

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Writ Petition No. 6917 of 2004

* City & Industrial Development Corporation, having its Head Office at Nirmal, 2nd Floor, Nariman Point, Bombay - 32 through its Administrator, CIDCO, New Aurangabad. .. **Petitioner**

Versus

- 1) State of Maharashtra
Through its Secretary,
Revenue & Forest Department
Mantralaya, Bombay.
- 2) The Hon'ble Minister for
Revenue & Forest Department,
Mantralaya, Mumbai - 32.
- 3) The Divisional Commissioner,
Aurangabad.
- 4) The Collector, Aurangabad.
- 5) The Special Land Acquisition
Officer (Special Unit),
Aurangabad Municipal Corporation
Rest House Premises,
Near Railway Station,
Aurangabad.
- 6) Gram Panchayat Satara,
Through its Sarpanch,
Village Satara,
Taluka & Dist. Aurangabad.

- 7) Devendrasingh Mulsingh Jaggi,
Age 55 years,
Occupation : Contractor,
R/o Osmanpura, Aurangabad.
- 8) The Aurangabad Municipal
Corporation, Aurangabad
Through the Commissioner. .. **Respondents**

Shri. A.S. Bajaj, Advocate, for petitioner.

Shri. A.R. Borulkar, Assistant Government Pleader, for
respondent Nos.1 to 5.

Shri. M.D. Shinde, Advocate, for respondent No.6.

Shri. S.D. Kulkarni, Advocate, for respondent No.7.

Shri. S.V. Kshirsagar, Advocate, holding for Mrs. M.A.
Deshpande, Advocate, for respondent No.8.

**Coram: R.D. DHANUKA &
SUNIL K. KOTWAL, JJ.**

Judgment reserved on : 22 AUGUST 2017

Judgment pronounced on : 6th OCTOBER 2017.

JUDGMENT (Per R.D. Dhanuka, J.):

1) By this petition filed under Articles 226 and 227 of the Constitution of India, the petitioner seeks a writ of certiorari for quashing and setting aside the impugned order dated 23rd June, 2004 passed by the learned Minister for Revenue, Government of

Maharashtra, in File No. LAQ 3940/2001/1582/Case No.181/A-1 and a notification dated 20th July, 2004 issued by the Divisional Commissioner Aurangabad dropping the land acquisition proceedings to the extent of Gat No.124/1 of village Satara, Taluka and District Aurangabad. Some of the relevant facts for the purpose of deciding this petition are as under :

2) The petitioner is appointed as New Town's Development Authority under section 113-A of the Maharashtra Regional & Town Planning Act (for short, "the said M.R.T.P Act"). Vide three notifications dated 30-10-1972, 3-2-1973 and 4-5-1973, the State Government appointed the petitioner as special planning authority for development of the notified area of new Aurangabad. The land bearing Gat No.124/1 of village Satara, which is subject matter of this petition, falls within the notified area under the said three notifications as per provision of section 40(1)(4) of the said M.R.T.P Act for the development of Aurangabad notified area.

3) The petitioner carried out survey and prepared one existing land use map of the said notified area and published the draft proposal for the development of lands within its jurisdiction by

publishing a public notice in Maharashtra Government Gazette dated 21st May, 1973 as per provision of section 40(3)(d) of the said M.R.T.P. Act. The said planing proposal was approved by the State Government. In the said notified area, some land were acquired for the purpose of the planned development and utilization for industrial, commercial and residential purpose.

4) The petitioner accordingly approached the Collector of Aurangabad vide letter dated 8th May, 1985 with a request to initiate land acquisition proceeding under section 6 of the Land Acquisition Act 1894 read with section 126 of the said M.R.T.P. Act as early as possible and to hand over the possession of the land to the petitioner. The Collector Aurangabad accordingly made appointment of the Special Land Acquisition Officer, Special Unit, Aurangabad under the powers delegated to him to perform the functions of the Collector for all the proceedings to be taken in respect of the acquisition under the Land Acquisition Act, 1894 and also directed under section 7 of the Land Acquisition Act, 1894 to take orders for said acquisition of lands to be acquired.

5) The notification as per provision under section 6 of

the Land Acquisition Act, 1894 read with section 126 (4) of the said M.R.T.P. Act was submitted to the Collector in order to get his approval for publication. The Collector Aurangabad issued notification under section 6 of the Land Acquisition Act, 1894 dated 29 September 1986. The said notification was published in the Maharashtra Government Gazette on dated 1st January, 1987 in Aurangabad Division Supplement Part I on pages 5 and 6 and was also published in the local news papers i.e. Daily Aurangabad Times dated 1st January, 1987 and Daily Lok Vijay dated 3rd January, 1987. Various lands were sought to be acquired including the land bearing Gat No.124/1 which was measuring about 7.78 hectares.

6) The Land Acquisition Officer thereafter issued notices under section 9(3)(4) of the Land Acquisition Act, 1894 to all the interested persons to file their claim statement and dispute, if any, in respect of the area etc. It is the case of the petitioner that after receipt of the notice under section 9(3)(4) of the Land Acquisition Act, 1894 none of the owners disputed the area of their land as per the notification.

7) On 14th December, 1988 the Land Acquisition Officer,

Special Unit, Aurangabad made an award in respect of various lands including the land bearing Gat No.124/1. In the said Award, the Land Acquisition Officer mentioned the names of various persons who were having interest in the said land bearing Gat No.124/1 and the other plots under acquisition. The Special Land Acquisition Officer in the said award determined the total amount of compensation payable in respect of each of the land under acquisition including land bearing Gat No.124/1 which is subject matter of this petition.

8) On or about 20th January, 1989 the respondent No.7 herein filed a Writ Petition bearing No.377/1989 in this Court under Article 226 read with Article 300A of the Constitution of India, *inter alia*, praying for declaration that the impugned award dated 14th December, 1988 made by the Land Acquisition Officer in respect of land bearing Gat No.124/1 is illegal and without jurisdiction. The said petition was resisted by the petitioner herein on various grounds.

9) By an oral judgment dated 26th July, 2001 delivered by this Court, the said writ petition bearing No.377/1989 filed by the

respondent No.7 herein came to be dismissed. During the pendency of the said writ petition there was an interim relief granted by this Court in favour of the respondent No.7. This Court had also rejected the oral application stay the operation of the said oral judgment. This Court in the said writ petition made it clear that the land owners were not precluded from approaching CIDCO or the State Government for either concession or deletion of the lands as those land owners continued to be in possession.

10) This Court also observed that the final Award had been already passed on 14th December, 1988 and the land acquisition proceedings stood concluded before the petitioner approached this Court in the said writ petition. This Court also rendered a finding that the petitioner had purchased the subject land in 1980 and 1984 and thus in view of the law laid down by the Supreme Court in the case of *State of Maharashtra and another v. Umashankar Rajabhau and other* (1996) 1 SCC 299 and various other judgments, the purchase of the land by the petitioners was illegal and such a transaction did not bind the State Government. This Court also observed that the original land owner was given a notice of hearing before the development plan was approved as far back as in the

year 1973 and thus challenge raised by the petitioner to the acquisition proceeding in respect of the land out of Gat No.124/1 from Satara village was without substance and accordingly was dismissed.

11) Being aggrieved by the said oral judgment delivered by this court on 26th July, 2001, the respondent No.7 herein filed Special Leave Petition. In the mean while the Special Land Acquisition Officer issued notice to respondent No.7 for handing over possession of the land by removing the construction etc. The respondent no.7 sought time to enable him to remove the machinery etc. The Special Land Acquisition Officer granted time to respondent No.7 to remove the machinery etc. and to hand over possession of the land in question. On 3rd October, 2001 respondent No.7 filed a Special Leave Petition. The said Special Leave Petition, however, came to be dismissed.

12) Before the Special Land Acquisition Officer could take possession of the land in question, respondent No.7 filed an application before the learned Minister for Revenue and Forests under section 48 of the Land Acquisition Act, 1894 on the ground

that the said land was not needed by the petitioner and thus the acquisition of the said land should be dropped. The said application was opposed by the petitioner herein on various grounds including on the ground of maintainability of the said application before the learned Minister. The petitioner also denied that the land was not needed by the petitioner. The petitioner pressed urgent need of possession of the land in question. On 23rd June, 2004 the learned Minister overruled the objections raised by the petitioner and directed to drop the acquisition proceeding in respect of the land in question and directed the Collector to issue notification to the effect that the land acquisition proceedings in so far as the land in question concerned are dropped.

13) Being aggrieved by the said order dated 23rd June, 2004 passed by the learned Minister, Revenue and Forests, the petitioner filed this writ petition, *inter alia*, praying for a writ of certiorari, for quashing and setting aside the said impugned order dated 23rd June, 2004 passed by the learned Minister for Revenue and Forests.

14) On 5th November, 2004 when the learned counsel for

the petitioner therein pressed for interim relief, learned counsel for the present respondent No.7 made a statement that no third party rights had been created nor any construction had been made nor the nature of the development was changed. Learned counsel also made statement that *status-quo* would be maintained by respondent No.7 until the matter was heard by the Court. He, however, made a statement that a layout had been approved by the Gram Panchayat, however, no further steps would be taken on that basis. By an order dated 7th March, 2007 the aforesaid writ petition came to be admitted. This Court directed respondent No.7 to maintain *status-quo* concerning the subject property and directed not to change the nature of the subject property thereafter until further orders. The said interim order passed by this Court continues to operate till date.

15) Mr. Bajaj, learned counsel for the petitioner, submits that, the petitioner was appointed as Special Planning Authority by the State Government for development of the notified area of New Aurangabad. The petitioner had taken all the requisite steps required for preparing the planning proposal contemplated under section 115 of the said M.R.T.P. Act and had submitted a planning

proposal to the State Government. The said planning proposal was sanctioned by the State Government on 3rd July, 1973. He submits that the petitioner had thereafter made an application under section 126 of the said M.R.T.P. Act to the Collector for the purpose of acquisition of the land bearing Gat No.124/1 and several other plots.

