

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2071 OF 2012

M/s. Tolani Brothers,
having its office at 6C Prem Kutir,
177 Marine Drive, LIC,
Mumbai – 400 020 through its
Constituted Attorney Mr. N. Tolani
Age: Adult, having his residence
at 6C Prem Kutir, 177 Marine
Drive, LIC, Mumbai 400 020.

.... Petitioner

- Versus -

1. The Chief Secretary,
Government of Maharashtra,
Urban Land Development,
Mantralaya, Mumbai-400 032.
2. Thane Municipal Corporation,
through its Commissioner,
having office at Admin. Office,
Almeida Road, Chandanwadi,
Panchpakhadi, Thane-400 601.
3. The Collector, Thane District,
having office at Government of
Maharashtra, Collectorate
Building, 3rd Floor,
Thane – 400 601.
4. Commissioner of Police,
Thane.

5. The Director, Town Planning,
Government of Maharashtra,
Central Building, Ground Floor,
Near Sassoon Hospital,
Pune – 411 001.

6. Smt. Manda Rama Waghmare,
residing at Thakare Compound,
Tikujini Wadi Road,
Chitalsar Manpada Road,
Tal. & District Thane.

.... Respondents

WITH

WRIT PETITION NO.2126 OF 2012

M/s. Eastern Machinery & Trading
Company, having its office at 6C
Prem Kutir, 177 Marine Drive, LIC,
Mumbai – 400 020 through its
Constituted Attorney Mr. N. Tolani
Age: Adult, having his residence
at 6C Prem Kutir, 177 Marine
Drive, LIC, Mumbai 400 020.

.... Petitioner

- Versus -

1. The Chief Secretary,
Government of Maharashtra,
Urban Land Development,
Mantralaya, Mumbai-400 032.

2. Thane Municipal Corporation,
through its Commissioner,
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Almeida Road, Chandanwadi,
Panchpakhadi, Thane-400 601.

3. The Collector, Thane District,
having office at Government of
Maharashtra, Collectorate
Building, 3rd Floor,
Thane – 400 601.

4. The Director, Town Planning,
Government of Maharashtra,
Central Building, Ground Floor,
Near Sassoon Hospital,
Pune – 411 001.

.... Respondents

Mr. Parag Tilak with Ms Shruti Tulpule for the
Petitioner in both petitions.

Ms M.P. Thakur, Assistant Government Pleader,
for Respondent Nos.1 & 3 to 5 in WP-2071/2012 and
for Respondent Nos.1, 3 & 4 in WP-2126/2012.

Mr. Ram S. Apte, Senior Advocate, with Mr. Ajit R.
Pitale for Respondent No.2-TMC in both petitions.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

DATE : MARCH 12, 2019

ORAL JUDGMENT (Per Shri S.C. DHARMADHIKARI, J.):

1. **Rule.** The respondents in both the petitions waive
service. By consent, Rule is made returnable forthwith and the
petitions are taken up for final disposal. Heard.

2. By these petitions under Article 226 of the Constitution of India, the petitioner in the respective petitions have prayed for the following relief:-

In Writ Petition No.2071 of 2012:

“(b) This Hon'ble Court be pleased to declare that the reservation imposed on the land bearing Gat No.59 (Part) and Survey No.93 (Part) and 87/1 (Part) admeasuring 12744 sq. yards of village Chitalsar-Manpada, Thane under M.R.T.P. Act, 1966 is deemed to have been lapsed and thereupon the said lands are deemed to have been released from such reservations and are available to the Petitioners for the purpose of development otherwise permissible in the case of the adjacent land under the Development Plan [save and except land] allegedly covered by Respondent No.6;”

In Writ Petition No.2126 of 2012:

“(b) This Hon'ble Court be pleased to declare that the reservation imposed on the land bearing Gat No.59/22 (Part), 59/23 (Part) and 59 (Part) Survey Nos.49/1, 49/2, 88/1, 2, 4 and 77/1, 2 measuring 32488 sq. yards and 21521 sq. yards as per Two Purchase deeds totally admeasuring 54009 sq. yards excluding land already taken for roads by Respondent No.2 in village Chitalsar-Manpada, Thane under M.R.T.P. Act, 1966 is deemed to have been lapsed and thereupon the said lands are deemed to have been released from such reservations and are available to the Petitioners for the purpose of development otherwise permissible in the case of the adjacent land under the Development Plan;”

3. To our mind, though there are two petitions, the

facts in both are more or less identical and the legal issue common. They can be conveniently disposed of by this common Judgment.

