

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO. 1497 OF 2020

Ramakant Vasudeo Pai

Residing at C/22,
Mangarish Co-operative Housing Society,
Lady Jamshedji Road,
Mahim (W), Mumbai 400016.

... Petitioner

V/s.

1. State of Maharashtra

Through the Director of Town Planning,
Maharashtra State, Pune.

2. Lonavala Municipal Council

Having its office at Tungarli,
Lonavala- 410401.

3. The Chief Officer

Lonavala Municipal Council
Having its office at Tungarli,
Lonavala- 410401.

... Respondents

.....

Mr. Rohaan Cama, Mr. Prateek Pai a/w. Ms. Sita Kapadia, Mr. Shashwat Rai and Ms. Alefiyah Shipchandler i/b. Keystone Partners for the Petitioner.

Mr. Aniruddha Garge a/w. Ms. Anushree Koparkar for the Respondent.

Mrs. A. A. Purav, AGP for the Respondent/State.

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CORAM

**: R. D. DHANUKA AND
MADHAV J. JAMDAR, JJ.**

RESERVED ON

: 17th SEPTEMBER 2020

PRONOUNCED ON

: 25th SEPTEMBER 2020

(THROUGH VIDEO CONFERENCING)

JUDGMENT :- (Per Madhav J. Jamdar,J.)

1. Rule. Learned counsel for the Respondents waives service. By consent of parties, Petition is heard finally. In the present Writ Petition filed under Article 226 of the Constitution of India, the Petitioner is seeking declaration that the reservation in respect of the Petitioner's land bearing Survey No. 21/2/C, admeasuring 1,170.92 square meters situated at village Lonavala, District Pune reserved for the purpose of extension of public primary school has lapsed as per the provisions of Section 127 of the Maharashtra Regional & Town Planning Act, 1966 (*hereinafter referred to as the 'MRTP Act'*).

2. The Petitioner *inter alia* has set out in the Writ Petition following factual aspects:-

- (i) The Petitioner is the owner of land bearing Survey No. 21/2/C, admeasuring 1,170.92 square meters situated at village Lonavala, Pune (*hereinafter referred to as the 'said Plot'*) The same was purchased by the Petitioner from one Jaidev Singh (erstwhile owner), under an

Agreement for Sale dated 3rd February, 1995 and subsequent registered Sale Deed dated 6th July, 1998.

- (ii) Earlier Survey No. 21 (Larger Land) was shown as reserved for residential purposes in the Development Plan for Lonavala. The Development Plan was thereafter revised and republished on 1st February, 1978 ("1978 DP") wherein the said larger land including said plot was shown as reserved for the purpose of extension of public primary school and extension of playground of the said public primary school. Adjacent to the said larger land, a public/Municipal school is standing on a plot of land bearing CTS No. 169 and 169/1.
- (iii) Between 1984 and 1988, the Respondent No.2 took some steps to acquire some other portion of said larger land. However, no steps were taken to acquire said plot.
- (iv) On 10th February, 1994, revised Development Plan for Lonavala ("1994 DP") was published, wherein the said larger land including the said plot was shown as reserved for extension of the said public primary school.
- (v) On 18th November, 2002, the Petitioner served a

purchase notice *interalia* under Section 49 of the MRTP Act. By an order dated 23rd March, 2003, the Director, Town Planning disposed of the said purchase notice and directed the Respondent No.2 to complete the acquisition of said plot within a period of six months. As the Respondent No.2 failed to complete acquisition within the said period of six months the Petitioner called upon the authorities to pass an order declaring that the reservation of the said plot had lapsed. However, no further action was taken by the Authorities. Therefore, the Petitioner filed Civil Writ Petition No. 7538 of 2007 seeking declaration that the reservation of said plot lapsed. The said Writ Petition by order dated 8th April, 2008 was admitted and pending for final disposal.

- (vi) The said existing public primary school was demolished and new building of public primary school has been erected between 2016 to April -2019. The said public primary school has been constructed on the very same plot of land on which it was earlier stood

viz. CTS No. 169 and 169/1. Thus, the said plot is not required for the purpose for which the same is reserved i.e. for the extension of public primary school.

(vii) As the said land was not required for extension of public primary school for which the same was reserved, the Petitioner made application on 30th March, 2016 to the Respondent No. 3 seeking development permission which was rejected on 13th April, 2016 as the said land was reserved under the Development Plan. The Petitioner challenged the said rejection dated 13th April, 2016 by preferring an Appeal under the provisions of the MRTP Act, however, the said Appeal was rejected by order dated 13th December, 2016.