16) It is submitted by the learned counsel that, the Land Acquisition Officer after following due procedure of law, made an award on 14th December, 1988 in respect of various lands including the land in question. The requisite notices were also given to the original owner of the said land in question. He invited our attention to the averments made by the respondent No.7 in Writ Petition No.377/1989 challenging the said order dated 14th December, 1987 in respect of part of the land bearing Gat No.124/1. He submits that an interim order was passed by this Court in the said writ petition restraining the petitioner herein and the Special Land Acquisition Officer from taking possession of the land in question. He submits that the said writ petition was ultimately dismissed by this Court by rendering detailed reasons.

17) It is submitted that this Court had also rendered finding that the transfer effected in favour of respondent No.7 in respect of the said portion in question was illegal and such transaction was not binding on the State Government. He submits that admittedly the S.L.P. filed by the respondent No.7 against the said oral judgment delivered by this Court rejecting the writ petition filed by the respondent No.7 came to be dismissed. He submits that the acquisition of the said land in question and validity of the acquisition proceeding has been upheld and could not be opened before the learned Minister for Revenue and Forests.

18) It is submitted by the learned counsel that though respondent No.7 had asked for time to remove his machinery and other items from the said plot of land in order to hand over the possession to the petitioner but in stead of handing over the possession thereof to the Special Land Acquisition Officer, respondent No.7 filed a Special Leave Petition. He submits that respondent No.7 did not hand over possession of the land in question to the Special Land Acquisition Officer though the writ petition as well as the S.L.P. filed by respondent No.7 came to be rejected.

19) It is submitted by the learned counsel for the petitioner that though the said proceedings filed by respondent No.7 under section 48 of the Land Acquisition Act, 1894 were not maintainable before the learned Minister for Revenue and Forests, the learned Minister illegally granted stay against the petitioner from taking possession of the land in question from respondent No.7.

20) It is submitted by the learned counsel for the petitioner that though respondent No.7 was fully aware of the fact that the original owner had not challenged the acquisition proceedings and the declaration issued by the Special Land Acquisition Officer had become final, the respondent No.7 purchased the said property thereafter and challenged the land acquisition by filing writ petition. The respondent No.7 also started carrying on development on the said land without obtaining any permission for the development of the said land contemplated under sections 44 and 45 of the said M.R.T.P. Act and under section 42 of the Maharashtra Land Revenue Code. He submits that the respondent No.7 had made a claim of compensation in terms of money before the Special Land Acquisition Officer contemplated under section 9 of the said Land Acquisition Act, 1894 and also by way of Reference under section 18

of the said Act. He submits that respondent No.7 thus could not have invoked section 48 of the Land Acquisition Act, 1894 in any manner whatsoever.

21) Learned counsel for the petitioner submits that the proceedings for acquisition of the land in question were initiated by the petitioner under section 126 of the said M.R.T.P. Act with the Collector for the purpose of acquisition. He invited our attention to Section 126 (1)(a) (b) of the said M.R.T.P. Act and submits that in this case there was no agreement between the original owners and the planning authority to pay the agreed amount to the original owners. The petitioner had accordingly made an application under section 126(1)(c) of the said M.R.T.P. Act to the State Government for acquiring such land. The State Government was satisfied on receipt of such application from the petitioner that the land specified in the said application was needed for the public purpose specified therein and had accordingly taken various steps to acquire the said land. It is submitted that the declaration made by the state Government under section 126(2) of the said M.R.T.P. Act has to be considered as a declaration duly made under the said provisions of the said M.R.T.P. Act and not under the provisions of the Land

Acquisition Act, 1894.

22) The learned counsel for the petitioner placed reliance on the judgment of the Supreme Court in the case of *Girnar Traders (3) v. State of Maharashtra*, (2011) 3 SCC 1, and in particular paragraphs 8, 17 to 20, 48 to 54, 64 to 68 and 85. Learned counsel for the petitioner invited our attention to the paragraphs 8 and 19 of the judgment in the case of *Girnar Traders (3)* (supra) and would submit that the issue before the Supreme Court in the said judgment was not only as to whether the provision of section 11-A of the Land Acquisition Act, 1894 amongst other provisions introduced by Central Act No.68/1984 would apply to Chapter VII of the said M.R.T.P. Act but the issue was also as to whether the said M.R.T.P. Act is a self-contained Code or not, if so to what effect. The issue considered by the Supreme Court in the said judgment was also to the effect that whether in any event all the provisions of the Land Acquisition Act, 1894 as amended by Central Act No.68/1984 with emphasis on section 11-A can be read into the provisions of the said M.R.T.P. Act.

23) It is submitted that in that context this Court has to

consider whether the view taken by the Supreme Court in the said judgment that the said M.R.T.P. Act is a self contained code and the views expressed by the Supreme Court on that issue and other relevant issues would be in the nature of *ratio decidendi* or would be an *obiter dicta*. He submits that even if any part of observations made by the Supreme Court in the said judgment if amounted to *obiter dicta*, the same would be still binding on this Court also. Learned counsel for the petitioner also invited our attention to the paragraphs 22 to 35, 39, 43, 45, 47 to 51, 54, 59, 64, 66, 68, 70, 71, 75, 76, 79 to 88, 91, 92, 95, 102, 104, 107 to 110, 116, 117, 119, 121 to 130. He submits that it is categorically held by the Supreme Court in the said judgment that all the provisions of the Land Acquisition Act, 1894 introduced by law of amendment would not *per se* become applicable and be deemed to be part and parcel of the said M.R.T.P. Act. It is held that if provisions of section 11-A of the Land Acquisition Act are applied or deemed to be incorporated by application of any doctrine of law into the provisions of the said M.R.T.P. Act it will have the effect of destroying the statutory rights available to the State Government and extra powers of the planning authority. It is held that if provisions of section 11-A of the Land Acquisition Act, 1894 are read and enforced *stricto sensu* in the said

M.R.T.P. Act indispensable consequences would be that various development schemes under the said M.R.T.P. Act would come to a halt and larger public interest would suffer.

24) It is submitted by the learned counsel that the proposal for acquisition of the land in question was made by the petitioner by invoking section 126 of the said M.R.T.P. Act. Thus merely because the machinery provided under the provisions of the Land Acquisition Act, 1894 was used for the purpose of acquisition, such acquisition of land does not become an acquisition under the provisions of the Land Acquisition Act, 1894 but continues to be the acquisition under the provisions of the said M.R.T.P. Act.

25) Learned counsel for the petitioner invited our attention to the judgment of the Supreme Court in the case of *Special Land Acquisition Officer, KIADB, Mysore and Another v. Anasuya Bai (Dead) By Legal Representatives And Others*, **(2017) 3 SCC 313**, and in particular paragraphs 29 and 30 and would submit that in the said latest judgment the Supreme Court has reiterated the views of the Supreme Court in the case of *Girnar Traders* (3) (supra). The Supreme Court held that the provisions of section 24(2) of the new

Land Acquisition Act making section 11-A of the old Land Acquisition Act would not be applicable. The Supreme Court also considered the earlier judgment in the case of *Munithimmaiah v. State of Karnataka*, **(2002) 4 SCC 326**, in which it was held by the Supreme Court that the provisions of Section 6 and 11-A of the Land Acquisition Act, 1894 do not apply to the provisions of the Bangalore Development Authority Act, 1976. The Supreme Court made a distinction between the purposes of the two enactments and held that all the provisions of the Land Acquisition Act, 1894 do not apply to the Bangalore Development Authority Act, 1976. The Supreme Court also adverted to the judgment of the Constitution Bench of the Supreme Court in the case of *Offshore Holdings (P) Ltd. v. Bangalore Development Authority*, **(2011) 3 SCC 139**, in which it was held that section 11-A of the Land Acquisition Act, 1894 does not apply to the acquisition under the Bangalore Development Act, 1976.

26) Learned counsel strongly placed reliance on the said judgment in the case of Special Land Acquisition Officer, KIADB, Mysore (*supra*) and would submit that the purposes of the Land Acquisition Act, 1894 and of the said M.R.T.P. Act are totally

different. He submits that the provisions of the Land Acquisition Act, 1894 thus cannot be extended to or be read in the provisions of the said M.R.T.P. Act. He submits that the Supreme Court in the said judgment has reiterated the view taken in the case of Girnar Traders (3) (supra).

27) Learned counsel for the petitioner also invited our attention to the judgment delivered by the Division Bench of this Court in the case of **Hanumanrao Morbaji Gudadhe and Ors. Vs. State of Maharashtra and Ors.**, 2015(6) Mh L J 127 and in particular paragraphs 9 to 11 and would submit that the Division Bench of this Court after adverting to the judgment of the Supreme Court in the case of Girnar Traders (3) (supra); the provisions of the said M.R.T.P. Act and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, "RFCTLARR Act 2013") and the true intention and object of the enactments made, has held that both the enactments are self contained code and the provisions of section 24 of the Act of 2013 would not be applicable to the acquisitions under the provisions of the said M.R.T.P. Act for various reasons.

28) It is submitted by the learned counsel that the judgment of the Supreme Court in the case of *Girnar Traders (3)* (supra) holding that the provisions of the said M.R.T.P. Act are self contained code and has been interpreted and followed by the Division Bench of this Court in the case of *Hanumanrao Morbaji Gudadhe* (supra) and thus the respondent No.7 cannot be allowed to urge that the limited issue before the Supreme Court in the case of *Girnar Traders (3)* was whether the provision of section 11-A of the Land Acquisition Act, 1894 amongst other provisions and introduction of Act No. 68/2014 would apply to Chapter VII of the said M.R.T.P. Act and on that ground the other observations made by the Supreme Court in the said judgment cannot amount to *ratio decidendi* has no merit. He submits that subsequent to the judgment of the Supreme Court, taking the same view the judgment of the Division Bench of this Court, interpreting the judgment of the Supreme Court in the case of *Girnar Traders (3)* (supra), squarely applies to the facts of this case and is binding on this Court.

