

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 10992 OF 2012**

1. Gangadhar Sadashiv Jagtap
2. Vasant Murlidhar Jagtap
3. Vishnu Murlidhar Jagtap
4. Somnath Murlidhar Jagtap
5. Prabhakar Murlidhar Jagtap
6. Umesh Murlidhar Jagtap
7. Smt. Sushila Appa Khatale
8. Smt. Manda Trayambak Gaikwad
9. Smt. Pujabai Murlidhar Jagtap

All adults, residing at Jagtap Mala,  
Nashik Road, Tal. & Dist. Nashik.

10. M/s. Sanklecha Construction,  
A partnership firm duly registered under  
The provisions of the Indian Partnership  
Act, 1966 having its registered office  
At Dehabanu Mansion,  
Near Kalantri Mangal Karyalaya,  
Nashik Pune Road, Nashik through its  
Partner Prakash Kachardas Sanklecha  
Sanklecha House, Datta Mandir Road,  
Nashik Road, Nashik  
And Power of Attorney holder of the  
Petitioner Nos.1 to 9.

...Petitioners.

versus

1. Nashik Municipal Corporation,  
A statutory corporation incorporated  
Under the provisions of the Bombay  
Provincial Municipal Corporation Act  
Having its office at Rajiv Gandhi

Bhavan, Sharanpur Road,  
Nashik.

2. The Commissioner,  
Nashik Municipal Corporation  
Having his office at Rajiv Gandhi  
Bhavan, Sharanpur Road, Nashik.

3. The State of Maharashtra ..Respondents.

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Mr. V.R. Kasale i/b M/s. Ram & Co. for the Petitioners.  
Mr. V.S. Tadke i/b Mr. M.L. Patil for Respondent Nos.1 and 2.  
Mr. V.S. Gokhale, AGP for Respondent No.3.

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**CORAM : A.S. OKA &  
A.S. GADKARI, JJ.**

**Judgment reserved on : 8<sup>th</sup> December 2014.  
Judgment pronounced on : 11<sup>th</sup> February 2015.**

**ORAL JUDGMENT (PER A.S. GADKARI, J.) :**

Rule. Rule made returnable forthwith. The Respondents waive service of notice. By consent of the learned counsel appearing for the Parties and at their request, the present Petition is taken up for final hearing.

2. By the present Petition filed under Article 226 of the Constitution of India, the Petitioners are seeking a Writ of Mandamus or any other appropriate writ, order or direction in the nature of Writ of Mandamus against the Respondents for a direction that the reservation in respect of the portion of land admeasuring 1507 sq. meters in Survey

No.31/3B/1+2/7 situated at Mauje – Devlali, Nashik is deemed to have lapsed and the Petitioners are entitled to develop the said property as otherwise permissible in the case of adjacent land under the relevant plan.

3. The facts which can be discerned from the pleadings in the Petition can be briefly stated as under :

(i) The Petitioner Nos.1 to 9 are the owners and are fully entitled to seize and possess the land bearing Survey No.31/3B/1+2/7 situated at Nashik Road, Nashik admeasuring in all about 1532.06 sq. meters (hereinafter referred to as “the said land”). The Petitioner No.10 is a partnership firm duly registered under the Indian Partnership Act and is engaged in the business of land development and construction of land in and around Nashik city. The Petitioner Nos.1 to 9 being the owners of the said land executed an agreement dated 6<sup>th</sup> September, 2003 for the development of the said land to and in favour of the Petitioner No.10 herein and by the said development agreement, the Petitioner Nos.1 to 9 granted development rights in favour of the Petitioner No.10.

(ii) That in the year 1972 the said land was falling within the area of Nashik Road Deolali Municipal Council and was reserved for the

purpose of "Market" and "Shopping Center" in the sanctioned development plan of Nashik Road Deolali Municipal Council which was approved by the State Government. That the said land was reserved for the said purpose under the designated Reservation No.181. That in the year 1981 Nashik Road Deolali Municipal Council was merged into Nashik Municipal Corporation and became the part of Nashik Municipal Corporation i.e. the Respondent No.1 herein.