4. We take the facts from Civil Writ Petition No.2071 of 2012. The petitioner before this Court is one M/s. Tolani Brothers who claims to be a firm and suing through its Constituted Attorney Mr. N. Tolani. It says that it is the owner of one parcel of land at village Chitalsar-Manpada, Thane, bearing Gat No.59 (Part) and Survey No.93 (Part) and 87/1 (Part) and admeasuring 12744 square yards (for brevity's sake hereinafter referred to as “the said property”).

5. The petitioner along with its sister concern M/s. Eastern Machinery had filed a writ petition being Civil Writ Petition No.3343 of 2010 in this Court seeking dereservation of lands and claiming other reliefs, and what transpired during the course of that petition is then set out in para 4. There is another writ petition mentioned in that paragraph. The sum total of all this was that the petitions were withdrawn with liberty to file

two separate writ petitions. Thereafter, what is informed to this Court and para 5 onwards is that the petitioners acquired said property under a Sale Deed dated 20-8-1962. It is then stated as to how they obtained the physical possession as well. The 1st respondent to this petition is the Secretary in the Department of Urban Development, Government of Maharashtra and the 2nd respondent is the Thane Municipal Corporation whereas respondent No.3 is the Collector, District Thane. The respondent No.4 is the Commissioner of Police, Thane and the 5th respondent is the Director, Town Planning, Government of Maharashtra. The 6th respondent to this petition is a private party and stated to be sued because she is claiming rights over a portion of the land which is the subject-matter of Civil Writ Petition No.2071 of 2012. It is claimed that the development plan for the City of Thane was sanctioned in the year 1999 and the said property was reserved for a park, police station and other reservations such as road expansion. The petitioner states that it raised certain objections but eventually it found that these reservations are in place. They would now be in place for 10

years. All the plans of the petitioner to enjoy its rights in the property and to exploit its full potential were thus lost and, according to it, the said property was frozen. Thereafter the petitioner made several attempts to develop the property or exploit its full potential but it found that it was not possible for it to do so. In para 15 the petitioner says that it was unable to develop the said property, nor was it able to sell it at a lower price than that which it might reasonably have been expected to be sold if there was no designation or reservation in the development plan. The petitioner was advised to issue, what is styled as, a purchase notice. That purchase notice is dated 13-2-2007 and copy of which is at Exhibit-E to the petition.

6. Before proceeding further, it would be advantageous to reproduce, firstly, sub-section (3) of Section 2 defining the term “Appropriate Authority” and secondly, Section 49 of The Maharashtra Regional and Town Planning Act, 1966 (“the MRTP Act” for short).

“2. In this Act, unless the context otherwise requires, -

(3) “Appropriate Authority” means any public

authority on whose behalf land is designated for a public purpose in any plan or scheme and which it is authorised to acquire;”

“49. (1) Where -

(a) any land is designated by a plan as subject to compulsory acquisition, or

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

(c) any land is indicated in any plan as land on which a highway is proposed to be constructed or included, or

(d) any land for the development of which permission is refused or is granted subject to conditions, and any owner of land referred to in clause (a), (b), (c) or (d) claims —

(i) that the land has become incapable of reasonably beneficial use in its existing state, or

(ii) (where planning permission is given subject to conditions) that the land cannot be rendered capable of reasonably beneficial use by the carrying out of the permitted development in accordance with the conditions; or

(e) the owner of the land because of its designation or allocation in any plan claims that he is unable to sell it except at a lower price than that at which he might reasonably have been expected to sell if it were not so designated or allocated,

the owner or person affected may serve on the State Government within such time and in such manner, as is

prescribed by regulations, a notice (hereinafter referred to as “the purchase notice”) requiring the Appropriate Authority to purchase the interest in the land in accordance with the provisions of this Act.

