

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
 WRIT PETITION NO.9630 OF 2017

Shri Sahebrao Bhausahab Kalate
 Occupation : Agriculture
 R/o Wakad, Tal.Mulshi
 District Pune ... Petitioner.
 V/s.
 1.The State of Maharashtra ...
 2.The Collector, Pune ...
 3.Special Land Acquisition Officer,
 Special Unit No.2, Pimpri,
 Sant Tukaram Nagar,
 Pimpri-Chinchwad Municipal
 Corporation, Pimpri, Pune. ...
 4.The Dy. Commissioner
 Planning and Development Department
 Pimpri-Chinchwad Municipal
 Corporation, Pimpri, Pune. ...
 5.The Commissioner,
 Pimpri-Chinchwad Municipal
 Corporation, Pimpri, Pune. ... Respondents.

WITH
 WRIT PETITION NO.2373 OF 2015 & C.A.NO.307 OF 2017

M/s. Devi Construction Company
 Through its Partner
 Mr.Vinod K. Baney, Devi House.
 4th Floor, 37, Shivaji Nagar,
 Pune - 411 005 ... Petitioner.
 V/s.
 1.The State of Maharashtra
 Through The Principal Secretary
 Urban Development Department
 Mantralaya, Mumbai ...
 2.The Deputy Director of Town
 Planning, Pimpri-Chinchwad
 Municipal Corporation.
 Pimpri, Pune 411 018 ...
 3.The Pimpri-Chinchwad Municipal
 Corporation through its Municipal

Commissioner, Pimpri, Pune – 411 018.	...	
4.The Assistant Commissioner (Octroi) Pimpri-Chinchwad Municipal Corporation, Pimpri, Pune.	...	
5.The Collector Pune District, Pune.	...	
6.The Special Land Acquisition Officer, Special Group No.1 Mahanagar Palika Market, 2nd Floor Sant Tukaram Nagar, Pimpri-Chinchwad Municipal Corporation, Pimpri, Pune.	...	
7.The Divisional Commissioner Pune Division, Council Hall, Pune 411 011.	...	
8.Union of India Through Secretary to Department of Land Resources Ministry of Rural Development New Delhi	...	Respondents.

WITH
WRIT PETITION NO.1163 OF 2018 & C.A. NO.324 OF 2019

Ramadhar Sadhu Yadav Age 75 years, Occ.Business R/at Yaduvanshi Nivas, Survey No.82/2, CTS No.5405, Adarsh Nagar, Kalewadi Road, Kalewadi, Pune 411 027 V/s.	...	Petitioner.
1.The Pimpri-Chinchwad Municipal Corporation through its Municipal Commissioner, Pimpri, Pune – 411 018.	...	
2.The Deputy Director, Town Planning, Pimpri-Chinchwad Municipal Corporation. Pimpri, Pune 411 018	...	
3.The Deputy Director of		

Town Planning, Pune Divisional Pune	...	
4.Pimpri-Chinchwad New Town Development Authority, Through its Chief Executive Officer, Having its office at Sector No.24, Nigdi, Pune - 411 018.	...	
5.The Special Land Acquisition Officer, Special Unit No.1 Pimpri, Pune.	...	
6.The Collector, Pune Having its office at Collector's Office Bldg, Pune.	...	
7.The Principal Secretary, Urban Land Development Department, Mantralaya, Mumbai 400 032	...	
8.The State of Maharashtra Through Chief Secretary, Urban Development Department Mantralaya, Mumbai 400 032	...	
9.Union of India Department of Land Resources Ministry of Rural Development New Delhi	...	Respondents.

WITH
WRIT PETITION NO.1165 OF 2018

Subhash Ramadhar Yadav Age 48 years, Occ.Business R/at - Yaduvanshi Nivas, Survey No.82/2, CTS No.5405, Adarsh Nagar, Kalewadi Road, Rahatni, Pune 411 027	...	Petitioner.
V/s.		
1.The Pimpri-Chinchwad Municipal Corporation through its Municipal Commissioner, Pimpri, Pune - 411 018.	...	
2.The Deputy Director, Town Planning and Development Dept.		

Pimpri-Chinchwad Municipal Corporation. Pimpri, Pune 411 018	...	
3.The Deputy Director of Town Planning, Pune Divisional Pune	...	
4.Pimpri-Chinchwad New Town Development Authority, Through its Chief Executive Officer, Having its office at Sector No.24, Nigdi, Pune - 411 018.	...	
5.The Special Land Acquisition Officer, Special Unit No.1 Pimpri, Pune.	...	
6.The Collector, Pune Having its office at Collector's Office Bldg, Pune	...	
7.The Principal Secretary, Urban Land Development Department, Mantralaya, Mumbai 400 032	...	
8.The State of Maharashtra Through Chief Secretary, Urban Development Department Mantralaya, Mumbai 400 032	...	
9.Union of India Department of Land Resources Ministry of Rural Development New Delhi	...	Respondents.

