

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

**WRIT PETITION NO. 1067 OF 2007
ALONG WITH
WRIT PETITION NO.2108 OF 2007**

WRIT PETITION NO.1067 OF 2007

- 1) Suraiya Akbarali Jetha)
 2) Raiyab Akbarali Jetha)
 3) Yabir Akbarali Jetha)
 4) Yakir Akbarali Jetha)
 All of them having their address)
 at Jetha Building, 2nd Floor, Opp.)
 Byculla Goods Depot, Dr.Babasaheb)
 Ambedkar Road, Mumbai 400 027)... Petitioners

VERSUS

- 1) Mumbai Municipal Corporation of)
 Greater Mumbai, having their head)
 office at Mahanagarpalika Marg)
 Near CST Fort, Mumbai 400 001)
 2) The Municipal Commissioner)
 Mumbai Municipal Corporation of)
 Greater Mumbai having their head)
 office at Mahanagarpalika Marg)
 Near CST, Fort, Mumbai 400 001)

- 3) The Chief Engineer)
 Development Plan having his)
 office at Municipal Corporation at)
 Greater Mumbai, Mahapalika Marg)
 Fort, Mumbai.)
- 4) The Chief Engineer)
 Building Proposals (City))
 Bycullar, Mumbai.)
- 5) State of Maharashtra)
 through Urban Development)
 Department, having its office at)
 Mantralaya, Nariman Point, Mumbai.)
- 6) Special Land Acquisition Officer)
 Mumbai and Mumbai Suburban)
 District.)
- 7) Hasanali Hasambhoy Jetha)
 C/o. M/s.Jetha Drums & Containers)
 Pvt. Ltd. Jetha Compound,)
 Dr.Babasaheb Ambedkar Road)
 Mumbai 400 027.)... Respondents

ALONG WITH
WRIT PETITION NO.2108 OF 2007

Hasanali Hasambhoy Jetha)
 of Mumbai, Indian Inhabitant)
 having his address c/o. Jetha Drums &)
 Containers Pvt. Ltd., Opp. Byculla Goods)
 Depot, Mumbai 400 027)... Petitioner

VERSUS

- 1) Mumbai Municipal Corporation of)
Greater Mumbai, having their office)
Mahanagarpalika Marg, CST, Fort)
Mumbai 400 001.)

- 2) The Municipal Commissioner)
Mumbai Municipal Corporation)
of Greater Mumbai, having his)
office at Mahanagarpalika Marg, CST))
Fort, Mumbai 400 001.)

- 3) The Chief Engineer (Dev. Plan))
having his office at Municipal Head)
Office, Mahapalika Marg, CST)
Fort, Mumbai 400 001.)

- 4) The Chief Engineer (B.P.))
having his office at "E" Ward)
Municipal Offices, 3rd Floor, Sheikh)
Hafizuddin Marg, Byculla)
Mumbai 400 008)

- 5) The State of Maharashtra)
represented by the Chief Secretary)
Urban Development Department)
Mantralaya, Mumbai 400 032)

- 6) The Dy. Collector and Special Land)
Acquisition Officer, Mumbai having)
their office at Old Custom House)
Shahid Bhaghat Singh Marg)
Mumbai 400 001.)

- 7) Suraiya Akbarali Jetha)
 8) Raiyab Akbarali Jetha)
 9) Yabir Akbarali Jetha)
 10) Yakir Akbarali Jetha)
 Having their address at Jetha)
 Building, 1st Floor, Opp, Byculla)
 Goods Depot, Dr.Babasaheb)
 Ambedkar Road, Mumbai 400 027)... Respondents

Mr. V.Y. Sanglikar for the Petitioners in Writ Petition No.1067 of 2007.

Mr. C.M. Korde with Mr. K.N. Kandekar for the Petitioners in Writ Petition No.2108 of 2007.

Mr.Pradeep Jadhav, AGP, for the State.

Mrs. Preeti Purandare for the BMC.

**CORAM : SWATANTER KUMAR, C.J. &
 V.M. KANADE, J.**

**Judgment reserved on : 9th April, 2008
 Judgment pronounced on : 12th June, 2008**

JUDGMENT (Per Swatanter Kumar, C.J.)