(2) The purchase notice shall be accompanied by a copy of any application made by the applicant to the Planning Authority, and of any order or decision of that Authority and of the State Government, if any, in respect of which the notice is given.

(3) On receipt of a purchase notice, the State Government shall forthwith call from the Planning Authority and the Appropriate Authority such report or records or both, as maybe necessary, which those authorities shall forward to the State Government as soon as possible but not later than thirty days from the date of their requisition.

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

(5) If within a period of six months from the date on which a purchase notice is served the State Government does not pass any final order thereon, the notice shall be deemed to have been confirmed at the expiration of that period.

** * * * **

(7) If within one year from the date of confirmation of

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

A bare perusal of the definition of the term “Appropriate Authority” would reveal that, it means any public authority on whose behalf land is designated for a public purpose in any plan or scheme and which it is authorised to acquire.

7. Section 49 read with its marginal note, reveals that there is an obligation to acquire the land on refusal of permission or on grant of permission in certain cases. Sub-section (1) says and through its clauses that, any land is designated by a plan as subject to compulsory acquisition, or any land is allotted by a plan for the purpose of any functions of a Government or local authority or statutory body, or is land designated in such plan as a site proposed to be developed for the purposes of any such Government, authority or body, etc.,

and any owner of land claims that the land has become incapable of reasonably beneficial use in its existing state, or where planning permission is given subject to conditions that the land cannot be rendered capable of reasonably beneficial use by the carrying out of the permitted development in accordance with the conditions, and in the case in hand, Clause (e), which is stated to be the applicable clause, enables the owner or person affected to serve on the State Government the purchase notice. That purchase notice requires the Appropriate Authority to purchase the interest in the land in accordance with provisions of this Act, namely, the MRTP Act. How that purchase notice should be served and accompanied by documents and what happens on its receipt is then set out in sub-sections (2), (3), (4) & (5) of this section. Sub-section (6) was deleted by the Maharashtra Act 6 of 1976, and by sub-section (7) the consequences of confirmation of the purchase notice are set out.

8. To continue the narration of facts, the petitioner says that it was called for a hearing and it made it clear that under no circumstances it would accept the transferable development

rights (TDR) for the sale of the land to be acquired by respondent Nos.2 and 4. The factum of the hearing was confirmed by the petitioner's letter dated 12-7-2007 in which it requested the 2nd respondent to purchase the land against payment of fair market price or alternatively to release it from reservation as many years had lapsed. Annexed as Exhibit-F is a copy of the letter dated 12-7-2007. In paras 18, 19, 20 & 21 of this petition, the petitioner states as under:-

*“18. The Petitioner states that the Respondent No.1 accepted the purchase notice issued by the Petitioner vide letter dated 10th August, 2007 and asked the Petitioner to contact the Respondent No.2 to take action in the matter. Hereto annexed and marked as **Exhibit “G”** is the copy of the letter acknowledging acceptance of the purchase notice by the Respondent No.1 dated 10th August, 2007. Hereto annexed and marked as **Exhibit “G-1”** is the copy of the true translation thereof.*

*19. The Petitioner states that the Respondent No.2 Corporation on 14th January, 2008 addressed a letter to the Petitioner stating that the purchase notice under Section 49(7) had been accepted and the Thane Municipal Corporation wanted to take over the suit land. Hereto annexed and marked as **Exhibit “H”** is the copy of the letter dated 14th January, 2008 from the Respondent No.2 Corporation to the Collector to acquire the suit land. Hereto annexed and marked as **Exhibit “I”** is the copy of the letter dated 16th January, 2008.*

