

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5347 OF 2018**

Bombay Salesian Society,	]	
a Society registered under Societies	]	
Registration Act; and a public trust	]	
registered under Bombay Public Trust Act,	]	
1950, through Secretary, Fr. Manuel	]	
Murzullo, having office at Don Bosco	]	
Provincial House, Nathalal Parekh Marg,	]	
Matunga, Mumbai – 400 019.	]	... Petitioner

Versus

1) The State of Maharashtra	]	
2) Municipal Corporation of Nashik,	]	
Rajiv Gandhi Bhavan, Gangapur	]	
Road, Nashik.	]	
3) Municipal Commissioner of Nashik	]	
Municipal Corporation, Rajiv Gandhi	]	
Bhavan, Sharanpur Road, Nashik.	]	
4) Maharashtra State Road Transport	]	
Corporation, Maharashtra Vahatuk	]	
Bhavan, Dr. A. Naik Marg, Mumbai	]	
Central, Mumbai – 400 008.	]	... Respondents

Dr. Virendra Tulzapurkar, Senior Advocate instructed by Mr. Suneet Moholkar for the Petitioner.

Ms. Shruti Vyas, 'B' Panel Counsel for Respondent No.1.

Mr. Murlidhar L. Patil for Respondent Nos.2 and 3.

Mr. Nitesh Bhutekar for Respondent No.4.

**CORAM : AKIL KURESHI AND
S.J. KATHAWALLA, JJ.**

**JUDGMENT RESERVED ON : 7th AUGUST, 2019
JUDGMENT PRONOUNCED ON : 10th OCTOBER, 2019.**

JUDGMENT (PER S.J. KATHAWALLA, J.) :-

1. The Petitioner – Bombay Salesian Society is a public trust formed and registered under the Bombay Public Trusts Act, 1950 vide Registration No.F-903(Bom) dated 20th October, 1961. The Petitioner is carrying out educational and other charitable activities. Respondent No.1 is the State of Maharashtra. Respondent No.2 is the Nashik Municipal Corporation constituted under the Maharashtra Municipal Corporation Act, 1949, and is designated as the ‘**Planning Authority**’ under section 2(19) of the Maharashtra Regional and Town Planning Act, 1966 (**MRTTP Act**). Respondent No.3 is the Municipal Commissioner of Nashik Municipal Corporation. Respondent No.4 - Maharashtra State Road Transport Corporation (MSRTC) is incorporated under Section 3 of the Road Transport Corporation Act, 1950, and is designated as the ‘Acquiring Authority’ under the provisions of the MRTTP Act.

2. By the above Writ Petition, the Petitioner has sought the following reliefs :

“(a) That the Hon’ble Court be pleased to issue writ of mandamus directing the Respondent No.1 to notify in the official gazette within one month that the reservation for bus terminus made on the Petitioner’s plot admeasuring around 5000 sq. mtrs. bearing FP No.454 of Town Planning Scheme-II (Plan), Survey No.713 & 714 of Nashik, as site no.321 under Final Development Plan, Nashik, which came in force vide TPS-1191/35(A)/CR-88/UD-9 dated 28th June, 1993 and which was further modified vide TPS-1193/2124/

CR-126/95/UD-9 dated 19th February, 1996, has lapsed u/s.127(1) of MRTP Act and consequently, reservation made for bus stand on the said Petitioner's plot as site no.231 under Revised Development Plan, Nashik, which has come in force vide TPS-116/CR-140(A) /2016/UD-9 dated 9th January, 2017 stands lapsed under regulation no.14(2) of the DC&PR.

- (b) *That this Hon'ble Court be pleased to issue writ of mandamus directing the Respondent no.2 to grant permissions within 1 month to the Petitioner to develop the Petitioner's plot admeasuring around 5000 sq. mtrs. bearing FP No.454 of Town Planning Scheme-II (Plan), Survey No.713 & 714 of Nashik, as per Plans submitted on 16th March, 2018 in accordance with law by considering the said plot in Residential zone as free from any reservation under Revised Development Plan, 2017."*

3. The facts and circumstances giving rise to the present Petition are briefly set out hereunder :-

3.1 The Petitioner is the owner and in possession of piece of land bearing FP No.454 of TPS-II (Final), Survey Nos.713 and 714-F.P. No.454-TPS-II, Nashik (**trust property**).

3.2 Out of the said trust property, a plot of land admeasuring around 5000 sq. mtrs. bearing FP No.454 of TPS (Final), Survey No. 713 & 714 – F.P. No.454-T.P.S.-II, Nashik (**the said plot**) was reserved for City Bus Terminus in the Sanctioned Development Plan of Nashik, 1993 as site No.321. The said plot was reserved for the benefit of Respondent No.4 – MSRTC (**the Acquiring Authority**). The said Development Plan was sanctioned by the Respondent No.1 vide No.TPS 1191/35(A) CR-88/UD-9 dated 28th June, 1993.

3.3 The Final Development Plan, 1993 was subsequently modified and sanction thereto was given by the Respondent No.1 vide TPS 1193/2124/CR-126/95/UD-9 dated 19th February, 1996.

