

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***ORDINARY ORIGINAL CIVIL JURISDICTION*****WRIT PETITION NO. 1569 OF 2016**

**The Bharatiya Adhyatmic Society,)
a Public Charitable Trust registered)
under the Societies Registration Act)
and the Bombay Public Trust Act,)
1960 having its office at 1,)
Shanti Sadan, 9th Road, Chembur,)
Mumbai 400 071)**

..... Petitioner**VERSUS**

**1. State of Maharashtra,)
through the office of the)
Government Pleader)**

**2. Chief Secretary,)
State of Maharashtra,)
Madam Cama Road, Hutatma)
Rajguru Chowk, Mumbai 400 032)**

**3. District Collector,)
Mumbai Suburban District,)
Admn Building, Bandra (E),)
Mumbai 400 051)**

**4. Executive Engineer,)
(Development Plan),)
Municipal Corporation of Greater)
Mumbai, M Ward)**

**5. Chembur Krida Kendra,)
Postal Colony, R.C.Marg, Chembur,)
Mumbai 400 071)**

..... Respondents**ALONG WITH
WRIT PETITION NO. 1977 OF 2016**

**Chembur Multipurpose Complex,)
 Being a Society registered under)
 Societies Registration Act, 1860,)
 having its registered office at)
 Chembur Krida Kendra,)
 Postal Colony, R.C.Marg, Chembur,))
 Mumbai 400 071)**

..... Petitioner

VERSUS

**1. State of Maharashtra,)
 through the Government Pleader,)
 (State), Original Side, High Court,)
 Bombay)**

**2. Chief Secretary,)
 State of Maharashtra, Mantralaya,)
 Madam Cama Road, Hutatma)
 Rajguru Chowk, Mumbai 400 032)**

**3. Collector,)
 Mumbai Suburban District,)
 having office at Administrative)
 Building, Bandra (East),)
 Mumbai 400 051)**

**4. Executive Engineer,)
 (Development Plan), 4th Floor,)
 Annexe Building, Municipal)
 Corporation of Greater Mumbai,)
 Corporation Building,)
 Mumbai 400 001)**

**5. The Bharatiya Adhyatmic Society,))
 Being a Public Charitable Trust,)
 having office at 1, Shanti Sadan,)
 9th Road, Chembur,)
 Mumbai 400 071)**

..... Respondents

Mr.V.K.Ramabhadran, Senior Advocate, a/w. Ms.Subra Karmakar for the Petitioner in WP/1569/2016 and for the Respondent in WP/1977/2016.

Mr.Ramchandra K.Mendadkar for the Petitioner in WP/1977/2016.

Mr.Kedar Dighe, Assistant Government Pleader for the State – Respondent nos. 1, 2 and 3 in WP/1977/2016.

Ms.Geeta Shatri, Additional Government Pleader for the State - Respondent nos. 1 to 3 in WP/1569/2016.

Mr.Yashodeep Deshmukh, a/w. Mr.R.Y.Sirsikar for the Respondent no.4, M.C.G.M. in WP/1977/2016.

Mr.Yashodeep Deshmukh, a/w. Ms.Vaidehi Deshmukh, Mr.Kedar Khambhate for the Respondent no.4, M.C.G.M. in WP/1569/2016.

CORAM : R.D. DHANUKA, J.

RESERVED ON : 15th OCTOBER, 2019

PRONOUNCED ON : 6th FEBRUARY, 2020

JUDGMENT :

By Writ Petition No.1569 of 2016, Bhartiya Adhyatmic Society has prayed for a writ of Certiorari or writ in the nature of Certiorari seeking an appropriate writ, order or direction for quashing and setting aside order dated 20th January,2016 passed by the Chief Secretary, State of Maharashtra thereby setting aside order of grant of land bearing Survey No. 14, C.S.T. No.518, Plot No.3-A, area admeasuring 225 sq.mtrs. to the petitioner vide Government Memorandum and directing the Collector of Mumbai Suburban District to take possession of the land in question within 60 days from the date of the said order and to handover the said land to the Municipal Corporation of Greater Mumbai for further use as per the development plan.

2. Writ Petition No.1977 of 2016 is filed by the Chembur Multipurpose Complex under Article 226 of the Constitution of India

inter alia praying for writ of Certiorari or any other appropriate writ, order or direction in the nature of Certiorari for quashing the impugned order dated 20th January, 2016 and for order and direction against the respondent no.2 to hear the review application of the said petitioner on merits. The said petitioner is respondent no.5 in the Writ Petition No. 1569 of 2016. By consent of parties, both these writ petitions were heard together finally and are being disposed off by a common order.

