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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2741 OF 2015**

Nirvikara Paper Mills Ltd. ... Petitioner
Versus
The State of Maharashtra & Ors. ... Respondent

Mr. S.U. Kamdar, Senior Advocate i/b Mr. Akshay P. Shinde, for the Petitioner.
Mrs. R.A. Salunkhe, AGP for Respondent Nos. 1, 2 and 4.
Mr. A.S. Rao, for Respondent No.3.

**CORAM: A.S. OKA AND
RIYAZ I. CHAGLA, JJ.
DATED: 27TH FEBRUARY 2018.**

PC:-

1. The learned Senior counsel appearing for the Petitioner invited our attention to the letter dated 1st September 2010 issued by the Assistant Director of Town Planning of the 3rd Respondent-Municipal Corporation to the Petitioner. It refers to earlier letter dated 13th May 2010 and records that the Petitioner was called upon to submit a proposal for handing over possession of the subject land which is reserved under the sanctioned development plan for road. The letter records that the proposal was to be submitted, within 8 days. The letter further states that if the proposal is not submitted, proceedings for acquisition will have to be initiated. The letter dated 30th July 1992 addressed by the Assistant Director of Town Planning of the 3rd Respondent – Municipal Corporation to the Petitioner calls upon the Petitioner to

hand over area affected by reservation for road, play ground and garden. Therefore, the Petitioner was called upon to execute an agreement and enter the name of the 3rd Respondent Corporation in the 7/12 extract.

2. There is another letter dated 14th December 2017 addressed by the Town Planner of the 3rd Respondent to the Petitioner. It records that unless the Petitioner agrees to accept the transferable development rights in lieu of the reserved land, the proceedings for acquisition will have to be initiated.

3. It is not necessary at this stage to enter into wider challenge to the reservation imposed by the sanctioned development plan. Assuming that the reservation is proper and legal, the only method by which the reserved lands held by the Petitioner can be acquired is by taking recourse to Section 126 of the Maharashtra Regional and Town Planning Act, 1966 (for short "**the MRTP Act**"). Sub-section 1 of Section 126 provides for three modes of acquisition. The first is by an agreement by paying an agreed amount, the second is of granting transferable development rights, and the third option available to the Planning Authority is of making an application to the State Government for acquiring a reserved land under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition,

Rehabilitation and Resettlement Act, 2013. If the Petitioner is not agreeable to take recourse to clauses (a) and (b) of sub-section 1 of section 126, the only option left for the Planning Authority is to take recourse to the acquisition proceedings as provided in clause (c) of sub-section 1 of Section 126. The very fact that this Petition is filed, shows that the Petitioner is not interested in opting for either clauses (a) and (b) of sub-section 1 of Section 126. In the circumstances, the Petitioner cannot be dispossessed of the subject land without taking recourse to the acquisition proceedings as provided under clause (c) of sub-section 1 of Section 126.

4. Therefore, we hold and direct that without taking recourse acquisition proceedings, the Respondents cannot dispossess the Petitioner. In view of this direction, it is not necessary to entertain challenge to the notification dated 4th April 2012 at Exhibit 'I' and the order dated 1st April 2013. As and when acquisition proceedings are initiated, the Petitioner can always challenge the sanctioned development plan in relation to the subject properties on the grounds which have been agitated in this Petition.

5. With the above observation and with the above direction, the Petition is disposed of.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J)