3.4 The Respondent No.2 – Municipal Corporation of Nashik neither acquired the said plot nor took any steps for acquisition of the said plot within 10 years from the date on which the Final Development Plan became operative. In view thereof, the Petitioner served a notice dated 30th September, 2013 as contemplated under Section 127(1) of the MRTP Act (**the said Notice**) on Respondent No.3 – Municipal Commissioner of Nashik and the Divisional Controller of Respondent No.4 – MSRTC.

3.5 The Petitioners have clearly stated in the said Notice that the Reservation No.321 for City Bus Terminus made in the Nashik Development Plan, sanctioned by the Urban Development Department vide No.TPS-1191/35(A) CR-88/UD-9 dated 28th June, 1993 and subsequently modified and sanctioned by Respondent No. 1 vide No.TPS-1193/2124/CR-126/95/UD-9 dated 19th February, 1996 has lapsed since no acquisition proceedings have been initiated within the stipulated period of 10 years as per the provisions of the MRTP Act; that the society urgently needs the said reserved land for the development and expansion of its charitable and educational activities; that with the serving of the notice, the Petitioners are initiating the process of getting the said land dereserved and making it available to the Petitioner for the purpose of urgent development and expansion needs; and that the necessary documents are

attached to the said notice.

3.6 After the receipt of statutory notice under Section 127(1) of the MRTP Act from the Petitioner, neither the said plot was acquired nor any steps for acquisition of the said plot were taken for more than twelve months. Also no notification was published in the official gazette under Section 127(2) of the MRTP Act, notifying that the reservation for bus terminus made on the said plot in the Final Development Plan, 1993 as site No.321 had lapsed under Section 127(1) of the MRTP Act.

3.7 The Petitioner ultimately addressed a letter dated 12th June, 2015 to the Respondent No.2 – Municipal Corporation of Nashik, wherein after referring to the notice dated 30th September, 2013 addressed by the Petitioner to the Respondent No.2 under Section 127(1) of the MRTP Act, the Respondent No.2 requested the Petitioner to take necessary steps to remove the reservation on the said plot from its record as well as the proposed Development Plan in future.

3.8 In response to the Petitioner's said letter dated 12th June, 2015, the Respondent No.1 addressed a letter dated 21st August, 2015 to the Petitioner. By the said letter, the Petitioner was asked to remain present with necessary documents before the Planning Committee of Respondent No.1 on 4th September, 2015 at 3.00 p.m. Accordingly, the Petitioner remained present before the Planning Committee on 4th September, 2015 and submitted necessary documents. According to the Petitioner, though the Respondent No.2 was supposed to intimate the decision of the Planning Committee on the Petitioner's request to remove reservation on the said plot from the

Government records, no such decision was taken or conveyed to the Petitioner by the Planning Committee of Respondent No.1.

3.9 According to the Petitioner when the matter regarding Petitioner's request to de-reserve the said plot in Government records was pending before the Planning Committee, the Revised Development Plan of Nashik came into force in 2017. The Respondent No.1 gave its sanction to the said plan vide TPS-116/CR-140(A)/2016/UD-9 dated 9th January, 2017. In the revised Development Plan, 2017, the reservation for bus stand on the said plot continued as site No.231.

3.10 According to the Petitioner, the Respondent No.1 framed and notified Development Control & Promotion Regulations (**DC & PR**) for Nashik Municipal Corporation which form part of the Revised Development Plan, 2017. It is provided in Regulation 14(2) of DC&PR that if the reservation in the earlier sanctioned Development Plan is lapsed in pursuance of notice under Section 127 of the MRTTP Act, then the corresponding reservation shall stand lapsed in the revised Development Plan, 2017 to the extent of area covered in the said notice; and the Municipal Commissioner shall take decision on such matters. According to the Petitioner, by virtue of Regulation 14(2) of DC&PR, the reservation site No.231 on the said plot made for bus stand under revised Development Plan of 2017 stands lapsed since corresponding reservation No.321 on the said plot made for city bus terminus under final Development Plan of 1993 is already lapsed under Section 127(1) of the MRTTP Act.

3.11 According to the Petitioner, in the year 2017, the Planning Committee of Respondent No.1 finally took a decision on Petitioner's request to de-reserve the said plot in the Government records which was made by the Petitioner vide letter dated 12th June, 2015. The Planning Department vide its letter dated 22nd August, 2017 decided that as necessary provision is made in DC&PR, there is no necessity to change the records.

3.12 The Petitioner, by its letter dated 20th February, 2018 requested the Respondent No.1 to notify in the official gazette that reservation of bus terminus on the said plot site No.321 under Final Development Plan, 1993 and reservation for the bus stand on the said plot under Revised Development Plan, 2017 as site No. 231 stands lapsed, with effect from 29th September, 2014. The Petitioner has also recorded in the said letter that in case the Respondent No.1 failed to issue the said notification within 30 days of receipt of the letter then the Petitioner would be constrained to file appropriate proceedings in the court of law.

3.13 The Respondent No.1 vide its letter dated 16th March, 2018 called for the report in respect of the reservation of the said plot from the Director, Town Planning, Municipal Commissioner, Nashik and others. The Respondent No.1 has forwarded a copy of the said letter to the Petitioner for information and record. However, despite the Petitioner's request, the Respondent has failed to issue the said notification in the Official Gazette which they were bound under Section 127(2) of the MRTP Act read with regulation 14(2) of DC&PR.