(iii) That the development plan for Nashik city dated 28<sup>th</sup> June, 1993 for which the Nashik Municipal Corporation is the Planning Authority was sanctioned on 16<sup>th</sup> November, 1993 by the State Government under Section 31 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as "the MRTP Act" for brevity) which was brought into force on 16<sup>th</sup> November, 1993. That a portion admeasuring 1507 sq. meters from the aforesaid land was reserved in the said development plan for the purpose of "Market" and "Shopping Center" under designated Reservation No.181. The Petitioners' land continues to be reserved for the purpose of "Market" and "Shopping Center".

(iv) That the Respondent No.1 Corporation had passed a resolution bearing Resolution No.156 dated 10<sup>th</sup> December, 1993 whereby the Corporation recommended to the Government for deletion and/or

cancellation of the said reservation on the Petitioners' land in view of the fact that there already exists a market in the near vicinity and that the entire area was developed and residential colonies have already come up. However, the Government i.e. the Respondent No.3 did not take any action on the recommendation of the Corporation.

(v) That the Planning Authority i.e. the Respondent No.1 herein which is also the Development Authority and the acquiring body as also the appropriate authority did not take any steps to acquire the said portion of land under reservation, within a period of ten years from the date of coming into force of the said development plan, the Petitioners invoked the provisions of Section 127 of the MRTP Act and issued a notice dated 16<sup>th</sup> August, 2005 to the Respondent No.1 i.e. the Planning Authority calling upon it to purchase and to process the acquisition of reserved portion of the said land within a period of six months from the date of receipt of the said notice upon payment of price and/or compensation which was due to the owners. That the said purchase notice issued under Section 127 of the MRTP Act was received by the Respondent No.1 Corporation and the Commissioner on the same day i.e. 16<sup>th</sup> August, 2005. It is the case of the Petitioners that the said notice was served personally and the Respondent No.1 Corporation acknowledged the said notice by affixing its stamp on the copy of the said notice.

(vi) That the Government of Maharashtra in its Urban Development Department issued a Government Resolution dated 7<sup>th</sup> April 1994 bearing No. TPS/1094/CR-14/94/NA-VI-9 declaring its policy for development of certain types of site reservations earmarked in the development plan in association with the land owners pursuant to which the land owner of the land wherein specific site reservation mentioned in the said Government Resolution was existing, an option was given to the said land owner to develop the said land in compliance with the reservation on a portion of the property at its own costs and to hand over the same to the Corporation in lieu of the balance portion, the Corporation would sanction the proposal submitted by the land owner for free development in accordance with the provisions of the development plan. That the said policy for developing reservations was known as "Accommodation Reservation" scheme, which was applicable to the lands reserved for a particular purpose in the development plan. In view of the said Accommodation Reservation policy, the Petitioners made an application to the Respondent No.1 Corporation on 26<sup>th</sup> September, 2005 and expressed their willingness to construct a "Market" and "Shopping Center" in accordance with the specifications provided by the Planning Authority and in accordance with the permissible development on surrounding plots.

(vii) That the Respondent No.1 Corporation, however, was not ready either to sanction or reject the building plan submitted under the said policy known as "Accommodation Reservation Scheme". It was informed to the Petitioners that the said reservation stands deleted by passing the aforesaid Resolution No.156 dated 10<sup>th</sup> December, 1993 and hence, no plan under the "Accommodation Reservation Scheme" can be approved. The Respondent Corporation expressed its inability to consider the plan under the said scheme as the Respondent No.3 herein had not passed any orders in pursuance of the said Resolution No.156 dated 10<sup>th</sup> December, 1993 by the Respondent Corporation for deletion of the said reservation.

(viii) It is the contention of the Petitioners that in accordance with the requirement of Section 127 of the said Act, a period of then years during which the said reservation had continued in the development plan came to an end in June 2003 and the Petitioners, therefore, were entitled to invoke the provisions of Section 127 of the said Act immediately thereafter. As the Respondent No.1 Corporation did not take any steps for acquiring the said land, the Petitioners have invoked the provisions of Section 127 of the said Act and have issued the aforesaid purchase notice dated 16<sup>th</sup> August, 2005 to the Respondents. It is the further contention of the Petitioners that the Respondents have failed to take any steps to acquire the said land as contemplated

under Section 127 of the MRTP Act within a period of six months from the date of receipt of the purchase notice and/or even thereafter till date and therefore, the said designated reservation for “Market” and “Shopping Center” in respect of the aforesaid portion of the land of the Petitioners in the development plan for Nashik city demed to have been lapsed and the said property ought to have been made available to the Petitioners for the purpose of development as otherwise permissible in the case of adjacent land under the relevant development plan.