3. I will first summarize the submissions made by the learned counsel for the parties in Writ Petition No.1569 of 2019 followed by the submission made by the learned counsel in Writ Petition No.1977 of 2016 and thereafter would deal with those submissions in the later part of this judgment.

The facts and submissions of the petitioner in Writ Petition No.1569 of 2016 :-

4. It is the case of the petitioner that on 17th February, 1996, the petitioner was registered under the provisions of the Societies Registration Act and under the Bombay Public Trusts Act, 1950. On 3rd February, 2009, the State of Maharashtra issued a notification through Under Secretary, Revenue and Forest Department informing that the land bearing Survey No.14(518) – C.T.S. No.518, Plot no.3-A area admeasuring about 225 sq.mtrs. was allotted to the petitioner for constructing a hall to conduct religious ceremonies post death etc. subject to charging market value as prevalent under Maharashtra Land Revenue Code, 1966 and Rule 40 of Maharashtra Land Revenue (Allotment of Land) Regulations, 1971, subject to the various conditions set out therein.

5. On 9th March, 2009, the petitioner addressed a letter to the Collector, Mumbai Suburban District and acknowledged the said Government notification dated 3rd February, 2009 and conveyed that the petitioner was agreeable by the terms and conditions set out in the said Government notification. The petitioner also informed that it was awaiting communication for the survey and demarcation of the land free from all encumbrances. In the said letter, the petitioner requested the Collector, Mumbai Suburban District to fix the land price as prevalent in August 1998 when the petitioner applied for the said land whereas the decision to allot the said land was taken only in the month of August/September 2002. It was however made clear in the said letter that if for any reason, the request of the petitioner was not found acceptable, the land value be fixed as prevalent in August/September 2002 when the land was actually allotted to the petitioner.

6. On 9th April, 2010, the Revenue Department addressed a letter to the District Collector directing him to handover the possession of the said land to the petitioner. On 6th July, 2010, the learned District Collector addressed a letter to the petitioner informing the petitioner that an approval of plot of 225 sq.mtrs out of the said land was granted vide Government, Revenue and Forest Department as per the provisions given in Rule 40 of Maharashtra Land Revenue (Allotment of Government Land) Regulations, 1971, on the terms/conditions after recovering cost of possessory rights as per prevailing market rate of ready reckoner of 2009 at the rate of Rs.16,000/- per sq. ft. and conveyed that an amount of Rs.36,00,000/- was being charged for the area of 225 sq.mtrs. The petitioner was called upon to deposit the amount for possessory rights as mentioned in the said letter in the

name of the District Collector, Mumbai Suburban District in the office of the District Collector to enable the said office to take further action.

7. The petitioner vide its letter dated 3rd December, 2010 to the Collector, Mumbai Suburban District thanked the Collector for allotment of the said land and informed the Collector that on inspecting the plot, the petitioner found that there was a structure built on a portion of the said plot. The petitioner requested the Collector to arrange to remove the said structure and to give vacant and peaceful possession of the plot, free of encumbrances at the earliest to the petitioner.

8. On 13th January, 2011, the District Collector addressed a letter to the Executive Engineer (East), Mumbai Slum Improvement Board recording that the State Government had given its approval to the petitioner for the said plot. Implementation as per Government approval was in process. The District Collector informed that the petitioner vide its letter dated 5th January, 2011 had requested for removal of the structure of gymnasium at Postal Colony, Chembur and unencumbered possession of the sanctioned land be given to the petitioner. It was further mentioned that the approval for temporary structure of gymnasium was to be in force for five years from 20th December, 2002 which period was over. The decision was taken by the Government to grant the said land to the petitioner and thus temporary structure on the said land should be removed and the unencumbered Government land should be given in possession to the petitioner.

9. It was the case of the petitioner that the petitioner came to know

subsequently that MHADA had issued an order under which the petitioner in Writ Petition No.1977 of 2016 was given custody of the building of the structure on temporary basis for a period of five years w.e.f. 20th December, 2002 and that the ownership of the said structure on the said plot was that of the Government.

