

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2152 OF 2008

Poona Timber Merchants and
Saw Mill Owners Association

...Appellant

versus

State of Maharashtra and others

...Respondents

WITH

CIVIL APPEAL NO. 2153 OF 2008

CIVIL APPEAL NO. 2154 OF 2008

CIVIL APPEAL NO. 2155 OF 2008

CIVIL APPEAL NO. 2156 OF 2008

JUDGMENT

G.S. SINGHVI, J.

1. Whether negotiations between the landowners and the perceived beneficiaries of the reservation of land in the Development plan prepared under the Maharashtra Regional and Town Planning Act, 1966 (for short, 'the Act') can be treated as steps for the acquisition of land as contemplated under Section 127 of the Act is the question which arises for consideration in these appeals filed against order dated 29.4.2005/2.5.2005 passed by the Division Bench of the Bombay High Court in Writ

Petition No.7846/2004 M/s. C.V. Shah and A.V. Bhat v. the State of Maharashtra and others, Writ Petition No.9644/2004 Tajuddin Mohhammadbhai Somaji and another v. the State of Maharashtra and others and Writ Petition No.5077/2004 Poona Timber Merchants and Saw Mill Owners Association v. the State of Maharashtra and others whereby it was declared that the reservation of land bearing Survey No.577 Hissa No.1, Survey No.577 Hissa No.2, Survey No. 577 Hissa No.3 and Survey No.578 Hissa No.1 (part) for 'timber industries' will be deemed to have lapsed because the land was not acquired within six months of the receipt of purchase notice.

2. In the revised Development plan of Pune City notified on 5.1.1987, the land in question was shown in the zone designated for 'timber industries'. On 18.8.1988, M/s. C.V. Shah and A.V. Bhat entered into an agreement with the members of Timber Merchants Association (for short, 'the Association') for sale of the land owned by them and received a sum of Rs.35,37,500/- as earnest money. They also agreed to execute a tripartite agreement involving Pune Municipal Corporation (for short, 'the Corporation'). After about three years, the landowners entered into another agreement dated 14.7.1991 for conveyance of the land in favour of the members of the Association either by inter vivos transaction or through acquisition procedure.

3. On 25.4.1989, the Standing Committee of the Corporation resolved to approve acquisition of the land in question and authorised the Municipal Commissioner to take steps for that purpose. Thereafter, letter dated 31.5.1989 was sent to Collector, Land Acquisition, Pune for issue of notification under Section 126(2) of the Act read with Section 6 of the Land Acquisition Act, 1894 (for short, 'the 1894 Act').

However, no further step was taken by the Corporation or the State Government and the required notification was not issued.

4. On 23.9.1998, the advocate representing the Association got published notice in the newspaper 'Prabhat' in regard to purchase of the land in question. He also sent letter dated 8.10.1998 to Shri Kiran Kothadiya, advocate for M/s. C.V. Shah and A.V. Bhat on the same issue. The latter sent reply dated 5.3.1999 stating therein that the transaction cannot be finalised because the land was subject to Urban Land (Ceiling and Regulation) Act, 1976 (for short, 'the 1976 Act').

5. On 7.10.2000, M/s. C.V. Shah and A.V. Bhat and the Association executed deed and cancelled the agreements for sale dated 18.8.1988 and 14.7.1991. The relevant portions of the cancellation deed are extracted below:

"The parties hereto mutually and voluntarily cancel, revoke and terminate the transaction relating to the property bearing Survey No.578/1, 578/2, 577/1 ad-measuring "Hectare 13.27 Ares" or thereabout, situate at village Munjeri (Bibwewadi) of the City of Pune, Taluka Pune City, District Pune, within the limits of the Registration District of Pune, Jt Sub.Registrar, Haveli No.1 and the Municipal Corporation of the City of Pune, in "reservation"/ Zoning for the timber market under the Development Plan of Pune City (the said "Land") witnessed by the agreements dated 18.08.1988 and confirmed by the agreements dated 14.07.1991 (both the documents are referred to as the said "Agreements").