Mr.R.A.Thorat, Senior Advocate with Mr.Sandeep S. Salunkhe for the petitioner in WP 9630/2017.
Mr.P.P.More AGP for State.
Ms.S.V.Bharucha with Mr.M.S.Lagu for Respondent No.9 in WP 1163/2018.
Mr.Girish Godbole a/w Mr.R.S.Kohli a/w Vikram Chavan a/w Preeti Limchiya a/w Ms.Dhvani Jain a/w Jatin Sahai a/w Khalid Kazi a/w K.Ayesha i/b M/s C.K.Legal for Petitioner in WP 2373/2015.
Mr.G.H.Keluskar for Respondent Nos.2 to 4 in WP 2373/2015.
Mr.N.R.Bubna for Respondent No.3 in WP 2373/2015.
Mr.Sandeep V.Marne for Respondent Nos.4 & 5.

**CORAM : R. M. BORDE AND
N. J. JAMADAR, JJ.**

**RESERVED ON : 29TH MARCH, 2019
PRONOUNCED ON : 07TH AUGUST, 2019**

JUDGMENT (PER R.M. BORDE, J.)

1. Heard.
2. Rule. Rule made returnable forthwith. With consent of the parties, the petitions are taken up for final hearing at the admission stage.
3. The petitioner in Writ Petition No.9630 of 2017, whose landed property ad-measuring 27R out of Gat No.1 situated at Wakad, Taluka Mulshi, District Pune is subjected to acquisition proceedings, is praying for issuance of writ of certiorari or a writ in the nature of certiorari or any other writ or direction for quashing and setting aside the Award dated 2nd June, 2017 passed by the Special Land Acquisition Officer, Special Unit No.2, Pimpri, Pune. Though the petitioner has prayed for issuance of declaration that the acquisition proceedings in respect of suit land have lapsed in view of failure to comply with the provisions of section 11(A) of the Land Acquisition Act, 1894 (for short "Act of 1894") i.e. failure to pass an Award within a period of two years from the date of declaration under section 6 of the Land Acquisition Act, 1894, however, said relief has not been pressed in view of the judgment of the Supreme Court in the matter of **Girnar Traders vs. State of Maharashtra and Others** (2011) 3 SCC Page 1. The land belonging to the petitioner, which is subjected to acquisition proceedings is situated at Wakad

within jurisdictional area of Pimpri-Chinchwad Municipal Corporation. The petitioner claims to be owner of the land and is also stated to be in possession of the property. The petitioner submits that the said land is reserved under Reservation Site No.4/3 for the purpose of extension of the primary school in the final development plan prepared for Pimpri Chinchwad Municipal Corporation under the provisions of MRTP Act. During the first round of acquisition proceedings, the petitioner states that, on 15th April, 2010, taking recourse to the provisions of section 17 of the Act of 1894 and by application of urgency clause, the possession of the land was taken over illegally by the acquisition authorities. The petitioner objected to the action of taking over illegal possession by the acquisition authorities and presented Writ Petition No.8313 of 2010 in this Court. The petition came to be decided finally on 5th December, 2011. The Division Bench of this Court while directing quashment of the action of taking over possession by application of urgency clause under section 17 of the Act of 1894, directed the respondents to return back possession of the land to the petitioner. The possession of land under acquisition came to be handed over back to the petitioner on 30th December, 2011.

4. The Special Land Acquisition Officer passed an Award under section 11 of the Act of 1894, determining the amount of compensation at Rs.4,74,56,086/-. The amount of compensation has been determined under the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

(hereinafter referred to as “RFCTLAR & R Act”). According to the petitioner while computing the amount of compensation the acquisition authorities have taken into consideration the date 22.04.2010 i.e. date of issuance of notification under section 6 of the Act of 1894 as the reference date for determination of the amount of compensation. In the instant proceedings, the date of issuance of notification under section 126(4) of MRTP Act read with section 6 of the Land Acquisition Act is 22.04.2010.

5. According to the petitioner, the acquisition authorities have not considered the office memorandum dated 17th June, 2015 issued by Union of India. In view of memorandum referred above, the reference date for calculation of the amount of compensation shall be 1st January, 2014 i.e. date of enforcement of the provisions of the Act of 2013. According to the petitioner, in view of Rule 19(3) of the Rules framed under the Act of 2013, in case of acquisition of the land under MRTP Act for the public purpose, the determination of compensation shall be governed by the provisions of Act of 2013 and since the Award has not been made before 31st December, 2013 the provisions of sections 26 to 30 of the Act of 2013 would be applicable for computing the amount of compensation. Reliance is placed on various judgments of this Court, Apex Court and other High Courts to substantiate the contentions raised by the petitioner.

6. Shri G.S. Godbole, learned counsel with leave of this Court, has put forth his submissions. While supporting the

claim raised by the petitioner, he contends that the reference date for determination of the amount of compensation, in the event of passing of an Award after enforcement of the Act of 2013 and in respect of proceedings of acquisition initiated prior to reference date shall be 1st January, 2014.