10. On 20th December,2002, an agreement was executed between the petitioner in Writ Petition No.1977 of 2016 and the Collector whereby the said petitioner agreeing to take possession of the said gymnasium specifically stating that the ownership thereof would remain with the State Government and that the agreement would be in force only for a period of five years. It is the case of the petitioner in Writ Petition No.1569 of 2016 that the said petitioner in Writ Petition No. 1977 of 2016 continued to remain in illegal occupation beyond the said date without any order of any authority extending the right to occupy the building in the very same plot which was allotted to the petitioner.

11. On 20th January,2011, the Maharashtra Slum Improvement Board addressed a letter to the petitioner in Writ Petition No.1977 of 2016 recording that the said gymnasium was transferred to the petitioner in the said writ petition for use and maintenance vide office order dated 28th January,2003 for five years as per the condition in the agreement. The period of the said agreement was over and the Government had taken decision to grant the said land to the petitioner in Writ Petition No.1569 of 2016. It was recorded that the possession of the said gymnasium was handed over to the petitioner in Writ Petition No.1977 of 2016 entirely on temporary basis. The petitioner in that Writ Petition No.1977 of 2016 was called upon to vacate the said premises within 30 days from the date of receipt of the said notice to enable the

State Government to take proper action for demolition of the said premises.

12. On 16th March, 2011, the District Collector, Mumbai Suburban District addressed a letter to the Executive Engineer (E), Mumbai Slum Improvement Board informing that the State Government had given the said land to the Executive Engineer (E), Mumbai Slum Improvement Board without any encumbrances thereon for the purpose of construction of gymnasium. The said temporary construction is required to be removed and the unencumbered Government land is required to be handed over to the office of the District Collector, Mumbai Suburban District. It was made clear that if the petitioner in Writ Petition No.1977 of 2016 fails to remove the temporary construction on the said land within the prescribed period, the said construction will be removed by the Executive Engineer and the unencumbered Government land would be handed over to the office of the District Collector, Mumbai Suburban District immediately.

13. In the said letter, it was further recorded that since further action in respect of the land granted to the petitioner was not being materialized, the Government revenue of Rs.36,00,000/- was yet to be recovered. It was further stated that as per the Government directions, it was necessary to recover the amount from the petitioner in Writ Petition No.1569 of 2016 and to give possession of the said land to the said petitioner and to take immediate action in that regard and to appraise the Government accordingly.

14. It is the case of the petitioner that the petitioner in Writ Petition No.1977 of 2016 appears to have filed a revision application before the

learned Revenue Minister. The petitioner in Writ Petition No.1569 of 2016 was impleaded as a respondent no.3 in the said revision application. It is the case of the petitioner that without issuing any notice to the petitioner, the learned Revenue Minister passed an order on 4th June, 2012 in the said revision application filed by the petitioner in Writ Petition No.1977 of 2016 cancelling the allotment of the land dated 3rd February,2009 which was made in favour of the said petitioner.

15. Sometime in the year 2012, the petitioner impugned the said order dated 4th June,2012 passed by the learned Revenue Minister by filing a writ petition bearing no.1921 of 2012 in this court. By an order dated 9th January,2013, this court has set aside the said order dated 4th June, 2012 passed by the learned Revenue Minister and remanded the matter back for *de nova* consideration. The petitioner filed written submissions before the learned Revenue Minister. The petitioner also raised issue of lack of jurisdiction before the learned Revenue Minister in deciding the said revision application. On 10th August,2014, the learned Revenue Minister once again passed similar order and upheld his earlier order dated 4th June, 2012.

16. The petitioner filed writ petition bearing lodging no.2868 of 2014 in this court impugning the order passed by the learned Revenue Minister dated 10th August, 2014. It was the case of the petitioner that Shri Eknath Rao Khadse, the then leader of opposition by his letter dated 14th February,2011 had recommended the Revenue Minister to allot the land to the petitioner in Writ Petition No.1977 of 2016 and thus could not have heard the said revision application on 18th December, 2014. During the pendency of the said writ petition before

this court, the learned District Collector addressed a letter to the learned Additional Chief Secretary recommending that it would be appropriate that if the land shall be allotted to the petitioner in Writ Petition No.1977 of 2016.