The Association, with the consent of the Consenting Party (including sub. numbers) renounce all claims, rights, title and interest under the said Agreements relating to the said Land, inducing the right to seek acquisition thereof.

The parties hereto release each other from all the obligations towards each other and hereby declare that the said Agreements stands cancelled, revoked and terminated and none of the parties hereto shall have claims, interest, title or right against each other under the, in respect of or relating to, either the said Agreements or any of the matters thereunder or relating thereto.

The Promoter/Owners has paid to the members of the Association and the Consenting Party No.2 to 16, the amount mentioned in the **ANNEX-URE** given herewith, towards the refund of the amount so far paid to the Promoter/Owners, and the lump sum compensation, as mutually decided, in full accord and satisfaction towards relinquishment of all rights. The Association and the Consenting Party do hereby confirm receipt thereof, in full and final settlement of all the claims of the Association and the Consenting Party No.1 against the Promoter/Owners.

The Association and the Consenting Party declare and assure the Promoter/Owners that they have not done any act, deed or thing encumbering or in any way creating any right, title or interest of any third party relating to the said Land or any part thereof.

The Association and the Consenting Party further declare that the Promoter/Owners shall be entitled to deal with and/or dispose of and/or take any steps for seeking release of the said Land from the reservation / Zoning at its sole discretion and choice. The Association shall not have any grievance whatsoever against the Promoter/Owners relating thereto.

The Association and the Consenting Party hereby, declare and assure the Promoter/Owners that their respective General Body vide the resolution No.06, dated 06.09.2000, and Managing Committee resolution No.02 dated 14.08.2000, respectively (True copies of which are annexed herewith) have resolved to accordingly cancel, revoke and terminate the said Agreements, and have approved and sanctioned this Deed of Cancellation.”

(emphasis supplied)

6. After executing the cancellation deed, the landowners issued purchase notice dated 15.11.2000 under Section 127 of the Act. The same was rejected by the City Engineer of the Corporation vide his letter dated 13.12.2000, which reads as under:

“Pune Municipal Corporation

Shivajinagar, Pune-5

Development Plan Office

Outward No.DPO/1826

Date : 13/12/2000

To,
M/s C.V. Shaha & A.V. Bhat
C/o. V.D. Karjatkar
C/15, Erandwana, Ambika Apartment,
Karve Road,
Pune-411 004.

Sub. :- Acquisition of land at S. No. 578/1, Bibwewadi
(Munjeeri), Pune.

Ref. :- Purchase Notice sent by you on 8/11/2000.

Sir,

The purchase notice for land acquisition sent by you u/s 127, at respect of land at S. No. 578/1 of Bibwewadi, which is reserved for fire brigade, is rejected, for following reasons.

- 1) Latest 7/12 extract for the said land is not submitted.
- 2) Latest demarcation certificate for the said land is not submitted.
- 3) Zoning demarcations as per development plan of Pune Municipal corporation is not submitted.

Sd/-

City Engineer

Pune Municipal Corporation”

7. On receipt of aforesaid communication, M/s. C. V. Shah and A. V. Bhat sent letter dated 16.2.2001 to the City Engineer informing him about execution of the cancellation deed with the request to take necessary steps in accordance with purchase notice dated 15.11.2000. That letter reads as under:

“Date : 16/2/2001

From,

M/s C.V. Shaha & A.V. Bhat
A.S.T.-I, Success Chambers,
1232, Deccan Gymkhana, Pune - 4.

To,
City Engineer
Pune Municipal Corporation
Pune - 5.

Sub. : Cancellation of acquisition proceeding's in respect of land reserved for Timber Industries at S. No. 577/1 & 578/1, Bibwe-wadi.

Ref. : 1) Purchase notice issued by us u/s 127 of MRTP Act on 15/11/2000.

2) Your letter DPO 1874, dt. 13/12/2000.