3.14 The Petitioner have therefore filed the above Petition seeking reliefs set out in Paragraph 2 above.

4. The Assistant Director of Town Planning, Nashik has filed her Affidavit-in-Reply dated 26th June, 2019 on behalf of the Respondent No.1. In the said Affidavit, the deponent has admitted the fact that as per the Sanctioned Development Plan, the said plot is shown as part and parcel of final plot No.454 (consisting of S.No.713 and 714) of Sanctioned Town Planning Scheme No.2 Nashik and is reserved as Site No.321 for “City Bus Terminus”; that the total area of reservation is about 5000 sq.mtrs.; and that the appropriate authority for acquisition and development of the said reservation was MSRTC. The deponent has also admitted that Regulation No.14.0(2) of DC & PR for Nashik Municipal Corporation provides that if the reservation in the earlier Sanctioned Development Plan has lapsed in pursuance of notice under Section 127 (1) of the MRTP Act, then the corresponding reservation shall stand lapsed in the Revised Development Plan to the extent of area covered in the said notice and that the Municipal Commissioner shall take decision on such matters. The deponent has also admitted in her Affidavit that it seems from the letter dated 20th February, 2018 (Exhibit “H” of the Writ Petition) relied upon by the Petitioner that a request was made by the Petitioner to the Principal Secretary, Urban Development Department, Government of Maharashtra to issue a notification in the official gazette under Section 127(2) of the said Act notifying that the said reservation of bus stand/terminus from the previous Development Plan and revised sanctioned

Development Plan has lapsed. The Government has thereupon vide its letter dated 16th March, 2018 called for a report from the concerned office. In her Affidavit filed on behalf of Respondent No. 1, the deponent has not commented on any of the averments concerning the Nashik Municipal Corporation and/or MSRTC. The deponent has submitted that after considering the say of the Nashik Municipal Corporation and / or MSRTC, the Court may pass suitable orders as may deem fit and proper.

5. Mr. Suresh Devram Nikumbhe has also filed an Affidavit-in-Reply dated 9th July, 2019 on behalf of Respondent No.2 – Municipal Corporation of Nashik, stating that an area of about 5000 sq. mtrs. out of survey Nos.713 and 714, F.P. No.454-TPS II Nashik was reserved for City Bus Terminus in the sanctioned Development Plan of 1993 as Site No. 321 ; that a purported notice was issued under Section 127 (1) of the MRTP Act by the Petitioner on 30th September, 2013. However, at that time, since the appropriate authority for acquisition was MSRTC, the Corporation was not required to take steps for acquisition ; that the Petitioner has after issuing notice not taken any steps and the revised draft Development Plan of Nashik dated 21st May, 2015 was published in the Maharashtra Government Gazette dated 04-10 June 2015 by which suggestions/objections were invited from General Public ; that the Petitioner thereafter by letter dated 12th June, 2015 made a request to remove the S.T. Reservation from the proposed Development Plan ; that the objections were considered by the planning committee and it was of the opinion not to change the reservation ; that the land under reservation is urgently required by the Corporation ;

that the notice purported to be under Section 127 of the MRTP Act cannot be construed to be a purchase notice ; that the purported purchase notice sent to the Divisional Controller, MSRTC, Nashik is not valid, as the same was required to be sent to the appropriate authority and the appropriate authority in that behalf is the Managing Director, MSRTC, Mumbai Central ; that the Writ Petition is liable to be rejected on that ground and also on the ground of delay and laches.

6. Mr. Swapnil Rajendra Pawar has filed an Affidavit-in-Reply on behalf of Respondent No.4, wherein no objection whatsoever is raised qua the notice dated 30th September, 2013 issued under Section 127(1) of the MRTP Act. The main objection raised in the Affidavit of MSRTC is that there is inordinate delay on the part of the Applicant in approaching the Court based on the said notice. It is also stated in the said Affidavit that the planning committee has taken a decision that there is no need to change the proposed reservation as the Development Control and Promotional Regulations provides for the same and that the same is apparent from Exhibit "G" of the Petition. It is admitted in the Affidavit that vide letter dated 16th March, 2018, the Urban Development Department asked the Director of Town Planning, State of Maharashtra and others to file the detailed report in respect of the objection raised by the Petitioner, however, the deponent is not aware whether report is filed by the Director of Town Planning.

7. The Petitioner has filed an Affidavit-in-Rejoinder dated 16th July, 2019, wherein they have stated that Section 136 of MRTP Act inter-alia provides that the notice

required to be served under MRTP Act or its rule, regulations on Corporation shall be deemed to be validly served if the same is served on the principal officer of such Corporation. It is submitted that the Divisional Controller of Respondent No.4, by virtue of the office which he holds signs and verifies the pleadings on behalf of Respondent No.4 in legal proceedings which is evident from the list of Writ Petitions filed/defended by the Divisional Controller on behalf of Respondent No.4 in various High Courts, particulars of which are set out in paragraph 9 of the Affidavit-in-Rejoinder. It is also averred in the Affidavit-in-Rejoinder that Order 29 Rule 1 of Code of Civil Procedure inter-alia provides that in a suit by or against Corporation, pleadings on behalf of Corporation can be signed and verified by its principal officer and it is clear from the aforesaid that the Divisional Controller is the principal officer of Respondent No.4. It is therefore submitted that the notice is deemed to be duly served on Respondent no.4 under Section 127 (1) of the MRTP Act. It is also pointed out in the Affidavit in Rejoinder that the Respondent No.4 - MSRTC has not raised any dispute regarding the validity of the purchase notice served on them by the Petitioner and the objection sought to be raised in regard thereto by the Respondent Nos.2 and 3 is without any substance and is liable to be rejected.