7. Learned Government Pleader appearing for the State opposed the contentions mainly relying upon the judgment of the Apex Court in *Girnar Traders* (supra) as well as judgment rendered by the Division Bench of this Court in the matter of *Chandrakant Mahadev Patil & Others vs. State of Maharashtra and Others* in Writ Petition No.4790 of 2018 decided on 6th August, 2018. Reliance is also placed on the judgment of the Full Bench in the matter of **Mehtab Laiq Ahmed Shaikh vs. State of Maharashtra and Others** reported in 2017(6) Mh.L.J. 408. The issue referred to the Full Bench was as regards applicability of the provisions of section 24(2) of the Act of 2013, which is a lapsing provision, in respect of the proceedings of acquisition initiated in terms of section 125 to 127 of Maharashtra Regional and Town Planning Act, 1966. The Full Bench of this Court adopted analogy recorded in the *Girnar Traders* (supra) and has answered the issue, holding that the lapsing provision contained in section 24(2) of the Act of 2013 has no application to the proceedings of acquisition initiated in terms of section 125 to 127 of the MRTP Act.

8. So far as the contentions raised by the petitioner that the proceedings of acquisition shall be deemed to have

been lapsed in view of non-compliance of section 11(A) of the Act of 1894 is concerned, the issue has been answered by the Supreme Court in *Girnar Traders vs. State of Maharashtra* (cited supra). So far as applicability of the lapsing provisions contained in section 24(2) is concerned, the issue is covered by the Full Bench judgment in the matter of *Mehtab Laiq Ahmed Shaikh* (supra). Thus, the prayer made by the petitioner in the instant petition seeking declaration that the proceedings of acquisition shall be deemed to have lapsed in view of section 11(A) of the Act of 1894 or in view of provisions of section 24(2) of the Act of 2013, need not be considered. The only contention that has been pressed into service by the petitioner is as regards applicability of the reference date of 1st January, 2014 for the purpose of determination of amount of compensation of the acquired land. The State of Maharashtra sought guidance from the Central Government on the issue as to what should be reference date for determination of the amount of compensation under the Act of 2013 in the matter where acquisition proceedings are initiated prior to enforcement of the Act of 2013 and the Award came to be declared after enforcement of the Act of 2013 and the amount of compensation, in view of the provisions of section 24(1)(a), is required to be determined in accordance with provisions contained in the Act of 2013. The issue raised by the Government of Maharashtra is answered by Central Government informing that “for calculation of market value under section 24(1)(a), reference date should be 01.01.2014 (commencement of Act of 2013) since the date of issuance

of preliminary notification under the Land Acquisition Act, 1894 falls prior to enforcement of Act of 2013. The Central Government has issued explanation as quoted below :

“The reference date for calculation of market value, under section 24(1)(a) should be 01.01.2014 (commencement of RFCTLAR & R Act, 2013) as the section reads “in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where no Award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply.”

“Under section 26 reference date is the date of preliminary notification, but section 24 is a special case of application of the Act in retrospective cases, and a later date of determination of market value is suggested (i.e. 01.01.2014) with a view to ensure that the land owners/Farmers/affected Families get enhanced compensation under the provisions of RFCTLAR & R Act of 2013 (as also recommended by the standing committee in its 31st Report)”.

9. The issue relating to enforceability of clarification expressed by the State Government (pursuant to issuance of memorandum by Union of India) under the memorandum was the matter of consideration before the Division Bench of Allahabad High Court in the matter of **Ishant International Educational Society through Director vs. State of Uttar Pradesh and 3 others**, decided on 9th May, 2013 and the Division Bench of the Allahabad High Court has held that the communication dated 26th October, 2015 of the Government

of India, Department of Land Resources, Ministry of Rural Development to the Maharashtra Government cannot be treated as directions issued under section 113 of the 2013 Act since those have not been laid before each house of the Parliament.

10. Section 113 provides that if any difficulty arises in giving effect to the provisions of Part-II, the Central Government, may, by order make such provision or give such directions not inconsistent with the provisions of the Act as may appear to it to be necessary or expedient for the removal of the difficulty. It is held by the Allahabad High Court that Sub-section (2) of section 113 provides that every order made under said section shall be laid, as soon as may be after it is made, before each House of Parliament. It does not, however, provide that directions issued also shall be laid before each House of Parliament. It is observed that the Central Government had not issued any order and had only issued directions after taking the opinion from the Department of Legal Affairs. Such directions, therefore, are not required to be laid before the two Houses of Parliament. It is not a case of the petitioners that the directions issued by the Department of Legal Affairs are also not consistent with the provisions of the 2013 Act. Thus, the directions do not remove the difficulty in giving effect to the provisions of 2013 Act. The Central Government has not issued any order but has issued only directions after taking the opinion from the Department of Legal Affairs and such directions are not required to be laid before the two Houses of Parliament. Thus, there can be no

controversy as regards the fact that the directions can be issued by the Central Government and need not be placed before the House of Legislature. The Division Bench of Allahabad High Court proceeded to issue directions to the Special Land Acquisition Officer in the aforesaid matter to determine the amount of compensation payable to the petitioner therein under the provisions of the 2013 Act by treating 1st January, 2014 as the date on which the market value of the land should be determined. The judgment of the Division Bench of Allahabad High Court was challenged at the instance of Ghaziabad Development Authority in Special Leave to Appeal (C) No(S).17660 of 2017 (*Ghaziabad Development Authority vs. Ishan International Educational Society & Ors.*). The Hon'ble Apex Court did not find any valid reason to cause interference and as such proceeded to dismiss the SLP.