1. By this Judgment, we shall dispose of the above two Writ

Petitions. In Writ Petition No.1067 of 2007, the Petitioners have approached this Court under Article 226 of the Constitution of India praying that the notice dated 22nd December 2003 and the acquisition proceedings taken by Respondent No.4 in pursuance to the said Notification are illegal having lapsed in accordance with the statutory provisions of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as "the Town Planning Act") in terms of Section 127 of the Act. They also prayed that the Respondents should be restrained from taking any action or steps in regard to acquisition and reservation of the land of which the Petitioners are the owners. This prayer has been made on the premise that the Petitioners and/or their predecessor in interest had purchased C.S. No.565 of Mazgaon Division from the sellers in terms of the Deed of Conveyance dated 18th November 1943. Respondent No.1 executed a Deed of Grant in relation to C.S. No.1/565 of Mazgaon Division in favour of the predecessor in title. On 26th February 1944 these premises were leased out. After coming into force of the development plan in relation to Greater

Mumbai, on 6th January 1966 Respondent No.3 had informed the predecessor in title of the Petitioners that the property in question had been reserved in the development plan for extension of Victoria Garden and Zoo and had requested for the willingness of the parties. A Notification was issued by Respondent No.5 on 18th September 1974 which was published in the official Gazette on 5th December 1974. Notices under clauses (3) and (4) of Section 9 of the Land Acquisition Act were also issued to all persons, but on 21st November 1986 Respondent No.6 informed the Petitioners that they do not wish to acquire the said property on account of non-declaration of the award as contemplated, on or before 23rd September 1986. The acquisition proceedings were allowed to lapse. Revised development plan for E Ward where the property in question was located was issued and came into force on 23rd December 1991. After the lapse of ten years i.e. as on 22nd December 2001, the revised development plan came into force and no action for completing the acquisition proceedings were taken by the concerned authorities resulting in issuance of a notice by the

Petitioners to Respondent No.7 under Section 127 of the Town Planning Act on 16th December 2002 requiring the said authority to acquire the said property in accordance with law. This notice was received by them on 17th October 2002. On 28th October 2002 after receiving the letter issued by the Petitioners, Respondent No.3 called upon the Petitioners' predecessor in title to submit ownership details in respect of the said property which were submitted on 6th December 2002.

2. Vide letter dated 3rd July 2003, the predecessor in title of the Petitioners and Respondent No.7 informed Respondent No.3 that more than six months have lapsed from the date of service of notice under Section 127 and since no steps have been taken, the properties stand released automatically. However, vide their letter dated 25th July 2003, Respondent No.3 informed the Petitioners and Respondent No.7 that application was made to the State Government as per the provisions of the Town Planning Act on 10th April 2003 for acquisition of the said properties and as such steps for

acquisition were taken in accordance with law and there was no question of the property being de-reserved. A Notification was issued by Respondent No.5 on 22nd December 2003 declaring that the said property was needed for a public purpose and Respondent No.6 was appointed under the Land Acquisition Act to perform the functions of the Collector. This Notification was published in the official Gazette of the State of Maharashtra on 4th March 2004. Proposed Building plans in relation to C.S. No.565 and 1/565 of Mazagaon Division were submitted by the predecessor in title of the Petitioners on 7th June 2006 which were pursued by the Architect appointed by them. Thereafter on 12th June 2006, a letter was also written by the Architect informing the authorities concerned that both the plots have been amalgamated and NOC in that regard was claimed. Further documents which were asked by the authorities were duly submitted by the Architect appointed by the Petitioners or through their predecessor in interest. While the matter was pending before the authorities concerned and the authorities had even informed by their letter dated 21st July 2007 that the matter would be

pursued and finalized by the authorities shortly, unfortunately, son of Petitioner No.1 and father of Petitioner Nos.2 to 4 i.e. Shri Akbarali H. Jetha died on 12th September 2006. On 15th January 2007, a letter was issued by the Respondents informing the Petitioners that the joint measurement of the site in question was to be taken and date for inspection was fixed as 19th January 2007. Aggrieved by the issuance of the said letter and to get complete relief in relation to the notice issued by the Petitioners under Section 127 of the Town Planning Act on 16th October 2002, the Petitioners have filed the present Writ Petition.

3. Writ Petition No.2108 of 2007 has been filed by the Petitioners from the same group. However, the only distinctive feature is that property bearing C.S. No.1-A and 1-B/565, Mazagaon Division was leased out to the father of the Petitioner i.e. Shri Hasambhoy Jetha for a period of 981 years on or about 26th April 1944. All other facts and even the dates are similar to that of Writ Petition No.1067 of 2007.