29) It is submitted by the learned counsel that the application thus made by respondent No.7 for deletion of the plot in question from the acquisition itself was not maintainable. He

submits that since the acquisition of the land in question was not under the provisions of the Land Acquisition Act, 1894, the question of applicability of section 48 of the said Act for deletion of the plot in question from acquisition did not arise. The learned counsel submits that though this Court in the order passed in the writ petition filed by the respondent No.7 and several other land owners had made it clear that the owners could approach the CIDCO or the State Government praying for either concession or deletion of the lands as they continued in possession, would not create any remedy in favour of the respondent No.7 for invoking section 48 of the Land Acquisition Act, 1894 which provision is not extended to the acquisitions made under the provision of section 126 of the said M.R.T.P. Act.

30) It is submitted that the said judgment of this Court could not have been construed by the respondent No.7 and the learned Minister for Revenue and Forests as if the provision of section 48 of the Land Acquisition Act, 1894 stood extended to the acquisition of the land in question made under section 126 of said M.R.T.P. Act. He submits that the application filed by the respondent No.7 before the respondent No.2 was thus without jurisdiction and

thus the order passed by the learned Minister for Revenue and Forests was totally without jurisdiction and was illegal and without authority of law. He submits that though an objection to the maintainability of the said application filed by the respondent No.7 was raised specifically by the petitioner by filing a detail reply before the respondent No.2, the respondent No.2 did not consider the objection of the maintainability of the said application in the impugned order and has passed an illegal order.

31) It is submitted by the learned counsel for the petitioner that the respondent No.7 had admittedly purchased the land much after the notification for acquiring the plot in question was issued knowing fully well that the property was under acquisition. Respondent No.7 could not claim any equity before the respondent No.2 for the amount paid by way of consideration to his original owners or the amount if any alleged to be spent on development if any on the plot. The respondent No.7 had purchased the said property at his own risk. He submits that this Court in the said judgment delivered on 26th July, 2001 in Writ Petition No.377/1989 filed by respondent No.7 had considered this issue and has already rendered finding that the respondent No.7

had purchased the land in question in 1980 and 1984 and after advertizing to the various judgments of the Supreme Court has rendered a finding that the purchase of the land in question by respondent No.7 herein was illegal and such a transaction thus would not bind the State Government. This Court also noticed that the original land owner was already given a notice of hearing before the development plan was approved way back in 1973.

32) Learned counsel for the petitioner invited our attention to the various averments made by the respondent No.7 in the application filed under section 48 of the Land Acquisition Act, 1894 before the respondent No.2 and also the detail reply filed by the petitioner to the said application raising various issues while opposing the said application. He submits that the petitioner had also pointed out in greater detail the need of the petitioner to take possession of the said plot already acquired.

33) Learned Counsel for the petitioner invited our attention to Section 126(2) of the said M.R.T.P Act and would submit that even if the Notification was issued under Section 6 of the Land Acquisition Act, 1894, since the declaration was issued under

Section 126(2) of the said M.R.T.P Act, the provisions of the said M.R.T.P Act would be attracted and not the Land Acquisition Act, 1894 for all the purposes. Learned Counsel for the petitioner invited our attention to the impugned order passed by respondent No.2 and also the averments made in the application filed by respondent No.7 and the detail reply filed by the petitioner raising objection to the said application and would submit that entire order passed by respondent No.2 is totally overlooking the objections raised by the petitioner and shows total non-application of mind on the part of respondent No.2. He submits that the impugned order is also contrary to the provisions of the said M.R.T.P Act and the Land Acquisition Act, 1894. He submits that though the purpose of the acquisition proceeding initiated by the petitioner were already upheld in the petition filed by respondent No.7 including the issue of the land needed by the petitioner or not, the learned Minister for the Revenue and Forest has decided contrary to the judgments delivered by this Court.

34) It is submitted by the learned Counsel for the petitioner that even if Section 48 of the Land Acquisition Act would have been attracted to the facts of this case, the scope of this provision is very

limited and is for public at large and is not meant for individual benefit. He submits that in this case respondent No.7 had purchased the land much after the notification was issued. He submits that the application of respondent No.7 was filed with a view to grab the land and was to somehow delay the handing over of possession of the land to the petitioner. In support of this submission, learned Counsel for the petitioner placed reliance on the judgment of the Supreme Court in case of *Uddar Gagan Properties Limited Versus Sant Singh and others* {(2016) 11 SCC 378}, and in particular paragraph 30.

35) It is submitted by the learned counsel that the learned Minister of Revenue and Forests has not considered any material produced by the petitioner in the impugned order. The learned Counsel for the petitioner placed reliance on the judgment delivered by the Division Bench of this Court in case of *Pralhad Lokram Dodeja and others Versus State of Maharashtra and others* {2001(4) BOM.C.R. 35}, and in particular paragraph 82.

36) Learned Counsel for the petitioner placed reliance on the judgment of the Supreme Court in case of *Uddar Gagan*

Properties Limited (supra), also in support of the submission that in the facts and circumstances of this case, the powers exercised by the learned Minister for Revenue and Forest could not have been exercised and more particularly on paragraphs 23 and 24. It is submitted by the learned counsel that the public purpose mentioned in the notification was not vague but a specific public purpose was mentioned.

37) Mr. Kulkarni, learned Counsel for respondent No.7, on the other hand, invited our attention to the order passed by the Division Bench of this Court on 26th July, 2001 in Writ Petition No. 377 of 1989 filed by respondent No.7 and in particular paragraph 9 and would submit that pursuant to the said order and Judgment delivered by this Court, respondent No.7 was granted liberty to approach the CIDCO or State Government praying for either concession or deletion of the lands as they continued to be in possession of respondent No.7. He submits that said application, thus, filed by respondent No.7 under Section 48 of the Land Acquisition Act, 1894 was maintainable. The learned Minister for Revenue and Forests, thus, did not exceed the jurisdiction as canvassed by the petitioner.

38) Learned Counsel for the respondent No.7 placed reliance on the judgment of the Supreme Court in case of *Girnar Traders (3)* (Supra) and, in particular paragraph 19 and would submit that the limited issue before the Supreme Court in the said judgment was whether provisions of Section 11-A of the Land Acquisition Act, 1894 amongst other provisions, introduced by Central Act 68 of 1984 would apply to Chapter VII of the said M.R.T.P. Act or not. He submits that observations, thus, made by the Supreme Court in the said judgment as to whether the said M.R.T.P. Act is self contained code or not, is not a *ratio decidendi* but would at the most obiter dicta.

39) Learned counsel for the respondent No.7 placed reliance on the judgment of the Hon'ble Supreme Court in case of *The Special Land Acquisition Officer, Bombay and others Vs. M/s. Godrej and Boyce (AIR 1987 Supreme Court 2421)*. He submits that after the impugned order was passed by the learned Minister for Revenue and Forests, the learned Collector has already deleted the land of respondent No.7 from acquisition. He submits that the power of the State Government to delete any land from acquisition is not taken away under Section 48 of the Land Acquisition Act,

1894. He invited our attention to the Notification issued under Section 6(3) of the Land Acquisition Act, 1894 and would submit that few persons' lands, which were sought to be acquired, were deleted by the Government on various grounds. He submits that land in question was reserved for housing which purpose was deleted.

40) Next submission of the learned Counsel for respondent No.7 is that all the lands, which were sought to be acquired by the petitioner, were already handed-over to Aurangabad Municipal Corporation and, thus, the petitioner has no *locus standi* even to raise any objection to the application filed by respondent No.7 for deletion of land in question either under section 48 of the Land Acquisition Act, 1894 or to impugned order passed by the learned Minister of Revenue and Forests in the writ petition. He submits that the petitioner ceased to have any interest in the land in question and on that ground itself, the petition deserves to be dismissed. He submits that Aurangabad Municipal Corporation itself could have pursued the litigation after handing-over possession of all the plots under acquisition. He submits that the plots of land vest in the Aurangabad Municipal Corporation and

not in petitioner.

41) Learned Counsel for the respondent No.7 placed reliance on various provisions of the said RFCTLARR Act 2013 and the Land Acquisition Act, 1894 and would submit that since the petitioner had neither paid the compensation nor took possession of the land in question from respondent No.7 within five years of the acquisition, the so called acquisition proceedings of the land in question proceedings thus came to an end. In support of this submission he strongly placed reliance on section 24(2) of the said RFCTLARR Act.

42) Learned Counsel for respondent No.7 placed reliance on Section 126(3) of the said M.R.T.P. Act and would submit that the provisions of the Land Acquisition Act, 1894 would apply to the facts of this case and thus the petitioner neither having paid any compensation nor has taken possession within the time prescribed, if the petitioner seeks to acquire land of respondent No.7 and to issue fresh notification, the petitioner will have to pay market value in respect of land in question to respondent No.7. He submits that all the provisions of the Land Acquisition Act 1894 would apply to

the acquisition though initiated by the petitioner under section 126 of the said M.R.T.P. Act. He submits that all the provisions from Section 6 onwards would apply in view of the Notification under Section 4 came to be issued by the State Government for acquiring land in question.

43) Learned Counsel for respondent No.7 invited our attention to section 126(a) (b) & (c) of the said M.R.T.P. Act and would submit that in this case since no agreement was entered into between petitioner and respondent No.7 and since no TDR was allowed, the only provision that could have been invoked by the petitioner under Section 126(c) of the said M.R.T.P. Act and for invoking the said provision, petitioner was required to apply to the State Government for acquiring land in question under the provisions of the Land Acquisition Act, 1894. He submits that once Notification under section 4 was issued under the Land Acquisition Act, 1894 all provisions of Land Acquisition Act, 1894 including Section 48 would be only applicable and not the provisions of the said M.R.T.P. Act.

44) The learned Counsel for respondent No.7 submits that

since several other lands have already been released by the State Government under Notification dated 19th June, 2000, the land of respondent No.7 also will have to be released. He submits that there cannot be any discrimination in respect of land of respondent No.7 and other land owners. In support of this submission, the learned Counsel for respondent No.7 placed reliance on the judgment of the Supreme Court in the case of *Hari Ram and Anr. Vs. State of Haryana and Ors.*, **(2010) 3 Supreme Court Cases 621**, and in particular paragraph 24 thereof. He submits that the award in this case was already made under section 11 of the Land Acquisition Act on 14th December, 1988 i.e. much prior to the said Act came into force. It is submitted by the learned counsel for respondent No.7 that under Section 151 of the said M.R.T.P. Act, the powers, which can be exercised under the said Act, can be delegated to any Officer of the State Government and accordingly the Collector can continue acquisition under the Land Acquisition Act, 1894 in view of the fact that there is no separate provision for acquisition under the said M.R.T.P. Act.