(ix) That admittedly the period of six months after the receipt of the aforesaid purchase notice dated 16<sup>th</sup> August, 2005 expired in the month of February 2006 and till date no action has been taken for acquisition of the said land by the Respondents.

(x) It is, therefore, the Petitioners' case that the reservation pertaining to the said land has undoubtedly lapsed and therefore, the First Respondent is under the legal obligation to permit the Petitioners to develop the said land In question as per the provisions of Section 127 of the MRTP Act. The Petitioners being aggrieved by the inaction on the part of the Respondents have filed the present Petition.

4. The Respondent No.1 through its Estate Manager Mr. Mahesh

Narayanprasad Tiwari has filed an affidavit in reply on behalf of the Respondent Nos.1 and 2. The Respondent Nos.1 and 2 have not disputed the fact that the land of the Petitioners was reserved for the public purpose viz. for "Market" and "Shopping Center" in the year 1993 which is more than ten years prior to the issuance of notice dated 16<sup>th</sup> August, 2005 under Section 127 of the MRTP Act. The issuance of notice under Section 127 of the MRTP Act has also been admitted in the said affidavit. It is contended in the said affidavit that the purchase notice issued under Section 127 of the MRTP Act is not valid notice as it was not accompanied by the necessary and relevant documents. It has been further stated in the said affidavit that the Corporation submitted a proposal to the Collector on 23<sup>rd</sup> January, 2006 for acquisition of the land and thereafter there was a correspondence in which every time a query or objection was raised by the office of the Collector. The queries were rectified by the Corporation though the said queries and the objections were totally irrelevant. That on 30<sup>th</sup> August 2008 the SLAO wrote a letter to the City Survey Officer to measure and prepare a map of the land and joint measurement of the land was completed on 21<sup>st</sup> October, 2008. It is further submitted that contrary to the procedure under the Act, the Land Acquisition Officer instead of issuing a declaration under Section 6 went ahead for the measurement of the land. The said act of the Land Acquisition Officer was deliberate and with oblique motive to

delay the acquisition under Section 6 of the Land Acquisition Act. It is further stated in the said affidavit that the Petitioner No.10 in collusion with the other Petitioners and the Land Acquisition Officer/ Survey Officer, TILR and ADTP, Nashik District have prevailed upon the officer for not taking steps for the acquisition of the said land expeditiously and according to the affiant of the said affidavit i.e. nothing but an abuse of the power and deliberate non-exercise of power. It is further contended in the said affidavit that the Petitioner No.10 has purchased the developing rights knowing fully well that the land is under reservation and the Petitioner No.10 has entered into a speculative transaction by purchasing the development rights of land under reservation with oblique motive to somehow get the land de-reserved. It is lastly contended by the Respondent Nos.1 and 2 that the purchase notice was issued on 16<sup>th</sup> August, 2005 and the present Petition was filed in the month of October 2012 and hence, there is a gross delay in filing the present Writ Petition and it should be dismissed on the ground of delay and laches.

5. We have heard Mr. V.R. Kasle, learned counsel appearing for the Petitioners, Mr. M.L. Patil for the Respondent Nos.1 and 2 and Mr. V.S. Gokhale, learned AGP for Respondent No.3. With the assistance of the learned counsel appearing for the respective parties, we have perused the compilation of the Writ Petition and the reply affidavit filed by the

Respondents.

6. The learned counsel appearing for the Petitioners urged before us that admittedly the land of the Petitioners is subjected to reservation for a period of more than ten years beginning from 28<sup>th</sup> June 1993. It was submitted that none of the Respondents have disputed the fact about the issuance of the purchase notice dated 16<sup>th</sup> August, 2005 and the receipt of the same of the even date. It is submitted that since no action has been taken within a period of six months by the Respondents to acquire the land after receipt of the purchase notice in view of the provisions of Section 127 of the MRTP Act, the reservation had lapsed and the land had become available to the Petitioners for development as per the provisions of Section 127 of the MRTP Act.