8. Dr. Virendra Tulzapurkar, learned Senior Advocate appearing for the Petitioner took us through the facts in the Petition which are already set out in Paragraph 3 above. He pointed out that the development plan under which the said plot belonging to the Petitioner was reserved as site No. 321 for City Bus Terminus was sanctioned on

28th June, 1993 and was subsequently modified and sanctioned on 19th February, 1996. Since the said plot was not acquired within 10 years from the date on which the final development plan came into force, the Petitioner served statutory notice dated 30th September, 2013 under Section 127 (1) of the MRTP Act to the Municipal Corporation, Nashik-Respondent No.2 and also to MSRTC-Respondent No.4. The Respondent No.2 admittedly failed to acquire the said plot within the statutory period of 12 months (which period prior to the amendment of 2009 was 6 months) In the circumstances, as provided in Section 127 of the MRTP Act, the reservation of the said plot deemed to have lapsed and the land stood released from reservation and became available to the owners / Petitioners for the purpose of development. However, Respondent No. 1 failed to comply with the mandate provided in Sub Section (2) of Section 127 of the MRTP Act i.e. issuing a notification in the official gazette notifying the lapsing of reservation of the said plot.

9. Mr.Tulzapurkar submitted that the Petitioner was therefore constrained to address a letter dated 12th June, 2015 to Respondent No.2 reiterating that the reservation for the bus terminus on the said plot made in Development Plan, 1993 as site No.321 has lapsed and requested the Respondent No.2 to take necessary steps to remove reservation on the said plot from its record as well as from the proposed Development Plan in future. In response to the Petitioner's said letter, the Respondent No.1 addressed a letter dated 21st August, 2015 and asked the Petitioner to remain present with necessary documents before the Planning Committee of

Respondent No.1 on 4th September, 2015 at 3.00 p.m. Accordingly, the Petitioner remained present before the Planning Committee on 4th September, 2015 and submitted necessary documents. However, for almost two years, no such decision was taken by the Planning Committee of Respondent No.1 and when the matter regarding Petitioner's request to de-reserve the said plot in Government records was pending before the Planning Committee, the Revised Development Plan of Nashik came into force in 2017. The Respondent No.1 gave its sanction to the said plan vide TPS-116/CR-140(A)/2016/UD-9 dated 9th January, 2017 and the reservation for the bus stand on the said plot continued as site No.231. Dr.Tulzapurkar submitted that since reservation No.321 on the said plot made for city bus terminus under final Development Plan of 1993 already stood lapsed under Section 127(1) of the MRTTP Act, the reservation site No.231 on the said plot made for bus stand under revised Development Plan of 2017 stood lapsed. The same also stood lapsed by virtue of Regulation 14 (2) to the DC & PR.

10. According to Dr. Tulzapurkar, the Petitioner by its letter dated 20th February, 2018 requested the Respondent No.1 to notify in the Official Gazette that reservation of bus terminus on the said plot having site No.321 under final Development Plan, 1993 and reservation for bus stand on the said plot as site No.231 under revised Development Plan, 2017 stands lapsed with effect from 29th September, 2014, but the Respondent No.1 failed to issue a notification to that effect. Dr. Tulzapurkar therefore submitted that the above Writ Petition ought to be allowed as prayed. In support of his

submissions, Dr. Tulzapurkar relied on the decisions of the Supreme Court in the case of *Prafulla C. Dave and Ors. v. Municipal Commissioner and Ors.*¹, *Bhavnagar University v. Palitana Sugar Mill (P) Limited & Ors.*² and *Girnar Traders V/s. State of Maharashtra and Ors.*³.

11. The Learned Advocate appearing for the State of Maharashtra/Respondent No.1 referred to the Affidavit dated 26th June, 2019 filed by the Assistant Director of Town Planning, Nashik and submitted that the Writ Petition specifically relates to Municipal Corporation of Nashik / Respondent Nos.2 and MSRTC/ Respondent No.4. This Court may therefore pass suitable orders considering the say of Respondent Nos. 2 to 4 and as may deem fit and proper.

12. The Learned Advocate appearing for Respondent No.2-Municipal Corporation of Nashik submitted that a company by the name of 'Nashik Mahanagar Parivahan Mahamandal Ltd.' is incorporated under the Companies Act for providing bus services in the City, pursuant to the resolution made by the general body of the Corporation on 19th September, 2018. He submitted that therefore, the Corporation requires the said land for providing bus services in different areas within its limits. The Learned Advocate appearing for the Corporation also submitted that the notice served on the Divisional Controller, MSRTC, Nashik is not valid since the same was required to be sent to the appropriate authority and the appropriate authority in that behalf is

1 (2015) 11 Supreme Court Cases 90

2 (2003) 2 Supreme Court Cases 111

3 (2007) 7 Supreme Court Cases 555

the Managing Director, MSRTC, Mumbai Central. He submitted that the Divisional Controller is not the appropriate authority and on this ground the Writ Petition be rejected. The learned Advocate for the Corporation relied on Section 15 of the MSRTC Act of 1950, which provides that the Managing Director of the MSRTC shall be the executive head of the Corporation and all other officers and employees of the Corporation shall be subordinate to him. He also relied on the decision of the Division Bench of this Court in the case of *C.V. Shah & A.V. Bhat v. State of Maharashtra*⁴ and the decision in case of *Shrikant s/o Uttamrao Bhutekar and others v. State of Maharashtra and others*⁵.