20. The Petitioner states that the Respondent No.2 also made an application to the Collector to acquire the suit

*land. Hereto annexed and marked as **Exhibit "J"** is the copy of the letter dated 16th January 2008. The petitioner states that although the letter dated 16th January, 2008 was issued by the Respondent No.2 Corporation to the Collector, Thane, the same was not sanctioned by the meeting of the managing committee of the Respondent No.2. The Petitioner states that it was only thereafter on 25th January, 2008 that the Respondent No.2 passed Resolution No.373 and accorded sanction for sanction of the land. Hereto annexed and marked as **Exhibit "K"** is the copy of the Resolution dated 25th January, 2008 and the proposal dated 16th January, 2008. However, the said proposal was returned by the Collector's Office vide letter dated 12th February 2008 to the Respondent No.2 Corporation as there were certain errors in the proposal. Hereto annexed and marked as **Exhibit "L"** is a copy of the letter dated 12th February 2008."*

9. It is then stated that respondent No.2 replied to the Collector's office on 13-3-2008 rectifying the errors/mistakes in the proposal of respondent No.2 dated 16-1-2008. On 9-4-2008, there was a further letter from the Collector to the 2nd respondent to the effect that the main application was returned to respondent No.2 as it was incomplete and the 2nd respondent was told to forward a complete proposal again. Then, there was a request made by respondent No.2-Corporation to the District Collector on 24-10-2008 to send proposal to the Special Land Acquisition Officer, Thane, urgently and

expeditiously. The petitioner also contacted some Non Governmental Organisation (NGO) and it also intervened by addressing a letter of 21-11-2008. Thereafter, the petitioner followed up the matter and it is stated that the correspondence continued, either with the petitioner or with the NGO.

10. Finally, on the legal position emerging from the provisions as summarised in paras 25 to 29, the petitioner claims the above relief.

11. In answer to this writ petition, there are affidavits filed and which affidavits, firstly of the State Government says that the reservation was imposed on the said property and it also confirms the sanction of the development plan vide Notification of 4-10-1999, as also the reservations/designations therein. Then in para 7 it says that part of the petitioner's land is included in residential zone but it is not correct to state that entire Chitalsar-Manpada is not shown in green belt. Thus the plan, sanctioned on 23-9-1999, is prepared for the next 20 years.

12. In the subsequent paragraphs it is stated that the

2nd respondent is an Appropriate Authority for development of the reservation/proposal except site No.1 for which the Police Department is an Appropriate Authority. The rest of the affidavit, more or less, confirms the factual position as narrated in the writ petition.

13. Insofar as the legal position is concerned, it is well-settled that it is not necessary to be set out in the affidavit in reply.

14. We have also an affidavit of the Thane Municipal Corporation which annexes along with it the entire sequence of events and states that it has fully complied with the law.

15. We have a rejoinder affidavit and which deals with the affidavits filed by respondent Nos.1 & 5 and in that, apart from the factual position being reiterated, it is stated that once there is a proposal forwarded within the specified period but that having not met the statutory requirements, sub-section (7) of Section 49 is not complied with. Hence, the rejoinder summarises the assertion of the petitioner that it is entitled to

the relief.

16. As far as the affidavits of the Government and the Local Body, the Hon'ble Supreme Court had very early succinctly pointed out the legal position. In the decision reported in AIR 1983 SC 239 [**Sanjeev Coke Manufacturing Company v. M/s. Bharat Coking Coal Ltd. and another**], the Hon'ble Court held as under:-

“26. Shri Ashok Sen drew pointed attention to the earlier affidavits filed on behalf of Bharat Coking Coal Company and commented severally on the alleged contradictory reasons given therein for the exclusion of certain coke oven plants from the Coking Coal Mines (Nationalisation) Act. But, in the ultimate analysis, we are not really to concern ourselves with the hollowness or the self-condemnatory nature of the statements made in the affidavits filed by the respondents to justify and sustain the legislation. The deponents of the affidavits filed into Court may speak for the parties on whose behalf they swear to the statement. They do not speak for the Parliament. No one may speak for the Parliament and Parliament is never before the Court. After Parliament has said what it intends to say, only the Court may say what the Parliament meant to say. None else. Once a statute leaves Parliament House, the Court's is the only authentic voice which may echo (interpret) the Parliament. This the court will do with reference to the language of the statute and other permissible aids. The executive Government may place before the court their understanding of what Parliament has said or intended to say or what they think was Parliament's object and all the facts and circumstances which in their view led to the

legislation. When they do so, they do not speak for Parliament. No Act of Parliament may be struck down because of the understanding or misunderstanding of Parliamentary intention by the executive government or because their (the Government's) spokesmen do not bring out relevant circumstances but indulge in empty and self-defeating affidavits. They do not and they cannot bind Parliament. Validity of legislation is not to be judged merely by affidavits filed on behalf of the State, but by all the relevant circumstances which the court may ultimately find and more especially by what may be gathered from what the legislature has itself said. We have mentioned the facts as found by us and we do not think that there has been any infringement of the right guaranteed by Art. 14."