17. By an order dated 25th February,2015, this court in the said Writ Petition (L) No.2868 of 2014 filed by the petitioner, set aside the said order dated 10th August,2014. It was pointed out before this court that the then leader of opposition in the previous Government who had recommended the land in question in favour of the petitioner in Writ Petition No.1977 of 2016 was the present Minister (Revenue). In these circumstances, this court thought it appropriate that the matter be decided by some other person/authority instead of Minister (Revenue). This court accordingly directed that the matter be decided by the learned Chief Secretary, Government of Maharashtra to which the learned counsel for the petitioner in Writ Petition No.1569 of 2016 who was the petitioner in Writ Petition (L) No.2868 of 2014 and the learned counsel for the respondent no.6 therein who is the petitioner in Writ Petition No.1977 of 2016 raised no objection.

18. This court while disposing off the said writ petition made it clear that the learned Chief Secretary shall ignore the said letter dated 18th December,2014 to the Additional Chief Secretary (Revenue) recommending the allotment of the said land to the petitioner in Writ Petition No.1977 of 2016. On 13th July, 2015, there was a meeting in the Chamber of the learned Chief Secretary to the Government of Maharashtra. It is the case of the petitioner that in the said meeting, the petitioner through its counsel confirmed that the petitioner was ready and willing to pay the market value of the land/plot according to

the ready recoknor.

19. The learned Chief Secretary however asked the officer present in the said meeting to indicate the reservation of the said land, if any, in the development plan. The officials who were present in the said meeting informed the learned Chief Secretary that under the said development plan, the land was earmarked for a Municipal Primary School. The representative of the petitioner in Writ Petition No.1977 of 2016 were present in the said meeting informed the learned Chief Secretary that under the said development plan the adjacent land had been allotted and not the suit land under the said development plan. The petitioner by its advocate's letter dated 17th July, 2015 to the learned Chief Secretary, Government of Maharashtra recorded what according to the petitioner transpired in the said meeting.

20. The petitioner also placed on record that at the relevant time, none of the authorities of the Government took cognizance of the development plan nor such alleged legal reservation was brought to the notice of this court in the earlier two writ petitions. The petitioner placed on record that no hearing was taken place pursuant to the order of this court. Learned Chief Secretary was requested to give notice of hearing atleast three weeks in advance of the date of hearing. It was recorded that the said meeting was held for eight minutes on 13th July, 2015.

21. There was a meeting held in the chamber of the the learned Chief Secretary on 23rd September,2015. The petitioner through its advocates' letter dated 23rd September,2015 recorded what according to the petitioner transpired in the said meeting on 23rd September,2015 in

the chamber of the learned Chief Secretary. The petitioner also raised an issue of maintainability of the revision application filed by the petitioner in Writ Petition No.1977 of 2016. The petitioner also placed on record that the learned Chief Secretary had pointed out in the said meeting that he had obtained factual data stating that Plot No.3-A was reserved for municipal school. The petitioner recorded that the city survey plan obtained from the Collector office indicated contrary to the stand taken by the authority that the Plot No.3-A was reserved for a municipal school. The allotment of the land which was cancelled in the earlier order also was not cancelled on the ground of any such alleged reservation of plot for the municipal school in the development plan.

22. The learned Chief Secretary directed the concerned officer to supply the copy of the report and relevant documents to the petitioner which were obtained by the learned Chief Secretary. On 27th July, 2015, the District Collector, Mumbai Suburban District informed the learned Chief Secretary that the report was called from the Executive Engineer, Development Plan, Municipal Corporation and according to the said report as per the revised development plan of M Ward and more particularly the proposed development plan of 2034 sq., Plot No.3-A, C.T.S.No.518 was demarcated in the map by blue colour which had been reserved for Municipal Primary School. The said land was in residential zone.

23. On 6th October, 2015, the District Collector, Mumbai Suburban District forwarded a copy of the map from the Municipal Corporation showing reservation of the land, the opinion on the issue of reservation submitted by the Deputy Chief Engineer (Development Planning – 1),

Municipal Corporation of Greater Mumbai and the copies of the map as per Development Plan 1991 and as per draft Development Plan 2034 to the petitioner in both the writ petitions. It was stated that as per proposed development plan 2034 of the 'M' Ward, the said Plot CTS 518 Vill, Chembur Plot No.3-A demarcated in blue colour in the enclosed map was reserved for Municipal Primary School. The said land was situated in the commercial-residential zone and was required to be developed for the same purpose and the structure of the said gymnasium on the said plot was not permissible.

