

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2315 of 2008
with
WRIT PETITION NO.892 OF 2013

WP NO.2315 OF 2008

Maharashtra Academy of Engineering & Educational Research, Pune, and Others.	..	Petitioners
Vs		
State of Maharashtra and Others.	..	Respondents
—		

Shri P.K. Dhakephalkar, Senior Counsel along with Ms. Manisha Jagtap i/by Shekhar Jagtap for the Petitioners.

Shri Janak Dwarkadas, Senior Counsel along with Shri Mohit Jadhav, AGP for the Respondent Nos.1 to 6 (State).

Shri S.U. Kamdar, Senior Counsel along with Shri Ritesh Jain and Shri Manish Parekh i/by Purnanand & Co for the Respondent No.8.

Shri A.Y.Sakhare, Senior Counsel along with Ms. Trupti Puranik for the BMC.

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WP NO.892 OF 2013

Mr. Behram Nowrosji Gamadia and Others.	..	Petitioners
Vs		
State of Maharashtra and Others.	..	Respondents
—		

Dr. V.V. Tulzapurkar, Senior Counsel along with Shri Chirag kamdar i/by M/s.Purnanand & Co for the Petitioners.

Shri Mohit Jadhav, AGP for the Respondent Nos.1 to 4 and 6.

Shri Milind Sathe, Senior Counsel i/by Shri Shekhar Jagtap for the Respondent No.7.

Shri A.Y.Sakhare, Senior Counsel along with Ms. Trupti Puranik for the BMC.

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CORAM : A.S. OKA & A.K. MENON, JJ

DATE ON WHICH SUBMISSIONS WERE HEARD : 15TH APRIL 2015S

DATE ON WHICH JUDGMENT IS PRONOUNCED: 10TH JULY 2015

JUDGMENT (PER A.S. OKA, J)

OVERVIEW

1. The land subject matter of these Petitions is the land bearing CTS No.398 (for short “the said land”), admeasuring about 2339 sq. meters situated at Tardeo in Mumbai. The said land is located in a prime locality in Central Mumbai. In the sanctioned Development Plan of the year 1967, the said land was shown reserved for a Secondary School. In the sanctioned revised development plan of the year 1991 under the provisions of the Maharashtra Regional and Town Planning Act, 1966 (for short “MRTP Act”), which is in force even as of today, the said land continues to be reserved for the public purpose of Secondary School.

2. Late Nowrosji Jehangir Gamadia (for short “the original owner”) was claiming to be the absolute owner of the said land. The first and second Petitioners in Writ Petition No.892 of 2013 are the Executors and Trustees of the Estate of the original owner appointed under the last Will and Testament of the original owner. The said original owner through his Advocate served a notice dated 14th August

1993 under Sub-section (1) of Section 49 of the MRTP Act to the Municipal Corporation for Greater Mumbai (for short “the said Corporation”) which is the Planning Authority within the meaning of the MRTP Act for the City of Mumbai. The notice was also addressed to the Secretary of the Urban Development Department of the State Government. By a letter dated 21st February 1994, the State Government informed the Advocate for the original owner that the purchase notice has been confirmed in accordance with Sub-section (4) of Section 49 of the MRTP Act. On 16th February 1995, the said Municipal Corporation made an Application to the Government of Maharashtra for acquisition of the said land in accordance with Sub-sections (2) and (4) of Section 126 of the MRTP Act. A copy of the said letter was also submitted to the Collector of Mumbai District. On the basis of the said Application, the State Government issued a Notification dated 25th March 1995 in exercise of the powers under Sub-section (2) read with Sub-section (4) of Section 126 of the MRTP Act read with Section 6 of the Land Acquisition Act, 1894 (for short “the Land Acquisition Act”) recording that the said land is needed for the public purpose of a Secondary School as per the reservation provided in the sanctioned Development Plan. It appears that on 24th June 1996, the Executive Engineer (Development Plan) of the said Municipal Corporation addressed a letter to the Under Secretary of the Urban Development Department of the State Government informing that the

Secondary Education was not an obligatory function of the Municipal Corporation and, therefore, he claimed that it was the School Education Department which is an Appropriate Authority to take further steps for acquiring the said land for the purposes of a Secondary School.

3. An advertisement was published on 10th October 2002 by the Secretary of the School Education Department of the State Government stating therein that the said land has been reserved for a Secondary School on which there are some encroachments. It was pointed out that the present FSI available for school purpose is of 2.66 which is likely to be doubled. Clause 2 of the said advertisement reads thus:

“2. Societies/Trusts/Parties interested in acquiring this plot at their cost may apply on plain paper to Secretary, School Education Department (Desk Officer, Shri R.N. Musale) on or before November 16, 2002 during office hours in a packet marked “Application for Development of School at Tardeo”. The interested parties will have to bear the full cost of land as determined by the competent authorities and also premium for F.S.I. In excess of 1.33 @ 2.5% of the land cost”.

4. It appears that on the basis of the said Application, the Petitioner in Writ Petition No.2315 of 2008 made an Application dated 15th November 2002 seeking allotment of the said land.

5. In the meanwhile, on the Application made on behalf of the original owner on 24th February 2002, the Upa (Deputy) Lokayukta made a recommendation dated 16th December 2002 holding that in view of the failure of the Appropriate Authority to submit a valid proposal for acquisition within the time specified under Sub-section (7) of Section 49 of the MRTP Act, the reservation for the Secondary School has lapsed. The said order/communication was issued in purported exercise of powers under Sub-section (1) of Section 12 of the Maharashtra Lokayukta and Upa Lokayuktas Act, 1971 (for short "the said Act of 1971"). The State Government through its Principal Secretary of the Urban Development Department responded by the letter dated 20th January 2003 addressed to the Upa Lokayukta by pointing out that a proposal for the acquisition of the said land in accordance with Sub-section (1) of Section 126 of the MRTP Act was submitted by the Planning Authority (the said Municipal Corporation) within the time specified by Sub-section (7) of Section 49 of the MRTP Act and therefore, the reservation has not lapsed. The explanatory memorandum approved by the Hon'ble Chief Minister was submitted by the State Government in response to the special report submitted under Sub-section (5) of Section 12 of the said Act of 1971 to the Hon'ble Governor. The stand taken therein was that in view of the proposal submitted by the said Municipal Corporation on 16th February 1995, reservation has not lapsed.

6. On the basis of the Application made by the Maharashtra Academy of Engineering and Education Research(MAEER), the Petitioner in Writ Petition No.2315 of 2008, the State Government issued a Government Resolution dated 24th August 2004 providing that the acquisition of the said land will have to be made for the benefit of the said Petitioner and, therefore, the said Petitioner should submit a proposal for acquisition to the District Collector, Mumbai. It was stated that the entire expenses of the acquisition including the compensation payable will have to be borne by the Petitioner and the State Government will pay its nominal contribution of Rs.100/- towards compensation. On the basis of the said Government Resolution, by letter dated 21st September 2004, the Petitioner in Writ Petition No.2315 of 2008 submitted a regular proposal for acquisition of the said land. A specific request was made therein to initiate the land acquisition proceedings in respect of the said land. On the basis of the said Application, it appears that the joint measurements were carried out after the notice to the Petitioner in Writ Petition No.2315 of 2008.

7. By letter dated 4th December 2006 addressed by the District Collector of Mumbai City to the Principal Secretary of the Revenue and Forest Department of the State Government, it was pointed out that the acquisition of the said land was commenced in the year 1996.

Thereafter, the Petitioner in Writ Petition No.2315 of 2003 has submitted a fresh proposal for acquisition. A guidance was sought by the Collector as to whether earlier acquisition should be continued.

8. By letter dated 8th April 2008, a communication was issued to the Petitioner in the Writ Petition No.2315 of 2008 by the School Education Department of the State Government stating that on 11th April 2008, as per the directions of Hon'ble the Chief Minister, a meeting has been convened in the office of the Principal Secretary of the School Education Department to discuss the issue of acquisition of the said land. The Petitioner in the said Petition replied to the said notice by the letter dated 21st April 2008. It was pointed out therein that on the basis of the Application made for acquiring the said land by the said Petitioner, joint measurement and survey have been carried out and the entire process has been duly completed.

9. The Executors and Trustees of the Will of the original owners executed a Deed of Conveyance dated 11th July 2007 by which they purported to sell the said land to the Eighth Respondent Company (M/s.Estelle Developers Private Limited) in Writ Petition No.2315 of 2008 which is the third Petitioner in Writ Petition No.892 of 2013. The said Purchaser is a Limited Company carrying on business of development of real estates. The said Purchaser addressed a letter

dated 5th September 2007 to the Hon'ble Chief Minister contending that the reservation on the said land has lapsed and, therefore, the said land is available for the purposes of development as otherwise permissible in the case of adjacent land under the relevant plan. Without prejudice to the said contention, the Purchaser contended that in the best interests of all the parties, the Purchaser Company was desirous of developing the said land for educational and allied purpose along with rehousing/re-accommodating the existing tenants or occupants provided the acquisition proceedings were withdrawn by the State Government.

10. Another meeting was convened as per the directions of the Hon'ble the Chief Minister, the Secretary of the School Education Department on 8th July 2008. The Secretary of the School Education Department passed an order dated 14th August 2008 directing that though the acquisition proceedings have already started, the Purchaser of the said land cannot be prevented from developing the said land by allotting the same to a private institution. It was, therefore, stated in the said order that it may not be proper to reject the prayer made by the Purchaser/owner of the said land for development of the said plot. Therefore, a direction was issued to cancel the Government Resolution dated 24th August 2004. On the basis of the said order, a Notification was issued on 12th September 2008 by which the Government

Resolution dated 24th August 2004 was withdrawn and an order was purportedly made under Sub-section (1) of Section 48 of the Land Acquisition Act for withdrawal of the acquisition in respect of the said land initiated on the basis of the Notification dated 25th March 1996. The said order was passed on the ground that a request was made by M/s. Estelle Developers Private Limited, the Purchaser, by pointing out that it was willing to develop the said land for the public purpose. It was observed that as the Purchaser was willing to develop the said land, the acquisition proceedings should be withdrawn.