To the same effect are the conclusions in a later decision reported in AIR 1984 SC 192 [**Babaji Kondaji Garad and others v. Nasik Merchants Co-operative Bank Ltd., Nasik and others**]. In para 15, the Hon'ble Court held thus:-

"15. Section 73-B provides a legislative mandate. Rule 61 has a status of subsidiary legislation or delegated legislation. Bye-law of a co-operative society can at best have the status of an Article of Association of a company governed by the [Companies Act, 1956](#) and as held by this Court in [Co-operative Central Bank Ltd. v. Addl. Industrial Tribunal, Andhra Pradesh, \(1970\) 1 SCR 205 : \(AIR 1970 SC 245\)](#) the bye-laws of a co-operative society framed in pursuance of the provision of the relevant Act cannot be held to be law or to have the force of law. They are neither statutory in character nor they have statutory flavour so as to be raised to the status of law. Now if there is any conflict between a statute and the subordinate legislation, it does not require elaborate

reasoning to firmly state that the statute prevails over subordinate legislation and the bye-law if not in conformity with the statute in order to give effect to the statutory provision the rule or bye-law has to be ignored. The statutory provision has precedence and must be complied with. Further the opinion of the Deputy Registrar as expressed in his circular dated February 1, 1979 and his letter dated June 4, 1979 has no relevance because his lack of knowledge or misunderstanding of law as expressed in his opinion has no relevance. The High Court relying upon the aforementioned two documents observed as under:

"There is no inconsistency between [S. 73-B](#) and the bye-laws because even the Government has construed [Section 73-B](#) in such manner that even though the bye-laws are not amended and reserved seats remain unfilled by election the same can be filled up by co-option."

With respect, we find it difficult to subscribe to this untenable approach that a view of law or a legal provision expressed by a Government Officer can afford reliable basis or even guidance in the matter of construction of a legislative measure. It is the function of the Court to construe legislative measures and in reaching the correct meaning of a statutory provision, opinion of executive branch is hardly relevant. Nor can the Court abdicate in favour of such opinion."

17. Upon such a petition, we have heard the learned counsel appearing for the petitioners, Ms Thakur appearing for respondent Nos.1 & 3 to 5 and Mr. R.S. Apte, learned Senior Advocate, appearing for respondent No.2.

18. Mr. Tilak, the learned counsel appearing for the petitioners would submit that the language of sub-section (7) of Section 49 is clear. That section cannot be and should not be read in isolation but with the prior sub-sections of Section 49 and when so read, it is evident that the purchase notice has to be served on the State Government by the owner in terms of sub-section (1). If the purchase notice has all accompaniments in terms of sub-section (2), then, on its receipt the State Government shall forthwith call from the Planning Authority and the Appropriate Authority such report or records or both, as may be necessary and which those authorities shall forward to the State Government as soon as possible but not later than 30 days from the date of their acquisition. Thereafter there is a requirement of confirmation of the purchase notice and by sub-section (5) if the confirmation is not communicated, there is a deeming fiction carved out which confirms the notice, styled as purchase notice, on the expiration of the period set out in sub-section (5) of Section 49. The precise argument in this case is that the purchase notice was duly served. True it is that it was

confirmed by the State Government within one year from the date of confirmation of the notice. The application purportedly forwarded was not in terms of the statutory requirements. Thus, the Appropriate Authority failed to make an application to acquire the land. Once an application made did not comply with the law and that is how the Collector of the District informed the 2nd respondent/Municipal Corporation, then, the deeming fiction carved out by sub-section (7) would come into play and the land shall be released from the reservation. Thus, full consequences would then ensue and follow. If they follow, then the petition must succeed.