45) Learned Counsel for respondent No.7 placed reliance on the judgment of the Supreme Court in the case of *Pune*

Municipal Corporation and another Vs. Harakchand Misirimal Solanki and others, **2014(4) Mh.L.J. 566** and in particular paragraph 3, 11, 20, 22 and would submit that since the petitioner has not deposited the compensation in the Government Treasury for more than five years prior to the commencement of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, the acquisition has lapsed. He submits that possession of the land in question admittedly is with the respondent No.7 even today.

46) It is submitted by the learned Counsel for respondent No.7 that though his client made statement that he will maintain *status-quo* and after order of *status-quo* was passed by this Court in this Writ Petition, the period of five years for the purpose of depositing compensation and for taking possession of the plot in question after an award under Section 11 of the L.A. Act made by the Special Land Acquisition Officer has not stopped. He placed reliance on the judgment of the Supreme Court in the case of *Union of India and others Vs. Shiv Raj and others* **(2014) 6 Supreme Court Cases 564** and in particular paragraphs 21 to 26.

47) It is submitted that even if order passed by the learned Minister for Revenue and Forests is set aside in Writ Petition, the earlier proceedings would revive. In support of the submission that the acquisition proceeding shall lapse and in view of petitioner not having deposited compensation amount within five years from the date of award and has not taken possession of the land from respondent No.7, the learned counsel for respondent No.7 also placed reliance on the judgment of the Supreme Court in case of *B.A. Basavaiah and others Vs. Bangalore Development Authority and others* **AIR 2000 SC 3403(1)** and on particular paragraph 1 in the case of *Radiance Fincap (P) Ltd. Vs. Union of India*, delivered on 12th January, 2015 in I.A. No. 3 of 2014 in Civil Appeal No. 4283 of 2011 and other companion matters.

48) Learned Counsel for the respondent No.7 placed reliance on the judgment of the Supreme Court in case of **Delhi Administration V. Gurdip Singh Uban and others etc., (AIR 2000 SC 3737)**, and more particularly on paragraph 64 in support of his submission that in view of his client having carried out various developments on the land in question and has incurred substantial amount, the learned Minister for Revenue and Forests has rightly

considered case of his client sympathetically under section 48 of the Land Acquisition Act, 1894 and thus, such decision of the learned Minister for Revenue and Forest cannot be interfered with by this Court in this Writ Petition. He submits that substantial loss would be caused to his client and thus, on that ground also the application filed by his client under Section 48 of the Land Acquisition Act 1894 would be maintained.

49) The learned Counsel submits that even if respondent No.7 had purchased land in question when the notification was issued, he is still the full owner of the said land till possession is taken by the State Government, which the Government failed within a period of five years from the date of the award made by the Land Acquisition Officer. He submits that there is no bar from purchasing the property under acquisition.

50) Mr Bajaj, learned Counsel for petitioner in rejoinder distinguished the judgment of the Supreme Court in case of **Pune Municipal Corporation and another** (Supra), on the ground that in that judgment the Supreme Court had considered the fact that the notice was issued under Section 4(1) of the Land Acquisition

Act, 1894 whereas, in this case the notice was issued under Section 126 of the said M.R.T.P. Act and thus the said judgment is clearly distinguishable with the facts of this case. He submits that the Supreme Court in the said judgment has accordingly considered the effect of Section 24(2) of the said RFCTLARR Act, 2013 and Section 31 of the Land Acquisition Act, 1894 ; and thus, the facts of the in case in above judgment of the Supreme Court are clearly distinguishable in the facts of this case.

51) In so far as submission of the learned counsel for respondent No.7 that the observation made by the Supreme Court in *Girnar Traders (3)* (Supra) is *obiter dicta* and not *ratio decidendi* is concerned, it is submitted that views expressed by Supreme Court in the said case has been changed in the later judgment in the case of Special Land Acquisition Officer, KIADB, Mysore and another (supra) and also followed and interpreted by the Division Bench of this Court in case of Hanumanrao Morbaji Gudadhe and others (supra), (Supra), holding that the said M.R.T.P. Act as well as Land Acquisition Act are self contained Codes and thus, the said judgments are binding on this Court.

52) In so far as submission of learned Counsel for respondent No.7 that the petitioner has no locus to file this petition on the ground that all the plots have been already handed over to the Aurangabad Municipal Corporation by the petitioner is concerned, it is submitted by the learned Counsel for the petitioner that in the year 1982, rest of the notified area of the CIDCO was covered within Aurangabad Municipal limits but the same was for all other purposes excluding the planning for the reason that CIDCO was Special Planning Authority for the new area of Aurangabad for the notified area. He submits that since then the petitioner has been exercising its power as Special Planning Authority. Learned Counsel submits that as per agreement entered into between CIDCO and Aurangabad Municipal Corporation, the authority has right to develop notified area of new Aurangabad Project to be retained with the petitioner itself. He submits that only developed area has been handed over to Aurangabad Municipal Corporation for maintenance. He submits that the petitioner has locus to file this petition and to impugn the order passed by the learned Minister for Revenue and Forest. He submits that the petitioner was a party to the said proceeding before the learned Minister for Revenue and Forest and has rightly filed this petition in view of being aggrieved

by the said order.

53) In so far as allegations of the respondent No.7 that there was discrimination between respondent No.7 and other land owners is concerned, the learned Counsel for the petitioner submits that no such reasons are assigned by the learned Minister for Revenue in the impugned order. He submits that in any event, there was no such discrimination between respondent No.7 and other land owners at the hands of the petitioner or by the State Government. Some of the land were deleted which were under acquisition for different reasons already set out in the rejoinder affidavit filed by the petitioner.

54) In support of this submission, learned Counsel for the petitioner invited our attention to the averments made by the petitioner in paragraph 5 of the rejoinder affidavit dated 3rd July, 2006. He submits that some of the lands during the course of time had been encroached upon or due to surrounding encroachment, have been rendered of no use for development and the removal of illegal construction and encroachment thereon had become impossible, and thus, such lands were denotified. He submits that

land of the petitioner however, cannot be compared with those lands as reasons for denotification of those lands cannot be a ground to hold that the land of the petitioner is not needed for the development and/or to justify the dropping of the land acquisition proceedings by the learned Minister for Revenue and Forest in the impugned order.

55) Learned Counsel for the petitioner invited our attention to the relevant paragraph at page 181 of the Writ Petition forming part of the impugned order passed by the learned Minister observing that the petitioner had not explained immense need of the plot in question. He submits that this observation in the impugned order is totally perverse and contrary to the judgment delivered by this Court thereby upholding acquisition proceedings of the land in question and the order passed by the Supreme Court in Special Leave Petition against order passed by this Court. He submits that learned Minister for Revenue and Forest could not have re-opened the issue of acquisition in the impugned order.

56) In so far as judgment of the Supreme Court in the case of **Godrej and Boyce**, (supra), relied upon by the learned Counsel

for respondent No.7 is concerned, learned Counsel for petitioner invited our attention to Paragraph 5 of the said judgment and would submit that in that matter the acquisition was withdrawn by the Government, whereas, the owners of the land were insisting and were seeking the relief against the Government to acquire their lands. He submits that facts before the Supreme Court in said judgment are totally different and are clearly distinguishable in the facts of this case.

57) It is submitted by the learned Counsel for the petitioner that respondent No.7 was even otherwise not entitled to invoke the provisions of Section 48 of the Land Acquisition Act in view of the fact that the acquisition of the land is made for the use of public at large and not for individual benefit.

58) In so far as the development alleged to have been carried out by respondent No.7 over the land in question is concerned, it is submitted by the learned Counsel for petitioner that it was case of respondent No.7 himself that he had already carried out some development after denotification. He submits that in any event, respondent No.7 did not produce any record or material

before the learned Minister for Revenue and Forest and also before this Court about the so called development carried out by respondent No.7 on the land and when. He submits that even if respondent No.7 has carried out development on the land, no sympathy can be shown to respondent No.7 in view of the fact that he has purchased property after notification was issued.

59) In so far as submission of the learned counsel for respondent No.7 that provision of Section 24(2) of the said RFCTLARR Act, 2013 would be attracted to the facts of this case, and thus the petitioner not having deposited compensation amount or not having taken possession of the land in question within five years from the date of award made by the Land Acquisition Officer and thus acquisition proceedings are lapsed, is concerned, it is submitted by the learned Counsel for the petitioner that the acquisition proceedings were already concluded much before five years of the said Act coming into force. The validity of the acquisition proceedings is already upheld by this Court and the Supreme Court. The question of applicability of Section 24(2) of the said Act did not arise.

60) It is submitted that the petitioner could not take possession in view of the stay granted by this Court in earlier Writ Petition filed by respondent No.7, thereafter by the learned Minister for Revenue and Forest and also in view of order of status quo by this Court in this writ petition. He submits that if this Court vacates status-quo order or if the impugned order of the learned Minister for Revenue and Forest is set aside by this Court, the petitioner would be able to take possession of the land in question from respondent No.7.

61) In so far as payment of compensation is concerned, it is submitted that the compensation is already determined by the Land Acquisition Officer in the award. Respondent No.7 has also filed a reference under Section 18 of the Land Acquisition Act, 1894. The amount of compensation is already deposited by the petitioner. The question of acquisition proceedings being lapsed on the ground of alleged non deposit of the compensation, thus, does not arise. He submits that respondent No.7 can withdraw the amount of compensation which is not withdrawn so far which was deposited by the petitioner. The petitioner will get five years time to take possession from the date of this Court vacating order of status-quo

for taking possession. He submits that in any event, for the purpose of computation of the period of five years for the purpose of taking possession under section 24(2) of the said Act, the period of stay granted by this Court in two writ petitions and by the learned Minister in the proceedings under section 48 of the Land Acquisition Act, 1894 has to be excluded.