(viii) On 20th December, 2017, the Petitioner addressed notice under Section 127 of the MRTP Act to the Respondent No.2 and 3 *interalia* stating that the said notice be treated as notice under Section 127 of the MRTP Act and asking them to acquire the said plot for the construction/extension of the existing school after payment of compensation and if the Respondent No.2 is

not desirous of acquiring the said plot, the same be released from reservation/allotment/designation so that the same be available to the Petitioner for the purpose of development.

- (ix) Although 24 months expired on or about 20th December, 2019, the Respondent No.2 failed to acquire the said land and in any case failed to take steps to acquire the said land.
- (x) The present Writ Petition seeking that it be declared that the said reservation has lapsed was filed on 22nd January, 2020.

3. We heard the submissions of learned counsel of all the parties on 10th September, 2020. In the light of above factual position as set out in the Petition, Mr. Rohaan Cama, learned counsel appearing for the Petitioner submitted that in the 1978 plan the said plot was reserved for the purpose of a public primary school and extension of the playground of the said public primary school. Thereafter, on 10th February, 1994 a revised Development Plan for Lonavala was published, by

which the said plot alongwith larger land continued to be shown as reserved for extension of the said public primary school. He submitted that the said reservation continued for more than 42 years. He submitted that the present purchase notice under Section 127 of the Act was issued on 20th December, 2017 and the time period of 24 months which is statutorily mandated under Section 127 of the Act expired on 20th December, 2019. Since the Respondent Nos. 2 and 3 failed to acquire the said plot or failed to take any steps as required under Section 127 of the Act, reservation of the said plot has deemed to have lapsed and the said plot is deemed to have been released from the reservation/designation or allotment and has become available to the Petitioner for the purpose of development as permissible under law. In support of his submission he has relied on following judgments of Hon'ble Supreme Court and this Court.

- 1. Popat Kisan Mhaske V/s. Hon'ble Minister for Urban Development, Mumbai & Ors., 2018 (2) Mh.L.J. 435.*
- 2. Shrirampur Municipal Council, Shrirampur V/s. Satyabhamabai Bhimaji Dawkher & Ors., (2013) 5*

SCC 627.

3. *Sir Jamsetjee Jejeebhoy Charity Fund & Ors. V/s. Lonavala Municipal Council, Lonavala & Ors., Writ Petition No. 3231 of 2015 (Bombay)*
4. *Abhay Anant Chougule V/s. State of Maharashtra & Ors. 2015 (1) Mh.L.J. 733.*
5. *Shankarrao s/o. Rambhau Dabhade V/s. Co-operation of City of Amravati & Ors., 2009 (5) Mh. L.J. 424*
6. *Suneeta G. Mhatre V/s. Commissioner, Kalyan Dombivali Municipal Corporation, Kalyan & Ors., 2009 (2) Mh. L.J. 86*
7. *Girnar Traders V/s. State of Maharashtra & Ors., (2007) 7 SCC 555*
8. *State of Maharashtra V/s. Bhakti Vedanta Book Trust & Ors., (2013) 4 SCC 676.*

4. Learned counsel, Mr. Rohaan Cama submits that in any case, the reservation was for extension of the said public primary school and admittedly the said existing public primary school having been demolished, new building of the primary

school has been erected on the same plot i.e. CTS No. 169 and 169/1, continuation of reservation of the said plot is not required. He submits that it be thus declared that the reservation of the said plot for the purpose of extension of existing primary school has lapsed as per provisions of Section 127 of the MRTP Act and further direction be given to sanction the plans proposed to be submitted by the Petitioner within time limit.

5. Mr. Aniruddha Garge, learned counsel appearing for the Respondent Nos. 2 and 3 pointed out the Affidavit-in-Reply dated 14th August, 2020 of the Respondent No.3- the Chief Officer, Lonavala Municipal Council on behalf of the Respondent Nos. 2 and 3. He submitted that the second revised Development Plan of Lonavala city has been approved for partial area by the Urban Development Department of the Government of Maharashtra on 29th June, 2005 and has been implemented from 27th August, 2005. The excluded part of the Lonavala city (EP) has been approved under the second revised Development Plan dated 18th August, 2006 and the same was

brought into force since 1st November, 2006. The said scheme is called as the Second Amended Approved Development Plan of Lonavala City. He pointed out that as per the said Second Amended Approved Development Plan of Lonavala City, the said plot has been reserved for “Primary School Extension”.