19. In this context, reliance is placed upon a Division Bench Judgment of this Court in the matter of **Subhash Ramrao Jadhav & Others v. State of Maharashtra & Others**, reported in 2012 (5) Bom. C.R. 602.

20. In the alternate, it is submitted that the designations in the development plan included a designation, namely, police station. That is a reservation or designation claimed on a part of

the said property. As far as that designation is concerned, an application has to be made by the Appropriate Authority. In this case, the Appropriate Authority would be the Commissioner of Police, Thane and the Commissioner of Police, Thane has not made any such application. Therefore, at least to that extent or that part the designation/reservation in the development plan would not fructify into an acquisition and no acquisition proceedings would lie for such reservation/designation. Consequently, at least a part of the said property would stand released from the reservation. Hence to this extent the writ petition must succeed.

21. On the other hand, Ms Thakur, appearing on behalf of the State and Mr. Apte, learned Senior Advocate appearing for the Thane Municipal Corporation would submit that there is no merit in the either contentions and the writ petitions deserve to be dismissed.

22. For properly appreciating these contentions we must note the language of Section 49. As we have already reproduced

it above, where any land is designated or allotted by a plan, indicated in any plan as land on which a highway is proposed to be constructed or included, or any land for the development of which permission is refused or is granted subject to conditions, and any owner of land referred to in Clauses (a), (b), (c) or (d) claims that the land has become incapable of reasonably beneficial use in its existing state, or if the conditional permission being in place but the land cannot be rendered capable of reasonably beneficial use by the carrying out of the permitted development in accordance with the conditions, or the owner of the land because of its designation or allocation in any plan claims that he is unable to sell it except at a lower price than that at which he might reasonably have been expected to sell if it were not so designated or allocated (and which is the assertion in this case), the owner or person affected, may serve on the State Government within such time and in such manner as is prescribed by regulations, a notice requiring the Appropriate Authority to purchase the interest in the land in accordance with the provisions of the MRTP Act, 1966. Further,

insofar as the notice is concerned, it has to be served within such time and in such manner as is prescribed by regulations. Secondly, the purchase notice in terms of sub-section (2) of Section 49 has to be accompanied by a copy of any application made by the applicant to the Planning Authority, and of any order or decision of that Authority and of the State Government, if any, in respect of which the notice is given.

23. What happens after the notice is received is then set out in sub-sections (3), (4) & (5). Pertinently, by sub-section (4), on being satisfied that the requirements of sub-section (1) of Section 49 are fulfilled, the State Government may confirm the purchase notice or it can issue the direction in terms of sub-section (4) and which is not the case here. It can also refuse to confirm the purchase notice which is also not the case here. Sub-section (5) talks of a deemed confirmation of the purchase notice which is also not the factual position before us.

24. By sub-section (7) what is mandated is making of an application within one year from the date of confirmation of the

notice.

25. Concededly, it is pointed out that the purchase notice dated 13-2-2007 is confirmed on 10-8-2007. Then a proposal/application was made on 16-1-2008 by the Thane Municipal Corporation, copy of which is at page 110 of the paper-book.

26. The argument is that, the sites are designated and the area covered by the designation is also indicated. The Thane Municipal Corporation included in this application all the reserved/designated sites except the one which was for the use of the Commissioner of Police, Thane (as police station). This, according to the counsel, would demonstrate that there is considerable merit in the alternate contention at least. We will come to this aspect a little later.

27. The primary argument is that this application, copy of which is at page 110-111, was accompanied by the relevant documents. However, on 12-2-2008 (Exhibit-L, page 114) this proposal/application was returned. In any event, it is an

incomplete proposal. In such circumstances, it is urged that once there is no application by the Appropriate Authority to acquire the land in respect of which purchase notice has been confirmed, as required under Section 126, then, the reservation/designation lapses and the land is deemed to have been released from the reservation.

28. True it is that the period of one year is mandatory and within which the Appropriate Authority has to make an application.