PRAYERS IN WRIT PETITION NO.2315 OF 2008

11. The substantive challenge in Writ Petition No.2315 of 2008 is to the order dated 14th August 2008 passed by the Secretary of the School Education Department and to the aforesaid Resolution dated 12th September 2008. A Writ of mandamus is sought to initiate acquisition proceedings in respect of the said land on the basis of the said Government Resolution dated 24th August 2004. We must note here that the Writ Petition No.2315 of 2008 was rejected by a Division Bench of this Court by the judgment and order dated 21st April 2009. There was an order of remand passed by the Apex Court on 11th September 2012.

PRAYERS IN WRIT PETITION NO.892 OF 2013

12. Writ Petition No.892 of 2013 has been filed by the Executors and Trustees of the Will of the original owners as well as Purchaser M/s. Estelle Developers Private Limited. The said Purchaser is the Petitioner No.3 in the said Writ Petition. The said Petition is based on the notice issued by the Advocate for the original owners under Sub-Section (1) of Section 49 of the MRTP Act. As stated earlier, the said notice was issued on 14th August 1993 which was confirmed by the communication dated 21st February 1994. The first prayer in the Writ Petition No.892 of 2013 is for a declaration that on the failure to apply for acquisition within the time specified under Sub-section (7) of Section 49 of the MRTP ACT, the reservation for secondary school has lapsed. The second challenge is to the notification dated 25th March 1996 issued under Sub-section (4) read with Sub-section (2) of Section 126 of the MRTP Act. The third challenge is to the Government Resolution dated 24th August 2004 by which the Petitioner(MAEER) in Writ Petition No.2315 of 2008 was appointed as the “Appropriate Authority” for the purposes of acquisition of the said land.

AFFIDAVITS IN REPLY AND OTHER AFFIDAVITS ON RECORD

13. There are several affidavits on record. It is necessary to make a reference to the contents of the relevant affidavits. As far as the

Writ Petition No.2315 of 2008 is concerned, the State Government has filed an affidavit dated 9th April 2009 of Shri Anil Madhavrao Bhattalwar, the Joint Secretary (Secondary), School Education and Sports Department, Mantralaya, Mumbai. It is pointed out in the said affidavit that the Mumbai Municipal Corporation being the Planning Authority and/or Appropriate Authority submitted a proposal for acquisition of the said land on 16th February 1995 which is well within a period of one year from the date of confirmation of the notice under Section 49 of the MRTP Act. It is stated that on 24th August 1996, the Mumbai Municipal Corporation informed the Government that the Secondary Education is not an obligatory duty of the Municipal Corporation and, therefore, the Government in the School Education Department would be Appropriate Authority for acquisition of the said land. It is contended that on the basis of the directions issued by the Upa Lokayukta, the notice was published inviting applications. After considering the applications, the Government Resolution dated 24th August 2004 was issued. It is stated that subsequently it was realized that as the notification dated 25th March 1996 for acquisition was already issued, unless the same was cancelled, a fresh notification cannot be issued for acquiring the said land for the benefit of the Petitioner in Writ Petition No.2315 of 2008. It is stated that on the basis of the opinion of the Law Ministry, a draft corrigendum was submitted by the Urban Development Department for changing the

name of the Acquiring Body in the said notification by showing the name of the Petitioner (MAEER) in the said Petition as the acquiring body. It is stated that on the basis of the letter dated 5th September 2007 of M/s. Estelle Developers Private Limited addressed to the Hon'ble the Chief Minister, a direction was issued to hold a meeting. It was decided that it will not be appropriate to acquire the said land for any private Trust by depriving the said land owner from the said land and, therefore, the Secretary of the School Education Department passed an order cancelling the Government Resolution dated 24th August 2004. Thereafter, by the notification dated 12th September 2008, the acquisition was withdrawn.

14. There is an affidavit filed by Shri Ranjit S. Sawant, the Assistant Engineer (Development Plan) City-I of Mumbai Municipal Corporation. In the said affidavit, it is stated that the reservation did not lapse on the basis of the purchase notice under Section 49 of the MRTP Act. The Application dated 16th February 1995 was made by the Mumbai Municipal Corporation for initiating the acquisition proceedings on the basis of which a notification was issued on 25th March 1996. He has stated that the secondary education is a discretionary duty of the Municipal Corporation and, therefore, the State Government in the Education Department is the Appropriate Authority/Public Authority for acquisition of the said land.

15. There is an affidavit-in-reply filed by the Eighth Respondent M/s. Estelle Developers Private Limited. A contention is raised in the said reply that the reservation on the said land has lapsed. Reliance is placed on the order of the Upa Lokayukta. It is contended that there is nothing illegal about the Sale Deed dated 11th July 2007. There is another affidavit filed by the Eighth Respondent on 1st April 2013 in which a contention has been raised that the Government Resolution dated 24th August 2004 as well as the notification dated 25th March 1996 are null and void and bad-in-law. Again a contention has been raised that the reservation has lapsed. Reliance is also placed on Section 11A of the Land Acquisition Act. Reliance is also placed on the notification dated 12th September 2008.

16. There is an affidavit-in-rejoinder filed by Prof.(Dr). Vishwanath Karad on 24th April 2013 on behalf of the Petitioner (MAEER). Shri Prakash Thube, the Joint Secretary of the School Education and Sports Department filed another affidavit dated 26th April 2013. It is contended that permitting the Petitioner to use the said land will be contrary to the provisions of the Regulation 9 of the Development Control Regulations applicable to the City of Mumbai. There is an affidavit-in-reply filed by Dr. Padmashri Bainade, the Special Land Acquisition Officer No.VII on 30th April 2013 in which it was

stated that on 17th March 1999, the original owner of the land has filed a claim for compensation in accordance with Section 9 of the Land Acquisition Act. It is stated that individual notices under Sections 9(3) and (4) of the Land Acquisition Act were served on 14th February 2000 to the original owner as well as 54 existing tenants. There is an additional compilation produced on record containing the copies of the notes in the relevant file of the Urban Development Department. There is a compilation of documents filed by the Eighth Respondent M/s. Estelle Developers Private limited as well.

17. In Writ Petition No.892 of 2013, there is an affidavit filed by Dr. Vishwnath Karad, the Managing Trustees of the Respondent No.7 (MAEER) in the said Writ Petition (the Petitioner in Writ Petition No.2315 of 2008). The contentions which have been raised in Writ Petition No.2315 of 2008 filed by the Respondent No.7 have been reiterated in the said affidavit filed in Writ Petition No.892 of 2013. To the said affidavit, a copy of the statement of claim filed by the original owner before the Land Acquisition Officer on 15th March 1999 has been annexed.

SUBMISSIONS IN WRIT PETITION NO.2315 OF 2008

18. The learned senior counsel appearing for the Petitioner in Writ Petition No.2315 of 2008 has taken us through the material on

record. The first submission is that Section 48 of the Land Acquisition Act is not applicable to the acquisition commenced on the basis of the Application made under Clause (c) of Sub-section (1) of Section 126 of the MRTP Act. He urged that once an Application under the said provision of Clause (c) of Sub-section (1) of Section 126 of the MRTP Act is made, the vesting of notified land will be completed. He relied upon a decision of the Apex Court in the case of *Manohar Joshi v. State of Maharashtra*¹. He urged that even the decision of the Constitution Bench of the Apex Court in the case of *Girnar Traders (3) v. State of Maharashtra*² supports the said contention. He urged that apart from the fact that Section 48 of the Land Acquisition Act will not apply to the acquisition commenced on the basis of the notification dated 25th March 1996, it cannot be withdrawn inasmuch as the vesting is already completed. He urged that there is no provision either under Land Acquisition Act or MRTP Act which provides for divesting of the acquired land after its vesting is complete. He, therefore, submitted that the notification dated 12th September 2008 and the decision of the State Government withdrawing from the acquisition are completely illegal. He urged that as the withdrawal from acquisition is bad-in-law, there is no question of allowing the subsequent Purchaser to develop the said land. He submitted that the reservation never lapsed on the basis of the notice under Section 49 of the MRTP Act served by the

1 (2012) 3 SCC 619

2 (2011) 3 SCC 1

original owner as within the time provided under Sub-section (7) of Section 49 of the MRTP Act, the Mumbai Municipal Corporation which is the Planning Authority applied for commencement of acquisition proceedings. He urged that the Upa Lokayukta has no jurisdiction to decide the issue of lapsing of reservation. He pointed out that though the notice under Section 49 of the MRTP Act was confirmed by the State Government way back in the year 1995, the original owner did not challenge the acquisition proceedings initiated on the basis of the notification dated 25th March 1996 and that the same has been challenged for the first time in the year 2013 by filing a Writ Petition No.892 of 2013. He urged that when the said Writ Petition was filed, according to the case of the original owner, the subsequent Purchaser M/s. Estelle Developers Private Limited was the owner by virtue of the Sale Deed dated 11th July 2007. He pointed out that the Sale Deed specifically refers to the notification issued for acquisition and the fact that the said land was under reservation. He pointed out that the Sale Deed records that from the Purchaser, the original owner accepted total consideration of Rs.15 crores which includes the charges payable to the Architects for the professional services rendered by them for obtaining a favourable order from the Up Lokayukta and for releasing the said land from the reservation. Relying upon a decision of the Apex Court in the case of *Meera Sahni v. Lt. Governor of Delhi*³ and *Gian Chand v. Gopala*⁴,

3 (2008)9 SCC 177

4 (1995)2 SCC 528

he urged that the sale is void and in any case, the same will not bind the State Government. He, therefore, submitted that the subsequent Purchaser under the Sale Deed dated 11th July 2007 has no locus to challenger acquisition proceedings commenced in the year 1996.