6. It is submitted that purchase notice was issued under Section 49 of the MRTP Act by the Petitioner on 18th November, 2002. The Director, Town Planning, State of Maharashtra by order dated 8th April, 2003 confirmed the same. He submitted that the proposal to acquire the land had been submitted to the Collector, Pune on 26th August, 2003 by the Council resolution No. 89 dated 7th August, 2003. The Respondents have already deposited 2/3rd of the compensation i.e. Rs.35,64,432/- with the District Collector, Pune on 10th November, 2004.

7. It is submitted that notice under Section 127 of the MRTP Act was issued by the Petitioner on 20th December, 2017 and since the said issue is the subject matter of finance and

policy, a report has been submitted before the Council meeting for its decision and the same is currently under consideration before the Council meeting. He submitted that although the existing school building was demolished and new building of primary school has been erected, the said plot is reserved for the purpose of "Primary School Extension". He submitted that the Petitioner has already filed Civil Writ Petition No. 7538 of 2007, which deals with lapse of reservation and inspite of that the Petitioner has filed present Writ Petition.

8. Learned AGP relied on the Affidavit-in-Reply dated 22nd June, 2020 filed on behalf of the Respondent No. 1- State of Maharashtra, wherein it is *interalia* contended that validity of the purchase notice under Section 127 of the MRTP Act and the consequent action taken by the planning authority after receipt of the notice shall be ascertained from the official records of the Respondent Nos. 2 and 3. It is further stated in the said affidavit that the Court may pass an appropriate order after considering the say of the Respondent Nos. 2 and 3 regarding existing status of acquisition of the said plot.

9. We have heard the submissions of learned counsel Mr. Rohaan Cama for the Petitioner, learned counsel Mr. Aniruddha Garge for the Respondent Nos. 2 and 3 and learned AGP for the Respondent No.1 on 10th September, 2020 and placed the matter for pronouncement of judgment on 15th September, 2020. When we were in the process of preparing the draft of our judgment, a praecipe was received by office of the High Court by email on 12th September, 2020 sent by Mr. A. A. Garge learned counsel appearing for the Respondent Nos. 2 and 3. By said praecipe, he circulated the judgment of Supreme Court in the case of ***Mohandas and Others V/s. State of Maharashtra and Others*** in Civil Appeal No. 831 of 2020 and also submitted that he wish to make certain further submissions. In the said praecipe submitted by Mr. Garge, Advocate for the Respondent Nos. 2 and 3 certain submissions were set out on the basis of Writ Petition No. 7538 of 2007 which has been admitted and pending for disposal.

10. In view of the said praecipe, by our order dated 15th September, 2020 we directed that Writ Petition No. 7538 of

2007 be also placed alongwith the above Petition and further clarified that the parties would be heard on the issues raised in the said praecipe of the Advocate of the Respondent Nos. 2 and 3 and also parties would be heard with respect to Writ Petition No. 7538 of 2007. When we were preparing the draft of the Judgment before the receipt of praecipe of Advocate Garge, we noticed the Judgment of the Hon'ble Supreme Court reported in *(2018) 2 Supreme Court Cases 784 in the matter between Chhabildas Vs. State of Maharashtra and Others* which will have bearing on certain issues raised and therefore, asked Advocates of all the parties to advance their submissions before us on 17th September, 2020 on all additional aspects including the aforesaid judgment.

11. On 17th September, 2020, we heard the further arguments of the learned counsel for the parties. They also submitted written notes of arguments.

12. Mr. Cama learned counsel for of the Petitioner pointed out Sections 49, 126, 127 of the MRTP Act. He relied

on the following judgments:-

1. Chhabildas (Supra)

2. Pankaj & Anr. Vs. State of Maharashtra & Ors. [Writ Petition No. 3471 of 2009 (Aurangabad)]

3. Pankaj & Anr. Vs. State of Maharashtra & Ors. [SLP (C)No. 867 of 2019 (Supreme Court)]

4. Hasmukhrai V. Mehta Vs. State of Maharashtra & Ors. [2015 (3) SCC 154]

5. Lalita Gyanchandji Sanchaity Vs. State of Maharashtra & Ors. [Writ Petition No. 4491 of 2016 (Nagpur)]

13. Mr. Cama submitted that since 10th February, 1994 the said land was reserved in the revised Development Plan for extension of existing primary school. The Petitioner issued purchase notice under Section 49 of the MRTP Act on 18th November, 2002 and by order dated 26th March, 2003 the Director, Town Planning, Pune directed Chief Officer, Lonavala Municipal Council to ensure that the acquisition process be completed by issuing notification under the 1894 Act within six months. As, no steps were taken for acquisition, Writ Petition

No. 7538 of 2007 was filed by the Petitioner which was simplicitor admitted by order dated 8th April, 2008. He submitted that thereafter notice under Section 127 was issued on 20th December, 2017 and two years period provided under the said Section lapsed on 20th December, 2019. As no steps were taken for acquisition i.e. no declaration under Section 19 of the Act of 2013 was issued and published, in view of the statutory mandate of Section 127, the reservation on the subject land stood lapsed.