7. He further submitted that admittedly declaration under Section 6 of the Land Acquisition Act has not been issued and/or published in the Official Gazette in respect of the said land as laid down by the Apex Court in the case of **Girnar Traders v. State of Maharashtra** reported in **(2007) 7 SCC 555** and in support of his contention thereof he relied on paragraph No.32 of the said judgment. The learned counsel appearing for the Petitioners thereafter contended that the provisions of Section 126 of the MRTP Act are mandatory and

due to the admitted inaction on the part of the Respondents, valuable rights have already been accrued in favour of the Petitioners and as the reservation pertaining to the said land has lapsed which entitles the Petitioners to develop the said plot / land. The learned counsel further submitted that the Corporation has also not deposited the amount of compensation within the stipulated period and /or till the date of hearing of the Petition with the appropriate authority. He, therefore, contended that the aforesaid land is deemed to have been deleted from the reservation and that the designated reservation is deemed to have lapsed and the Petitioners being entitled to develop the said land as per the Development Control Rules applicable to the adjacent land. It is further submitted that the Respondent No.1 Corporation by its resolution dated 10<sup>th</sup> December, 1993 bearing Resolution No.156 had already recommended the deletion and /or cancellation of the reservation for "Market" and "Shopping Center" of the Petitioners' land as in the near vicinity of the said land a market already exists and the entire area was already developed and residential colonies have already come up in the area. The learned counsel appearing for the Petitioners therefore urged before this Court that the present Petition may be allowed thereby directing that the reservation in respect of the portion of land as mentioned in the Petition is deemed to have been lapsed and the Petitioners are entitled to develop the said property as otherwise permissible in the case of

adjacent land under the relevant plan.

8. The learned counsel appearing for the Respondent Nos.1 and 2, however, supported the reservation on the basis of the pleadings as have been taken in the affidavit in reply and submitted that the present Petition may be dismissed as the Respondent Nos.1 and 2 have already taken the necessary and relevant steps required under the law. The learned AGP appearing for the Respondent No.3 has also supported the contentions of the Respondent Nos.1 and 2 and prayed that the present Petition may be dismissed.

9. After taking into consideration the facts on record, it is clear that the Respondent Nos.1 and 2 have not disputed about the service of notice dated 16<sup>th</sup> August, 2005 as contemplated under Section 127 of the MRTP Act and its receipt, as has been contended by the Petitioners. It was necessary for the Respondent Nos.1 and 2 to take appropriate action as contemplated under the provisions of Section 127 of the MRTP Act within a period of six months from the date of receipt of the said notice dated 16<sup>th</sup> August, 2005. At this stage, a useful reference can be made to a celebrated decision of the Apex Court in the case of **Girnar Traders v. State of Maharashtra** reported in **(2007) 7 SCC 555** and in particular paragraph Nos.55 to 61 of the said decision which read as under :

- “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.

- 58.** The MRTP Act does not contain any reference to Section 4 or Section 5-A of the LA Act. The MRTP Act contains the provisions relating to preparation of regional plan, the development plan, plans for comprehensive developments, town planning schemes and in such plans and in the schemes, the land is reserved for public purpose. The reservation of land for a particular purpose under the MRTP Act is done through a complex exercise which begins with land use map, survey, population studies and several other complex factors. This process replaces the provisions of Section 4 of the LA Act and the inquiry contemplated under Section 5-A of the LA Act. These provisions are purposely excluded for the purposes of acquisition under the MRTP Act. The acquisition commences with the publication of declaration under Section 6 of the LA Act. The publication of the declaration under sub-sections (2) and (4) of Section 126 read with Section 6 of the LA Act is a sine qua non for the commencement of any proceedings for acquisition under the MRTP Act. It is Section 6 declaration which would commence the acquisition proceedings under the MRTP Act and would culminate into passing of an award as provided in sub-section (3) of Section 126 of the MRTP Act. Thus, unless and until Section 6

declaration is issued, it cannot be said that the steps for acquisition are commenced.