11. The petitioner placed reliance on the judgment of the Constitutional Bench of the Supreme Court in the matter of **Nagpur Improvement Trust and Anr. vs. Vithalrao & Others** reported in AIR 1973 SC 689 and contends that it is open for the State to make reasonable classification for the purpose of legislation. But the object itself shall be lawful. The object itself cannot be discriminatory, or otherwise, for instance, if the object is to discriminate against one section of the society the discrimination cannot be justified on the ground that there is a reasonable classification because it has no rational relation to the object sought to be achieved. Different principles for determination of the amount of compensation cannot be applied merely because the land is

acquired by different entities; because as far as the owner is concerned, it does not matter to him whether the land is acquired by the one authority or the other. It is the contention of the petitioner that failure to prescribe 1.1.2014 as the reference date for computation of the amount of compensation in cases of acquisition of land for development purpose as regards sites reserved under final development plan prepared under the MRTP Act is discriminatory and violation of principle of equality. There cannot be discrimination in the matter of computation of compensation based on reference date by taking recourse to the provisions of the Land Acquisition Act, 1894, Act of 2013 or the MRTP Act. Though, the land under acquisition is utilised for the purpose of development of site prescribed under the final development plan for the Municipal Corporation, so far as the owner of the land is concerned, the object of acquisition does not matter and that he is entitled to contend that there shall be no discrimination in computation of the amount of compensation, merely, on the ground that the object of acquisition of the property is different.

12. In the case of Nagpur Improvement Trust (supra) the lands were acquired by Nagpur Improvement trust in view of sanction accorded by the Government for its scheme under section 45 of the Improvement Act. The petitioner/claimant tendered the writ petition challenging validity of the Improvement Act on various grounds and one of the ground was that the Improvement Act was violative of Article 14 of the Constitution inasmuch as it empowered the acquisition of the lands at prices lower than those which would have been

payable if they had been acquired under the Land Acquisition Act, 1894. It was noticed that since the basis of determination of payment of compensation is violative of the guarantee under Article 14 of the Constitution it was not permissible for the State to violate guarantee of equality and proceed to acquire the property under the provisions of Land Acquisition Act as amended by the Improvement Trust Act. It was held by the High Court that the provisions of paragraph 10(2) and 10(3) insofar as they add a new clause (3)(a) to section 23 and a proviso to sub-section(2) of section 23 of the Land Acquisition Act are ultra vires, violating the guarantee of Article 14 of the Constitution. In view of the modifications brought about in the Improvement Act, the owner, whose land is acquired under the Improvement Act is paid compensation not according to the market value of the land but the market value according to the use to which the land was put at the date with reference to which the market value is to be determined. In other words, if the land is being used for agricultural purposes, even though it has a potential value as a building site, the potential value is to be ignored. The second aspect which puts the land owner to disadvantage is that the claimant does not get a solatium at 15% under the amended provision, in the absence of which he would have got all benefits accruable under Land Acquisition Act. The question that arose was as to whether the State can make any discrimination in the matter of determination of the amount of compensation on the count that acquisition of property is under the Improvement Act and whether it would be permissible to deny benefits accruable had the property

been acquired under the Land Acquisition Act. The Supreme Court has observed that the State can make a reasonable classification for the purpose of legislation. It is equally well settled that the classification in order to be reasonable must satisfy two tests: (i) the classification must be founded on intelligible differentia and (ii) the differentia must have a rational relation to the object sought to be achieved by the legislation in question. The object itself must be rational and cannot be discriminatory. It is further held that different principles of compensation cannot be formulated for lands acquired on the basis, such as, owner is old or young, healthy or ill, tall or short or whether owner has inherited the property or built it with his own efforts, or whether the owner is politician or an advocate. The object being to compulsorily acquire the land for a public purpose, the object is equally achieved whether the land belongs to one type or another type. The classification made on the basis of the public purpose, for the purpose of payment of compensation for which the land is acquired, is also discriminatory and as such impermissible. It is observed that ordinarily a classification based on the public purpose is not permissible under Article 14 of the Constitution for purpose of determining compensation. Whether the land is acquired for or by an Improvement Trust or Municipal Corporation or the Government or that the classification made on the basis of authority acquiring land, would be impermissible for the reason that so far as the owner is concerned, it does not matter to him whether the land is acquired by one authority or other.