19. Inviting our attention to the notes in the file of the Government, he urged that before the said Developer/Purchaser came into the picture, the stand of the State Government seems to be that the reservation had not lapsed. He pointed out the stand taken by the State Government before the Up Lokayukta. He pointed out the action initiated on the basis of the Application made by the Petitioner and the decision taken by the Urban Development Department to show the name of the Petitioner as the Acquiring Body in the acquisition proceedings commenced in the year 1996. He pointed out that on the basis of the Application made by M/s. Estelle Developers Private Limited on 5th September 2007 to the Hon'ble the Chief Minister, an opinion of the Law and Judiciary Department was sought. He pointed out that the opinion of the Law and Judiciary Department was that the acquisition cannot be dropped. He pointed out that the Education Department opposed the deletion of the reservation for Secondary School. He pointed out that the hearing was conducted on the basis of the directions issued by the Hon'ble Chief Minister at the instance of the Purchaser- M/s. Estelle Developers Private Limited. He urged that the

orders passed by the State Government in the year 2008 are completely illegal and the same have been passed at the instance of the Respondent No.8- M/s. Estelle Developers Private Limited. He submitted that the legal representatives of the original owner had belatedly challenged the acquisition initiated in the year 1996. He pointed out that the impugned order dated 14th August 2008 proceeds on the footing that the subsequent Purchaser was willing to develop the said land as per the reservation provided in the sanctioned Development Plan, but the subsequent Purchaser who is the Petitioner No.3 in the Writ Petition No.892 of 2013 has contended that the reservation stands lapsed. He urged that in any case, the said subsequent Purchaser cannot maintain the Petition for challenging the acquisition, as in the year 2007, the said Purchaser had taken the property with the full knowledge that the acquisition had commenced in the year 1996. He, therefore, submitted that the Writ Petition No.892 of 2013 deserves to be dismissed. He, therefore, submitted that the Government Resolution dated 24th August 2004 could not have been cancelled.

20. The learned senior counsel appearing for the Eighth Respondent (subsequent Purchaser) while opposing the Writ Petition No.3215 of 2008 submitted that there is no allotment made of the said land to the Petitioner. He pointed out that the Government Resolution dated 24th August 2004, at highest, provides that the Petitioner will be

entitled apply for acquisition of the said land. He urged that there is no right created in favour of the Petitioner under the said notification and therefore, the Petitioner has no right to challenge the order of withdrawal from acquisition. He urged that in the decision of the Apex Court in the case of *Girnar Traders (3)*, it is not held that Section 48 of the Land Acquisition Act is not applicable to the acquisition under Section 126 of the MRTP Act. He urged that all that the said decision holds is that Section 11A of the Land Acquisition Act will not apply to the acquisition commenced in accordance with Section 126 of the MRTP Act. He urged that the Application made by the Mumbai Municipal Corporation cannot be the one under Sub-section (7) of Section 49 of the Land Acquisition Act. He submitted that the possession of the said land was not taken over either by the State Government or by the said Municipal Corporation and, therefore, there cannot be any vesting. He submitted that even assuming that Section 48 of the Land Acquisition Act is not applicable, under Section 21 of the Maharashtra General Clauses Act, the State Government could have always withdrawn from the acquisition.

21. The learned senior counsel representing the State Government urged that though a stand was taken earlier that the reservation had not lapsed, but after considering the rights of the owner under Article 300A of the Constitution of India, the State Government

corrected its mistake. He urged that under the Development Control Regulations, the owner has a right to develop the property for the purpose for which it is reserved and the said right of the owner cannot be taken away. He urged that the land was never acquired for the benefit of the Petitioner. He urged that the Petitioner could not have been the Acquiring Body. He urged that the notification dated 25th March 1996 was never amended to show the Petitioner as the Acquiring Body. He urged that the acquisition which commenced in the year 1996 was not valid under the MRTP Act. He urged that the order of the Secretary dated 24th August 2004 is legal and valid. He pointed out that the acquisition proceedings did not result in an expropriation of the private property of the original owner. He stated that the Purchaser has undertaken to develop the said land as per the reservation. He urged that before passing the impugned order, hearing was given to the Petitioner. He urged that the reliance placed on the decision of the Apex Court in the case of *Manohar Joshi* was completely misplaced. He urged that under Section 48 of the Land Acquisition Act, the State Government has a power to withdraw from the acquisition proceedings. He submitted that in any case, under Section 21 of the Maharashtra General Clauses Act, the acquisition could have been withdrawn. He relied upon a decision of the Apex Court in the case of *State of Madhya Pradesh and Others v. Vishnu Prasad Sharma and Others*⁵. He also relied upon a decision of the Apex Court in the case of *Tukaram Kana Joshi*

5 1966(3) SCR 557

*and Others v. M.I.D.C. and Others*⁶. He relied upon a decision of the Apex Court in the case of *Chandra Singh v. State of Rajasthan*⁷.

SUBMISSIONS IN WRIT PETITION NO.892 OF 2013

22. The learned senior counsel appearing for the Petitioners in the Writ Petition No.892 of 2013 urged that neither under the Land Acquisition Act nor the MRTP Act, the sale of the property under acquisition after notification under Section 6 of the Land Acquisition Act is issued, becomes void. He submitted that such a sale transaction binds the original owner, though at highest, the State Government will have to ignore the same. He urged that the Mumbai Municipal Corporation was not the “Appropriate Authority” to apply for acquisition under Sub-section (7) of Section 49 of the MRTP Act. He urged that once there is a failure to apply for acquisition under Sub-section (7) of Section 49 of the MRTP Act, the reservation automatically lapses. He urged that even if there was no Petition filed by the Petitioners, the lapsing of reservation is automatic. He urged that as the reservation had lapsed, the notification dated 25th March 1996 issued under Sub-section (4) of Section 126 of the MRTP Act was completely illegal as there could not have been any acquisition by taking recourse to the provisions of the MRTP Act as the reservation had lapsed. He urged that the advertisement issued by the State Government on the basis of which the

⁶ (2013)1 SCC 353

⁷ Decided on 22nd July 2003 in Civil Appeal No.5576 of 2000

Petitioner in the Writ Petition No.2315 of 2008 applied for allotment, proceeds on the erroneous assumption that the reservation had not lapsed. He, therefore, urged that the reservation under the sanctioned Development Plan has lapsed. We have also heard the learned counsel representing the Mumbai Municipal Corporation who has reiterated the stand that the Secondary Education is not the mandatory function of the said Municipal Corporation.

BROAD QUESTIONS INVOLVED

23. Considering the diverse contentions raised by the parties, the first issue which is required to be decided is whether the reservation on the said land for Secondary School has lapsed in accordance with Sub-section (7) of Section 49 of the MRTP Act. If the conclusion is that the reservation had lapsed, the notification issued for acquisition on 25th March 1996 taking recourse to the provisions of the MRTP Act becomes bad in law. If it is held that the reservation did not lapse, the question will be whether the State Government had power to withdraw or cancel the acquisition proceedings by exercising the power either under Section 48 of the Land Acquisition Act or under Section 21 of the Maharashtra General Clauses Act. Another question connected with this question is whether on basis the notification dated 25th March 1996, the original owner was divested of his right, title or interest and whether the said land is vested in the State Government or the Mumbai

Municipal Corporation on publication of the said notification. The issue of the legality and validity of the Government Resolution dated 24th August 2004 also arises for consideration. Another important question which needs to be decided is of the locus of the Petitioners in the Writ Petition No.892 of 2013 to challenge the acquisition and to claim that the reservation has lapsed. It will be also necessary to deal with the issue whether there is a gross delay in filing the said Petition.

24. We have carefully perused the pleadings. We have considered the rival submissions. We have also carefully gone through the various decisions cited by the parties. In the body of the judgment, we have referred to only the relevant decisions.

THE ISSUE OF THE LAPSING OF THE RESERVATION

25. It will be necessary to make a reference to the provisions of Section 49 of the MRTP Act which reads thus:

“49. Obligation to acquire land on refusal of permission or on grant of permission in certain cases:- Where-

- (a) any land is designated by a plan as subject to compulsory acquisition, or
- (b) any land is allotted by a plan for the purpose of any functions of a government or local authority or statutory body, or is land designated in such plan as a site proposed to be developed for the purposes of any functions of any such Government, authority or body, or

- (c) any land is indicated in any plan as land on which a highway is proposed to be constructed or included, or
 - [(d) any land for the development of which permission is refused or is granted subject to conditions, and any owner of land referred to in clauses (a), (b) (c) or (d) claims-
 - (i) that the land has become incapable of reasonably beneficial use in its existing state, or
 - (ii) (where planning permission is given subject to conditions) that the land cannot be rendered capable of reasonably beneficial use by the carrying out of the permitted development in accordance with the conditions; or]
 - (e) the owner of the land because of its designation or allocation in any plan claims that he is unable to sell it except at a lower price than that at which he might reasonably have been expected to sell if it were not so designated or allocated, the owner or person affected may serve on the State Government within such time and in such manner, as is prescribed by regulations, a notice (hereinafter referred to as "the purchase notice") requiring the Appropriate Authority to purchase the interest in the land in accordance with the provisions of this Act,
- (2) The purchase notice shall be accompanied by a copy of any application made by the applicant to the Planning Authority, and of any order or decision of that Authority and of the State Government, if any, in respect of which the notice is given.
 - (3) On receipt of a purchase notice, the State Government shall forthwith call from the Planning Authority and the Appropriate Authority such report or records or both, as may be necessary, which those authorities shall forward to the State Government as soon as possible but not later than thirty days from the date of their requisition.