62) It is submitted that the respondent No.7 himself had made a statement before this Court in this writ petition that he would maintain status-quo. It is lastly submitted by the learned counsel for the petitioner that impugned order passed by the learned Minister for Revenue and Forest is totally perverse, contrary to the provisions of law and the judgments delivered by this Court in earlier Writ petition, which is upheld by the Hon. Supreme Court upholding acquisition of the land in question and thus, deserves to be set aside.

REASONS AND CONCLUSIONS

63) We shall first decide whether the provisions of the Maharashtra Regional and Town Planning Act, 1966 (M.R.T.P. Act

for short) and the provisions of Land Acquisition Act, 1894 are self-contained and also whether all the provisions of the Land Acquisition Act can be read into the provisions of the M.R.T.P. Act or not. Learned counsel for the petitioner as well as learned counsel for respondent No.7 relied upon various paragraphs of the judgment of the Supreme Court in case of *Girnar Traders (3)* (supra) in support of their rival contentions whether the provisions of Land Acquisition Act as well as the provisions of the M.R.T.P. Act are self-contained or not, and on the issue whether the acquisition of the land in question initiated at the instance of the petitioner under the provisions of the M.R.T.P. Act were to be considered as an acquisition under the provisions of the Land Acquisition Act for all the purposes.

64) It is the submission of the learned counsel for the respondent No.7 that there was no issue before the Supreme Court in the case of *Girnar Traders (3)* whether both these Acts were self-contained Code or not and thus, the observations made by the Supreme Court in the said judgment cannot be considered as ratio decidendi and at the most, it may amount to *obiter dicta*. On the other hand, the submission of the learned counsel for the petitioner is that, the issue before the Supreme Court in the said judgment was not limited to

whether the provisions of Section 11-A of the Land Acquisition Act, amongst other provisions, introduced by Central Act 68 of 1894 would apply to Chapter VII of the M.R.T.P. Act or not, but the issue was also before the larger Bench that whether the Land Acquisition Act, 1894 and the M.R.T.P. Act are self-contained Code or not.

65) Learned counsel for respondent, in support of his submissions heavily placed reliance on para 19 of the judgment of Supreme Court and would submit that, the issue for consideration of the larger Bench in the said judgment was restricted to whether the provisions of Section 11-A of the Land Acquisition Act amongst other provisions would apply to Chapter VII of the M.R.T.P. Act or not. Mr. Bajaj, learned counsel for the petitioner, on the other hand, heavily placed reliance on paras 8, 17 to 20, 22 to 35, 39, 43, 45, 47 to 51.

66) We have minutely gone through the judgment of the Supreme Court in case of *Girnar Traders (3)* (supra). A perusal of the said judgment indicates that a Bench of Supreme Court, in case of *Girnar Traders (1) Vs. State of Maharashtra*, reported in **(2004) 8 SCC 505**, expressed certain doubts on the correctness of law stated

in case of *Sant Jogindar Singh Vs. State of Punjab*, reported in **1995 (Supp) (2) SCC 475**, and referred the matter to larger Bench. Supreme Court, in case of *Girnar Traders (1)* (supra) felt that, there were good reasons for reading the provisions introduced by the Land Acquisition (Amendment) Act, 1894 into Chapter VIII of the M.R.T.P. Act, and Section 11-A of the Land Acquisition, 1894 is one of such provisions. The Constitution Bench was accordingly called upon to examine whether the M.R.T.P. Act is a self-contained Code or not and if so, to what effect. The issue before the larger Bench was also as to whether in any event, all the provisions of Land Acquisition Act, as amended by Central Act of 1894, with emphasis of Section 11-A can be read into the provisions of the M.R.T.P. Act.

67) The Supreme Court referred to these questions in para 8 of the said judgment, which were the issues before the Supreme Court in the said judgment and have been dealt with in the later part of the said judgment. In para No.17 and 18 of the said judgment, the Supreme Court referred to the arguments of the appellant that the decision of the Supreme Court in *Sant Jogindar's* case (supra) needs reconsideration by a larger Bench as it did not state correct law whereas the respondent State of Maharashtra has

taken up the plea that, Sant Jogindar's case (supra) clinched the entire issue in para 18 of the said judgment. The Supreme Court also referred to the order passed by it earlier rendering three reasons for referring the matter to a larger Bench.

68) The Supreme Court, after considering the statement of objects and reasons of the M.R.T.P. Act, observed that, the said Act was enacted by the legislature of the State of Maharashtra as it was expedient to make provisions for the planning, development and use of the land in regions established for the purpose of that Act, for the constitution of regional planning bodies therefor, and to make better provisions for the preparation of development plans with a view to ensure that the town planning scheme is made in proper manner and its execution is made effective. It is held that, the planning authority is entitled to refuse or grant, subject to certain conditions permission to develop in accordance with such plan. Unauthorised development was made penal and could be removed and the use contrary to plan according to be discontinued. Under such plan, a local authority is to allocate land for different uses i.e. for residential, industrial, commercial and agricultural and to reserve sites required for public purposes as well. Town Planning

Scheme could be made in respect of any land whether open or built up and incremental contribution i.e. betterments of land value could be recovered from the owners of the plots benefiting from the proposals made in the scheme.

69) The scheme of the M.R.T.P. Act includes specifying the land to be used for providing various public amenities and services. The Supreme Court has also dealt with various provisions of the M.R.T.P. Act and the purpose and object of the Act, the matters provided under the said Act, restriction of change of user of land for development etc.

70) In para 37 of the said judgment, the Supreme Court has held that, the most important facet of the M.R.T.P. Act is the provisions with regard to acquisition and lapsing of reservation and powers of the Government in that regard. The Supreme Court dealt with Sections 125 and 126 of the M.R.T.P. Act. It is held that, under Section 126(2)(c) of the M.R.T.P. Act, where an application has been moved under Section 126(2)(c) of the M.R.T.P. Act, to the State Government for acquiring such land under the Land Acquisition Act, then the Government is to act in accordance with and subject to the

provisions of Section 126(2) of the M.R.T.P. Act. If the State Government is of the view that, any land included in such plan is needed for any public purpose, it may make a declaration to that effect in the official gazette in the manner provided in Section 6 of the Land Acquisition Act. Such declaration, notwithstanding anything contained in the Land Acquisition Act, shall be deemed to be a declaration duly made under that Section.

71) There is no requirement to comply with the provisions of Sections 4 and 5 of the Land Acquisition Act before such declaration is published. It is further provided that, subject to provisions of Section 126(4) of the M.R.T.P. Act, no such declaration shall be made after the expiry of one year from the date of publication of the draft regional plan, development plan or any other plan or the scheme as the case may be.

72) It is held by the Supreme Court that, after such declaration is published, the Collector shall proceed to take order for acquisition of the land under the Land Acquisition Act and provisions of that Act shall apply to the acquisition of the said land with a modification that date of market value of the land to be

acquired shall be determined with reference to sub-section 3(i)(iii) of Section 126 of the M.R.T.P. Act. Section 126(4) of the M.R.T.P. Act empowers the State Government to make a fresh declaration for acquiring the land where a period of one year specified in Section 126(2) of the M.R.T.P. Act has lapsed but then market value of the land would be the market value of the date of publication of fresh declaration.

73) In paras 48 to 51 of the said judgment of Supreme Court in *Girnar Traders* (3) (supra), it is held that, the provisions of the M.R.T.P. Act clearly demonstrate 'self-contained' scheme under the said Act. It is held that, reference to the provisions of Land Acquisition Act in some of the provisions of the M.R.T.P. Act could only imply that they have solely been made for the purpose of completing the process of acquisition. Most of the provisions of the Land Acquisition Act, with alteration in the language, have been specifically stated under the provisions of the M.R.T.P. Act itself. Sections 126 to 129 of the State Act clearly enunciate the intention of the framers that substantive provisions of the Land Acquisition Act are not applicable to the M.R.T.P. Act, which is a self-contained Code providing procedure regarding all matters contained therein,

except to the extent that provisions of Section 9 to 11 of the Land Acquisition Act be brought into it for the limited purpose of acquiring land.

74) It is held that, once the provisions of the M.R.T.P. Act are analysed in their correct perspective, a holistic view can be taken that it is a Code in itself. It is a legislation which has the paramount purpose only of planning, and acquisition of land is merely incidental, that too for a very limited purpose. It is held that, the primary object of the State Act is planned development. Acquisition of land takes place only where the land is reserved, designated or required for complete development in the view of the planning, development or appropriate authority. Complete mechanism as to how the development plans shall be prepared, notified and implemented as well as how the land is to be acquired, and how the rights and disputes inter se parties as well as between the planning authorities and the owners will be settled are provided under different provisions of the M.R.T.P. Act.

75) It is held that it is explicitly clear that, a complete mechanism of planning, implementation, adjudicatory process in

that regard as well as the methodology adopted for acquiring lands, in its limited sense, inclusive of change in the use, for public purpose, for which the land is required have been specifically provided under the M.R.T.P. Act. The M.R.T.P. Act is hardly dependent upon the Land Acquisition Act except to the limited extent of completing the process of determining compensation other than the compensation determinable by the designated arbitrator or Tribunal. The matters for acquisition and payment of compensation are to be finalized with the aid of the provisions of the Land Acquisition Act. It is held that, this being a scheme of the M.R.T.P. Act, mere reference to some of the provisions of Land Acquisition Act would not take away the substantive scheme of the said Act which is a complete Code in itself.

76) Insofar as the provisions of the Land Acquisition Act, 1894 are concerned, the same are dealt with in para 55 onwards in the said judgment. It is held by the Supreme Court that, the primary purpose and the only object of the Land Acquisition Act is acquisition of land and payment of compensation for such acquisition. It is not an Act dealing in extension or otherwise with development and planning. Despite the fact that it is compulsory

acquisition, which is in exercise of the powers of the State of eminent domain, the legislature has still admitted to create a balance between the compulsory acquisition on the one hand and right of owners/ interested persons in land on the other. The acquisition proceedings are commenced with issuance of a notification under Section 4 of the Land Acquisition for public purpose and would end with the payment of compensation for such acquired land. The mechanism provided under Land Acquisition Act is entirely relatable to the process of acquisition of land and payment of compensation.