13. The Learned Advocate appearing for Respondent No.4 submitted that though notice under Section 127(1) of the MRTP Act was served on MSRTC on 30th September, 2013, the Writ Petition is filed only in April 2018. He submitted that since there is inordinate delay in approaching this Court, the Petitioners are guilty of delay and laches and therefore, not entitled to any reliefs.

14. In rejoinder, Dr. Tulzapurkar relied on Affidavit-in-Rejoinder dated 16th July, 2019 filed by the Petitioner and pointed out that it is not the case of MSRTC that the notice served on them is not valid. However, it is the Municipal Corporation of Nashik who has alleged that the notice under Section 127(1) of MRTP Act is not valid since the same was served on the Divisional Controller of MSRTC and not the Managing Director who is not the appropriate authority. Dr. Tulzapurkar has given

4 2006 (3) Bom.C.R. 216

5 (2009) 2 Mah LJ 673 : (2008) 110 (9) Bom LR 3360 : (2009) 1 AIR Bom R 561

particulars of several Writ Petitions filed by the Divisional Controller of MSRTC as a principal officer of MSRTC and pointed out that the submissions raised by the Advocate for the Municipal Corporation of Nashik is baseless and untenable. Dr. Tulzapurkar also submitted that in any event since the Divisional Controller, MSRTC, Nashik on behalf of Respondent No.4 was responsible for and concerned with the acquisition of the Petitioner's land which was reserved as site No.321 under Development Plan, 1993, the Divisional Controller, Nashik, on behalf of Respondent No.4 was responsible for and concerned with the acquisition of the Petitioner's land which was reserved as site No.321 under Development Plan, 1993. Dr.Tulzapurkar submitted that in view of the chronology of events set out in the Petition and pointed out by him in his oral submissions, there is no delay whatsoever on the part of the Petitioner in approaching this Court.

15. We have perused the above Writ Petition as well as the Affidavits filed by the parties. We have considered the facts of the present case, the submissions made by the learned Advocates for the parties and the case law relied upon by them.

16. Chapter VII of the MRTP Act deals with "Land Acquisition". Section 125 of the MRTP Act deals with "Compulsory acquisition of land needed for purpose of regional plan, development plan or town planning etc." Section 126 of the MRTP Act deals with "Acquisition of land required for public purposes specified in plans." Section 127 of the MRTP Act pertains to "Lapsing of reservations". Section 127 of the MRTP Act is relevant for deciding the issues raised in the present Writ Petition

and is therefore reproduced hereunder :

“127. Lapsing of reservations

[(1) If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional plan, or final Development Plan comes into force [or if a declaration under sub-section (2) or (4) of section 126 is not published in the Official Gazette within such period, the owner or any person interested in the land may serve notice, alongwith the documents showing his title or interest in the said land, on the Planning Authority, the Development Authority or, as the case may be, the Appropriate Authority to that effect; and if within twelve months] from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon, the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan.

[(2) On lapsing of reservation, allocation or designation of any land under sub-section (1), the Government shall notify the same, by an order published in the Official Gazette.]”

Section 127 of the MRTP Act therefore, sets out the circumstances in which the land reserved in the Regional or Development Plan would lapse. It prescribes a period of

ten years within which acquisition of the land reserved, allotted or designated, has to be completed by agreement from the date on which a final regional plan or a final development plan comes into force, or the proceedings for acquisition of such land under the MRTP Act or under the Land Acquisition Act are commenced. If the said procedure prescribed is not completed within a period of ten years i.e. no steps are taken as prescribed, the owner is entitled to issue a notice on the planning authority, development authority or appropriate authority informing them that they have not taken any steps within ten years and if no steps are taken within a period of twelve months from the date of receipt of the such notice by the concerned authorities, the reservation allotment or designation shall deemed to have lapsed and consequently the land shall be deemed to be released from the reservation, allotment or designation and shall become available to the owner for the purpose of development. Upon lapsing of reservation, allocation or designation of any land, under Sub Section (1) of Section 127 of the MRTP Act, the Government shall as provided in sub-Section (2) of Section 127, notify the said lapsing by an order published in the official gazette.

17. Section 38 of the MRTP Act deals with the revision of a final development plan, already in operation. Such revision is contemplated on the expiry of 20 years from the date of coming into operation of a development plan.