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

[(6) ***]

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

26. In the present case, the acquisition proceedings in the form of the Notification dated 25th March 1996 commenced on the basis of the Application dated 16th February 1995 made by the Mumbai

Municipal Corporation. As state earlier, the notice under Section 49 of the said Act was confirmed on 21st February 1994. If the Mumbai Municipal Corporation is held to be an “Appropriate Authority”, it is obvious that the acquisition will not lapse as the said Municipal Corporation applied for acquisition within the period provided in Sub-Section (7) of Section 49.

27. The “Appropriate Authority” is defined under Sub-section (3) of Section 2 of the MRTP Act, which reads thus:

“(3) “Appropriate Authority” means any public authority on whose behalf land is designated for a public purpose in any plan or scheme and which it is authorised to acquire;

28. One interesting aspect which is not specifically brought to our notice by any of the learned counsel appearing for the parties but which is borne out of the record is that a notification dated 2nd June 1979 in respect of the same land was issued and published in the Government Gazette dated 14th June 1979 under Sub-section (2) read with Sub-section (4) of Section 126 of the MRTP Act read with Section 6 of the Land Acquisition Act. The said notification was issued on the basis of the reservation in the sanctioned Development Plan for the Secondary School. The acquisition was initiated by the Mumbai Municipal Corporation for Secondary School. There is a specific reference to the said notification in the notice dated 14th August 1993

issued under Sub-section (1) of Section 49 of the MRTP Act by the Advocates for the original owner. The notice proceeds on the footing that the said notification lapsed in view of Section 11A of the Land Acquisition Act. In fact, in view of what is held by the Constitution Bench of the Apex Court in the case of *Girnar Traders (3)*, the said acquisition had never lapsed as Section 11A of the Land Acquisition Act was not applicable to the acquisition under the MRTP Act. Perhaps, as in the subsequent sanctioned Revised Development Plan, the same reservation was again shown in the year 1991 that the notice under Sub-section (1) of Section 49 of the MRTP Act appears to have been served. All the parties have proceeded on the footing that the acquisition proceedings initiated by the notification dated 2nd June 1979 had lapsed. However, the said acquisition had never lapsed. In fact, on this ground itself, the said notice can be said to be invalid and illegal.

29. Nevertheless, we are considering the case by proceeding on the footing that the said earlier acquisition had lapsed. The notice under Sub-section (1) of Section 49 of the MRTP Act served by the Advocates for the original owner was confirmed by the State Government on 21st February 1994.

30. The Application for acquisition was admittedly made by the said Municipal Corporation on 16th February 1995 to the State

Government. A copy of the said Application was also submitted to the Collector of the District Mumbai. The Application records that the required information in the usual format along with three copies of the plans and resolution of the Municipal Corporation were enclosed for ready reference. It specifically records that the Municipal Corporation by its Resolution No.1097 dated 28th November 1975 accorded its sanction to initiate acquisition proceedings. It will be necessary to make a reference to the said Resolution dated 28th November 1975 passed by the said Municipal Corporation (by its General Body). The said Resolution reads thus:

“That sanction be given (I) under Section 126(1) of the Maharashtra Regional and Town Planning (Amendment) Act 1970, to an application being made by the Commissioner to the State Government, on behalf of the Corporation acquisition of property bearing C.S. No.398, at Tardeo Division, measuring 2340 sq. metres and as shown bounded red on Plan No.EEDP/ACAN-10, dated 15.1.1975 received with the letter, for the purpose of Municipal Secondary School at the rate of 228.00 per sq mts. At an estimated cost of Rs.6,59,575.00 as detailed in para 4 thereof, under the provisions of Section 126(2) and (3) of Maharashtra Regional and Town Planning (Amendment) amended up to date, and (ii) under Section 67(b) to a liability for expenditure being incurred by the Commissioner beyond current official year, in respect of acquisition of the aforesaid property for the purpose of Municipal Secondary School, at the aforesaid estimated cost, as proposed”.

(Underline supplied)

31. Thus, the Resolution of the said Municipal Corporation is to acquire the said land under Sub-section (1) of Section 126 of the MRTP Act for the purpose of a Municipal Secondary School. There is no dispute that the said Municipal Corporation is the Planning Authority within the meaning of the MRTP Act. The Application dated 16th February 1995 is specifically based on the Resolution dated 28th November 1975 of the said Municipal Corporation which provides that the acquisition proceedings in respect of the said land be initiated for setting up a Municipal Secondary School. This Resolution shows that the said Municipal Corporation intended to start a Municipal Secondary School on the said land. The Resolution dated 28th November 1975 is on the basis of the Resolution of the Improvement Committee of the Municipal Corporation dated 5th September 1975.

32. After the notification dated 25th March 1996 was published, the said Municipal Corporation seems to have taken a stand that the Secondary Education is not an obligatory duty of the Mumbai Municipal Corporation. However, the Municipal Corporation in its discretion was entitled to provide facility of Secondary Education by starting a Secondary School. By Resolution dated 28th November 1975, the General Body of the Municipal Corporation decided to start a Municipal Secondary School on the said land.

33. Section 61 of the said Act of 1888 reads thus:

“Matters to be provided for by the corporation.

61. It shall be incumbent on the corporation to make adequate provision, by any means or measures which it is lawfully competent to them to use or to take, for each of the following matters, namely:—

- (a) the construction, maintenance and cleansing of drains and drainage works, and of public latrines, urinals and similar conveniences;
- (b) the construction and maintenance of works and means for providing a supply of water for public and private purposes;
- (c) scavenging and the removal and disposal of excrementitious and other filthy matters, and of all ashes, refuse and rubbish;
- (d) the reclamation of unhealthy localities, the removal of noxious vegetation and generally the abatement of all nuisances;
- (e) the regulation of places for the disposal of the dead and the provision of new places for the said purpose;
- (f) the registration of births and deaths; [(ff) public vaccination in accordance with the provisions of the Bombay Vaccination Act, 1877;]
- (g) measures for preventing and checking the spread of dangerous diseases;
- [(gg) establishing and maintaining public hospitals and dispensaries and carrying out other measures necessary for public medical relief;]
- (h) the construction and maintenance of public markets and slaughter-houses and the regulation of all markets and slaughter-houses;

- (j) the regulation of offensive and dangerous trades;
- (k) the entertainment of a fire-brigade and the protection of life and property in the case of fire;
- (l) the securing or removal of dangerous building and places;
- (m) the construction, maintenance, alteration and improvement of public streets, bridges, culverts, causeways and the like;
- (n) the lighting, watering and cleansing of public streets;
- (o) the removal of obstructions and projections in or upon streets, bridges and other public places;
- (p) the naming of streets and the numbering of premises;
- (q) maintaining, aiding and suitably accommodating schools for primary education [subject always to the grant of building grants by '[the "[State] Government]' in accordance with the Government Grant-in-aid Code for the time being in force];
- (r) the maintenance of a municipal office and of all public monuments and other”
(underline added)

Section 63 of the said Act of 1888 reads thus:

“Matters which may be provided for by the corporation at their discretion.

63. The corporation may, in 'their discretion, provide from time to time, either wholly or partly, for all or any of the following matters, namely:—

- (a)

[(a)

[(b) the furtherance of educational objects other than those intentioned in clauses (q} of section 61:

(c)

(underline supplied)

Therefore, in view of clause (b) of Section 63, it was open for the said Municipal Corporation to provide even for secondary education by setting up a Secondary school which was precisely done by the said Resolution of the year 1975. Once such a decision is taken by the Municipal Corporation, it becomes an Appropriate Authority within the meaning of the MRTP Act. In the sanctioned development Plan of 1991-1992, no other Authority is shown as the Appropriate Authority. Hence, when the Application was made on 16th February 1995, the Municipal Corporation was an Appropriate Authority within the meaning of Sub-section (3) of Section 2 and Sub-section (7) of Section 49 of the MRTP Act. The said Application was made within a period of one year from 21st February 1994 when the notice under Sub-section (1) of Section 49 of the MRTP Act was confirmed by the State Government. Therefore, within a period of one year provided in Sub-section (7) of Section 49 of the MRTP Act, there was an Application made by the Appropriate Authority and/or the Planning Authority for initiating acquisition proceedings on the basis of which, a notification dated 25th March 1996 under Sub-section (2) read with Sub-section (4) of Section 126 of the MRTP Act was issued. Hence, the reservation did

not lapse on the basis of the notice issued by the original owner under Sub-section (1) of Section 49 of the MRTP Act on 14th August 1993.

THE STAND OF THE STATE GOVERNMENT AND SHIFT
IN THE STAND AFTER 2007 AFTER THE DEVELOPER
COMES INTO PICTURE

34. It appears that the original owner moved the Hon'ble Upa Lokayukta with a grievance. The Upa Lokayukta made a recommendation under Sub-section (1) of Section 12 of the said Act of 1971. The recommendation recorded that in view of Sub-section (7) of Section 49 of the MRTP Act, the said land has been released from the reservation and, therefore, the Education Department should consider whether it can proceed further with the advertisement dated 10th October 2002. The Petitioner in Writ Petition No.2315 of 2008 has relied upon an explanatory memorandum submitted by the State Government to the Lokayukta. The explanatory memorandum was forwarded to the office of the Lokayukta along with a letter dated 31st December 2005 addressed by the Desk Officer of the General Administrative Department of the State Government. In the said explanatory memorandum, the State Government specifically contended that the notice under Sub-section (1) of Section 49 of the MRTP Act was confirmed on 21st February 1994 and that the Mumbai Municipal Corporation submitted an application for acquisition on 16th February 1995. Therefore, a specific stand was taken therein that the

reservation has not lapsed as the Application for acquisition was made within the time stipulated by Sub-section (7) of Section 49 of the MRTP Act. The letter dated 20th January 2003 addressed by the Principal Secretary of the Urban Development Department of the State Government to the Upa Lokayukta is also on record. The said letter is signed by Shri Ramanand Tiwari, the Principal Secretary of the Urban Development Department. The material part of the said letter reads thus:

“I have received your recommendation under section 12(1) of the Maharashtra Lokayukta and Upa-Lokayukta Act, 1971, in the subject matter. It has been recommended that the action, mentioned in paragraph 6 of the note, be completed within one month from the date of receipt of recommendation.