3) Our letter Dt. 15/1/2001.

Sir,

Vide letter mentioned in ref.2) above, you have informed us about ongoing land acquisition proceeding.

To carry out land acquisition procedure without difficulty & to carry out land acquisition procedure without delay, after sanctioning necessary resolution in Hon. Standing Committee & to avoid any litigation/difficulties which may be created by owner of the property, Timber Merchants Association entered into an agreement with us on 18/8/1988 & 14/7/1991. Accordingly we never created any litigation or created hindrance in acquisition procedure, instituted by PMC & we always cooperated Timber Merchants Association & PMC.

But now as per cancellation deed on 7/10/2000, between Association of Timber Industries & us, Association do not require the land here after. They have given no objecting for taking necessary steps for getting the zoning of the said land changed and for canceling acquisition proceeding's.

The officer of the association of "Poona Timber Industries Associations & Poona Timber Small Scale Industries Association" has passed necessary resolution in their general body meeting & managing committee meeting by majority & have signed the cancellation deed. The copies of said resolutions are also part & parcel of the cancellation deed.

As mentioned in para 2 on page 5 of cancellations deed, Associations has surrendered their all rights, including rights of acquisition & as mentioned in para no. 6 on page 6, it is clearly

mentioned that owner of land is at liberty to deal with said land as per their wish.

As association has mentioned that they do not need said land, we request you to pass necessary resolution in standing committee for canceling the acquisition proceedings & to cancel acquisition proceedings & take necessary steps in response to my letter mentioned in ref. 3 above.

Enclosed along with true copy of cancellation deed dated 7/10/2000.

Your Sincerely
For M/s C.V. Shah & A.V. Bhat,

Sd/-
Sanjay C. Shaha
Partner"

8. In view of the letter of the landowners, the City Engineer vide his letter dated 12.3.2001 asked the President of the Association to attend the meeting to be held on 16.3.2011 (the record produced before the Court does not show as to what actually transpired in that meeting).

9. In the meanwhile, Additional Collector and Competent Authority passed order dated 26.2.2001 whereby he declared that the provisions of the 1976 Act are not applicable to the land in question. As a sequel to this, fresh negotiations appear to have taken place between the parties and M/s. C.V. Shah and A.V. Bhat conveyed its willingness to sell the land for Rs. 350/- per sq. yard. This was discussed in the meeting held in the office of the City Engineer on 12.6.2011, the minutes of which are reproduced below:

“A Meeting was held between the Poona Merchants Small Scale Industries (Association and The president, standing committee of PMC on 12-6-2001 in the office of commissioner of PMC.

The said meeting was called for the shifting process at s.no.577,578,579, The minutes of meeting is as follows.

1. Initially a meeting was held with the owners of property s.no.577,578,579 The landlords have dis –agreed with the rate of Rs. 135 per sq.ft. as per quoted in the meeting dt.6-6-2001. They have also submitted the copies of sale deed of nearby residence in their locality. According to them in their area the applicable rate is of Rs. 300 & above, per sq.mt. there their demand is for Rs. 350/- per sq.ft. They further submitted that they would approach the court of law for enhancement of amount if the increased rate is not fulfilled.

2. The rate of amount communicated to the Timbers Association by the city Engg. On dt. 6-6-2001 is Quoted approximately & it can be changed. The association is bound to pay the amount as per Land Acquisition at It the landlords reject the rate & approach the count, then they shall pay the amount as per directions of the court, if any encroachment in it.

3. Association has rejected the change of rate & they insisted upon written communication of the proposed rate. But unless & until the special land acquisition officer no. 15 pune gives the rate in writing to supply it in writing city Engg. is unable to supply it in writing to the Association.

4. The landlords informed that they are ready & willing to give their lands if the rate of Rs.350/- is satisfied.

5. The landlords shall communicate their intention & their rate written form to PMC.”

(reproduced from the Civil Appeal paper book)

10. However, the negotiations held between the parties did not result in the execution of the sale deed in favour of the Association or its members.

