a writ petition in February, 2004, complaining that the Respondents are neither acquiring the land belonging to the Appellant nor releasing the same from reservation for the Agricultural Produce Market Yard. The High Court dismissed the aforesaid writ petition stating that as the provisions of Section 127 were not attracted, there could be no lapse. This Court, after referring to Sections 49 and 127 of the Act, held:

> "12. We think it pertinent to mention here that APMC, Respondent 5, even after service of notice, has not cared to contest this appeal. Also, we think it relevant to mention that till date no steps appear to have been taken for acquisition of the land in question or to release the same. The land of the appellant, in our opinion, cannot be held up, without any authority of law, as neither the same is purchased till date by the respondent authorities, nor acquired under any law, nor the appellant is being allowed to use the land for the last more than twenty years."

29. It thereafter referred to **Vijayalakshmi v. Town Planning Member** (2006) 8 SCC 502 and **Girnar's case** (supra) and then held:

> "15. In view of the principle of law laid down by this Court, as above, we are of the view that in the present case since neither have steps been taken by the authorities concerned for acquisition of the land, nor is the land of the appellant purchased under purchase notice, nor is he

> allowed to use the land for the last more than twenty years, the land will have to be released as the appellant cannot be deprived from utilising his property for an indefinite period.
>
> xxx xxx xxx
>
> 18. Accordingly, we allow the appeal and set aside the impugned order passed by the High Court. Since no steps appear to have been taken till date for the last more than twenty years either for acquisition or for purchase of the land under the MRTP Act, 1966 by the authorities concerned, as such, the land in question stands released from reservation under Section 127 of the MRTP Act."

30. The aforesaid judgment lays down that since more than 20 years had elapsed since the date of the purchase notice under Section 49 on the facts of that case, the land will have to be released from acquisition. No doubt this Court held that over 20 years is an inordinately long period of delay, and therefore, lapsing has taken place under Section 127 of the MRTP Act. However, on the facts of that case, no purchase notice under Section 127 was issued after 10 years had elapsed from the date of publication of the requisite plan. This being the case, we read the judgment as having allowed a lapse to take place, in view of the inordinately long delay of over 20 years,

by really doing complete justice on the facts of that case under Article 142 of the Constitution of India.

31. In the present case, 15 years have passed since the date of publication of the development plan, and over 10 years have passed sincethe date of the purchase notice issued under Section 49. Considering the fact that there has been no stay at any stage by any Court, it is clear that an inordinately long period of time has elapsed, both since the date of publication of the development plan, as well as the date of the purchase notice served under Section 49. No doubt, the letter of 26.9.2008 shows that an application was made within the requisite time period to acquire the aforesaid land. However, on the facts of this case, since after the aforesaid letter nothing has been done to acquire the appellant's property, we are of the view that the reservation contained in the development plan as well as acquisition proposal have lapsed. We make it clear that we hold this in order to do complete justice between the parties under Article 142 of the Constitution of India. However, in all future cases that may arise under the provisions of Section 49, the drill of Section 127 must be followed, i.e. that after 10 years have elapsed from the date of

publication of the relevant plan, a second purchase notice must be served in accordance with the provisions of Section 127, in order that lapsing can take place under the aforesaid section. With these observations, the appeal is disposed of.

…….J.
(R.F. Nariman)

…….J.
(Navin Sinha)

New Delhi;
February 6, 2018.