In paragraph 6 of the note it is mentioned that in the instant case, since there has been failure to initiate a valid proposal to acquire the land as stipulated in section 49(7) by the “Appropriate Authority” within one year, the reservation of the land has lapsed within the meaning of the provision of law and the Govt. should issue a simple letter to complainant confirming that the land stand released from acquisition/reservation.

In connection with this, I have to point out that the Govt. had confirmed purchase notice vide letter dated 21st February, 1994 & thereafter according to Corporations Resolution No.1097 of 28/11/75, the Chief Engineer (Development Plan), MCGM had submitted the Acquisition proposal under section 126 of MR&TP Act, to Govt. on 16/2/1995. The Govt. had issued the notification on 25th March, 1996 declaring the said land for the public purpose of “Secondary School” under the provision of section 126 of the said Act.

The MCGM, at that time, had not raised any point regarding the issue of Appropriate Authority for Secondary School, however, in its letter No.Acq/C/70 dated 24/6/96, it was mentioned that in order to avoid lapsing of the reservation, action for acquisition was initiated. Thus, the provisions of section 49(7) of MR&TP Act was already fulfilled. Thereafter the MCGM had requested that the Acquisition proceeding shall be taken over by the Education Deptt. of Govt. of Maharashtra”.

(underlines added)

Thus, till the year 2005, the stand of the State Government was that the acquisition has not lapsed as the Mumbai Municipal Corporation being the Appropriate Authority had applied for initiating acquisition proceedings. We have carefully perused the documents on the file of the State Government produced by the Petitioner along with compilation dated 17th November 2008. The said compilation contains photocopies of the original file notes. The advertisement inviting Applications, on the basis of which the Petitioner in Writ Petition No.2315 of 2008 applied, proceeds on the footing that the said land is reserved in the sanctioned Development Plan for Secondary School. In fact, the decision for publishing advertisement has been taken on the basis of the note prepared on 1st October 2002 by the Urban Development Department of the State Government. The said note specifically refers to the notice under Section 49 of the MRTP Act and the recommendations of the Upa Lokayukta. In the file, there is an order passed on the August 2004 by the then Hon’ble Minister of School Education, Sports and Youth Welfare Department which grants approval

for initiating acquisition proceedings of the said reserved land for the benefit of the Petitioner in the said Writ Petition. There is a note dated 6th October 2005 prepared by the Urban Development Department which is signed even by the Principal Secretary of the Urban Development Department which records that cancellation of the notification dated 25th March 1996 may lead to lapsing of reservation under Section 49 of the MRTP Act and, therefore, the opinion of the Law and Judicial Department should be sought. The Law and Judiciary Department submitted its opinion on 5th December 2005 and recorded an opinion that the condition provided in Sub-section (7) of Section 49 of the MRTP Act has been fulfilled and therefore, reservation will not lapse. The Law Ministry opined that a corrigendum can be issued to the notification dated 25th March 1996 for providing that the State Government will be the Appropriate Authority instead of the said Municipal Corporation. On the basis of the said opinion, the Urban Development Department prepared a note on 4th February 2006 which was approved by the Principal Secretary recommending that a corrigendum should be issued to the notification dated 25th March 1996. Even a draft of the corrigendum was annexed to the said note. The remark of the Hon'ble Chief Minister on the said note is that the matter should be discussed. The note dated 6th August 2007 prepared by the Urban Development Department recommends that a corrigendum should be issued for amending the notification dated 25th

March 1996 for providing that the Petitioner in the Writ Petition No.2315 of 2008 will be the Appropriate Authority. On the said note, the Hon'ble Chief Minister passed an order directing that fresh tenders should be invited. Till the year 2007, the consistent stand of the State Government appears to be that there was a compliance with Sub-Section (7) of Section 49 and the reservation has not lapsed.

35. The file shows that there is a sudden shift in the stand of the State Government after the letter dated 5th September 2007 was submitted by M/s. Estelle Developers Private Limited contending that the reservation has lapsed on the basis of the notice dated 14th August 1993. The Urban Development Department prepared a note dated 29th October 2007. In the said note, it is recorded that on the letter dated 5th September 2007, the Hon'ble Chief Minister had directed that “please put up”. On the basis of the said letter dated 5th September 2007, the Law Ministry submitted an opinion dated 19th December 2007 under the signature of the Principal Secretary that the said Developer is not entitled to dispute the acquisition proceedings as it has purchased the property after the notification was issued on 25th March 1996.

36. There is a note dated 24th January 2008 prepared by the Urban Development Department of the State Government. The said note records that by letter dated 5th September 2007, M/s. Estelle

Developers Private Limited requested the State Government to allow the use of the said land for educational purposes and the said Company showed willingness to rehabilitate the tenants on the said land. It is noted that a request was made by the said Company to withdraw the acquisition proposal. The said note was for seeking an opinion of the School Education Department. Accordingly, a note was prepared by the Education Department in which the recommendation was not to cancel the acquisition proceedings but to issue a corrigendum for incorporating the name of the Petitioner in Writ Petition No.2315 of 2012 in the notification dated 25th March 1996 as the Appropriate Authority. The said remark was approved by the Principal Secretary of the School Education and Sports Department by specifically recording that though the acquisition proceedings may not have been finalized, the reservation should be maintained as "Educational". Only remark made by the Principal Secretary of the Urban Development Department on 15th February 2008 is "put up". A fresh note was prepared by the Urban Development Department on 26th February 2008 which records an opinion of the Legal Department that the question of dropping the acquisition proceedings at the instance of M/s. Estelle Developers Private Limited does not arise in view of the decision of the Apex Court. The note also records that the remark of the Education Department was to maintain reservation. The note was put up for seeking an opinion in the light of different norms of the Education Department.

37. It will be necessary to note the remark put up by the Hon'ble Chief Minister on the said note dated 26th February 2008. The English translation of the said remark reads thus:

“(1) Prin.Secy.(E.D.) to give hearing to MIT and then take cancellation G.R. (2) Thereafter, U.D. should allow the owner to develop the school reservation as per D.C. Rules.”

(underline supplied)

38. Thus, the Hon'ble the Chief Minister directed the Principal Secretary of the Education Department to complete the formality of giving hearing to the Petitioner in Writ Petition No.2315 of 2008 and to cancel the Government Resolution dated 24th August 2004. A direction was also given to the Urban Development Department to allow M/s. Estelle Developers Private Limited (the Purchaser) to develop the said land for school purpose reservation as per the Development Control Regulations. Thus, this direction implies that the acquisition should be cancelled. A note was put up on 10th April 2008 by the Section Officer of the School Education and Sports Department. A report of the Education Inspector, South Zone was placed on record which recommended the case of the Petitioner in Writ Petition No.2315 of 2008. In terms of the order of the Hon'ble the Chief Minister, hearing was fixed on 11th April 2008 before the then Principal Secretary of the Education Department Smt. Sharvari Gokhale. On 11th April 2008, the

Principal Secretary directed to obtain a clarification from the Urban Development Department on certain points specified in the minutes of the meeting. It appears that thereafter, the said Principal Secretary was transferred and another Principal Secretary assumed the charge. The said Principal Secretary ultimately heard the parties on 8th July 2008 and passed an order on 14th August 2008. The said order which is challenged in the Writ Petition No.2315 of 2008 records that the Purchaser M/s.Estelle Developers Private Limited has submitted a proposal to the State Government that the said Company was prepared to develop the land for education purposes and for rehabilitating the tenants. By the said order, the Principal Secretary directed cancellation of the Government Resolution dated 24th August 2004 in terms of the order of the Hon'ble Chief Minister which has quoted above. The Urban Development Department issued the Resolution dated 12th September 2008 in the purported exercise of powers under Sub-section (1) of Section 48 of the Land Acquisition Act to withdraw the acquisition proceedings initiated on the basis of the notification dated 25th March 1996. The said Resolution proceeds on the footing that the reservation on the said land continues. It records that M/s. Estelle Developers Private Limited have informed the State Government that they are prepared to develop the land for the public purpose. Thus, as observed above, after the said Developers came into picture, there was a complete shift in the stand of the State Government notwithstanding

the clear opinion given by the Law Ministry that the reservation had not lapsed and that the acquisition cannot be cancelled. In fact, the clear opinion of the Law Ministry based on the decision of the Apex Court to which we have made a reference in the subsequent part of this judgment, is that the subsequent Purchaser has no right to challenge the acquisition. There is an affidavit filed by Dr. Padmashri Bainade, the Special Land Acquisition Officer No.VII on 30th April 2013 in which it is stated that individual notices dated 14th February 2000 issued under Sub-sections (3) and (4) of Section 9 of the Land Acquisition Act were served on the original owner Shri Nowrosji Jehangir Gamadia and 54 tenants. It records that even prior to the service of notice under Section 9 of the Land Acquisition Act, the owner has filed a claim for compensation on 17th March 1999. This shows that the original owner never intended to challenge the acquisition and never intended to claim benefit on the basis of the purchase notice dated 14th August 1993 issued under Section 49 of the MRTP Act.