13. According to the petitioners, since the reference date prescribed by the Central Government while answering the query raised by the State of Maharashtra has direct nexus in determination of the amount of compensation, the claimants/landowners, whose lands are acquired by the authorities, the lands being prescribed under reservation in the final development plan prepared under the MRTP Act, there can be no classification in respect of acquisition initiated under the MRTP Act or Land Acquisition Act in the matter Awarding monetary benefits.

14. Learned counsel Shri Godbole invited our attention to the Rule 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Maharashtra) Rules, 2014 and contends that the Rule postulates that in cases where the declaration under section 4 of the old Act of 1894 has been made before 31.12.2013 and the Award under section 11 of the 1894 Act has not been declared before 31.12.2013 then in such cases provision of sections 26 to 30 shall be made applicable for determination of the amount of compensation. Sub-Rule 2 of Rule 19 relates to the acquisition under section 32 of the Maharashtra Industrial Development Act, 1961 whereas Sub-Rule 3 of Rule 19 refers to acquisition of land for the public purpose under Maharashtra Regional and Town Planning Act. It is further contended that in view of section 26 of the Act of 2013, and more particularly, the proviso contained therein, it is imperative that the date of determination of market value shall be the date on which a notification has been issued

under section 11 of the RFCTLAR & R Act, 2013 (New Act). There were certain difficulties for the State Government in completing acquisition proceedings in cases where notification under section 4(1) of the 1894 Act was issued or declaration under section 6 of the 1894 Act for the lands reserved under MRTP Act was published or that notification under Chapter VI of the Maharashtra Industrial Development Act was issued before 31.12.2013 and the Award under section 11 of the 1894 Act has not been passed before the said date. In the light of the provisions of section 26 of the RFCTLAR & R Act, in order to invoke the provisions of section 26, the Government of Maharashtra would have been required to issue fresh notification under section 11 of the new Act which would have resulted in delay in acquisition proceedings and as such the State of Maharashtra sought clarification from the Union of India as regards the reference date for calculation of the market value in relation to such acquisition proceedings. With reference to section 24 (1)(a) of the RFCTLAR & R Act, the Government of India in exercise of powers under section 113 of the RFCTLAR & R Act, issued clarification, thereby directing that the reference date for calculation of market value for determination of the amount of compensation in such cases would be 01.01.2014. It is contended that the clarification issued by the Central Government, in reference to the acquisition proceedings governed by the MRTP Act, wherein the Award has not been declared on 01.01.2014 would apply to such proceedings that have been initiated, and the reference date shall have to be prescribed as 01.01.2014. It is contended that the legislature never intended to make the

provisions of the 1894 Act partly applicable alongwith with the provisions of RFCTLAR & R Act. If the provision of section 24(1) of RFCTLAR & R Act is read in consortium with Rule 19 of the Rules framed by the State of Maharashtra, the reference date made applicable to the acquisition proceedings under the 1894 Act shall also have to be made applicable to the proceedings under the MRTTP Act, The benefits under the RFCTLAR & R Act in respect of computation of amount of compensation have been extended to the proceedings of acquisition under the Maharashtra Regional and Town Planning Act, 1966. Considering the peculiar nature of clarification issued under section 113 of the RFCTLAR & R Act, it must apply, according to Shri Godbole, with equal force to such acquisition proceedings also.

15. Learned Government Pleader appearing for the State, relying upon the judgment in the case of Girnar Traders (3) (cited supra) as well as the full bench judgment in the case of Mehtab Laiq Ahmed Shaikh (cited supra) as well as the observations made by the Division Bench of this court in writ petition no. 4790 of 2018 decided on 6th August, 2018 contends that the interpretation put up on behalf of the Petitioner and by Shri Godbole is not acceptable. It is contended that the proceedings of acquisition in respect of reserved sites, prescribed under the final development plan, are governed by the provisions of the Maharashtra Regional and Town Planning Act. The MRTTP Act is a complete code in itself. The provisions relating to determination of the amount of compensation can be made applicable and those will have

to be read in the provisions of sections 125 and 126 since those provisions are incorporated in the statute. It is a case of the legislation by incorporation and not the legislation by reference. Section 105-A which has been introduced in the RFCTLAR & R Act, by way of amendment by the State of Maharashtra, does not have applicability and in view of the judgment of the Division Bench of this Court in the matter of Chandrakant Patil (cited supra) it would be difficult to accept the contention of the petitioner that the clarification issued by the Union of India under section 113 of the RFCTLAR & R Act, will have applicability to the proceedings initiated under the MRTP Act.

16. The issue raised by the Government of Maharashtra taking recourse to section 113 of RFCTLAR & R Act was “for calculation of market value under section 24 (1)(a), reference date should be 01.01.2014 (commencement of RFCTLAR & R Act) or date of issuance of preliminary notification under 1894 Act”. The opinion issued by the Department of Legal Affairs is in reference to proceedings initiated under Land Acquisition Act. The explanation issued by the Department of Legal Affairs is with the reference date for calculation of market value under section 24(1)(a) should be 01.01.2014 (commencement of RFCTLAR & R Act, 2013), as the section reads “in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894; where no Award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply.” Under section 26 reference date is

the date of preliminary notification, but section 24 is a special case of application of the Act in retrospective cases and a later date of determination of market value is suggested (i.e. 01.01.2014) with a view to ensure that the land owners/ farmers/ affected families get enhanced compensation under the provisions of the RFCTLAR & R Act (as also recommended by Standing Committee in its 31st report).