14. In view of the contentions raised in the praecipe submitted by the Advocate for the Respondent Nos. 2 and 3 contending that as the purchase notice issued by the Petitioner under Section 49 of Act was already confirmed, Petitioner is prevented from invoking Section 127 of the MRTTP Act, Mr. Cama contended that there is nothing in law that prevents a person who has taken steps under Section 49 of the Act to separately and independently take steps under Section 127 of the MRTTP Act. He relied on the aforesaid judgment in the case of ***Chhabildas*** (*Supra*) and submitted that the legal position is

no longer *res integra*. On the basis of said judgment, he submitted that if purchase notice is issued under Section 49 and if no steps are taken for acquisition, then such person has following two options:-

(i) to move the writ court for a direction pursuant to Section 126 of the MRTP Act, that the acquisition be completed by the State; and

(ii) if more than 10 years has lapsed from the Development Plan, to issue a second purchase notice, under Section 127 of the MRTP Act, calling upon the concerned authorities to acquire the land.

15. It is submitted that admitted position on record show that Respondents have failed to issue requisite declaration under Section 126 of the MRTP Act and therefore, the Petitioner rightly invoked Section 127 of the MRTP Act. Since two years period has expired after issuance of statutory notice under Section 127 of the MRTP Act, the reservation has lapsed and accordingly the subject land stands de-reserved. He further

submitted that the judgment of Supreme Court in the case of ***Mohandas***(Supra) relied on by the Respondent Nos. 2 and 3 in fact, supports the Petitioner's case. He pointed out that in that case a declaration was issued as contemplated under Section 126 of the MRTP Act and as Section 127 was invoked only after lapse of eight years, the Supreme Court declined to grant any relief. He submitted that it be declared that the reservation of the Petitioner's land has lapsed and also direction be issued to process the Development Plan of the Petitioner's land in accordance with law expeditiously. He submitted that if the reliefs in this Writ Petition are granted then he has instructions to withdraw the Writ Petition No. 7538 of 2007.

16. Mr. Aniruddha Garge, the learned counsel for the Respondent Nos. 2 and 3 submitted that in the present case, Section 127 of the MRTP Act cannot be invoked as Petitioner had served notice under Section 49 of the MRTP Act and the same was confirmed by the Director, Town Planning, State of Maharashtra, Pune on 8th April, 2003. He submitted that on 26th August, 2003 the Respondent Nos. 2 had submitted to the

Collector proposal to acquire the land and has already deposited 2/3rd of the compensation on 10th November, 2004 with the District Collector, Pune. He submitted that Section 49 and 127 operate in different situation and once the notice under Section 49 is confirmed and according to which steps have been taken by the Respondent No.2, then the question of invoking Section 127 does not arise. He submitted that the Petitioner has already filed Writ Petition No. 7835 of 2007, which has been admitted on 8th April, 2008 and is pending for final disposal and therefore, Section 127 is not at all applicable. He relied on the aforesaid judgment in the case of *Mohandas* (Supra) and relied on paragraph 25 of the said judgment. He also relied on the judgment in the case of *Chhabildas* (Supra) and pointed out paragraph 7 of the said judgment.

REASONS AND CONCLUSIONS:

17. For considering the rival submissions, it is important to take into consideration Section 49 and Section 127 and also Section 126 of the MRTP Act as the same is referred in both the aforesaid Sections. We propose to examine the Petitioner's case

initially in the light of the provisions of Section 126 and Section 127 of the MRTP Act and thereafter the impact of steps, if any, taken under Section 49 of the MRTP Act by the Respondent No.2 and on the reliefs prayed in this Writ Petition.

18. At the outset it is required to be stated that the relevant Sections of the MRTP Act before amendment and the aboveresferred Judgments of the Supreme Court and this Court refers to the Land Acquisition Act, 1894 (*hereinafter referred to as the "1894 Act"*). The Land Acquisition Act, 1894 stands repealed by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (*hereinafter referred to as "2013 Act"*). Sections 126 and 127 of the MRTP Act were amended w.e.f. 29th August, 2015 by which "1894 Act" was substituted by "2013 Act" and Section 6 of the "1894 Act" was substituted by Section 19 of the "2013 Act". In Section 127 of the MRTP Act w.e.f. 29th August, 2015, twelve months period (earlier six months) was substituted by twenty four months.