39. Since we are discussing the shift in the stand taken by the State Government, we must make a reference to the note submitted by Shri Dwarkadas, the learned senior counsel, who has been appointed as the Special Counsel by the State Government. At Sr.No.1 in the chart of the legal steps taken, a specific contention has been raised that the Mumbai Municipal Corporation was not the Appropriate Authority. This

contention was never specifically raised earlier and not even in the affidavits filed on record. Against the column No.6, the stand taken by the State Government is that the Application dated 16th February 1995 made by the Mumbai Municipal Corporation is without authority of law as the Mumbai Municipal Corporation was not the Appropriate Authority. Against Column No.6, a fault is found with the Mumbai Municipal Corporation by contending that there is no Resolution of the Improvements Committee or the Standing Committee authorizing the acquisition. Against Column No.7, it is contended that there is no vesting on the basis of the notification dated 25th March 1996 as the correct procedure for acquisition was not followed. Surprisingly, a submission was made by Shri Dwarkadas, the learned senior counsel on behalf of the State Government that in light of the Article 300A of the Constitution of India, the State Government permitted the subsequent Purchaser M/s. Estelle Developers Private Limited to develop the said land. His submission was that the State Government was conscious of the fact that the acquisition will defeat the rights of the owner guaranteed under Article 300A of the Constitution of India. We must record here that such a stand based on Section 300A is very rarely taken by the State Government. In Paragraph 3 of the written submissions submitted by the State Government, a stand has been taken that the acquisition proceedings were without authority of law and in contravention of Article 300A of the Constitution of India. This stand

is completely contrary to the explanatory note submitted by the State Government to the Upa Lokayukta. It is contended in the note submitted by the learned senior counsel for the State that the State Government has a right to withdraw the acquisition under Section 48 of the Land Acquisition Act and also in exercise of the powers under Section 21 of the Maharashtra General Clauses Act. This has to be appreciated in the light of the order of the Hon'ble Chief Minister dated 27th February 2008 which directs the Principal Secretary of the School Education Department to complete the formalities by giving hearing and to cancel the Resolution dated 24th August 2004. The Hon'ble Chief Minister directed the Urban Development Department to allow the Purchaser M/s.Estelle Developers Private Limited to develop the said land for public purpose as per the reservation. In the subsequent part of the judgment, we have referred to the judgment of the Apex Court which holds that a Purchaser who purchases the land subject matter of acquisition after publication of the notification under Section 6 of the Land Acquisition Act, has no right and the said transaction is void which does not bind the State Government. However, the State Government and the Hon'ble Chief Minister proceeded on the footing that the said transaction binds the State Government. Thus, only conclusion which can be drawn is that after M/s. Estelle Developers Private Limited came into picture, the State Government acted completely contrary to its earlier stand as well as contrary to the law laid down by the Apex Court

and decided to hold in favour of the Developer who had admittedly purchased the said land in the year 2007 with full knowledge of the notification dated 25th March 1996.

40. There is another interesting feature. The order of the State Government dated 12th September 2008 of withdrawal from acquisition records that the Developer has agreed to develop the land for the public purpose in view of the reservation. Surprisingly, in the year 2013, the Petitioner No.3- Developer filed Writ Petition No.892 of 2013 contending that the reservation for secondary school has lapsed. The State Government has taken a stand during the course of submissions that the reservation has lapsed. All this has to be appreciated in the light of the fact that the said land is a prime property situated in the Central Mumbai.

LEGALITY OF THE ACTION OF WITHDRAWAL FROM
ACQUISITION PROCEEDINGS

41. The next question is whether the State Government can exercise the power under Section 48 of the Land Acquisition Act of withdrawing from acquisition initiated on the basis of the notification under either Sub-section (2) or sub-Section (3) of Section 126 of the MRTP Act read with Section 6 of the Land Acquisition Act. Another question is if Section 48 of the Land Acquisition Act cannot be invoked,

whether Section 21 of the Maharashtra General Clauses Act can be pressed into service by the State Government to withdraw from acquisition initiated on the basis of a notification under either Sub-section (2) or sub-Section (4) of Section 126 of the MRTP Act read with Section 6 of the Land Acquisition Act.

42. The Apex Court in its decision in the case of *Girnar Traders*(3) dealt with the entire scheme of the MRTP Act in the context of the issue of applicability of Section 11A of the Land Acquisition Act to the acquisition under Section 126 of the MRTP Act. In paragraph 67, the Apex Court compared the scheme of the both the Acts which reads thus:

“67. Having stated the scheme of the two Acts, let us proceed to examine if there are marked distinctions between the statutory provisions of the two Acts and, if so, what is the scope of the same.

<i>Sl. No.</i>	<i>The Land Acquisition Act</i>	<i>The MRTP Act</i>
1.	The Land Acquisition Act is a legislation regulating only the acquisition of land for a public purpose and payment of its compensation. In other words, it is a legislation of acquisition alone and is in no way concerned with planned development.	The primary object of the MRTP Act is regional/town planning and development of the entire State of Maharashtra. The function of the authorities constituted under the Act is planning. The purpose of the Act primarily is planned development and acquisition is incidental thereto.
2.	The lands are to be acquired only for a public purpose in terms of	The Act deals with and provides only for land

the notification under Section 4.

required, reserved or designated for planned development.

3. Upon issuance of notification under Section 4 of the Act, the owner/interested person can develop the land or utilise the same for his benefit but without claiming any compensation for such modification subsequent to the date of the notification. (Clause Seventhly of Section 24)
 4. Under normal proceedings for acquisition under the Act, the land vests in the Government only after the award is made and possession is taken in terms of Section 16 of the Act, of course with the exception stated in Section 17 of the Act.
 5. Under this Act, there is no provision empowering the State Government to acquire the land for any purpose other than the
- Even prior to issuance of declaration under Section 126(2) i.e. on publication of declaration of intention to prepare a development plan for any area under Section 43 or town planning scheme under Section 69, the rights of the owner are completely restricted. No person is entitled to institute or change the use of any land or carry out any development of land without permission of the authority under Section 43 or a commencement certificate under Section 69.
- Under this Act, the land required for development vests in the Government at the very threshold.** Under Section 129(1) when emergency provisions are invoked, the land shall vest without any further assurance and free from all encumbrances in the State only when notice of 15 days is given by the Collector prior to taking possession. Section 83 shows marked distinction that possession of the land can be taken and it shall vest in the Government/authority where it is necessary to undertake forthwith any work included even in a draft scheme for a public purpose.
- In terms of Section 128(1), the Government has been vested with the power to acquire land for the purposes

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| <p>one specified in the notification issued under Section 4 for which the property was acquired.</p> | <p>other than the one for which it is designated in any plan or scheme.</p> |
| <p>6. Very few provisions provide for limitation of period within which the action by the authority is required to be taken and default thereto results in substantial consequences. (Sections 6 and 11-A)</p> | <p>There are as many as 80 different provisions of the Act which provide limitation of time for commencement, execution and completion of actions by the authorities concerned and in default the consequences flowing therefrom.</p> |
| <p>7. The Collector is vested with all the powers under the Act right from acquisition till payment of compensation. The award passed by the Collector is subject to reference and appeal under the provisions of the Act.</p> | <p>Multiple authorities have been constituted under different provisions of the Act which are responsible for performing the specified functions. The arbitrator nominated and the Tribunal constituted under the provisions of the Act has to perform practically all the adjudicatory proceedings except where land is to be acquired for planned development acquisition thereof and awarding of its compensation by the Collector.</p> |
| <p>8. This Act is a Central legislation relatable to Entry 42 of List III of Schedule VII to the Constitution.</p> | <p>This Act is a State legislation relatable to Entries 5 and 18 of List II of Schedule VII to the Constitution (without prejudice to the contention of the parties).</p> |
| <p>9. The market value of the land has to be determined as on the date of issuance of notification under Section 4 of the Land Acquisition Act.</p> | <p>The market value has to be determined with reference to the date/dates specified in Section 126(3) and upon issuance of a declaration under Section 126(2) in the manner for issuance of declaration under Section 6 of the LA Act.</p> |
| <p>10. The Government can withdraw</p> | <p>There is no provision</p> |

from acquisition of any land before possession is taken in terms of Section 48 of the Act. empowering the planning authority from denotifying land from acquisition. However, in terms of Section 50, it has power to delete from reservation, designation for an interim draft plan.

These are some of the glaring points of distinction between the two Acts. Of course, there may be other distinctions and the ones stated by us are only illustrative. The purpose of referring to these distinctions is primarily to demonstrate that they are two different statutes operating in different fields, the provisions of which are required to be utilised by the authorities concerned for the object sought to be achieved under the respective Acts.”

(emphasis added)

43. In further part of the decision, the Apex Court examined the question of the stage at which vesting of the land under the acquisition under the provisions of sub-section (2) or (4) of Section 126 takes place. In paragraph 29, the Apex Court held thus:

“129. Further, determination of compensation will again depend upon the principles stated in Sections 23 and 24 of the Land Acquisition Act but subject to Sections 128(2) and 129(1) of the MRTTP Act. Statutory benefits accrued under Sections 23(1-A), 23(2) and 28 of the Land Acquisition Act would be applicable as held by this Court in *U.P. Avas Evam Vikas Parishad* [(1998) 2 SCC 467]. **Vesting, unlike Section 16 of the Land Acquisition Act which operates only after the award is made and compensation is given, whereas under the MRTTP Act it may operate even at the initial stages before making of an award, for example, under Sections 126(1)(c) and 83.**”

(emphasis added)

44. Thereafter in paragraphs 168 and 169, the Apex Court considered the legal effect of vesting.

“168. There are different kinds of vesting of lands as mentioned in the two Acts. The State Act has multi-dimensional purposes leading to primary object of planned development, while the Central Act has only one dimension i.e. acquisition of land for a specified public purpose. The land, in terms of Section 16 of the Central Act shall vest in the State free of encumbrances only when the compensation is paid and possession of the land is taken under that Act. Section 48 of the Central Act empowers the State to withdraw from acquisition of any land of which possession has not been taken, despite the fact that award may have been pronounced in terms of Section 11 of the Central Act. But once there is complete vesting of land in the State it amounts to transfer of title from owner to the State by fiction of law.”