29. It is conceded before us that save and except the reservation/designation for police station is concerned, the Appropriate Authority is the Thane Municipal Corporation. It is conceded that it made the application within one year from the date of confirmation of the purchase notice. Thus, the purchase notice dated 13-2-2007 was confirmed on 10-8-2007 and the period of one year would have expired on 10-8-2008. Prior to that date, on 16-1-2008, an application in terms of sub-section (7) of Section 49 for the reserved/designated land, for which the

Thane Municipal Corporation is the Appropriate Authority, was indeed made by it. However, this proposal was returned back with certain remarks on 12-2-2008. Consequently, there is no application on the file, according to the counsel. Alternatively, this is an incomplete application and which does not meet the requirements of law. Hence there is no compliance with sub-section (7) of Section 49.

30. It is difficult to agree with the learned counsel appearing for the petitioners and for more than one reason. Once he concedes that the application has been made within one year, then in the absence of any prescription in the statute or anything partaking the character of a statute about the manner in which the application has to be made, the requirement of it being accepted, or accepted unconditionally or conditionally, the consequences after it being returned or refused, the learned Advocate/counsel cannot have build an argument of this nature. He concedes that there is no form of the application unlike the manner prescribed by the regulations for the purchase notice. The portion below Clause (e) of sub-section (1) of

Section 49, in clearest term, says that the owner or person affected may serve on the State Government within such time and in such manner, as is prescribed by regulations, a notice (hereinafter referred to as “the purchase notice”). Concededly, there is no such prescription in the regulations or the Rules or anything having a statutory flavour or character as far as the application contemplated by sub-section (7) of Section 49 of the MRTP Act. There could not have been either. The language of sub-section (7) of Section 49 is advisedly different. That sub-section opens with the words “If within one year from the date of confirmation of the notice, the Appropriate Authority fails to make an application to acquire the land”. Thus, the crucial words are failing to make an 'application'. This word is not defined in the MRTP Act. It must be given its ordinary and natural meaning. The ordinary dictionary meaning of the word “Application” is “to make or lodge a request” or “a formal request to an Authority”, “the action of putting something into an operation” and Black's Law Dictionary defines this word as a “request or Petition”. The word “Applicant” means “one who

requests something”. It is the failure to make an application to acquire which invites the consequences under sub-section (7). Therefore, to read into the sub-section anything beyond this will contravene the settled canon or principle of interpretation of statutes, namely, when the language is plain, unambiguous and clear, there is no scope for applying these principles.

31. Before the Division Bench of this Court, in the case of **Subhash Ramrao Jadhav** (supra), the position was somewhat different. That Division Bench had before it the issue and controversy of purchase notice having been served. Therein the petitioners before this Court claimed to be the owners of certain land situated at Nanded. They served a purchase notice on the respondents. Since the lands were reserved for a playground and a primary school in the final development plan of Nanded City, the purchase notice was duly confirmed. On 28-11-2006, about a month before the expiry of one year, a proposal was sent by the 3rd respondent to that petition to the Collector for taking steps for acquisition of the lands. However, that proposal was rejected on 22-2-2007 by the Collector on various grounds.

Thereafter, a Resolution was passed by the Municipal Corporation on 31-3-2010 to the effect that since the land acquisition proceedings were not initiated within one year from the date on which the purchase notice was confirmed, the lands stood dereserved. In the meanwhile the petitioners applied to the Collector for grant of permission for non-agricultural use of the lands but that was rejected. They went in Appeal before the State Government and in the Appeal the State Government held that the reservation does not lapse and it directed the Municipal Corporation to deposit 2/3rd of the amount of compensation payable towards the lands and take further steps for their acquisition.