11. After two years and five months, the landowners filed an application under Section 37 of the Act and prayed that the land may be released from the reservation. The concerned Minister accepted the request of the landowners and passed order dated 6.2.2011 for de-reservation. However, that order could not be implemented

because of the objections raised by some persons. The landowners then filed writ petitions for grant of a declaration that the reservation of the land will be deemed to have lapsed because the Planning Authority, i.e., the Corporation did not take steps for its acquisition within six months of the receipt of purchase notice.

12. The Division Bench of the High Court noted factual matrix of the case, referred to the relevant statutory provisions and held:

“In our conclusion, therefore, the stand of the Pune Municipal Corporation that the steps were already taken prior to the service of the purchase notice is fallacious for more than one reason. For one, there is no decision by the Planning Authority or for that matter by the General Body of the Pune Municipal Corporation to acquire the subject land and send the proposal for acquisition of the subject lands to the State Government. The other, communication dated 20.4.1989 from the Municipal Commissioner, Pune Municipal Corporation to the Municipal Secretary, does not reflect any decision by the Municipal Commissioner for acquisition of the subject land but rather it is for seeking approval of the Standing Committee. Then the Commissioner is not competent to exercise the functions of the Planning Authority prescribed in section 127 of the MRTP Act, 1966 even by virtue of section 68 of the BPMC Act. The resolution of the Standing Committee passed on 25.4.1989 is of no legal worth. Last but not the least, the letter dated 31.5.1989 of the Assistant Municipal Commissioner (Special), Pune Municipal Corporation addressed to the Collector, Land Acquisition Department, Pune for the acquisition of the subject land under the Land Acquisition Act is without any legal authority. The letter dated 31.5.1989 of the Assistant Municipal Commissioner to the concerned Collector cannot be held to be an application by the Planning Authority to the Collector for acquisition of the subject land for want of any legal authority to him in that regard. Section 68(2) of the BPMC Act does not improve the case as there is nothing on record to show that the Commissioner has empowered the Assistant Commissioner in this regard by written order after obtaining approval from the Standing Committee. Moreover what Commissioner himself cannot do even with the aid of section 68(1) of the BPMC Act, a fortiori, the Assistant Commissioner cannot do by virtue of section 68(2). The proposal dated 31.5.1989, thus, sent by the

Assistant Municipal Commissioner to the Collector, Land Acquisition Department cannot be said to be lawful proposal by the Planning Authority to the State Government and for that matter, to the concerned Collector for the acquisition of the subject land.

We have, thus, no hesitation in holding that the communication dated 31.5.1989 by the Assistant Municipal Commissioner (Special), Pune Municipal Corporation to the Collector, Land Acquisition Department, Pune for acquisition of the subject land and issuance of notification under section 126(2) of the MRTP Act, 1966 and section 6 of the Land Acquisition Act is not a proposal by the Planning Authority and not a step for acquisition as contemplated by section 127 of the MRTP Act, 1966.”

13. During the pendency of the appeal, several interlocutory applications were filed by the landowners for disposal of the cases in terms of the judgment in *Shrirampur Municipal Council, Shrirampur v. Satyabhamabai Bhimaji Dawkher* (2013) 5 SCC 627. Their prayer has been opposed by the Corporation and the Association. In paragraphs 5 to 11 of affidavit dated 12.7.2013, Shri Lalchand Kasturchand Sanghvi, President of the Association has spelt out the reasons for shifting the timber industries from their present site to the land belonging to M/s. C.V.Shah and A.V.Bhat. In paragraphs 12 to 14, he has referred to the negotiations held with the landowners and the sanction accorded by the Standing Committee of the Corporation for the acquisition of the land and indirectly blamed the State Government for delay in the issuance of notification under Section 6 of the 1894 Act. In paragraph 26, the deponent has referred to the negotiations held between the parties and pleaded that the judgment in *Girnar Traders v. State of Maharashtra (II)* (2007) 7 SCC 555 and *Shrirampur Municipal Council's* case are distinguishable. He has also relied upon the minority view in *Girnar Traders (II)* and averred that by order dated 27.3.2008, another Bench had expressed the agreement with minority

view. For the sake of reference, paragraphs 5 to 11, 17 and 24 of the affidavit of Shri Lalchand Kasturchand Sanghvi, are reproduced below:

“5. That the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as the "MRTP Act") was enacted by the State Legislature for making provision for planning the development and use of land in the State of Maharashtra. It is submitted that Section 21 of the MRTP Act provides for preparation of Development Plan by the Planning Authority (in the present case Pune Municipal Corporation). It is stipulated Section 22 that the Development Plan would indicate the manner in which land in a particular area would be used and / or developed. It is pertinent to mention herein that under the Development Plan, land is reserved for a designated purpose. It may be pointed out herein that in the present case 21 hectares of land situated at Village Munjeri (Bibwewadi), Taluka Haveli, District Pune was reserved for "Timber Industries" by a notification dated 5 January 1987 under the draft Development Plan. The draft Development Plan was approved and notified and came into force with effect from 15 February 1987. Out of the said 21 hectares of land, 11 hectares was owned by the predecessor in title of respondent no. 3 in the present appeal whereas 10 hectares was owned by the respondent no. 4 in the present appeal.

6. That it is provided under Section 126 of the MRTP Act, any land reserved under the Development Plan shall be deemed to be land needed for public purpose within the meaning of the Land Acquisition Act, 1894 (hereinafter referred to as the "Act of 1894"). Apart from the deeming provision in the MRTP Act, the land reserved in the present case was factually held to have been reserved for public purpose by the Hon'ble High Court in the impugned judgment and order. Thus it is unimpeachable fact that the land was reserved for public purpose.

7. That at this stage, it may be relevant to mention that presently the timber market in the city of Pune is situated in the heart of the city which is densely populated. The location of the timber market is causing inconvenience not only to the traders, but also to the general public as due to movement of lorries and trucks, traffic gets stalled in the city. Besides timber is a volatile material and there is likelihood of it catching fire. Therefore the location of the timber market in the heart of the city was not a desirable situation and was not in public interest. In view of this fact reservation for timber industry was made in the Development Plan, as mention above. It may be relevant to mention herein that this is the only land reserved for timber industry in the whole Development Plan.

8. That after reserving the plot for timber industry, the Pune Municipal Corporation requested the timber merchants to shift their establishments from the present location to the newly reserved land in the larger public interest. On such request being made by the Corporation, the timber merchants cooperated with the Corporation and they decided to move their establishments to the newly reserved plot. Accordingly they took various steps as would be indicated hereinafter the Association was always ready and willing and still is ready and willing to take any steps which may be necessary for shifting the timber market including making any payment towards the cost of acquisition to the land lowers/ Corporation. The Association has already made provision for the same in their bank account.

9. That it is most humbly submitted that use of the reserved land for timber industry would be in the interest of general public of the city of Pune and it would defeat public purpose if the timber market is not shifted from the heart of the city to the newly reserved land. It is most humbly submitted that the overriding public interest demands that even presuming that there have been some lapses on the part of the State Government and the Municipal Corporation or even the Association, it ought to be condoned and acquisition of the land for public purpose ought to be allowed. However, the respondents now want to defeat the public purpose and make private gains by using the land for residential purpose by raising technical and frivolous **objections**.

10. That under the Provisions of Section 126(1) of the MRTP Act, the land reserved by for any public purpose can be acquired in 3 ways" (a) by an agreement with the landowner and payment of the agreed amount (b) by granting Floor Space Index (FSI) or Transferable Development Rights (TDR) to the landowner in lieu of the agreed amount and (c) by making an application to the State Government for acquisition of the land under the Act of 1894.