17. The reference made by the State Government was in relation to the proceedings initiated by issuing preliminary notification under the Land Acquisition Act and the clarification that has been issued is also in relation to the proceedings initiated under the Land Acquisition Act. So far as the proceedings for acquisition in respect of reserved sites prescribed under the final development plan are initiated under the provisions of MRTP Act.

18. In the matter of Girnar Traders (cited supra), the question referred for determination by the larger Bench was that "Whether the provisions of section 11-A of the Land Acquisition Act, amongst other provisions introduced by Central Act (68 of 1984) would apply to Chapter VII of the MRTP Act". While considering the provisions of the Land Acquisition Act, 1894, the Supreme Court observed in paragraph-66 of the judgment that the Land Acquisition Act is a self-contained code within the framework of its limited purpose i.e. acquisition of land. It provides for complete machinery for acquisition of land including the process of execution, payment of compensation as well as legal remedies

in case of any grievances. Marked distinctions have been recorded between statutory provisions of the two Acts i.e. Land Acquisition Act and MRTP Act. In paragraph 67 of the Judgment in column at serial no. 9 of the chart, so far as the Land Acquisition Act is concerned, it is recorded that the market value of the land has to be determined as on the date of issuance of notification under section 4 of the Land Acquisition Act. So far as the MRTP Act is concerned, it is recorded that the market value is determined with reference to the date/dates specified in section 126(3) and upon issuance of a declaration under section 126(2) in the manner for issuance of declaration under section 6 of the Land Acquisition Act. The Hon'ble Supreme Court has proceeded to observe that MRTP Act is a self-contained code. It would be appropriate to refer to the observations made in paragraph nos. 84 and 85 of the judgment which read thus :

“84. The MRTP Act besides being a code in itself has one pre-dominant purpose, i.e., planned development. Other matters are incidental and, therefore, should be construed to achieve that pre-dominant object. All the provisions of the Land Acquisition Act cannot be applied to the MRTP Act. The provisions of the MRTP Act have to be implemented in their own field. As far as the provisions relating to preparation, approval and execution of the development plans are concerned, there is hardly any dependency of the State Act on the provisions of the Land Acquisition Act. It may be necessary, sometimes, to acquire land which primarily would be for the purpose of planned development as contemplated under the MRTP Act. Some of the provisions of the State Act have specifically referred to some of the provisions of the Land

Acquisition Act but for the limited purpose of acquiring land. Thus, the purpose of such reference is, obviously, to take aid of the provisions of the Central Act only for the purpose of acquiring a land in accordance with law stated therein rather than letting any provision of the Central Act hamper or obstruct the principal object of the State Act, i.e. execution of the planned development.

85. There can hardly be any hesitation in concluding that the MRTTP Act is a self-contained code and does not lose its colour or content of being a self-contained code merely because it makes a reference to some of the provisions of Land Acquisition Act for acquisition of land for the purpose of MRTTP Act and determination of compensation in that behalf. The referred provisions of the Land Acquisition Act may only be taken recourse to that limited extent, within the extensive framework and for the purpose of MRTTP Act. Therefore, MRTTP Act is an Act which completely provides for various steps in relation to execution of its object, constitution of various authorities to implement the underlying scheme of planned development, machinery for interested persons to raise their claims for adjudication under the provisions of this Act or at best to an authority referred to in the Act. Thus, we have no hesitation in holding that the MRTTP Act is a complete code in itself."

19. In paragraph no. 99 of the judgment it is observed by the Hon'ble Supreme Court that " Market value of the land has to be determined with reference to the date specified in clauses (i) to (iii) of sub-section (3) of section 126. In terms of proviso to Section 126(2) if the declaration is not made within one year from the date of publication of the draft

regional plan or any other plan or the scheme, as the case may be, the authority loses the right to make such a declaration. Exception to this is contemplated under section 126(4) that despite the above consequences, the Government still has the right to make a fresh declaration for acquisition of the land subject to the modification that the market value of the land shall be the market value at the date of declaration in the Official Gazette published for acquiring the land afresh. It is also observed in the said judgment (Para 108) that the entire Land Acquisition Act cannot be made applicable to the proceedings under the MRTP Act, where, unlike the Land Acquisition Act, the proceedings commence and consequences take place the moment the land is designated or reserved under a plan, draft plan or even scheme. On the contrary, the proceedings under the Land Acquisition Act start when the notification under section 4 of that Act is issued. The twin conclusions must be drawn that (i) MRTP Act is self contained code in itself, and (ii) proceedings for acquisition of land, in respect of the reserved sites, prescribed under the development plan, commences with the issuance of the notification under section 126 of the MRTP Act and in the manner, as laid down under section 6 of the Act, 1894. The notification issued under section 126 (2) of the MRTP Act is in the manner as provided under section 6 of the Land Acquisition Act. The reference date for determination for amount of compensation under the MRTP Act is issuance of notification under section 126(2) of the Act. The purpose for enacting the MRTP Act is referable to planned development and acquisition is an incidental aspect thereof. The planned