32. It is in this factual backdrop that the observation in para 8 of the Division Bench Judgment has been made. Then in para 9, once again in the factual backdrop, it was observed that the purchase notice was confirmed but the Collector on 22-2-2007 rejected the proposal as being not consistent with the statutory provisions. It is not this aspect alone which weighed with the Division Bench in accepting the arguments of the

petitioners and allowing the writ petition. Pertinently, the Division Bench had before it an additional factual position and which was totally undisputed. That was, that the Municipal Corporation and the State Government were not *ad idem*. The Municipal Corporation proceeded to pass a Resolution in its General Body Meeting presumably on the footing there is no application made within one year from the date of confirmation of the public notice, as is contemplated by sub-section (7) of Section 49. If there is no application made within one year in terms of this sub-section, then, the Corporation thought that it is empowered to pass a Resolution and dereserving the lands. It is in this factual backdrop that the observations in para 9 have been made. We must at once clarify that para 9 of the said Judgment would have to be read in the backdrop of the peculiar factual circumstances and cannot be read as laying down a general principle of law. More so, when the statute does not contemplate anything beyond making an application within one year from the date of confirmation of the purchase notice. So long as that the application says that the land should be

acquired in respect of which the purchase notice has been confirmed, then, for the purposes of the statutory provision that would suffice. There is no form prescribed for that purpose and therefore any requirement as in the case of service of purchase notice is concerned cannot be read into this sub-section.

33. The application in terms of sub-section (7) of Section 49 is a distinct aspect than that covered by the provision for serving of purchase notice itself [see Section 49(1)]. Hence, the first contention of the counsel is rejected.

34. Equally, we do not find any substance in the alternate contention as well. The alternate contention to be accepted would require us to peruse and very carefully the definition of the term “Appropriate Authority”. That definition is also reproduced but it has not been read in its entirety either by the deponent of the affidavit filed on behalf of the State Government in this petition (2071 of 2012) as also the counsel appearing for the parties. It is clearly saying that appropriate authority means any public authority on whose behalf land is

designated for a public purpose in any plan or scheme. As far as this aspect is concerned, there is no hesitation in agreeing with the counsel for the petitioners that the Commissioner of Police is a public authority on whose behalf land can be designated and the requirement of the Commissioner of Police is for a public purpose. The construction of a police station is thus a public purpose. The question is that the definition also has a requirement and which is equally salutary, that is, whether such public authority on whose behalf land is designated for a public purpose in any plan or scheme is authorized to acquire it? It is in that context we do not agree with the counsel appearing for the petitioners for the simple reason that administration of justice, maintenance of law and order and defence of India are Regal Functions. They are sovereign functions and within the constitutional scheme, as understood by the Constitution of India. They cannot be alienated nor can be outsourced. It is the State which must perform these duties and when it is in-charge of the maintenance of law and order it sets and establishes a whole force known as the police force. A police force is thus

functioning under the Department of Home and which is a Department within the Government itself and which, through the Commissioner of Police, is requiring the Government's another Department, namely, the Urban Development Department to provide and sanction a designation for its purpose in the development plan of the City of Thane. Once the scheme is understood in this manner, then we do not expect the Home Department to make an application as Appropriate Authority. It is but a working check Department of the State Government and cannot style himself or itself as an Appropriate Authority and make the application. There is no independent power, which is brought to our notice, in the Commissioner of Police which gives him an authority to acquire the lands of the petitioners. Once this is the factual matrix, then we cannot agree with the counsel appearing for the petitioners that the application for the reservation/designation of land for use as a police station was not made by the Appropriate Authority. There was no question of such an application being made. The purchase notice is admittedly confirmed by the State

Government and it is the State Government which has decided to go ahead with the acquisition of the land reserved/designated for use as a police station. Once it has confirmed that requirement and factually from the Thane Police Commissionerate, then, all the more, we cannot agree with the counsel for the petitioners. The reservation/designation for the purposes of use as a police station is also a subject-matter of acquisition in terms of the purchase notice. That the acquisition can be made for such a user is, therefore, natural and consequential. No capital can be made of the statement in the affidavit in reply of the State Government. The Deponent of the affidavit cannot be the source or origin for understanding and interpreting a legal provision. That at best is his perception or personal view. A statutory provision cannot be interpreted by the Court, as held above, by relying on such affidavits.

35. Once the matter is understood in the above factual backdrop and background, then we do not think that the petitioners are entitled to any relief.

36. As a result of the above discussion, both the writ petitions fail. The Rule is discharged. There will be no order as to costs.

(B.P. COLABAWALLA, J.)

(S.C. DHARMADHIKARI, J.)