24. The petitioner vide its letter dated 8th October, 2015 to the learned Chief Secretary referred to the documents received from the office of the District Collector, Mumbai Suburban District and informed that the petitioner was in process of obtaining translation of the documents and requested the learned Chief Secretary for personal hearing in the matter to enable the petitioner to make submissions on the documents now provided to the petitioner.

25. The petitioner vide its letter dated 19th October, 2015 to the learned Chief Secretary placed on record that as late as on 30th June, 2015 by a letter, the office of the City Survey Officer at Chembur had confirmed to the learned District Collector that the Plot No.3-A was admeasuring 225 sq.mtrs. and had recommended that if the area of 38.0 sq.mtrs. which was occupied by the gymnasium in C.T.S.No.518, Plot No.3-A was deducted, the area of 18 sq.mtrs. is open. The City Survey Officer had requested to accommodate both the organizations in the said land. It was placed on record that if according to the Municipal Corporation, the said Plot No.3-A was reserved for the Municipal Primary School and the same was published as part of draft

development plan as early as 25th February, 2015, how could the City Survey Officer in his letter dated 30th June, 2015 confirm that 187 sq.mtrs. was vacant and on such plot both the organizations could be accommodated.

26. The petitioner in the said letter contended that the said Plot No.3-A was vacant and not reserved for any Municipal Primary School considering that on the very adjoining plot, there already exists a Municipal School. The draft plant relied upon by the Deputy Chief Engineer (Development and Planning -1), Municipal Corporation of Greater Mumbai and provided to the petitioner which was a draft plan which no longer existed as it had not been accepted by the State Government. The petitioner once again raised an issue of jurisdiction before the learned Chief Secretary to hear any application filed by the petitioner in Writ Petition No.1977 of 2016. The petitioner also relied upon the judgment of Supreme Court in support of the said plea.

27. The petitioner vide its letter dated 24th November, 2015 to the learned Chief Secretary(DP), Municipal Corporation of Greater Mumbai informed that from the draft plan of 2034, Designation Survey October 2015 which was uploaded on 30th October, 2015 on the website of the Municipal Corporation inviting comments from the public indicates that the plot allotted to the petitioner through the notification of the Government of Maharashtra was being shown in the draft plan as reserved for Municipal school. The petitioner contended that the plot which was already allotted to the petitioner as stated in the Government notification dated 3rd February, 2009 could not have been considered for reservation of the Municipal school. The petitioner requested the Chief Engineer (DP) to forthwith delete the reservation

of the plot for Municipal school and contended that the subject matter was subjudice and therefore the said plot could not have been reserved for Municipal school under the development plan 2034 at all.

28. On 20th January, 2016, the learned Chief Secretary passed an order on the said revision application filed by the petitioner in Writ Petition No.1977 of 2016 dismissing the said application dated 19th July, 2011 filed by the petitioner in Writ Petition No.1977 of 2016 before the learned Minister (Revenue) asking for the allotment of the land in question. The learned Chief Secretary has set aside the order of the grant of the land to the petitioner in Writ Petition No.1569 of 2016 vide Government Memo dated 3rd February, 2009 and directed the Collector, Mumbai Suburban District to take possession of the land in question within 60 days from the date of the said order and to handover the possession of the said land to the Municipal Corporation of Greater Mumbai for further use as per the development plan. In the said order, the learned Chief Secretary held that the land was reserved for the Municipal Primary School as per sanction development plan 1991 and the draft development plan for the period 2014-2034.

29. On 18th February, 2016, the City Survey Officer addressed a letter to the Deputy Chief Engineer (Development Planning) – 1, and after referring to the order dated 20th January, 2016 passed by the learned Chief Secretary, fixed a date for taking possession of the said land on 22nd February, 2016. On 20th February, 2016, Bhartiya Adhyatmic Society filed Writ Petition No.1569 of 2016. On 4th March, 2016, Chembur Multipurpose Complex filed Writ Petition No.1977 of 2016.

30. Mr. Rambhadran, learned senior counsel for the petitioner in

Writ Petition No.1569 of 2016 invited my attention to various paragraphs of the writ petition filed by his client, Writ Petition No.1977 of 2016 various affidavits filed by the authorities in the writ petition and findings rendered by the learned Chief Secretary in the impugned order. He also tendered written arguments. It is submitted by the learned senior counsel that on 3rd February,2009, the Government of Maharashtra had issued notification thereby allotting the said plot bearing no.3-A admeasuring 225 sq.mtrs. situated at Survey No. 14, C.S.T. No.518. The petitioner had applied for allotment of the said land in the month of August 1998.