18. In the case of Girnar Traders (*supra*), it is explained that the underlying principle envisaged in Section 127 of the MRTP Act is either to utilize the land for the purpose it is reserved in the plan in a given time or let the owner utilize the land for

the purpose it is permissible under the town planning scheme. However, it is trite law that Section 127 of the MRTP Act or any other provision of the said Act, does not provide for automatic lapsing of acquisition, reservation and allotment or designation of land included in development plan on expiry of 10 years. In case of Prafulla C. Dave and Ors. (*supra*), the Supreme Court relying on its earlier decision in the case of Bhavnagar University (*supra*) has held that Section 127 of the Act or any other provisions of the Act, does not provide for automatic lapsing of the acquisition, reservation or designation of the land included in any development plan on the expiry of ten years. In fact, upon expiry of the said period of ten years, the land owner or the person interested is mandated by the Statute to take certain positive steps i.e. to issue / serve a notice and there must occur a corresponding failure on the part of the authority to take requisite steps as demanded therein in order to bring into effect the consequences contemplated by Section 127. It is further held that if the land owner or the person interested remains silent and in the meantime a revised plan under Section 38 of the Act comes into effect, obviously, the period of 10 years under Section 127 of MRTP Act has to get a fresh lease of life of another ten years. This position is clearly explained in paragraphs 21 and 22 of the said decision and the same are reproduced hereunder :

“21. Section 127 of the MRTP Act or any other provision of the said Act does not provide for automatic lapsing of the acquisition, reservation or designation of the land included in

any development plan on the expiry of ten years. On the contrary, upon expiry of the said period of ten years, the landowner or the person interested is mandated by the Statute to take certain positive steps i.e. to issue / serve a notice and there must occur a corresponding failure on the part of the authority to take requisite steps as demanded therein in order to bring into effect the consequences contemplated by Section 127. What would happen in a situation where the landowner or the person interested remains silent and in the meantime a revised plan under Section 38 comes into effect is not very difficult to fathom. Obviously, the period of ten years under Section 127 has to get a fresh lease of life of another ten years. To deny such a result would amount to putting a halt on the operation of Section 38 and rendering the entire of the provisions with regard to preparation and publication of the revised plan otiose and nugatory. To hold that inactivity on the part of the authority i.e. failure to acquire the land for ten years would automatically have the effect of the reservation, etc. lapsing would be contrary to the clearly evident legislative intent. In this regard, it cannot be overlooked that under Section 38 a revised plan is to be prepared on the expiry of a period of 20 years from the date of coming into force of the approved plan under Section 31 whereas Section 127 contemplates a period of 10 years with effect from the same date for the consequences provided for therein to take effect. The Statute, therefore, contemplates the continuance of a reservation made for a public purpose in a final development plan beyond a period of ten years. Such continuance would get

*interdicted only upon happening of the events contemplated by Section 127 i.e. giving / service of notice by the landowner to the authority to acquire the land and the failure of the authority to so act. It is, therefore, clear that the lapsing of the reservation, allotment or designation under Section 127 can happen only on the happening of the contingencies mentioned in the said section. If the landowner or the person interested himself remains inactive, the provisions of the Act dealing with preparation of revised plan under Section 38 will have full play. Action on the part of the landowner or the person interested as required under Section 127 must be anterior in point of time to the preparation of the revised plan. Delayed action on the part of the landowner, that is, after the revised plan has been finalised and published will not invalidate the reservation, allotment or designation that may have been made or continued in the revised plan. This according to us, would be the correct position in law which has, in fact, been clarified in *Municipal Corpn. Of Greater Bombay v. Hakimwadi Tenants's Assn.*⁶ in the following terms : (SCC p. 62, para 10)*

“10..... If there is no such notice by the owner or any person, there is no question of the reservation, allotment or designation of the land under a development plan of having lapsed. It a fortiori follows that in the absence of a valid notice under Section 127, there is no question of the land becoming available to the owner for the purpose of development or otherwise.”

*22. In fact the views expressed in *Bhavnagar University* in para 34 to the same effect : (SCC p. 123)*

6 1988 Supp SCC 55

“34..... The relevant provisions of the Act are absolutely clear, unambiguous and implicit. A plain meaning of the said provisions, in our considered view, would lead to only conclusion, namely, that in the event a notice is issued by the owner of the land or other person interested therein asking the authority to acquire the land upon expiry of the period specified therein viz. ten years from the date of issuance of final development plan and in the event pursuant to or in furtherance thereof no action for acquisition thereof is taken, the designation shall lapse.”

19. In the backdrop of the aforestated law laid down by the Supreme Court, let us consider its applicability to the facts of the present case. Admittedly, the Petitioner is the owner and in possession of the said plot. The said plot admeasuring 5000 sq. mtrs. was reserved for city bus terminus in the sanctioned development plan of Nashik, 1993 as site No.321 The said plot was reserved for the benefit of Respondent No.4 – MSRTC (the Acquiring Authority). The said Development Plan was sanctioned by the Respondent No.1 vide No.TPS 1191/35(A) CR-88/UD-9 dated 28th June, 1993. The Final Development Plan, 1993 was subsequently modified and sanction thereto was given by the Respondent No.1 vide TPS 1193/2124/CR-126/95/UD-9 dated 19th February, 1996. The Respondent No.2 – Municipal Corporation of Nashik neither acquired the said plot nor took any steps for acquisition of the said plot within 10 years from the date on which the Final Development Plan became operative. In view thereof, the Petitioner served a notice dated 30th September, 2013 as

contemplated under Section 127(1) of the MRTP Act on Respondent No.3 – Municipal Commissioner of Nashik and the Divisional Controller of Respondent No.4 – MSRTC.