- 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.
- 60.** On a conjoint reading of sub-sections (1), (2) and (4) of Section 126, we notice that Section 126 provides for different steps which are to be taken by the authorities for acquisition of the land in different eventualities and within a particular time span. Steps taken for acquisition of the land by the authorities under Clause (c) of Section 126(1) have to be culminated into Section 6 declaration under the LA Act for acquisition of the land in the Official Gazette, within a period of one year under the proviso to sub-section (2) of Section 126. If no such declaration is made within the time prescribed, no declaration under Section 6 of the LA Act could be issued under the proviso to sub-section (2) and no further steps for acquisition of the land could be taken in pursuance of the application moved to the State Government by the planning authority or other authority.

**61.** Proviso to sub-section (2) of Section 126 prohibits publication of the declaration after the expiry of one year from the date of publication of draft regional plan, development plan or any other plan or scheme. Thus, from the date of publication of the draft regional plan, within one year an application has to be moved under Clause (c) of Section 126(1) which should culminate into a declaration under Section 6 of the LA Act. As per the proviso to sub-section (2) of Section 126, the maximum period permitted between the publication of a draft regional plan and declaration by the Government in the Official Gazette under Section 126(2) is one year. In other words, during one year of the publication of the draft regional plan, two steps need to be completed, namely, (i) application by the appropriate authority to the State Government under Section 126(1)(c); and (ii) declaration by the State Government on receipt of the application mentioned in Clause (c) of Section 126(1) on satisfaction of the conditions specified under Section 126(2). The only exception to this provision has been given under Section 126(4)."

10. It is also pertinent to note here that in a recent judgment of a three Judges' Bench of the Supreme Court in the case of **Shrirampur Municipal Council, Shrirampur v. Satyabhamabai Bhimaji Dawkher and others** reported in **(2013) 5 SCC 627** while affirming

the view taken by the majority of the members in the case of **Girnar Traders** (supra) in paragraph Nos.41, 42, 43 and 46 has observed as under :

“41. In our view, there is no conflict between the judgments of the two-Judge Bench in Dr. Hakimwadi Tenants’ Association<sup>1</sup> and the majority judgment in Girnar Traders (2)<sup>2</sup>. In both the cases, this Court emphasized 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’ Association<sup>1</sup>, 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 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 (paragraphs 10 and 11). The majority judgment in Girnar Traders (II)<sup>2</sup> appears to suggest that the question considered and decided in Dr. Hakimwadi

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1 1988 Supp SCC 55.

2 (2007) 7 SCC 555.

Tenants' Association<sup>1</sup> was slightly different, but having carefully gone through paragraphs 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.

42. We are further of the view that the majority in *Girnar Traders (2)*<sup>2</sup> 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

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2 (2007) 7 SCC 555.

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 utilized 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 300A of the Constitution.

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46. As a sequel to the above discussion, we hold that the majority judgment in *Girnar Traders (2)*<sup>2</sup> lays down correct law and does not require reconsideration by a larger Bench. We further hold that the orders impugned in these appeals are legally correct and do not call for interference by this Court. The appeals are accordingly dismissed."

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2 (2007) 7 SCC 555.

Thus, the view taken by the Apex Court is that the publication of a declaration under sub-section (2) or sub-section (4) of Section 126 of the Town Planning Act read with Section 6 of the said Act of 1894 is a *sine qua non* for commencement of any proceeding for acquisition under the Town Planning Act. The Apex Court has held that unless and until Section 6 declaration is issued, it cannot be said that the steps for acquisition are commenced. The Apex Court held that the steps for acquisition within the meaning of sub-section (1) of Section 127 would really commence when the State Government publishes a declaration under Section 6 of the said Act.