77) In para 66 of the judgment, it is held that, the Land Acquisition Act itself is a self-contained Code within the framework of its limited purpose i.e. acquisition of land. It provides for complete machinery for acquisition of land including the process of execution, payment of compensation as well as legal remedies in case of any grievances. In para 67 of the said judgment, the Supreme Court has compared the provisions of the Land Acquisition Act with the M.R.T.P. Act in great detail. The Supreme Court has summarized in detail the provisions in the two Acts, which are contrary to each other insofar as powers of the authority provided

therein are concerned.

78) After summarizing some of the glaring contents of distinct between the two Acts, it is held that, the purpose of referring to this distinction was primarily to demonstrate that they were two different Statutes operating in different fields, the provisions of which were required to be utilised by the authorities concerned for the object sought to be achieved under the respective Acts. The schemes under the two Acts are distinct and different. The scheme under the State Act can be implemented with recourse to the provisions of the Central Act which have been specifically stated therein. At the same time, where there are specific provisions under the State Act, the corresponding provision of the Land Acquisition Act will not apply. The provisions of the Land Acquisition Act relating to the acquisition of land alone, for which there are no specific provisions under the State Act, would be applicable to the acquisition under the State Act. The Supreme Court referred to various provisions of the two Acts to come to a conclusion as to why both the Acts are self-contained Code, in the said judgment.

79) In paras 86 to 94, the Supreme Court decided the issue whether the provisions of Land Acquisition Act with particular reference to Section 11-A can be read into and treated as part of the M.R.T.P. Act on the principles of either “Legislation by reference” or “Legislation by incorporation”. Supreme Court held that, there can be hardly any hesitation in concluding that the M.R.T.P. Act is a self-contained Code and does not lose its colour or content of being a self-contained Code merely because it makes a reference to the some of the provisions of the Land Acquisition Act for acquisition of the land for the purpose of the M.R.T.P. Act and determination of compensation in that behalf. The referred provisions of the Land Acquisition Act may only be taken recourse to that limited extent within extensive framework and for the purpose of the M.R.T.P. Act. It is held that, both these Acts operate in different field. One is the Central Act while other is the State Act. They derive their source from different entries in the constitutional lists.

80) In para 125 of the judgment, Supreme Court held that, in terms of Section 126(1) (c) of the M.R.T.P. Act, the application to the State Government has to be made for acquiring such land under the Land Acquisition Act under the Land Acquisition Act. Such land

refers to the lands which are required only under the provisions of the M.R.T.P. Act. Section 126(2) refers to Section 6 of the Land Acquisition Act only for the purpose of format in which the declaration has to be made. In terms of Section 126(3), on publication of the declaration, the Collector shall proceed to take order for acquisition of the land under the State Act i.e. for the purpose of acquisition of the land. The procedure adopted under the Land Acquisition Act shall be adopted by the Collector and nothing more. It is held that, those provisions of the State Act clearly frame a scheme for planned development with limited incorporation of some of the provisions of the Land Acquisition Act.

81) In para 127 of the judgment, it is held that, the acquisition proceedings under the M.R.T.P. Act are commenced by issuance of a declaration under Section 126(2) and then the procedure prescribed under the Land Acquisition Act is followed, up to the passing of the award under Section 11 of the Land Acquisition Act. The determination of compensation 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 M.R.T.P. Act. It is held that, all the provisions of Land Acquisition Act introduced

by later amendments would not, per se, become applicable and deemed to be part and parcel of the M.R.T.P. Act.

82) The Supreme Court in the case of *Special Land Acquisition Officer, KIADB, Mysore and Another* (Supra) after considering the provisions of the Land Acquisition Act, 1894 and Karnataka Industrial Areas Development Act, 1966 (for short, 'KIAD Act'), and after considering some of the provisions of the said Acts, which are *pari-materia* with the provisions of The Maharashtra Regional & Town Planning Act (for short, 'the M.R.T.P. Act') and also after considering the provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, RFCTLARR Act, 2013) has held that the said provisions of the KIAD Act, 1966 are self-contained code and the said Act is regulating the land acquisition for public purpose and for payment of compensation.

83) The Supreme Court in the said judgment adverted the earlier judgment in case of *Girnar Traders*(3) (supra). After interpreting the said Judgment the Supreme Court took a view that Section 11-A of the Land Acquisition Act, 1894 does not apply to acquisitions under

the provisions of the M.R.T.P. Act. The Supreme Court held that on parity of reasoning, the provisions of Section 24(2) of the said RFCTLARR Act, 2013 would not be applicable. It thus clear that the Supreme Court in the later Judgment has taken the same view what was taken by the Supreme Court in the earlier case *Girnar Traders(3)* (supra). The Supreme Court in this later Judgment also interpreted the Judgment in the case of *Girnar Traders (3)* (supra) and held in this Judgment that Section 11-A of the Land Acquisition Act does not apply to the acquisition under the M.R.T.P. Act.

84) The Division Bench of this Court in case of *Hanumanrao Morbaji Gudadhe and Ors.* (supra) has held that the provisions of Section 24(2) of the said RFCTLARR Act, 2013 and also the provisions of the Land Acquisition Act and M.R.T.P. Act, and RFCTLARR Act, 2013 are self-contained codes and the provisions of Section 24 of the RFCTLARR Act, 2013 would not be applicable to the acquisitions under the provisions of the M.R.T.P. Act for various reasons. It is held that the M.R.T.P. Act is a self contained code. The M.R.T.P. Act and RFCTLARR Act, 2013 are wholly dis-similar and have different objects. It is held that the reference to the provisions of the Land Acquisition Act, 1894 in the M.R.T.P. Act having been

held to be reference by incorporation of the provisions of Section 24 of the said RFCTLARR Act, 2013 Act which is enacted after the repeal of Land Acquisition Act, 1894, cannot be read into the provisions of M.R.T.P. Act, especially when the M.R.T.P. Act is not amended and its provisions do not make reference to the RFCTLARR Act, 2013. It proves that the true intent of both the enactments is different.

85) This Court adverted to the Judgment of the Supreme Court in case of *Girnar Traders (3)* (supra) and held that the Supreme Court in the said Judgment had held that the provisions of the Land Acquisition Act, 1894 is limited to the extent of land acquisition, payment of compensation and recourse to legal remedies could be read into the acquisitions controlled by the provisions in the M.R.T.P. Act, but the provisions of Land Acquisition Act, 1894 insofar as they provide different time-frames and consequences of default thereof including lapsing of acquisition proceedings cannot be read into the M.R.T.P. Act. The Division Bench held that the said Judgment of Supreme Court in the case of *Girnar Traders* is the last word of the Supreme Court on the issue involved that the provisions limited to acquisition and compensation

would only apply to the proceedings for the acquisition under the M.R.T.P. Act and the provisions like Section 24 of the said RFCTLARR Act, 2013, which provide different time-frames and consequences of default thereof including lapsing of acquisition proceedings cannot be read into the M.R.T.P. Act.

86) In paragraph No.10 of the Judgment of the Division Bench, it is clearly held that even assuming that the other provisions of the said RFCTLARR Act, 2013 were to apply to the acquisitions under the M.R.T.P. Act, it could be gathered from unambiguous provisions of Section 24 of the said RFCTLARR Act, 2013 by complying salutary principles of interpretation that the provisions of Section 24 of the said RFCTLARR Act, 2013 would apply only to the acquisitions initiated under the Land Acquisition Act, 1894. This Court also considered the definition of “initiated” defined in the Oxford English Dictionary to mean 'cause, process or action to begin'. It is held that the proceedings under the Land Acquisition Act, 1894 commence or begin with the issuance of Section 4 Notification. A reference is also made to Section 4 of the Notification in the proviso to Section 24(2) of the said RFCTLARR Act, 2013 and it is held that the said provisions shows that the

provisions of Section 24 of the RFCTLARR Act, 2013 would be applicable only to the acquisitions under the Land Acquisition Act.

87) In paragraph No.11 of the said Judgment delivered by the Division Bench, it is held that although the provisions of the said RFCTLARR Act, 2013 would not *per se* apply to the M.R.T.P. Act, specially when the M.R.T.P. Act not is not yet amended and continues to make a reference to the Land Acquisition Act, 1894 by incorporation, the provisions of the said RFCTLARR Act, 2013 insofar as they relate to determination of compensation will have to read into the M.R.T.P. Act, so as to save some of the provisions of the M.R.T.P. Act from the vice of discrimination.

88) A perusal of the Judgment of the Supreme Court in case of *Girnar Traders*(3) clearly indicates that the issue before the Supreme Court was not restricted to whether the provisions of Section 11-A of the Land Acquisition Act, 1894 would apply to acquisitions under Chapter VII of the M.R.T.P. Act or not, but also to decide whether the M.R.T.P. Act is a self-contained code or not and if so to what extent. Various issues were referred to larger Bench in view of the Supreme Court having expressed doubt about the correctness of law stated in

case of *Sant Joginder Singh*, reported in **1995 Supp.(2) SCC, 475**. We are thus not inclined to accept the submission of Mr.Kulkarni, the learned counsel that the view taken by the Supreme Court that the provisions of the Land Acquisition Act, 1894 and M.R.T.P Act are self-contained codes and only limited provisions of the Land Acquisition Act can be read in the provisions of the M.R.T.P Act, cannot be considered as *ratio decidendi* but was at most the *obiter dicta*. In our view, the submission of the learned counsel is contrary to the view taken by the Supreme Court in case of *Girnar Traders*(3) (supra), which has been followed by the Supreme Court in case of *Special Land Acquisition Officer, KIADB, Mysore and Another* (supra) and also followed and interpreted by the Division Bench of this Court in case of *Hanumanrao Morbaji Gudadhe and Ors.* (supra).

89) A perusal of the record clearly indicates that in this case a declaration was issued by the State Government for acquiring the land in question under Section 126(2) of the M.R.T.P Act. Based on the said declaration, the Collector had appointed the Special Land Acquisition Officer for the purpose of acquiring the said land and to provide mechanism of the acquisition of the said land under the provisions of the Land Acquisition Act, 1894. There was no

Notification issued by the Land Acquisition Officer under Section 4 of the Land Acquisition Act, 1894 admittedly. It is thus clear beyond reasonable doubt that the proceedings for acquisition were initiated under the provisions of Section 126(2) of the M.R.T.P. Act and not under Section 4 of the Land Acquisition Act.