11. That in the present case, the facts of the case would disclose that there was private negotiation between the parties i.e. the respondent no. 3 (landowner) and the Timber Merchants Associations after the reservation of the land for Timber Industries in 1987. The negotiation ultimately resulted in an agreement dated 18 August 1988 between the respondent no. 3 and the Timber Merchants Association's members. Pursuant to the said agreement consideration also passed from the Timber Merchants Association to the landowner. The Association paid Rs. 35,37,500/- towards earnest money to the landowner way back in 1988, a substantial sum of money in 1988. The landowner agreed to enter into a tripartite agreement with the Timber Merchants Association and the Pune Municipal Corporation and also agreed for passing of a consent award under the provisions of the Act of 1894.

17. That it is submitted that the aforesaid paragraphs would clearly demonstrate that steps were taken by the Pune Municipal Corporation for acquisition of the land in 1989 itself i.e. at a time when

there was not even a purchase notice from the landowners in existence. It may be very relevant to mention here that Pune Municipal Corporation could not have itself issued notification under Section 6 of the Act of 1894, which is the sole prerogative of the State Government. For taking steps for acquisition, Pune Municipal Corporation could only have requested the State Government for publication of notification under Section 5. The Corporation had done that way back in 1989 itself. Thereafter the publication of Section 6 notification has to be done by the State Government. Therefore it is most humbly submitted that the Corporation cannot be faulted with delaying the matter and it had clearly taken all possible and reasonable steps towards acquisition of the land in question.

24. That it is only after 26 February 2001 that the land could be legally retained by the landowners and the question of acquisition of the land by the Pune Municipal Corporation arose. It is submitted that prior to 26 February 2001, since it was not even clear that the land could be retained by the landowners, the question of acquisition of land under the provisions of Act of 1894 could not have arisen. In any event, as shown in the earlier paragraphs, steps for acquisition had been taken by the Pune Municipal Corporation way back in 1989 and all that was within the power and the jurisdiction of the Corporation for acquisition of the land had been done by the Corporation. Thus the purchase notice sent by respondent no. 3 was clearly misconceived and is not at all a valid purchase notice as contemplated under Section 127 of the MRTP Act."

(emphasis supplied)

14. Learned senior counsel appearing for the Corporation and the Association assailed the impugned order on the ground that the view expressed therein is contrary to the plain language of Section 126 read with Section 127 of the Act and argued that the declaration made by the High Court is liable to be set aside because the land had been acquired by private negotiations. Shri T. R. Andhyarujina, learned senior counsel appearing for the Association extensively referred to affidavits filed by the parties in the interlocutory applications to drive home the point that the parties, i.e., the landowners and the Association had, with the intervention of the officers of the Corporation executed two agreements dated 18.8.1988 and 14.7.1991 and submitted that the cancellation agreement is liable to be ignored because the same is vitiated due to fraud and misrepresentation. He submitted that the landowners misled the Association in signing the cancellation agreement and then served purchase notice under Section 127 and this is an ample evidence of its *mala fides*. Learned counsel emphasised that the reservation of land cannot be deemed to have lapsed because the purchase notice was rejected by the City Engineer vide letter dated 13.12.2000. Learned counsel also invited our attention to order passed by two Judge Bench in *Poona Timber Merchants & Saw Mill Owners Association v. State of Maharashtra*

(2008) 17 SCC 357 and submitted that the matter should be referred to a larger Bench. Learned counsel for the writ petitioners supported the impugned order and argued that the appeal should be dismissed in view of the judgment of the three Judge Bench in Shrirampur Municipal Council's case. He submitted that there is no need of making reference to the larger Bench because by an order dated 8.12.2010 the five Judges' Bench before which these appeals were placed directed that the matter need be heard by a Bench of three Judges.