4. On this factual premise, the Petitioners while claiming the other reliefs, have raised the legal issues that Respondent Nos.1 to 6 do not have any legal right to keep the properties belonging to the Petitioners under reservation for such indefinite periods. The alleged letter even if written by the Respondents to the Government without any effective measures cannot be termed as 'a step for acquisition' under Section 127 of the Town Planning Act. There is complete abandonment of acquisition proceedings resulting in automatic release from reservation of the properties in question. The Respondents, therefore, have no right to withhold the sanction of the development plans submitted by the Petitioners with the Respondents.

5. In Writ Petition No.2108 of 2003, two different reply affidavits have been filed. Shrikant Krishnaji Godbole has filed an affidavit on behalf of the Municipal Corporation dated 2nd May 2008 and Sanjay Raghunath Kurvey has filed affidavit on behalf of the

State dated 23rd January 2008. Primarily, the stand taken in both the affidavits is common to some extent that the Corporation has deposited an amount of Rs.5.15 crores towards costs of acquisition with the State Government. The Notification under Section 126 (2) and (4) of the Development Act read with Section 6 of the Land Acquisition Act were issued on 22nd December 2003. The Corporation had submitted an application for acquisition of land to the State Government on 10th April 2003. Resultantly the purchase notice served on behalf of the Petitioners dated 16th October 2002 is ineffective and inconsequential. The letter written by the Corporation to the Government on 10th April 2003 is a step in the acquisition proceedings and as such under proviso to Section 127 of the Town Planning Act no cause survives in favour of the Petitioners. It is also stated that Improvement Committee vide their Resolution No.337 dated 19th March 2003 had recommended proposal to the Corporation for sanction to initiate the proceedings and further stated that the Corporation had accorded sanction as on 7th April 2003. In pursuance to all these steps, the Notification dated 22nd December

2003 has been issued and the acquisition proceedings having been initiated in accordance with law, the claim made by the Petitioners cannot be accepted by the Court. The common stand taken in both the Writ Petitions is that the Corporation has filed a Review Application in the case of *Girnar Traders* which is pending before the Supreme Court in Civil Appeal No.3922 of 2007 (SLP No.11446 of 2005) and as such that judgment is of no help to the Petitioners.

6. The relevant dates are hardly in dispute in the present case. The purchase notice under Section 127 of the Town Planning Act was dated 16th October 2002 and was served upon the Respondents on 17th October 2002. The Corporation had submitted an application to the State Government on 10th April 2003. The Notification under Section 126 read with Section 6 of the Land Acquisition Act was admittedly issued on 22nd December 2003 and no Award has been made till date. The Notification dated 22nd December 2003 was also issued one year after the service of notice. The reservation on the properties in question has been in

existence since 1964 onwards.

7. In both the Writ Petitions, the purchase notice was issued on 16th October 2002 and it was addressed to the Municipal Corporation of Brihan Mumbai and Chief Engineer, Development Plan. This Notice specify the basic ingredients of Section 127 of the Town Planning Act and was admittedly served on the Respondents on 17th October 2002. No action was taken by the authorities within the statutory period of six months and thereafter. Not only that the Petitioners through their Architect had persisted their request before the Corporation to clear the plans. There was an attempt made to argue that the purchase notice in these Writ Petitions have not been served upon the appropriate authority as contemplated under the provisions of Section 127of the Town Planning Act. Firstly, we may notice that in the reply affidavits filed on behalf of the authorities, no such contention has been raised. Secondly, the notices served upon the concerned authorities were duly received and were acted upon by the authorities. The notice dated 16th October 2002 was

first dealt with and accepted by the Respondent Corporation vide their letter dated 28th October 2002, Exhibit "F" to Writ Petition No.1067 of 2007, wherein while referring to the purchase notice under Section 127 of the Town Planning Act, they had asked for ownership documents which were submitted by the Petitioners vide their letter dated 6th December 2002. Thereafter, the Petitioners again reiterated their request vide their letter dated 3^d July 2003. This letter was answered by the Respondents vide their reply dated 25th July 2003 which reads as under :-

"MUNICIPAL CORPORATION OF GREATER
MUMBAI

No. ACQ/C/534 of 25/07/2003
Office of the Chief Engineer
(Development Plan)
4th Floor, Extn. Bldg.,
Municipal Head Office
Mahapalika Marg, Fort
Mumbai 400 001.