90) In our view, the acquisition of the land in question thus was initiated under the provisions of the M.R.T.P. Act and was subject to the provisions of the said Act except to the extent of completing the process of determining compensation other than the compensation determinable by the designated arbitrator or tribunal. Be that as it may, even if the Judgment of the Supreme Court in case of *Girnar Traders*(3) holding that the provisions of the Land Acquisition Act, 1894 and the M.R.T.P. Act are self-contained codes and all the provisions of the Land Acquisition Act cannot be read in the provisions of M.R.T.P. Act is considered as *obiter dicta*, this Court is bound by even by the *obiter dicta* in the Judgment delivered by the Supreme Court. The aforesaid three judgments squarely apply to the facts of this case. We are respectfully bound by those Judgments.

91) Insofar as the issue whether Section 48 of the Land

Acquisition Act is applicable to the acquisition initiated under the provisions of M.R.T.P. Act or not is concerned, in our view, in view of the principles laid down by the Supreme Court in case of *Girnar Traders(3)* (supra), in case of Special Land Acquisition Officer, KIADB, Mysore and Another (supra) and Judgment of the Division Bench of this Court in case of *Hanumanrao Morbaji Gudadhe and Ors.*(supra), remedy under Section 48 cannot be attracted in case of acquisition initiated under M.R.T.P. Act. The said application made by respondent No.7 before respondent No.2 for seeking deletion of the land from acquisition itself was not maintainable, In our view, the learned Minister for Revenue and Forest Department had acted without jurisdiction, without authority of law by entertaining the application purported to have been filed by the respondent No.7 under Section 48 of the Land Acquisition Act, 1894.

92) A perusal of the record indicates that though the petitioner herein had raised a specific objection about the maintainability of the said application filed by the respondent No.7 purportedly under Section 48 of the Land Acquisition Act, the learned Minister for Revenue and Forest Department did not even bothered to deal with the said objection of maintainability of the said application in the

impugned order and passed an illegal order contrary to the provisions of the Land Acquisition Act, 1894 and also the provisions of the said M.R.T.P. Act.

93) Insofar as the Judgment of the Supreme Court in case of *Pune Municipal Corporation and another* (supra) relied upon by Mr.Kulkarni, learned counsel for the respondent No.7 is concerned, a perusal of the said Judgment clearly indicates that the Notification in that case was issued by the Land Acquisition Officer under Section 4 of the Land Acquisition Act, 1894 and the notices under Section 4(1) were served upon the land owners/interested persons. The said Notification under Section 4 was valid. A declaration under Section 6 was followed by notices under Section 9. The Special Land Acquisition Officer thereafter, made an award under Section 11 of the Land Acquisition Act, 1894. However, in this case admittedly, the notification was issued under Section 126(2) of the M.R.T.P. Act.

94) In paragraph No.11 in the case of *Pune Municipal Corporation*, the Supreme Court has held that in relation to the land acquisition proceedings initiated under Land Acquisition Act, 1894,

where an award has been made five years prior to the commencement of RFCTLARR Act, 2013 and either of the two contingencies are satisfied i.e. (i) physical possession of the land has not been taken, or (ii) the compensation has not been paid, such acquisition proceedings shall be deemed to have lapsed. On the lapse of such acquisition proceedings, if the Government still chooses to acquire the land, which was subject matter of acquisition under the 1894 Act, then it has to initiate the proceedings afresh under the RFCTLARR Act, 2013. The proviso appended to Section 24(2) deals with a situation where in respect of the acquisition initiated under the Land Acquisition Act, 1894 has been made and compensation in respect of majority of landholdings has not been deposited in the account of beneficiaries, then all the beneficiaries specified in the Notification become entitled to compensation under RFCTLARR Act, 2013.

95) The Supreme Court in the said Judgment thereafter considered the issue whether the expression “compensation has not been paid” and held that the amount of compensation has to be either paid to the land owners/persons interested to or to be deposited in the Court. The Supreme Court rejected the argument

of the State Government that deposit of the compensation in the State's Revenue account would amount to the payment of compensation or deposit of the same in the Court under Section 31 of the Land Acquisition Act, 1894. The intent and object of RFCTLARR Act, 2013 and the M.R.T.P Act are totally different. Division Bench of this Court in case of *Hanumanrao Morbaji Gudadhe* (supra) has held that the provisions of section 24(2) of the RFCTLARR Act, 2013, the provisions of Land Acquisition Act and M.R.T.P Act are Self Contained Code and the provisions of Section 24 of the RFCTLARR Act, 2013, would not be applicable to the acquisition under M.R.T.P Act. It is held that since M.R.T.P Act is not yet amended after enactment of RFCTLARR Act, 2013, the provisions as they relate to determination of the compensation will have to be read into the M.R.T.P Act, so as to save some of the provisions of the M.R.T.P Act from the vice of discrimination. The said Judgment of the Division Bench applies to the facts of this case and is binding on this Court.

96) Be that as it may, in the facts of this case, admittedly no Notification was issued for acquiring land under Section 4 of the Land Acquisition Act, but was issued under Section 126 of the

M.R.T.P. Act. The acquisition proceeding in this case challenged by the respondent No.7 on various grounds has attained finality. The writ petition filed by the respondent No.7 challenging the acquisition proceedings came to be dismissed by this Court. Special Leave Petition against the said order and Judgment of the Division Bench also came to be dismissed. The respondent No.7 had applied for injunction against the petitioner from taking possession of the land in question from respondent No.7. The said injunction was granted by this Court in the said writ petition. The petition was thereafter dismissed.

97) The learned Minister for Revenue and Forest also granted injunction against the petitioner from taking possession of the land in question from respondent No.7. The said injunction continued till the impugned order was passed by him. In this writ petition also, the respondent No.7 made a statement that he would maintain *status-quo* in respect of the land in question, which was accepted by this Court. This Court thereafter, passed an order of *status-quo* in respect of land in question, which order is still in force till today. The question of the petitioner thus taking the possession of the land from the respondent No.7, within five years from the

date of award in this case did not arise.

98) Insofar as payment or deposit of compensation is concerned, though section 24 of the RFCTLARR Act, 2013 would not apply to the acquisition under M.R.T.P. Act, it is not in dispute that the petitioner had already deposited the amount determined by the Special Land Acquisition Officer in respect of the land in question in the appropriate proceeding. Thus, it cannot be said that the petitioner could not take possession within five years from the date of award made by Special Land Acquisition Officer or could not pay or deposit the compensation payable to the respondent No.7 within five years from the date of award and thus the reservation has lapsed and if fresh notification is issued, compensation at the rate provided in the said Act would be payable.

99) In our view, there is no substance in the submission of the learned counsel for the respondent No.7 that though there was injunction against the petitioner for taking possession of land in question in favour of the respondent No.7 passed by this Court and also by the learned Minister for Revenue and Forest, the time of five years to take possession or to pay or deposit compensation had not

stopped even during such period of such injunction and/or *status-quo* order. It is not in dispute that till today the said status-quo order is in force.

100) In our view, the principles of law laid down by the Supreme Court in case of Girnar Traders (3) (supra), in case of Special Land Acquisition Officer, KIADB, Mysore & anr. (supra) and judgment of this Court in case of Hanumanrao Morbaji Gudadhe & others (supra) squarely apply to the facts of this case. We are respectfully bound by this judgment. In our view, the application, thus, filed by the respondent No.7 purportedly under Section 48 of the Land Acquisition Act, 1894 itself was not maintainable and thus, the impugned order passed by the learned Minister for Revenue & Forest Department were totally without jurisdiction, without authority of law and illegal.

101) Be that as it may. In our view, since the acquisition of land in question was not under the provisions of Land Acquisition Act, 1894, the question of applicability of Section 48 of the Land Acquisition Act, 1894 for deletion of the plot in question from acquisition did not arise. Though this Court, while dismissing the

Writ Petition filed by the respondent No.7 on 26/7/2001 had made it clear that the land owners were not precluded from approaching the respondent No.3 or the State Government praying for either concession or deletion of the land as they continued in possession, the said clarification issued by this Court would not create a remedy in favour of the respondent No.7 under Section 48 of the Land Acquisition Act, which provision was not at all attracted in view of the acquisition of the land in question being initiated under Section 126(2) of the M.R.T.P. Act.

102) In our view, the learned Minister for Revenue & Forest Department could not have usurped the jurisdiction purportedly under Section 48 of the Land Acquisition Act, 1894, which he did not have, relying upon the order of clarification in para 9 of the judgment dated 26/7/2001 made by this Court in the said Writ Petition No.377/1989. Such application could be made by the respondent No.7 only if the same was permissible in law and under the provisions of Land Acquisition Act, 1894 or under any other provisions of law. The learned counsel for the respondent No.7 could not point out any other provision of law invoked by the respondent No.7 while filing such application for deletion of

reservation before the learned Minister for Revenue & Forest Department. The learned Minister for Revenue & Forest Department did not decide the issue of maintainability of the said application in the impugned order at all though specifically raised in reply filed by the petitioner before him. In our view, the order passed by the learned Minister for Revenue & Forest Department shows total non-application of mind in passing the impugned order.

103) Be that as it may. Even if the respondent No.7 could have invoked the provision under Section 48 of the Land Acquisition Act for seeking deletion of the land in question from acquisition, in our view, the scope of Section 48 of the Land Acquisition Act is very limited and can be invoked only in the interest of public at large, and not for the individual benefit of a party. It is not in dispute that the notice of acquisition was already issued to the original owner by the authority. The original owner did not challenge the acquisition proceedings at all. After issuance of such notice by the authority to the original owner, the respondent No.7 entered into the transaction with the original owner in respect of the plot in question intentionally and knowing well of the initiation of acquisition proceedings in respect of the plot in question.