15. We have considered the respective submissions and carefully scrutinized the record including the affidavits and documents filed by the parties along with interlocutory applications. In furtherance of the order passed by two Judge Bench in Poona Timber Merchants & Saw Mill Owners Association's case these appeals were placed before the Constitution Bench along with Civil Appeal Nos. 3703/2003 M/s. Girnar Traders v. State of Maharashtra and others. On 8.12.2010, the Constitution Bench passed the following order:

“Having heard learned counsel on both sides, we are of the view that the matters need to be heard a Bench of three Judges of this Court. The Registry is directed to place these matters in the final hearing list after the judgment is pronounced in the case of M/s. Girnar Traders v. State of Maharashtra and others [Civil Appeal No.3703 of 2003].”

16. In view of the above order, it is not possible to accept the submission of the learned counsel for the appellants that the matter should be referred to a larger Bench, more so, because the issue has already been concluded in Shrirampur Municipal Council's case. In that case, the Court referred to the relevant provisions of the Act including Sections 126 and 127 of the Act (paragraphs 27-33) and

observed:

“Section 126(1) lays down that when any land is required or reserved for any of the public purposes specified in any plan or scheme, the planning authority, development authority, or any appropriate authority can acquire the same by an agreement by paying an agreed amount, or by granting the landowner or the lessee floor space index or transferable development rights in lieu of the area of land surrendered free of cost and free from all encumbrances and further additional floor space index or transferable development rights against the development or construction of the amenities on the surrendered land at his cost, or by making an application to the State Government for acquiring such land under the 1894 Act. Once the land is acquired by an agreement under Section 126(1)(a) or by grant of floor space index or additional floor space index or transferable development rights under Section 126(1)(b) or under the 1894 Act, the same vests in the planning authority, development authority or appropriate authority, as the case may be. Section 126(2) empowers the State Government to make a declaration under Section 6 of the 1894 Act. The proviso to this sub-section fixes the time-limit of one year for making such declaration. Section 126(3) lays down that on publication of a declaration under Section 6 of the 1894 Act, the Collector shall proceed to take order for the acquisition of the land under the 1894 Act and the provisions of that Act shall apply to such acquisition with the modification regarding market value as specified in clauses (i) to (iii) of that sub-section. Section 126(4) contains a non obstante clause and provides that if a declaration is not made within the period referred to in sub-section (2), or having been made, such period expired at the commencement of the Maharashtra Regional and Town Planning (Amendment) Act, 1993, the State Government can make fresh declaration under the 1894 Act. This is subject to the rider that in such an event, market value of the acquired land shall be determined with reference to the date of fresh declaration. Section 127 speaks of lapsing of reservation. It lays down that if any land reserved, allotted or designated for any purpose specified in any plan prepared and sanctioned under the 1966 Act is not acquired by agreement within ten years from the date on which a final regional plan or final development plan comes into force or if proceedings for the acquisition of such land under the 1966 Act read with the 1894 Act are not commenced within that period, the owner or any person interested in the land may serve notice on the planning authority, development authority or appropriate authority to that effect.

That section further lays down that if the land is not acquired or no steps are commenced for its acquisition within six months from the date of service of notice, the reservation, etc. shall be deemed to have lapsed and the land shall be deemed to have been released from such reservation, etc. so as to enable the owner to develop the same.”

17. The three Judge Bench then referred to the judgments in Municipal Corporation of Greater Bombay v. Hakimwadi Tenants’ Association (1988) Supp SCC 55, Ginar Traders (II) and rejected the argument that there was conflict between the judgments of the two Judge Bench in Hakimwadi Tenants’ case and the majority judgment in Ginar Traders (II) by recording the following observations:

“In our view, there is no conflict between the judgments of the two-Judge Bench in Hakimwadi Tenants’ Assn. and the majority judgment in Ginar Traders . In both the cases, this Court emphasised that if any private land is shown as reserved, allotted or designated for any purpose specified in any development plan, the same may be acquired within ten years either by agreement or by following the procedure prescribed under the 1894 Act, and if proceedings for the acquisition of land are not commenced within that period and a further period of six months from the date of service of notice under Section 127 of the 1966 Act, then the land shall be deemed to have been released from such reservation, allotment, etc. In Hakimwadi Tenants’ Assn., notice under Section 127 was issued on 1-7-1977. The State Government did not take any steps for the acquisition of land within next six months. The learned Single Judge and the Division Bench of the High Court held that in terms of the second part of Section 127, the reservation of land for recreation ground will be deemed to have lapsed. This Court unequivocally approved the view expressed by the High Court (paras 10 and 11). The majority judgment in Ginar Traders appears to suggest that the question considered and decided in Hakimwadi Tenants’ Assn was slightly different, but having carefully gone through paras 10 and 11 of the first judgment, we are convinced that the question involving interpretation of Section 127 was very much considered and decided by the two-Judge Bench in favour of the landowner and there is no conflict in the opinion expressed in the two judgments.

We are further of the view that the majority in Girnar Traders 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.”

The Three Judge Bench further observed:

“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.”

The Court finally referred to the judgment of the Constitution Bench in Girnar Traders v. State of Maharashtra (2011) 3 SCC 1 (Girnar Traders – III) (paragraphs

125 to 138) and held that the observations contained in para 133 of Girnar Traders (III) unequivocally support the majority view in Girnar Traders (II).

18. In our opinion, the ratio of the judgment in Shirampur Municipal Council's case is squarely applicable to these appeals. The argument of the learned counsel that the acquisition proceedings will be deemed to have commenced within the meaning of Section 126 read with Section 127 of the Act because the landowners had executed agreements for sale with the members of the Association is without merit and is liable to be rejected.

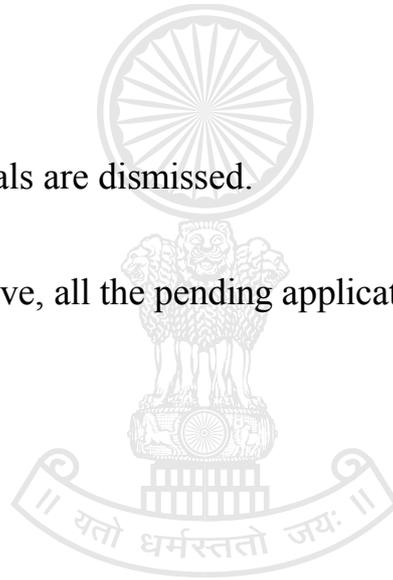
19. Section 126 (1) postulates acquisition of land by Planning Authority, Development Authority, or as the case may be, by Appropriate Authority by agreement by paying an agreed amount or by granting the landowner or the lessee, subject, however, to the lessee paying the lessor or depositing with the planning authority etc., for payment to the lessor, an amount equivalent to the value of the lessor's interest, floor space index (FSI) or transferable land against the area of land surrendered free of cost or by making an application to the State Government for acquiring such land by invoking the provisions of the 1894 Act. The section does not even make a mention of the acquisition by private negotiations between the landowner and the intended beneficiary of the reservation. Therefore, the appellants cannot rely upon the agreements dated 18.8.1988 and 14.7.1991 for advancing an argument that the land in question had already been acquired by negotiations. That apart, the agreements executed between the Association and M/s. C.V. Shah and A.V. Bhat had been voluntarily cancelled by parties on 7.10.2000 and on the date of issuance of purchase notice the agreements for sale did not exist. Therefore, the same

cannot be made basis for recording a finding that the land had been acquired by negotiations.

20. The rejection of purchase notice by the City Engineer of the Corporation vide letter dated 13.12.2000 was inconsequential because the documents placed before the Court do not show that he was authorised to act on behalf of the Corporation. In any case, the failure of the Competent Authority to acquire the land within six months of the receipt of purchase notice resulted in deemed lapsing of the reservation.

21. In the result, the appeals are dismissed.

22. As a sequel to the above, all the pending applications are disposed of.



.....J.
(G.S. SINGHVI)

.....J.
(V. GOPALA GOWDA)

New Delhi;
August 7, 2013.

JUDGMENT