development is quite different from merely “achieving a public purpose”, for which the land is acquired under the provisions of the Land Acquisition Act. The provisions relating to planned development of the site or any part thereof, read in conjunction with the object of the State Act, show that different time-frames are required for initiation, finalisation and complete execution of such development plans. The Apex Court has concluded in paragraph no. 191 of the judgment “For the reasons stated in the judgment, we hold that the MRTP Act is a self-contained code. Further, we hold that provisions introduced in the Land Acquisition Act, 1894 by Central Act 68 of 1984, limited to the extent of acquisition of land, payment of compensation and recourse to legal remedies provided under the said Act, can be read into an acquisition controlled by the provisions of Chapter VII of the MRTP Act but with a specific exception that the provisions of the Land Acquisition Act in so far as they provide different time frames and consequences of default thereof including lapsing of acquisition proceedings cannot be read into the MRTP Act, Section 11-A of the Land Acquisition Act being one of such provisions cannot be applied to the acquisitions under Chapter VII of the MRTP Act”.

20. The Supreme Court has held with reference to the provisions of the Land Acquisition Act that the provisions of section 126 of the MRTP is an instance of legislation by incorporation and not legislation by reference. The consequence is that there is only limited applicability to the certain provisions relating to determination of the amount of

compensation; whereas subsequent amendment to the Act incorporated are specifically excluded from its operation.

21. In the matter of Mehtab (cited supra), the issue referred for consideration was “Whether the provisions of section 24(2) of the RFCTLAR & R Act, 2013, as regards lapsing of the acquisition would apply to the acquisition proceedings initiated in terms of sections 125 to 127 of the MRTP Act, 1966”. The issue has been answered in the negative for the reasons recorded by the Full Bench in the judgment.

22. The argument before the Full Bench was that since the Act of 1894 has been repealed and the RFCTLAR & R Act has been re-enacted, unless the contra- intention is apparent, the reference under MRTP Act has to be construed as reference to the provisions so enacted, in view of the section 8 of the General Clauses Act. The Full Bench has ruled out the applicability of the provisions of sections 4 to 15 of the Act of 2013. Considering the scheme of MRTP Act, such social impact assessment report is not required. Reiterating the view taken by the Apex Court in the matter of Girnar Traders (3), it is recorded that the provisions which provide for default resulting in lapsing of acquisition will not apply. No provision which provides different time frame and lapsing of acquisition can be imported into the scheme of MRTP Act, neither by implication of or by resorting to section 8 of the General Clauses Act, this position of law can be overridden. No such legislative intent can be culled out from

the proviso to section 125 nor any contra- intention is apparent.

23. In so far as extending more benefits or to enact any law to enhance or add any entitlement which confer higher compensation and to make provisions for rehabilitation and resettlement which are more beneficial; the State Government is empowered under section 107 of the RFCTLAR & R Act to enact a law. Rules have also been framed by the State of Maharashtra in the year 2015 and Rule 19 also provides for cases, where a declaration has been made prior to 31st December 2013 and the proceedings are continued, the amount of compensation shall be determined as per the formula provided in sections 26 to 30 for the RFCTLAR & R Act. It is thus amply clear that the State is empowered to provide appropriate additional benefits in terms of the compensation.

24. So far as the clarification that has been issued by the Central Government pursuant to the query raised by the State under section 113 of the Act of 2013, it refers to the proceedings initiated by issuing preliminary notification under Land Acquisition Act; whereas the explanation also refers to the cases where notification issued and the proceedings are initiated under the Land Acquisition Act. As has been recorded earlier, referring to the judgment in the matter of "Girnar Traders", that the proceeding for acquisition for taking over reserved sites prescribed under development plan is initiated under the MRTP Act. The MRTP Act is a complete code in itself. Under MRTP Act the date of issuance of a declaration

under section 126(2) is the reference date for determination of the amount of compensation.

25. In view of the observations made in paragraph 67 at serial no. 9 of the column in relation to the acquisition of land under MRTP Act, the market value has to be determined with reference to the date/ dates specified in section 126(3) and upon issuance of a declaration under section 126(2) in the manner for issuance of declaration under section 6 of the 1894 Act, as has been held by the Supreme Court in *Girnar Traders* (cited supra).