To
Shri Hansanali Hasambhoy Jetha
Shri Akbarali Hasambhoy Jetha
Jetha Building, Opp. Byculla Goods
Depot, Dr.Bose Saheb, Ambedkar Road

Byculla, Mumbai 400 027.

Sub.: Purchase Notice under Section 127 of
M.R.T.P. Act 1966 in respect of land
 bearing C.S. No.565, 1/565, 1/A/565
 & 1B/565 of Mazgaon Division `E' Ward.

Sir,

Please refer to your letter dt. 03.07.2003 regarding subject matter. I have to inform you that application to the State Government as per the provision of M.R. & T.P. 1966 amended upto date for acquisition of plot under reference has already been made on 10.04.2003 i.e. Steps for acquisition of the land have been taken by M.C.G.M.

Yours faithfully,
 Sd/-
 Executive Engineer
 (Development Plan)(City)"

After responding to the letters of the Petitioners, the Respondents had issued the Notification dated 22nd December 2003 (the year being wrongly typed as 2004). Thus, the Respondents had not denied the fact that they had acted upon the notices issued by the Petitioners but the Petitioners were not entitled to the benefit of the provisions of Section 127 of the Town Planning Act primarily for the

reason that the Corporation had already taken steps in the acquisition proceedings by writing the letter dated 10th April 2003 and more so when the letter was backed by the decision of the Improvement Committee of the Corporation. This contention need not detain us any further as the matter is no more *res integra* and has been squarely answered by the judgment of the Supreme Court in the case of *Girnar Traders vs. State of Maharashtra and others*, (2007) 7 SCC 555, where the Supreme Court held as under :-

“35. Shri Shekhar Naphade, Senior Advocate appearing for the State and Shri Bhimrao Naik, Senior Advocate appearing for the Municipal Corporation concluded that the steps were taken on 17/9/2002 when in pursuance of the resolution passed by the Municipal Corporation of Greater Mumbai, the Chief Engineer (Development Plan) sent a letter to the State of Maharashtra enclosing therewith a copy of Resolution 956 dated 16/9/2002, requesting that the steps be taken for acquisition of the land and this step taken by the respondents would constitute “steps” for the acquisition of the land under Clause (c) of Section 126(1) of the MRTP Act, the same having been taken on 17/9/2002 when the period of six months had not expired, the same to be expired on 18/9/2002 and, therefore, the provision of dereservation under Section 127 would not apply.

36. It is contended by Shri Soli J. Sorabjee and Shri U.U. Lalit, learned Senior Counsel appearing for the appellants, that the intent and purpose of Section 127 of the MRTP Act is the acquisition of land within six months, which could only be when a declaration under Section 6 of the LA Act is published in the Official Gazette. It is submitted by the learned Senior Counsel that the words "if within six months from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition" are not susceptible of a literal construction and the words have to be given a meaning which safeguards a citizen against arbitrary and irrational executive action which, in fact, may not result in acquisition of the land for a long period to come. It cannot be doubted that the period of 10 years is a long period where the land of the owner is kept in reservation. Section 127 gives an opportunity to the owner for dereservation of the land if no steps are taken for acquisition by the authorities within a period of six months in spite of service of notice for dereservation after the period of 10 years has expired.

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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 subsection (4) of Section 126; and till then no declaration could be made under Section 127 as regards lapsing of reservation and contemplated declaration of land being released and available for the landowner for his utilisation as permitted under Section 127. Section 127 permitted inaction on the part of the acquisition authorities for a period of 10 years for dereservation of the land. Not only that, it gives a further time for either to acquire the land or to take steps for acquisition of the land within a period of six months from the date of service of notice by the landowner for dereservation. The steps towards 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 MRTTP 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 MRTTP 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 MRTTP 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 required 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.

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59. There is another aspect of the matter. If we read Section 126 of the MRTP Act and the words used therein are given the verbatim meaning, then the steps commenced for acquisition of the land would not include making of an application under Section 126(1) (c) or the declaration which is to be made by the State Government under sub-section (2) of Section 126 of the MRTP Act.