19. Bare reading of Section 126 r/w. Section 127 of the MRTP Act contemplates following:-

(A) **Section 126 (1) of MRTP Act:**

If any land is required or reserved for any of the public purposes as specified in any draft regional plan, a Development or any other plan or town planning scheme under said Act, the same can be acquired by Planning Authority, Development Authority or any appropriate Authority, as the case may be, by following three methods:-

- (a) By agreement by paying an amount agreed to, or
- (b) By granting Floor Space Index(FSI) or Transferable Development Rights (TDR) or
- (c) By making application to the State Government for acquiring such land under the provisions “2013 Act”(Earlier “1894 Act”).

It is to be noted that acquisition contemplated by method (a) and (b) is by consent between the land owner/lessee and the Planning Authority/Development Authority/Appropriate Authority and acquisition by method (c) is compulsory

acquisition.

(B) **Section 126(2) of the MRTP Act:**

On receipt of application contemplated under Section 126 (1) (c) if the State Government is satisfied that the land specified in the application is needed for the public purpose therein specified, it may make declaration to that effect in the Official Gazette in the manner provided in Section 19 of the “2013 Act” (Earlier under Section 6 of the “1894 Act”).

No such declaration is to be made after the expiry of one year from the date of publication of the draft Regional plan, Development plan or any other Plan, or Scheme, as the case may be.

(C) **Section 126 (3) of the MRTP Act:**

On publication of declaration under Section 19 of “2013 Act” (Earlier under Section 6 of the 1894 Act”) as provided in Section 126(2), the steps to acquire land be taken as per the provisions of “2013 Act”(Earlier “1894 Act”), however the market value of the land shall be as provided in Section 126(3).

(D) **Section 126(4) of the MRTP Act:-**

If the declaration is not made within a period of one year then the State Government may make a fresh declaration for acquiring the land under the provisions of “2013 Act”(Earlier “1894 Act”) in the manner provided under Section 126(2) and (3), however market value of the land shall be the market value of the date of publication of declaration in the Official Gazette made for acquiring the land afresh.

(E) **Section 127 of the MRTP ACT:-**

If any such land is not acquired by agreement within 10 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 on the Planning Authority, the Development Authority or Appropriate Authority to that effect and if within 24 months(Earlier 12 months/6 months) from the date of service of such notice, the land is not acquired or

no steps as aforesaid are commenced for its acquisition, reservation, allotment or designation shall be deemed to have lapsed.

20. It is very significant to note that Section 126 makes reference to “draft Regional Plan, a Development or any other Plan or town planning scheme” whereas Section 127 of the said Act makes reference to “Final Regional Plan, or Final Development Plan.”

21. In the light of provisions of Sections 126 r/w. Section 127 of the MRTP Act the admitted factual position in this case reveals as follows:-

- (i) In the Development Plan revised and republished on 1st February, 1978 *interalia* the said plot was reserved for the purpose of extension of public primary school and extension of playground of the existing public primary school standing on CST No. 169 and 169/1.
- (ii) In the revised Development Plan published on 10th February, 1994 *interalia* the said plot was shown as

reserved for extension of said public primary school.

- (iii) The “Second Amended Approved Development Plan” was approved partly on 29th June, 2005 and approved for balance area on 18th August, 2006 and the same were brought into force w.e.f. 27th August, 2005 and 1st November, 2006 respectively.
- (iv) The ten year period as contemplated under the provisions of Section 127 of the MRTP Act expired on 1st November, 2016 after the “Second Amended Approved Development Plan” in its entirety came into force for entire Lonavala City.
- (v) The Petitioner issued notice under Section 127 of MRTP Act regarding said plot on 20th December, 2017.
- (vi) The said plot *interalia* continued to be affected by reservation for aforesaid purpose w.e.f. 1st February, 1978 i.e. for more than 39 years when purchase notice dated 20th December, 2017 was issued and in any case more than 10 years have expired after coming into force of “Second Amended Approved Development Plan”.
- (vii) Admittedly, the said plot is not acquired. As per the

submission of the learned Advocate of the Respondent Nos. 2 and 3 and as per the Affidavit-in-Reply dated 14th August, 2020 of the Chief Officer of the Lonavala Municipal Council following steps were taken for the acquisition of the said plot. Relevant portions of the affidavit is extracted as under:-

Paragraph 4 of the Affidavit-in-Reply:-

“4. I say that, the Purchase notice was issued under Section 49 of Maharashtra Regional Planning and Town Planning Act, 1966 and was confirmed by the Director, Town Planning, State of Maharashtra, Pune on 08.04.2003. I say that, accordingly, the proposal to acquire the land under this reservation had been submitted to the Collector, Pune on 26.08.2003 by the Hon. Council Resolution no. 89 dated 07.08.2003 according to which, the Respondent deposited the 2/3rd of the compensation amount i.e. Rs.35,64,332/- (Rs. Thirty five lakh, sixty four thousand four hundred and thirty two only) on 10.11.2004 with the District Collector, Pune.”