104) This Court, while dismissing the Writ Petition filed by the petitioner by judgment dated 26/7/2001, rendered a finding that the purchase of the said land by the respondent No.7 was illegal and such a transaction did not bind the State. It is also held by this Court that the respondent No.7 (original petitioner in the said Writ Petition No.371/1989) had purchased the subject land in 1984. The original land owner was given a notice for hearing before the development plan was approved way back in 1973. Such findings rendered by the Division Bench of this Court in the said Writ Petition filed by respondent No.7 has attained finality. The learned Minister for Revenue & Forest Department, however, totally ignored and overlooked these findings of the Division Bench of this Court which were not only binding on the parties but also on the learned Minister for Revenue & Forest Department. A perusal of the order passed by the learned Minister for Revenue & Forest Department clearly indicates that, various findings about illegality of transactions entered into between the respondent No.7 and the original owner, and about the knowledge of respondent No.7, of the acquisition proceedings have not been dealt with or considered by the learned Minister for Revenue & Forest Department in the

impugned order at all. The respondent No.7 had already made a claim before the Land Acquisition Officer and had applied for enhancement of the claim subsequently.

105) A perusal of the impugned order passed by the learned Minister for Revenue & Forest Department indicates that, he has held that there was no bar for any kind of the transaction of the land under acquisition after the proposed acquisition of the land had commenced and even after initiation of acquisition process till the possession of the land under acquisition was not taken, and, therefore, the transaction for purchase of the land in question, entered into by the respondent No.7 with the original land owner was legal. In our view, this finding of the learned Minister for Revenue & Forest Department is totally contrary to the finding of fact rendered by Division Bench of this Court to the effect that the purchase of the land by the respondent No.7 was illegal and such a transaction did not bind the State. This Court, while rendering such finding, had also considered the date of the transaction between the respondent No.7 and the original owners. In our view, the impugned order passed by the learned Minister for Revenue & Forest Department shows total ignorance of law and contrary to the

judgment of this Court.

106) In our view, the finding of the learned Minister for Revenue & Forest Department that application under Section 48(1) of the Land Acquisition Act, 1894 is maintainable, is totally contrary to the principles of law laid down by the Supreme Court in case of *Girnar Traders (3)* (supra), in case of Special Land Acquisition Officer, KIADB, Mysore & anr. (supra) and judgment of this Court in case of *Hanumanrao Morbaji Gudadhe & others* (supra). Similarly, the findings of the learned Minister for Revenue & Forest Department that the entire acquisition proceedings were to be completed as per the provisions of the Land Acquisition Act, 1894 and thus, application under Section 48 filed by the respondent No.7 was maintainable, is also totally perverse and contrary to the aforesaid judgments delivered by the Supreme Court as well as High Court respectively. The finding of the learned Minister for Revenue & Forest Department that since possession of the land was not taken by the Government under Section 16 of the Land Acquisition Act, 1894 and thus, application under Section 48(1) is maintainable on that ground, is also totally perverse and contrary to the judgments of the Supreme Court. There was a stay order granted by this Court

in the Writ Petition No.377/1989, which stay order continued from time to time. The petitioner, thus, could not have taken possession of the said land from the respondent No.7. In our view, Section 16 of the Land Acquisition Act, 1894 was not at all attracted in view of the fact that the acquisition proceedings initiated by the petitioner were under Section 126(2) of the M.R.T.P. Act and not under the provisions of the Land Acquisition Act, 1894.

107) Insofar as the issue whether the land was required for public purpose or not, the learned Minister for Revenue & Forest Department has held that the purpose of acquisition mentioned by the petitioner was that the land was immensely required. However, the acquiring body had not given any reasons in the Writ Petition or brought any concrete evidence and thus, the requirement of the petitioner to acquire the land was not proved. In our view, this finding of the learned Minister for Revenue & Forest Department is totally perverse and contrary to the judgment delivered by this Court in Writ Petition No.377/1989 and the order passed by the Supreme Court on 3/10/2001 dismissing the S.L.P. Filed by the respondent No.7. This Court had rejected the challenge by the respondent No.7 to the validity of the acquisition proceedings in

toto, which order has attained finality. The learned Minister for Revenue & Forest Department, therefore, in the impugned order, could not have rendered a finding that the petitioner had not proved that the land was immensely required by the petitioner.

108) The petitioner had only taken possession of all the lands except few, which were deleted from acquisition at the initial stage for various reasons. This finding rendered by the learned Minister for Revenue & Forest Department is also without application of mind and contrary to the order of the Supreme Court accepting that the acquisition of proceedings were initiated for public project. The finding of the learned Minister for Revenue & Forest Department that the petitioner has not brought on record any concrete evidence or documents showing that there would be any hurdle to the entire public, or public interest would be affected if the land in question is deleted from the acquisition proceedings is concerned, the said finding is also totally perverse and contrary to the judgment of this Court and the order of Supreme Court and is passed overlooking the material produced by the petitioner before the learned Minister for Revenue & Forest Department. The plot was acquired by the petitioner being a special planning authority

and for the public purpose. The learned Minister for Revenue & Forest Department has totally overlooked various submissions made and the documents produced by the petitioner in support of its submissions opposing the said application purportedly to have been made under Section 48 of the Land Acquisition Act, 1894.

109) This Court, in case of Pralhad Lokram Dodeja (supra) has held that, if the learned Minister has drawn conclusion contrary to the material placed by the beneficiary, this conduct on the part of the Minister cannot be considered as an innocent act or mistake, but it was a deliberate decision. In our view, this principle laid down by the Division Bench of this Court squarely applies to the facts of this case. In this case also the learned Minister for Revenue & Forest Department totally by-passed and overlooked the binding judgment of this Court rendering various findings of facts which is upheld by the Supreme Court and has decided totally contrary to the law laid down by this Court and the findings rendered therein. It is thus clear that the conduct on the part of the learned Minister for Revenue & Forest Department cannot be considered as an innocent act or mistake but is a deliberate decision to favour the respondent No.7 and is contemptuous. We are respectfully bound by the said

judgment of this Court in the case of Pralhad Lokram Dodeja (supra).

110) The Supreme Court, in case of Uddar Gagan Properties Limited (supra) has held that, use of power for a purpose different from the one for which power is conferred, is colourable exercise of power. Statutory and public power is trust and the authority on whom such power is conferred is accountable for its exercise. Fraud on powers voids the action of the authority. It is held that, the power to release land from acquisition has to be exercised consistent with the doctrine of public trust and not arbitrarily. Functioning of a democratic Government demands equality and non-arbitrariness. Rule of law is the foundation of a democratic society. In our view, even if the learned Minister for Revenue & Forest Department had jurisdiction to entertain such frivolous application filed by the respondent No.7, powers of the learned Minister for Revenue & Forest Department could not have been exercised in favour of the respondent No.7 claiming individual interest and in ignorance of the larger public interest involved in acquiring the said portion of the land. The larger public interest would prevail over the smaller individual interest and more

particularly in a case where a party whose transaction was already declared as illegal and not binding on the State Government by this Court. The principles of law laid down by Supreme Court in case of Uddar Gagan Properties Limited (supra) squarely applies to the facts of this case. We are respectfully bound by the said judgment.

111) In so far as judgment of Supreme Court in case of Special Land Acquisition Officer, Bombay and others V/s M/s Godrej and Boyce, relied upon by learned counsel for respondent No.7 is concerned, in our view, the said judgment would not apply to the facts of this case on the ground that, in that matter the acquisition was withdrawn by the Government whereas the owners of the land were insisting that the Government shall acquire their lands. In our view, the facts before the Supreme Court in the said judgment were totally different and thus, the said judgment is clearly distinguishable in the facts of this case and would not assist the case of the respondent No.7.

112) Insofar as the submission of learned counsel for respondent No.7 that there was discrimination in respect of the land of respondent No.7 and other land owners, and in support of this

submission, reliance placed on the judgment of the Supreme Court in case of Hari Ram & anr. (supra) is concerned, in our view, Mr. Bajaj, learned counsel for the petitioner is right in his submission that there was no discrimination between the respondent No.7 and any other land owner. The transaction of respondent No.7 with the original owner was already declared illegal. Be that as it may. The ten plots deleted from acquisition were for different reasons permissible in law and could not be compared with the case of the respondent No.7. The judgment of Supreme Court in case of Hari Ram & anr. (supra) is totally distinguishable in the facts of the case and would not assist the case of respondent No.7. Similarly, the judgment of the Supreme Court in Union of India & ors. Vs. Shiv Raj & ors.(supra) and the judgment in case of Radiance Fincap (P) Ltd. (supra) relied upon by respondent No.7 would not assist the case of respondent No.7 and are clearly distinguishable.

113) Insofar as submission of learned counsel for respondent No.7 that his client has spent substantial amount on the land in question is concerned, in our view, Mr. Bajaj, learned counsel for the petitioner is right in his submission that the respondent No.7 could not produce any proof before this Court in the earlier Writ Petition,

before the learned Minister and also before this Court in this petition. Even if he has spent any amount, the same was at his risk in view of the fact that he was fully aware of the acquisition proceedings being initiated and in spite thereof, had entered into the transaction with the original owner. In any event, he had already filed a claim for compensation.

114) In our view, the impugned order passed by the learned Minister for Revenue & Forest Department is totally illegal and without authority of law, and thus deserves to be set aside.

We, therefore, pass following order :

ORDER

- (a) Writ Petition No.6917/2004 is made absolute in terms of prayer clauses (A) and (B). Rule is made absolute in aforesaid terms.
- (b) There shall be no order as to costs.
- (c) Parties to act on the authenticated copy of this order.

(SUNIL K. KOTWAL)
JUDGE

(R.D. DHANUKA)
JUDGE

ysk/

At the request of the learned counsel for the Respondent No.7, operation of this Judgment is stayed for a period of six weeks. It is made clear that the respondent No.7 shall not part with the possession of the property in question, during this period in favour of any party, except the petitioner. The respondent no.7 shall serve the copy of the proceedings of the Special Leave Petition or any other proceedings arising out of the challenge to the present judgment, if any, that may be filed by the Respondent No.7, upon the petitioner as well as other parties, well in advance.

(SUNIL K. KOTWAL)
JUDGE

(R.D. DHANUKA)
JUDGE

YSK/