(emphasis added)

“169. Neither the Central Act has any provision to deal with re-vesting of the land in the owner, nor does it appear to be permissible within the scheme of both the Acts. Corollary to this would be that even where the reservation lapses as a result of default specified in the provisions of Sections 49, 126 and 127 of the State Act the acquisition of the vested land would not, per se, lapse. The provisions of Section 11-A of the Land Acquisition Act do not have any application to such cases under the provisions of the MRTP Act.”

(emphasis added)

45. Thus, it is held that after vesting of the acquired land, there cannot be re-vesting in the owner even under any of the provisions of the Land Acquisition Act including Section 48. Moreover, even the

reservation on the basis of which the acquisition is initiated lapses, the acquisition does not lapse.

46. The Apex Court considered the issue of vesting of land notified for acquisition on the basis of clause (c) of Sub-Section (1) of Section 126 of the MRTP Act in another case. In the case of *Manohar Joshi v. State of Maharashtra*, in paragraphs 119, it is held thus:

'119. The appellants relied upon the judgment of this Court in *Land Acquisition Officer v. Godrej & Boyce* [(1988) 1 SCC 50 : AIR 1987 SC 2421] in support of their contention, that the purpose for acquisition must continue until possession is taken. In that matter this Court held that the title to the land vests in the Government only when the possession is taken. It is, however, material to note that this judgment is concerning Section 16 of the LA Act. As far as this submission is concerned, as held by K. Ramaswamy, J. in *Industrial Development Investment Co. case* [(1996) 11 SCC 501], one must note that the scheme of the MRTP Act is different from that under the LA Act. In paras 11 and 12 of his judgment in *Industrial Development Investment Co. case* [(1996) 11 SCC 501] he has specifically held that Section 126(1) of the MRTP Act is a substitute for the notification under Section 4 of the LA Act. A declaration under Section 126(2) is equivalent to a declaration under Section 6 of the LA Act. The objections of the persons concerned are considered before such land gets earmarked for public purpose in the plan. Therefore, there is no need of any enquiry as under Section 5-A of the LA Act. **Section 126(1)(c) specifically states that when an application is made to the State Government for acquiring the land under the LA Act, the land vests absolutely with the Planning Authority.** Therefore, it was held that in the scheme of the MRTP Act, it is not necessary that the

original public purpose should continue to exist till the award was made and possession taken.”

(emphasis added)

47. Hence, it is categorically held that when an application is made under Section 126(1)(c) to the State Government for acquiring the Land under Land Acquisition Act, the land vests absolutely with the Planning Authority. In paragraph 122 in the decision in the case of *Manohar Joshi*, the Apex Court observed thus:

“122. Section 128 of the MRTP Act strengthens the view that we are taking. Section 128 deals with a situation where the land is sought to be acquired for a purpose other than the one which is designated in the plan or the scheme. In that case, provisions of the LA Act apply with full force. This section reads as follows:

“128. Power of State Government to acquire lands for purpose other than the one for which it is designated in draft plan or scheme.—(1) Where any land is included in any plan or scheme as being reserved, allotted or designated for any purpose therein specified or for the purposes of Planning Authority or Development Authority or appropriate authority and the State Government is satisfied that the same land is needed for a public purpose different from any such public purpose or purpose of the Planning Authority, Development Authority or appropriate authority, the State Government may, notwithstanding anything contained in this Act, acquire such land under the provisions of the Land Acquisition Act, 1894 (1 of 1894).

(1-A) Save as otherwise provided in this Act or any other law for the time being in force where any land included in any plan or scheme as being reserved, allotted or designated for any purpose therein specified

or for the purposes of a Planning Authority or Development Authority or appropriate authority, is being acquired by the State Government under the provisions of the Maharashtra Industrial Development Act, 1961 (Mah 3 of 1962), for the Maharashtra Industrial Development Corporation (being the Special Planning Authority deemed to have been appointed as such under sub-section (1-A) of Section 40), the provisions of sub-sections (2) and (3) of this section shall *mutatis mutandis*, apply to such acquisition proceedings.

(2) In the proceedings under the Land Acquisition Act, 1894 (1 of 1894), the Planning Authority, or Development Authority or appropriate authority, as the case may be, shall be deemed to be a person interested in the land acquired; and in determining the amount of compensation to be awarded, the market value of the land shall be assessed as if the land had been released from the reservation, allotment or designation made in any plan or scheme or new town, as the case may be, and the Collector or the court shall take into consideration the damage, if any, that Planning Authority or Development Authority or appropriate authority, as the case may be, may sustain by reason of acquisition of such land under the Land Acquisition Act, 1894 (1 of 1894), or otherwise, and the proportionate cost of the development plan or town planning scheme or new town, if any, incurred by such Authority and rendered abortive by reason of such acquisition.

(3) On the land vesting, in the State Government under Section 16 or 17 of the Land Acquisition Act, 1894 (1 of 1894), as the case may be, the relevant plan or scheme shall be deemed to be suitably varied by reason of acquisition of the said land.”

Sub-section (1) of this section states that in such situations the provision of the LA Act will apply notwithstanding anything contained in the MRTP Act, and sub-section (3) specifically states that in such an event the vesting will take place under Sections 16 and 17 of the LA Act as the case may be. **That is not the case with respect to the acquisition under Section 126 of the MRTP Act, where the vesting takes place in the three circumstances mentioned thereunder. In the present case also the acquisition is resorted to by issuing a notification under Section 126 read with Section 6 of the LA Act. The vesting therefore takes place at that stage.**

(emphasis added)

48. Thus, the sum and substance of what is held by the Apex Court in the cases of *Girnar Traders (3)* and *Manohar Joshi* is that in case of the acquisition under Section 126(1)(c) of the MRTP Act, the vesting takes place when an application for acquisition is made and the vesting in such cases is not deferred till the stage of taking possession of the acquired land. The owner is divested of his right, title and interest at that stage and there is no provision in the MRTP Act or the Land Acquisition Act under which the acquired land can be re-vested in the owner. Once there is a vesting of the land subject matter of the acquisition in the Planning or Appropriate Authority, the same cannot be released from acquisition. In the present case, there was a vesting of the said land on 16th February 1995 when the application as aforesaid was made by the said Municipal Corporation. Hence, the original owner

was divested of his rights of ownership on such vesting. Hence, the subsequent Purchaser did not acquire any rights on the basis of the sale deed of the year 2007. Hence, the State had no power to withdraw from acquisition in purported exercise of powers under Section 48 of the Land Acquisition Act. Even Section 21 of the General Clauses Act cannot re-vest the title in the owner which was vested in the said Corporation long back. Hence, the action of withdrawing from acquisition commenced on the basis of the notification dated 25th March 1996 is completely illegal.

*LEGAL EFFECT OF THE SALE DEED 11TH JULY 2007
EXECUTED BY AND BETWEEN THE ORIGINAL OWNER
AND THE DEVELOPER*

49. The State Government has acted at the instance of the Developer (M/s. Estelle Developers Private Limited) who purchased the said land from the owner 12 years after the vesting and 11 years after the notification dated 25th March 1996 with the full knowledge of the acquisition proceedings. Apart from the finding which we have recorded above that no transfer was effected on the basis of the sale deed, the legal effect of such transfer of a land under acquisition under the Land Acquisition Act by the owner has been considered by the Apex Court in the case of *Meera Sahni v. Lt. Governor of Delhi*. In paragraph 17, the Apex Court held thus:

“17. When a piece of land is sought to be acquired, a notification under Section 4 of the Land Acquisition Act is required to be issued by the State Government strictly in accordance with law. The said notification is also required to be followed by a declaration to be made under Section 6 of the Land Acquisition Act and with the issuance of such a notification any encumbrance created by the owner, or any transfer made after the issuance of such a notification would be deemed to be void and would not be binding on the Government. A number of decisions of this Court have recognised the aforesaid proposition of law wherein it was held that subsequent Purchaser cannot challenge acquisition proceedings and also the validity of the notification or the irregularity in taking possession of the land after the declaration under Section 6 of the Act.”

After holding as aforesaid, the Apex court concluded that :

“21. In view of the aforesaid decisions it is by now well-settled law that under the Land Acquisition Act, the subsequent purchaser cannot challenge the acquisition proceedings and that he would be only entitled to get the compensation.”