Paragraph 10 of the Affidavit-in-Reply:-

“10. I say that, adjacent to the present plot, the construction of the existing school was demolished

and a new building of the primary school has been erected. However, the present plot is reserved for the purpose of Reservation No.74 “Primary School Extension” and the issue laid down in the notice under Section 127 of the Maharashtra Regional Town Planning Act, 1966 dated 20.12.2017 for the purpose of land acquisition of the present plot has been presented before the Council meeting and the same is under consideration.”

22. Thus, what is very important and significant is as to what steps are required to be taken for acquisition as contemplated by Section 126 r/w. Section 127 of the MRTP Act. The Supreme Court in various Judgments have considered the said issue. The Supreme Court made detailed analysis of Section 126 and Section 127 of the MRTP Act in the following cases:-

1. ***Municipal Corporation of Greater Bombay V/s. Hakimwadi Tenants Association reported in 1988 Supreme Court SCC 55***
2. ***Girnar Traders (2) V/s. State of Maharashtra reported in (2007) 7 SCC 555.***
3. ***Shrirampur Municipal Council, Shrirampur V/s. Satyabhamabai Bhimaji Dawkher and others reported in***

(2013) 5 SCC 627.

4. *Girnar Traders (3) V/s. State of Maharashtra reported in (2011) 3 SCC 1*
5. *(2018) 2 Supreme Court Cases 784 in the matter between Chhabildas Vs. State of Maharashtra and Others*

The following legal position emerges from the above Supreme Court Judgments:-

- (i) *Section 127 of the Act is a part of the law for acquisition of lands required for public purposes, namely, for implementation of schemes of town planning. The statutory bar created by Section 127 providing that reservation of land under a development scheme shall lapse if no steps are taken for acquisition of land within a period of 24 months (earlier 12 months/6 months) from the date of service of the purchase notice, is an integral part of the machinery created by which acquisition of land takes place.*
- (ii) *The period of 10 years provided in Section 127 of the said Act is long enough. The Development or the Planning Authority must take recourse to acquisition with*

some amount of promptitude in order that the compensation paid to the expropriated owner bears a just relation to the real value of the land as otherwise, the compensation paid for the acquisition would be wholly illusory. Such fetter on statutory powers is in the interest of the general public and the conditions subject to which they can be exercised must be strictly followed.

- (iii) When sections 126 and 127 of the MRTTP act are conjointly read, it is apparent that the legislative intent is to expeditiously acquire the land reserved under the Town Planning Scheme and, therefore, various periods have been prescribed for acquisition of the owner's property.*
- (iv) During one year of the publication of the draft regional plan, two steps need to be completed, namely, (i) application by the appropriate authority to the State Government under Section 126(1) (c); and (ii) declaration by the State Government on receipt of the application mentioned in Clause (c) of Section 126(1) on satisfaction of the conditions specified under Section*

126(2). The only exception to this provision has been given under Section 126(4).

(v) The step taken under the section 127 within the time stipulated should be towards acquisition of land. It is a step of acquisition of land and not step for acquisition of land. It is trite that failure of authorities to take steps which result in actual commencement of acquisition of land cannot be permitted to defeat the purpose and object of the scheme of acquisition under the MRTP Act by merely moving an application requesting the Government to acquire the land, which Government may or may not accept. Any step which may or may not culminate in the step for acquisition cannot be said to be a step towards acquisition.

(vi) The step towards acquisition would really commence when the State Government permits the acquisition and as a result thereof publishes the declaration under section 6 of the 1894 Act/Section 19 of "2013 Act". The acquisition commences with the publication of declaration under section 6 of the 1894 Act /Section 19

of “2013 Act”. The publication of the declaration under sub-sections (2) and (4) of Section 126 read with Section 6 of the 1894 Act / Section 19 of “2013 Act” is a sine qua non for the commencement of any proceedings for acquisition under the MRTP Act. It is Section 6 declaration/Section 19 declaration which would commence the acquisition proceedings under the MRTP Act and would culminate into passing of an award as provided in sub-section (3) of Section 126 of the MRTP Act. Thus, unless and until Section 6 declaration/Section 19 declaration is issued, it cannot be said that the steps for acquisition are commenced.