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62. In the present case, the amended regional plan was published in the year 1991. Thereafter, the steps by making an application under Clause (c) of sub-section (1) of Section 126 for issuance of the declaration of acquisition and the declaration itself had to be made within the period of one year from the date

of the publication of regional plan, that is, within the period of one year from 1991. The application under Section 126(1)(c) could be said to be a step taken for acquisition of the land if such application is moved within the period of one year from the date of publication of regional plan. The application moved after the expiry of one year could not result in the publication of declaration in the manner provided under Section 6 of the LA Act, under sub-section (2) of Section 126 of the MRTP Act, there being a prohibition under the proviso to issue such declaration after one year. Therefore, by no stretch of imagination, could the step taken by the Municipal Corporation under Section 126(2)(c) of making an application be said to be a step for the commencement of acquisition of the land. After the expiry of one year, it is left to the Government concerned under sub-section (4) of Section 126 to issue declaration under Section 6 of the LA Act for the purposes of acquisition for which no application is required under Section 126(1)(c). Sub-section (4) of Section 126 of the MRTP Act would come into operation if the State Government is of the view that the land is required to be acquired for any public purpose.

63. The High Court has committed an apparent error when it held that the steps taken by the respondent Corporation on 9/9/2002 and 13/9/2002 would constitute steps as required under Section 126 (1)(c) of the MRTP Act. What is required under Section 126(1)(c) is that the application is to be moved to the State Government for acquiring the land under the LA Act by the planning/local authority. Passing of a resolution by the Improvement Committee recommending that the steps be taken under Section

126(1)(c) or making an application by the Chief Engineer without there being any authority or resolution passed by the Municipal Corporation, could not be taken to be steps taken of moving an application before the State Government for acquiring the land under the LA Act. The High Court has committed an apparent error in relying on these two documents for reaching the conclusion that the steps for acquisition had been commenced by the Municipal Corporation before the expiry of period of six months which was to expire on 18/9/2002.”

8. Paragraph 56 of the judgment, clearly answers the objections raised by the Respondents. It has been specifically held by the Supreme Court that “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.” In face of clear dictum of the Supreme Court, we have no hesitation in rejecting the only contention raised on behalf of the

Respondents. In fact, when these Writ Petitions came up for hearing on different occasions, the main plea raised on behalf of the Corporation used to be that they have filed a Review Application before the Supreme Court in that case and since the Review Application was pending, the disposal of these Writ Petitions were deferred. Admittedly, as the Review Application has since been dismissed by the Supreme Court, there is no occasion for the Court to keep these Writ Petitions pending any longer. They are covered on law by the judgment of the Supreme Court.

9. While relying upon the judgment of the Supreme Court in the case of *Larsen & Toubro Ltd. vs. State of Gujarat and others*, AIR 1998 SC 1608, it is argued that the present Writ Petitions suffer from the defect of delay and laches and as the challenge has not been made within a reasonable time, the Writ Petitions should be dismissed for that reason. This argument raised on behalf of the Respondents again is without any merit. The reservation against the properties in question is in force since 1964 and after coming into

force the relevant provisions of the Act, the Petitioners were expected to wait for a period of ten years whereafter they served a notice dated 16th October 2002. This notice was duly entertained and acted upon by the Respondents. At no point of time, they took up this plea. On the contrary, their case was that of compliance to the provisions of Section 127 of the Town Planning Act in face of their letter dated 10th April 2003. The Notification was issued on 22nd December 2003 and no Award had been made till date and no compensation had ever been determined or paid to the claimants. In face of these defaults of the Respondents themselves, they are hardly justified in taking up the plea of delay and laches against the Petitioners. The Petitioners had served a notice in the year 2002 and were in correspondence with the Respondents who finally vide their letter dated 25th July 2003 had declined their request and despite such a reply no action was taken by the Government except that when they wanted to take joint measurement of the land in the year 2004. In these circumstances, we do not think that the present Petitions suffer from defect of delay and/or laches.

10. Resultantly, in view of our above discussion, Rule is made absolute in both the Writ Petitions. Writ Petitions are allowed to the extent that the Notification dated 22nd December 2003 is hereby quashed and the Respondents are directed to deal with the application filed by the Petitioners with the Corporation in accordance with law. In the facts of the case, there shall be no order as to costs.



CHIEF JUSTICE

V.M. KANADE, J.