26. In so far as the argument advanced by the learned counsel appearing for the Petitioner, relying upon provisions of Rule 9 of the Rules framed by the State of Maharashtra, it cannot be controverted that it would be open for the State Government to provide for or grant better benefits to the claimants, however, until such steps are taken, the benefits accruable in reference to the acquisition proceedings initiated under the provisions of the Land Acquisition Act, cannot be automatically made applicable in cases of acquisition, governed under the MRTP Act. In this context, it would be appropriate to refer to the judgment of the Division Bench of this court in the matter of *Chandrakant Mahadev Patil* (supra). This court has referred to section 105-A of the Act of 2013 incorporated by Maharashtra Act No. XXXVII of 2018, which reads thus :

11 Now, we come to section 105A of the said Act

of 2013 incorporated by the Maharashtra Act No.XXXVII of 2018. Section 105A reads thus :-

“105-A.(1) Subject to sub-section (2), the provisions of this Act shall not apply to acquisition of land under the enactments specified in the Fifth Schedule.

(2)The State Government may, by notification, within one year from the date of commencement of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement(Maharashtra Amendment) Act, 2018, direct that any of the provisions of this Act, relating to the determinationof compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fifth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to the compensation, rehabilitation and resettlement as may be specified in the notification, as the case may be :

Provided that, no such notification shall be issued except on a resolution passed by both Houses of the State Legislature.”

(emphasis added)

12 By Section 105-A, even the Fifth Schedule is added to the said Act of 2013 which reads thus :-

THE FIFTH SCHEDULE (See section 105-A)

LIST OF MAHARASHTRA ENACTMENTS REGULATING LAND ACQUISITION IN THE STATE OF MAHARASHTRA

- 1.The Maharashtra Highways Act (LV of 1955).
- 2.The Maharashtra Industrial Development Act,

1961 (Mah. III of 1962).

3. The Maharashtra Regional and Town Planning Act, 1966 (Mah. XXXVII of 1966).

4. The Maharashtra Housing and Area Development Act, 1976 (Mah. XXVIII of 1977)."

It is observed by the Division Bench that section 125 and section 126 of the MRTP Act existed before the Maharashtra Act No. XLII of 2015 came into force. The MRTP Act apart from prescribing provisions for planned development also provide for acquisition of the land required, reserved or designated for public purpose in a regional plan, development plan or town planning scheme under the MRTP Act by taking recourse to the provisions of the Land Acquisition Act, 1894.

27. The question that fell for consideration is as to whether the provisions of the 1894 Act or Act of 2013 have been included in the MRTP Act by a mere reference or citation of one statute into another or by incorporation. Referring to the full bench judgment of this court, the Division Bench has concluded that the provisions of the Act of 2013, found in provisions of section 125 and section 126 of the MRTP Act are by way of incorporation and not by way of a reference and that is why a modification, repeal or re-enactment of the Act of 2013 will have no repercussions on the provisions of sections 125 and 126 of the MRTP Act. The Division Bench of this court has concluded that the incorporation of sub-section (1) of section 105-A by Maharashtra Act No. XXXVII of 2018 will have no impact on the applicability of the said Act of 2013 to acquisition under

the MRTP Act to the extent permitted by sections 125 and 126 of the MRTP Act.

28. As has been recorded above, it is always permissible for the State Government to extend the additional benefits to the claimants, affected by the acquisition proceedings initiated, taking recourse to the provisions of MRTP Act. Section 105-A, as amended by virtue of the State Amendment in the year 2018, will have no impact so far as its applicability to the existing provisions of the Act of 2013 to the extent permitted by sections 125 and 126 of the MRTP Act. The Division Bench has also turned down the arguments advanced on behalf of the Petitioner in the said writ petition that adopting the arguments as has been recorded above would render sub-section (2) of Section 105-A redundant. It is recorded by the Court that it is possible for the State by taking recourse to sub-section (2) of section 105-A to apply the other provisions of the Act of 2013 to the provisions of the MRTP Act. Moreover, sub-section (2) of section 105-A not only applies to MRTP Act but also to other enactments listed in the Fifth Schedule. It is thus concluded that in any manner sub-section 2 of section 105-A would not become redundant and it would be open for the State to extend beneficial provisions to cases of acquisition under the MRTP Act.

29. In the instant matter, no such decision has been taken by the State Government. The decision taken in relation to the proceedings for acquisition initiated under the Land

Acquisition Act cannot be automatically made applicable to the proceedings for acquisition initiated under the MRTTP Act. As has been laid down in the matter of Girnar Traders (cited supra) the proceedings of acquisition commences with issuance of notification under section 126 of the MRTTP Act and that the reference date for determination of the amount of compensation is the date of issuance of such notification.

30. For the reasons, as recorded above, we do not find any force in the contentions raised on behalf of the Petitioner. In the circumstances, Writ Petition No.9630 of 2017 stands rejected. Rule is discharged. No order as to costs.

31. In view of the reasons recorded for rejection of Writ Petition No.9630 of 2017, Writ petitions Nos.2373/2015, 1163/2018, 1165/2018 and Civil Application Nos.324/2019 and 307/2017 are also disposed of. Rule discharged. No order as to costs.

32. After this order is pronounced, request is made by the learned counsel for the petitioners for continuation of the interim relief in respect of protection of the possession. It is informed that the Award has already been declared.

33. In view of the reasons recorded above, no interim relief. Request stands rejected.

(N. J. JAMADAR, J.)

(R. M. BORDE, J.)