(vii) Section 127 permitted inaction on the part of the acquisition authorities for a period of 10 years for dereservation of the land. Not only that, it gives a further time for either to acquire the land or to take steps for acquisition of the land within a period of 24 months (Earlier 12 months/6 months) from the date of service of notice by the landowner for dereservation. The steps

towards commencement for the acquisition in such a situation would necessarily be the steps for acquisition and not a step which may not result into acquisition and merely for the purpose of seeking time so that Section 127 does not come into operation.

(viii) 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.

23. Thus, as per settled legal position the steps towards acquisition as contemplated under Section 127 of the MRTP Act, means when the State Government permits the acquisition and as a result thereof publishes the declaration under Section 6 of the “1894 Act” and now under Section 19 of the “2013 Act”.

24. In the present case, the only step taken after service of notice under Section 127 is that, as the said issue is subject

matter of finance and policy, a report has been submitted before the Council meeting for its decision and same is currently under consideration before the Council meeting. The said step cannot be considered as steps of acquisition of the said land as contemplated under Section 126 read with Section 127 of the MRTP Act. It is settled legal position that the State Government should have permitted the acquisition and should have published declaration under Section 19 of the “2013 Act”, which is admittedly not done.

25. If factual position after the issuance of purchase notice dated 20th December, 2017 is seen, then it is very clear that there are no steps taken for the acquisition of the said plot within time limit of two years as mandated by Section 127 of the said Act and therefore, the said plot is deemed to have been released from such reservation. The purchase notice is dated 20th December, 2017 and 24 months expired on 20th December, 2019. In these circumstances, case of the Respondent Nos. 2 and 3 that due to outbreak of the COVID-19 pandemic, the Council meeting has not been conducted since February-2020

has no merit and irrelevant. In any case, the mandatory period of 24 months after issuance of purchase notice as per Section 127 of the MRTP Act was completed on 20th December, 2019, much before outbreak of the COVID-19 pandemic.

26. Now we will deal with the issue whether notice under Section 127 of the Act could be at all issued in view of the Petitioner already having issued notice under Section 49 and a Writ Petition filed by the Petitioner arising out of the said notice is still pending in this Court. In the Affidavit-in-Reply dated 14th August, 2020 the action taken by the Respondent No.2 when the earlier purchase notice dated 18th November, 2002 under Section 49 of the MRTP Act was issued are set out. It is stated that the said notice was confirmed by the Director, Town Planning, State of Maharashtra, Pune on 08.04.2003 and the proposal to acquire the land under this reservation had been submitted to the Collector, Pune on 26.08.2003. The Council vide Resolution No. 89 dated 07.08.2003 has deposited the 2/3rd of the compensation amount i.e. Rs.35,64,432/- (Rs.Thirty five lakh, sixty four thousand four hundred and

thirty two only) on 10.11.2004 with the District Collector, Pune.

27. The question to be considered is whether any steps taken by the Respondent Nos. 2 and 3 are in compliance with Section 49 and are as per the provisions of law. In the abovereferred Judgment of Hon'ble Supreme Court in ***Chhabildas*** (Supra) case, the effect of purchase notice issued under Section 49 and the effect thereof on the right to get reservation lapsed under Section 127 of the MRTP Act by issuing fresh notice after lapse of 10 years as contemplated under Section 127 of the MRTP Act was considered. The Hon'ble Supreme Court has held as follows:-

“23. On a conspectus of the above authorities, the following position in law emerges:

23.1 In all Section 49 cases, where a purchase notice has been served and is confirmed within the period specified, the appropriate authority must make an application to acquire the land within one year from the date of confirmation of the notice. If it does not do so, the reservation, designation, etc. shall be deemed to have lapsed.

23.2 If within the period specified in Section 49(7), the appropriate authority makes the requisite application, then the State Government may acquire the land by making a declaration under Section 6 of the Land Acquisition Act as set out under Section 126(4), wherein

the market value shall be the market value of the land as on the date of the Section 6 declaration. Ordinarily, such declaration must be made within 1 year of the date of receipt of the requisite application. In case this not done, it will be open to the aggrieved person to move the Court to direct the State Government to make the requisite declaration immediately.