20. The Petitioners have clearly stated in the said Notice that the Reservation No.321 for City Bus Terminus made in the Nashik Development Plan, sanctioned by the Urban Development Department vide No.TPS-1191/35(A) CR-88/UD-9 dated 28th June, 1993 and subsequently modified and sanctioned by Respondent No. 1 vide No.TPS-1193/2124/CR-126/95/UD-9 dated 19th February, 1996 has lapsed since no acquisition proceedings have been initiated within the stipulated period of 10 years as per the provisions of the MRTP Act; that the society urgently needs the said reserved land for the development and expansion of its charitable and educational activities; that with the serving of the notice, the Petitioners are initiating the process of getting the said land dereserved and making it available to the Petitioner for the purpose of urgent development and expansion needs; and that the necessary documents are attached to the said notice. Since the Respondents failed to acquire the said land or to commence any steps for its acquisition within a period of 12 months or from the date of service/receipt of the said notice dated 30th September, 2013, the said reservation in respect of the said plot lapsed and the land stood released from such reservation and became available to the owner for the purpose of development as provided in Section 127 of the MRTP Act. Respondent No. 1 was thereupon bound to notify the lapsing of the said reservation by an order published in the official gazette.

21. No notification was published in the official gazette under Section 127(2) of the MRTP Act, notifying that the reservation for bus terminus made on the said plot in the Final Development Plan, 1993 as site No.321 had lapsed under Section 127(1) of the MRTP Act.

22. Since the Respondent No.1 failed to follow the mandate prescribed in Sub Clause 2 of Section 127 of the MRTP Act, the Petitioner addressed a letter dated 12th June, 2015 to the Respondent No.2 – Municipal Corporation of Nashik, whereby after referring to the notice dated 30th September, 2013 addressed by the Petitioner to the Respondent No.2 under Section 127(1) of the MRTP Act, the Respondent No.2 requested the Petitioner to take necessary steps to remove the reservation on the said plot from its record as well as the proposed Development Plan in future.

23. The learned Advocate in his oral submission made on behalf of Nashik Municipal Corporation/Respondent No. 2 has stated that the revised draft Development Plan of Nashik dated 21st May, 2015 was published in the Maharashtra Government Gazette dated 04-10 June 2015 by which suggestions/objections were invited from General Public and the Petitioner thereafter by letter dated 12th June, 2015 made a request to remove the S.T. Reservation from the proposed Development Plan and that the objections were considered by the planning committee and it was of the opinion not to change the reservation since the land under reservation is urgently required by the Corporation. This submission lends no assistance to the Respondent No.2 since the said notice under Section 127(1) was issued by the Petitioner to the

Respondents on 30th September, 2013 i.e. much prior to the publication of the draft revised development plan of Nashik dated 21st May, 2015 and further since the Respondents failed to act on the said notice for a period of one year/twelve months thereafter, the reservation lapsed on and from 29th September, 2014 and the land stood released from reservation and became available to the Petitioner for development in the manner set out in Section 127 of the MRTP Act. In fact, Respondent No. 1 has in its Affidavit dated 26th June, 2019 reproduced Regulation No. 14.0 (2) of the sanctioned Development Control and Promotion Regulations for Nashik Municipal Corporation, which form part of the Revised Development Plan, 2017. The same reads thus :

“14.0(2) – Reservations lapsed under 127 of the Act. - If the reservation in the earlier Sanctioned Development Plan is lapsed in pursuance of notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966, then the corresponding reservation shall stand lapsed in this Revised Development Plan to the extent of area covered in the said notice. The Municipal Commissioner shall take decision on such matters.”

Therefore, in our view after the reservation of the bus terminus made on the said plot in the Final Development Plan, 1993 as site No. 321, having lapsed on and from 29th September, 2014, the Respondents cannot again reserve the said plot in the draft revised Development Plan of Nashik dated 21st May, 2015. The Respondents who have failed to comply with the mandate provided in Sub Clause (2) of Section 127 of the MRTP Act, cannot be allowed to take advantage of its own wrong and blame the

Petitioner for the delay when in fact the delay lies squarely at the doors of the Respondents.

24. We are therefore left to answer the main contention of the Respondent No. 3 Corporation that the purchase notice dated 30th September, 2013 is not a valid notice since the same is addressed to the Divisional Controller of Respondent No.4 – MSRTC, Nashik. As noted earlier, MSRTC which is the acquiring authority has at no stage in the past or even in their Affidavit or in their submissions before us contended that the notice served on its Divisional Controller under Section 127 of the MRTP Act is not valid or that the notice ought not to have been served on Divisional Controller of Respondent No.4 – MSRTC but ought to have been served on the Managing Director of MSRTC. The only submission made by the MSRTC before this Court is that the Petition be dismissed since the Petitioner has approached the Court much after the service of notice dated 30th September, 2013 on MSRTC. The Planning Authority / Nashik Municipal Corporation has no grievance qua the notice served on them under Section 127 of the MRTP Act, but have raised objection on the ground that the notice ought not to have been served on the Divisional Controller of the Acquiring Authority / MSRTC, who interestingly have not raised any objection qua the notice served on them. In fact, even in the decision in the case of C.V.Shah & A.V. Bhat (*supra*) relied upon by the Municipal Corporation Nashik, the Division Bench of this Court in paragraph 24 of its Judgment has clearly held as under :

“24. In the reply affidavits filed by the Pune Municipal

Corporation, no objection has been raised about the legality and validity of the purchase notice. As a matter of fact, the Pune Municipal Corporation considered the aforesaid notices as legal and valid notices under Section 127 of the MRTP Act and rejected them on the ground that the said notices do not require to be acted upon as the process for acquisition had already begun much before the said notices were served”.