(emphasis added)

50. In the case of *Gian Chand v. Gopala*, the Apex Court held in paragraph 2 as under:

“2. The only question for consideration is whether the appellant is entitled to obtain refund of earnest money. One of the terms of the contract, admittedly entered into between the parties, is that in the event of acquisition of land by the Government for a public purpose, the respondent “shall return the earnest money without interest”. Admittedly, since the notification under Section 4(1) of the Land Acquisition Act was already published, the question arises whether the appellant could get a sale deed executed and in its absence whether he is entitled to obtain refund of

earnest money paid under the agreement. On publication of notification under Section 4(1) of the Act, though it is not conclusive till declaration under Section 6 was published, the owner of the land is interdicted to deal with the land as a free agent and to create encumbrances thereon or to deal with the land in any manner detrimental for public purpose. **Therefore, though notification under Section 4(1) is not conclusive, the owner of the land is prevented from encumbering the land in that such encumbrance does not bind the Government. If ultimately, declaration under Section 6 is published and acquisition is proceeded with, it would be conclusive evidence of public purpose and the Government is entitled to have the land acquired and take possession free from all encumbrances. Any sale transaction or encumbrances created by the owner after the publication of notification under Section 4(1) would therefore be void and does not bind the State.** In this perspective, when the necessary conclusion is that the agreement of sale stands frustrated, the question of readiness and willingness on the part of the vendor or vendee does not arise. The appellate court wrongly held that the appellant was not ready and willing to perform his part of the contract. In the face of the notification how could the appellant get a valid title? Any attempt on his part would be futile exercise and avoidable expenditure. Both the courts have concurrently found that time is not the essence of the contract. Under those circumstances, the plaintiff is entitled to lay the suit for refund of earnest money within three years from the date of refusal of the performance of the contract. In this case, declaration under Section 6 was published and so it was conclusive of public purpose and the land was acquired. The contract was, therefore, frustrated. Since one of the terms of the contract is to return the earnest money, in the event of acquisition being made by the State, the vendee-appellant is entitled under Section 33 of the Contract Act, as rightly and legally held by the trial court, to seek refund of the earnest money.”

(emphasis added)

As stated earlier, after the Developer-Purchaser came into picture, there was a material change in the stand of the Government though as far as the State Government is concerned, the sale transaction was void. The Hon'ble the Chief Minister virtually ordered withdrawal of acquisition at the instance of the said Developer. The State Government committed a gross illegality by acting upon such a void transaction. This is the second reason why the action of withdrawal from acquisition becomes illegal.

LOCUS OF THE PETITIONERS IN WRIT PETITION _
NO.892 OF 2013

51. In view of what we have held earlier, the reservation had not lapsed on the basis of the notice dated 14th August 1993. The Writ Petition No.892 of 2013 is based on the said notice. As far as the locus of the legal representatives of the original owner is concerned, the original owner appears to have proceeded on the footing that the reservation had not lapsed on the basis of the said notice. In fact, in the conveyance dated 11th July 2007 executed by the original owner in favour of M/s.Estelle Developers Private Limited, there is a recital that the said land is subject matter of acquisition proceedings. As pointed out earlier, in the year 2000, the contention of the original owner was that the acquisition has lapsed by virtue of Section 11A of the Land Acquisition Act. In the case of *Girnar Traders* (3), the Apex Court has held that Section 11A of the Land Acquisition Act will not apply to the

acquisition proceedings under the MRTP Act. In Writ Petition No.892 of 2013, in the alternative, there is a challenge to the acquisition proceedings initiated on the basis of the notice dated 25th March 1996. The original owner was always aware of the notification. In fact he filed a claim for compensation in the year 1999 in the acquisition proceedings. Apart from the fact that this Petition filed at the instance of the legal representatives of the original owner on 2nd April 2013 suffers from gross delay, when the original owner did not challenge the acquisition in his life time and in fact filed a claim in the acquisition proceedings, his legal representatives are estopped from challenging the acquisition after lapse of several years. In view of the decision of the Apex Court, the third Petitioner M/s. Estelle Developers Private Limited in Writ Petition No.892 of 2013 is not entitled to challenge the acquisition proceedings. In any case, there is a gross delay even on the part of the third Petitioner as the said Petitioner was aware of the acquisition proceedings in the year 2007 when the Sale Deed was executed.

DELAY IN FILING WRIT PETITION NO.892 OF 2013

52. There is another aspect as far as Writ Petition No.892 of 2013 is concerned. The aspect is of a gross delay as well as acquiescence. It will be necessary to make a reference to the letter

dated 23rd March 2000 submitted by the Advocate for the original owner to the Special Land Acquisition Officer No.7. The stand taken in the said letter is that the acquisition initiated in the year 1979 and the acquisition initiated on the basis of the notification dated 25th March 1996 lapsed not because of lapsing of reservation, but due to the fact that the award was not made within the stipulated time. It is contended that as a consequence of lapsing of land acquisition proceedings, the reservation is deemed to have been lapsed. As pointed out earlier, the original owner did not file any proceedings on the basis of the notice dated 14th August 1993. In fact on 17th March 1999, the original owner filed a claim for compensation in the acquisition proceedings before the Special Land Acquisition Officer. The third Petitioner M/s.Estelle Developers Private Limited in Writ Petition No.2315 of 2008 acquired the said land by Conveyance Deed dated 11th July 2007. The said conveyance specifically refers to the acquisition proceedings. The said conveyance does not record that the reservation had lapsed on the basis of the notice issued under Sub-section (1) of Section 49 of the MRTP Act. From the year 2007, even the said Purchaser kept quiet and the Petition was filed in the year 2013 claiming that on the failure of the Appropriate Authority of making an Application for acquisition within a period of one year from 21st February 1994, the reservation had lapsed. Interestingly, the order dated 14th August 2008 and the notification dated 12th September 2008

which are impugned in the Writ Petition No. 2315 of 2008 proceed on the footing that the Purchaser therein M/s. Estelle Developers Private Limited desires to develop the said land for the public purpose of Secondary School. Both the orders are supported by the said Purchaser. Hence, the Petition suffers from gross delay. The conduct of the Petitioners therein is sufficient to dismiss the Petition on the ground of gross delay.

LEGALITY OF GOVERNMENT RESOLUTION DATED
24TH AUGUST 2004

53. Another issue which survives for consideration is about the legality and validity of the Government Resolution dated 24th August 2004. The said Resolution has been set aside by the State Government by an order dated 14th August 2008.

54. The said notification provides that the acquisition of the said land shall be made for the benefit of the Petitioner in Writ Petition No.2315 of 2008 at the cost of the said Petitioner and that the State Government will pay only nominal amount towards the compensation. The said Resolution dated 24th August 2004 is not a notification by which the said land was allotted to the Petitioner in the said Writ Petition. The said Resolution itself records that the acquisition proceedings were initiated on 25th March 1996. As held by the Apex

Court in the case of *Manohar Joshi*, the vesting was already completed and, therefore, there was no occasion to again acquire the said land for the benefit of the Petitioner in the said Writ Petition. Hence, the said Government Resolution was not at all legal.

55. It is true that the order dated 14th August 2008 has been passed cancelling the said Resolution on the basis of the order of the Hon'ble the Chief Minister which was passed at the instance of M/s. Estelle Developers Private Limited. The State Government ought not to have entertained the Application made by M/s. Estelle Developers Private Limited. The question is whether the said order dated 14th August 2008 should be set aside. If the said order is set aside, the Government Resolution dated 24th August 2004 will be restored. The said Resolution was not legal as the vesting was completed atleast in the year 1995. In any event, on that day, the earlier acquisition proceedings were pending.

56. The contention of the Petitioner in Writ Petition No.2315 of 2008 is that there was already a decision taken to amend the notification dated 25th March 1996 for incorporating the name of the Petitioner as the Acquiring Body. The Government Resolution dated 24th August 2004 provides that the Petitioner as the Acquiring Body shall submit a proposal for acquisition of the said land. There is no

allotment made under the said Resolution dated 24th August 2004. The Petitioner in Writ Petition No.2315 of 2008 has not paid any amount on the basis of the said notification. As stated earlier, the notification dated 25th March 1996 continues to be valid. The said acquisition commenced on the basis of the Application made by the said Municipal Corporation under Clause (c) of Sub-section (1) of Section 126 of the MRTP Act. In the sanctioned Development Plan, the Petitioner in the said Writ Petition is not shown as the Appropriate Authority in the sense that it is not shown that the said land is reserved for the benefit of the Petitioner. Therefore, a fresh acquisition could not have been initiated at the instance of the Petitioner in the said Writ Petition under the MRTP Act. As the acquisition has already commenced on the basis of the notification dated 25th March 1996, in law, the said notification cannot be modified by substituting the name of the Petitioner as the Appropriate Authority inasmuch as the Development Plan has not been amended to provide that the reservation is for the benefit of the said Petitioner. This is apart from the fact that vesting had already taken place in the said Municipal Corporation. The writ jurisdiction cannot be exercised if by setting aside one illegal order, another illegal order is likely to be restored. The writ jurisdiction under Article 226 of the Constitution of India is always discretionary and equitable.

57. Therefore, the said Resolution dated 24th August 2004 cannot be restored.

58. As far as challenge to the notification dated 12th September 2008 is concerned, we have already held that the State Government could not have exercised the power to withdraw from acquisition. Therefore, Writ Petition No.2315 of 2008 must succeed to that extent. In view of the fact that the notification dated 25th March 1996 continues to be valid and in view of the vesting, the acquisition proceedings will have to be completed in accordance with law.

59. Hence, we pass the following order:

ORDER :

(A) WRIT PETITION NO.2315 OF 2008

- (i) The Notification dated 12th September 2008 (Exhibit “P” to the Petition) is hereby quashed and set aside;
- (ii) However, we hold that the notification dated 25th March 1996 is valid and subsisting;
- (iii) The order dated 14th August 2008 stands confirmed with a specific clarification that the

reservation of the said land under the sanctioned Development Plan continues to exist and the Notification dated 25th March 1996 continues to be valid and subsisting;

(iv) Rest of the prayers in the Petition stands rejected;

(v) The Rule is partly made absolute on above terms with no order as to costs;

(B) WRIT PETITION NO.892 OF 2013

(i) The prayer clauses (a), (b), (d) and (e) are rejected;

(ii) As far as the prayer clause (c) is concerned, the same does not survive as the Government Resolution dated 24th August 2004 has been cancelled;

(iii) The Rule is discharged with no orders as to costs;

(C) Pending Notices of Motion and the Chamber Summons in both the Petitions do not survive and the same are disposed of.

(A.K. MENON, J)

(A.S. OKA, J)