23.3. If 10 years have passed from the date of publication of the plan in question, and a purchase notice has been served under Section 127, and no steps have been taken within a period of one year from the date of service of such notice, all proceedings shall be deemed to have lapsed. Thus, even in cases covered by Section 49, the drill of Section 126(4) and Section 127 will have to be followed, subsequent to the appropriate authority making an application to acquire the land within the period specified in Section 49(7)".

28. The Hon'ble Supreme Court in the judgment dated 29th January, 2020 in the case between ***Mohandas and Others V/s. State of Maharashtra and Others*** in Civil Appeal No. 831 of 2020 held as follows:-

"25. The right would accrue to the owner under Section 127 of the Act to serve notice thereunder only if a declaration is not published within ten years of the Development Plan under Section 126(4) of the Act, inter alia. The High Court has, undoubtedly, noticed that the final Development Plan came into force on 24.08.1984. It further noticed that there is a declaration or Notification under Section 126(4) of the Act on 03.09.1992. This means, within ten years from 24.08.1984, there is action, as contemplated under Section 126(4) of the Act. Under Section 127 of the Act, therefore, any notice which was

given may not hold good going by the letter of the law.”

“26.The problem for appellants, however, is the action on the part of the respondent issuing declaration under Section 126(4) of the Act on 03.09.1992. Lapsing of reservation contemplated under Section 127 of the Act will occur only if the conditions mentioned therein are fulfilled. The indispensable conditions is that after the reservation of the land, inter alia, under any Plan, for a period of ten years, the land is not acquired by agreement within that period or proceedings for acquisition under the Act, i.e., declaration under Section 126(4) of the Act, inter alia, is not published within the said period. If either of the two conditions exist, a notice is to be issued setting in motion the process for lapsing reservation. If, before issuance of notice, action is already taken by issuance of notification/declaration by the respondent within ten years of the final Development Plan, it will render the notice ineffective in law. The result is that the High Court was right in finding that the appellant was not entitled to the relief based on lapsing of reservation under Section 127 of the Act. This is a case, therefore, where the Development Plan also stood revised under Section 38 of the Act, bringing in consequences, as noticed by this Court in Prafulla C. Dave (supra)”.

(Emphasis Supplied)

29. Thus, it is clear that steps taken by the Respondent Nos. 2 and 3 after receipt of purchase notice under Section 49 are not the steps as contemplated under Section 49 r/w. Section 126 of the MRTP Act. What is required is the publication of declaration under Section 6 of the “1894 Act”/under Section 19

of “2013 Act” as required under Section 126(4) of the MRTP Act, which is admittedly not done. Therefore, the Petitioner has rightly issued purchase notice under Section 127 of the MRTP Act as there is no declaration issued under Section 126(4) of the MRTP Act. There is no substance in the contention raised by Mr. Garge on behalf of Respondent Nos. 2 and 3 that once Section 49 of the MRTP Act is invoked, the Petitioner is prevented from invoking Section 127 of the said Act. As rightly submitted by Mr. Cama on behalf of Petitioner, there is nothing in law that prevents a person who has taken steps under Section 49 of the MRTP Act, to take steps under Section 127 of the MRTP Act. In fact, the said issue is no longer *res integra* in the light of ***Chhabildas*** judgment wherein it is specifically held that even in cases covered by Section 49 of the MRTP Act, the drill of Section 126(4) and Section 127 will have to be followed.

30. In the present case, admittedly Section 19 Notification under the “2013 Act” was not issued and hence advertent to the principles of law laid down by the Supreme

Court in the aforesaid decisions it would be required to be held that reservation of the plot in question had lapsed by operation of Section 127 of the M.R.T.P. Act, 1966. In the light of aforesaid observations, the reservation of the Petitioner's land in question has lapsed under Section 127 of the MRTP Act and the land has become available to the Petitioner to be developed as otherwise permissible, as in the case of the adjacent land under the Development Plan.

31. Writ Petition therefore deserves to be allowed and is accordingly allowed in terms of prayer clause (a). The State Government is directed to notify the lapsing of the reservation by an order to be published in the Official Gazette as per the requirement of Section 127(2) of the MRTP Act which shall be done as expeditiously as possible and preferably within a period of six months from today. Thereafter, if fresh plans for building permission are submitted by the Petitioner, then the same be considered expeditiously. Rule is made absolute in aforesaid terms. No order as to costs.

32. This judgment will be digitally signed by the Private Secretary of this Court. Associate of this Court is permitted to forward the parties copy of this order by e-mail. All concerned to act on digitally signed copy of this order.

[MADHAV J. JAMDAR, J.]

[R. D. DHANUKA, J.]