25. In any event, as pointed out by Dr.Tulzapurkar the Petitioner has in its Affidavit in Rejoinder provided particulars of several Writ Petitions filed by the Divisional Controller of MSRTC, in his capacity as a principal officer of MSRTC. Section 136 of the MRTP Act pertains to service of notice. Sub - clause (a) of Clause (1) of Section 136 is reproduced hereunder :

“136. Service of notice, etc.

(1) All documents including notices and orders required by this Act or any rule or regulation made thereunder to be served upon any person shall save as otherwise provided in this Act or rule or regulation, be deemed to be duly served -

(a) Where the document is to be served on a Government department, railway, local authority, statutory authority, company, corporation, society or other body, if the document is addressed to the head of the Government department, General Manager of the Railway, Secretary or Principal Officer of the local authority, company, corporation, society or any other body at its authority, principal, branch, local or registered office, as the

case may be, and is either -

(i) sent by registered post to such office ; or

(ii) delivered at such office.”

The MSRTC has not disputed the contents of the said Affidavit in Rejoinder. Even during the oral arguments, it is not submitted by MSRTC that its Divisional Controller is not its Principal Officer. The decision of this Court in the case of *Shrikant S/o. Uttamrao Bhutekar and Others (supra)* lends no assistance to the submission of Respondent No. 3 Corporation qua the service of the notice under Section 127 of the MRTP Act not being valid, since in that case the Nagar Parishad had in its Affidavit specifically averred that the notice had not been received by them, and the said avernment was not controverted by the Petitioners by filing any Rejoinder.

26. We are therefore of the considered view that the notice issued by the Petitioner to MSRTC under Section 127 of the MRTP Act, is valid and the submissions made by the Corporation in that regard are rejected.

27. Before we part with the order, we would like to record that though not contended / submitted by any of the Respondents, we inquired from Dr.Tulzapurkar whether it is mandatory for the owner of the land or any person interested therein, to call upon the government to acquire the land reserved in the notice issued under Section 127 (1) of the MRTP Act. This question was asked since in paragraph 34 of the decision of the Supreme Court in *Bhavnagar University (supra)*, we noted the

statement that in the event notice is issued by the owner or other person interested therein, asking the authority to acquire the land upon expiry of the period specified therein viz. ten years from the date of issuance of final development plan and in the event pursuant to or in furtherance thereof no action for acquisition thereof is taken, the designation shall lapse. Paragraph 34 of the said decision is reproduced hereunder :

“34. The relevant provisions of the Act are absolutely clear, unambiguous and implicit. A plain meaning of the said provisions, in our considered view, would lead to only one conclusion, namely, that in the event a notice is issued by the owner of the land or other person interested therein asking the authority to acquire the land upon expiry of the period specified therein viz. ten years from the date of issuance of final development plan and in the event pursuant to or in furtherance thereof no action for acquisition thereof is taken, the designation shall lapse.”

28. Dr. Tulzapurkar relied on the decision of the Supreme Court in the case of Girnar Traders (*supra*) pointing out that in paragraph 31 of the majority decision, it is recorded that “.....*The six-month period shall commence from the date the owner or any person interested in the land serves a notice on the planning authority, development authority or appropriate authority expressing his intent claiming dereservation of the land.....*”. Dr.Tulzapurkar has submitted that therefore the said statements of the Supreme Court are general / passing statements and is not the law laid down / proclaimed by the Supreme Court. Dr.Tulzapurkar has further submitted that in fact

in the said decision, the Supreme Court has clearly recorded that there is no prescribed format qua the contents of the notice set out in Section 127 of the Act. Dr.Tulzapurkar has relied on the decision of the Division Bench of this Court in case of *M/s.Jaika Vanijya Limited & Anr. v. The State of Maharashtra & Ors.*⁷, wherein it is expressly recorded that the owner is not required by Section 127 of the MRTTP Act to call upon the authority to take steps to acquire the land within stipulated period and in fact the authority on which the notice is served, is aware of the obligations cast upon it by the said Section.

29. For all the above reasons, we hold as follows :

- i. The notice issued by the Petitioner under Section 127 of the MRTTP Act, dated 30th September, 2013 is a valid notice.
 - ii. Upon expiry of the period of twelve months from the date of issuance of notice dated 30th September, 2013, the reservation in respect of the plot of land belonging to the Petitioner, has lapsed.
 - iii. Action on the part of the Respondents to show the said plot of the Petitioner as reserved in its Revised Development Plan, Nashik, which has come in force vide TPS-116/CR-140(A) /2016/UD-9 dated 9th January, 2017 / final development plan, is void and illegal and also stands lapsed.
30. The Writ Petition is therefore disposed off in terms of prayer Clause (a).

(S.J. KATHAWALLA, J.)

(AKIL KURESHI, J.)