11. As stated above, in the present case admittedly a notice under Section 127 of the MRTP Act was served by the Petitioners on the Respondent No.1 Corporation on 16<sup>th</sup> August, 2005 and the Respondent No.1 Corporation received the same on the same day. Admittedly, Section 6 notification was not received and hence, adverting to the principles of law laid down by the Supreme Court in the aforesaid decisions, it is necessary to hold that the reservation of the land in question has lapsed by operation of Section 127 of the MRTP Act. It is to be noted here that though the Respondent No.1 in its affidavit in reply, has made allegations against other Government agencies in not complying with the requirements of the provisions of

the MRTP Act, which according to us amounts to mud flinging against the other authorities, a bare perusal of the said affidavit demonstrates that it is conspicuously silent about the fact pleaded by the Petitioners in paragraph No.11 of the Petition that the Respondent No.1 had passed a resolution dated 10<sup>th</sup> December, 1993 bearing No.156 and had recommended to the Respondent No.3 Government for deletion of the reservation from the final development plan. The non-rebuttal of the said contention and not making any mention about the said resolution in the affidavit filed on behalf of the Respondent Nos.1 and 2 amounts to admission and adverse inference against the Respondent Nos.1 and 2 about the same has to be drawn here.

12. The Respondent Nos.1 and 2 in its affidavit have elaborately stated about the lengthy correspondence entered into between the Respondent Nos.1 and 2 on the one hand and the other Government agencies on the other hand. However, it is clear from the pleadings of the said affidavit that the declaration under Section 6 of the Land Acquisition Act has not been made within a period of six months as provided under Section 127 of the Town Planning Act. Therefore, within the said period of six months, neither the said lands are acquired nor any steps have been taken by publication of declaration under sub-section (2) or sub-section (4) of Section 126 of the Town Planning Act and therefore, the reservation as regards the said lands

shall be deemed to have been lapsed.

13. As far as the issue as has been raised on behalf of the Respondent Nos.1 and 2 with respect to the delay in approaching this Court belatedly in the year 2012 is concerned, it is contended by the Respondent Nos.1 and 2 that the purchase notice was issued on 16<sup>th</sup> August, 2005 and the Petitioners have filed the present Petition in the month of October 2012 and the Petition therefore be dismissed on the ground of delay. This contention of the Respondent Nos.1 and 2 deserves to be rejected at its threshold for the simple reason that the Respondent Nos.1 and 2 did not deny that it had entered into correspondence with the other Government agencies for the purpose of alleged acquisition of the land in dispute and secondly, it also did not deny the fact that the Petitioners have filed an application on 26<sup>th</sup> September, 2005 with it under the policy of developing reservations known as "Accommodation Reservation Scheme" and a substantial correspondence was exchanged between the parties thereto. Admittedly, the First Respondent did not take any steps for acquisition of the said land after receipt of the notice dated 16<sup>th</sup> August, 2005. That after the Petitioners filed an application on 26<sup>th</sup> September, 2005 with the Respondent No.1 for development of the said plot on the Accommodation Reservation Scheme, after a lapse of substantial period, the Respondent Nos.1 and 2 intimated their inability to

consider the said application and the plan under the said scheme as the Respondent No.3 had not passed any order in pursuance of the resolution passed by the Respondent No.1 Corporation for deletion of the said reservation. This contention of the Petitioners has not been denied at all by the Respondents in their affidavit. In view of the aforesaid facts and the correspondence exchanged between the parties and also between the Respondent Nos.1 and 2 on the one hand and the other Government agencies on the other hand, the contention of the Respondent Nos.1 and 2 that there is a delay on the part of the Petitioners in approaching this Court, according to us, is not tenable.

14. In the light of the aforesaid discussion, we are of the confirmed opinion that the reservation of the Petitioners' land in question has lapsed and the land has become available to the Petitioners to be developed as otherwise permissible, as in the case of adjacent land under the development plan. The present Writ Petition, therefore, deserves to be allowed and is accordingly allowed in terms of prayer clause (a). Hence, we pass the following order :

- i) We hold that the reservations in relation to the lands described in prayer clause (a) of the Writ Petition under the sanctioned development plan of the Nashik Municipal Corporation which was approved by the State Government on 16<sup>th</sup> November, 1993 shall be deemed to have been lapsed;

- ii) We direct the State of Maharashtra to notify the lapsing of reservation by an order published in the Official Gazette in accordance with sub-section (2) of Section 127 of the Town Planning Act within a period of three months from today;
- iii) Rule is made absolute on above terms with no order as to costs.

**(A.S. Oka, J.)**

**(A.S. Gadkari, J.)**