31. Learned senior counsel pointed out sequence of the events to indicate as to how the respondent no.5 (petitioner in Writ Petition No.1977 of 2016) filed a revision application before the learned Minister (Revenue) of the State of Maharashtra and how the orders passed by the learned Minister (Revenue) came to be set aside by this court and finally remanding the matter back to the learned Chief Secretary, State of Maharashtra. He submits that the order passed by the learned Minister (Revenue) was passed without issuing any notice to the petitioner and without granting of any opportunity of being heard to the petitioner.

32. It is submitted by the learned senior counsel that neither the learned Minister (Revenue) who passed earlier two orders nor the learned Chief Secretary had any jurisdiction to hear the said revision application filed by the respondent no.5. He submits that even by consent of parties, learned Chief Secretary could not be vested with any jurisdiction to hear the said revision application filed by the respondent no.5 which jurisdiction, the learned Chief Secretary did not

have under the provisions of the Maharashtra Land Revenue Code, 1966. The petitioner had specifically raised an issue of jurisdiction to hear and entertain the revision application filed by the respondent no.5 before the learned Minister (Revenue) and thereafter even before learned Chief Secretary in the correspondence as well as in the written submissions.

33. It is submitted that the said objections raising issue of jurisdiction however came to be rejected by the learned Chief Secretary by holding that he had jurisdiction to decide the matter in view of the order passed by this court remanding the matter back to the Chief Secretary, State of Maharashtra. In support of the submission that even by consent of parties, authorities which does not have jurisdiction, cannot be conferred with jurisdiction, learned senior counsel placed reliance on the judgment of Supreme Court in case of **Zuari Cement Limited vs. Regional Director, Employees' State Insurance Corporation, Hyderabad & Others, (2015) 7 SCC 690** and in particular paragraphs 2, 5, 10 to 12, 15 and 16 and judgment of Supreme Court in case of **Babu Verghese vs. Bar Council of Kerala, (1999) 3 SCC 422**.

34. It is submitted by the learned senior counsel that even concession of law, if any, made by the learned counsel appearing for the parties before the court of law contrary to the statutory provisions is not binding on his clients. There could not be any estoppel against statute. In support of this submission, learned senior counsel placed reliance on the judgment of Supreme Court in case of **Vijay Narayan Thatte & Ors. vs. State of Maharashtra & Ors. (2009) 9 SCC 92** and in particular paragraphs 23 to 28 and also judgment of Supreme Court

in case of ***Chiranjilal Shrilal Goenka vs. Jasjit Singh & Ors., (1993) 2 SCC 507.***

35. It is submitted by the learned senior counsel that no reliance can be placed by the respondent no.5 on sections 247, 257 and 258 of the Maharashtra Land Revenue Code, 1966 which provides for appeal, revision and review respectively. He submits that the respondent nos. 1 to 4 cannot be allowed to supplant fresh reasons in the affidavit which reasons were not recorded in the impugned order passed by the authority which is subject matter of the writ petition. In support of this submission, learned senior counsel placed reliance on the judgment of Supreme Court in case of ***Mohinder Singh Gill & Anr. vs. The Chief Election Commissioner, New Delhi & Ors., (1978) 1 SCC 405*** and in particular paragraph 8.

36. It is submitted by the learned senior counsel that even otherwise under section 258(iv), review application could not have been entertained since the same was not filed within 90 days from the date of passing of the order. The learned Chief Secretary had purported to exercise the right after a period of seven years after such land was allotted to the petitioner on 3rd February, 2009 and passed the said order for cancellation of allotment on 20th January, 2016. The revision application was filed by the respondent no.5 only on 19th July, 2011. Even if the revision application could be treated as review, the same is barred by law of limitation. He submits that no application for condonation of delay was filed by the respondent no.5 before the learned Chief Secretary.

37. The impugned order passed by the learned Chief Secretary did

not indicate that the said order was passed exercising the power of review under section 258 of Maharashtra Land Revenue Code. The learned Chief Secretary did not consider nor recorded any reasons as to why the letter dated 27th July, 2015 addressed by the learned District Collector should be relied upon and why several other letters addressed by the same District Collector in past could be ignored. Learned senior counsel invited my attention to section 247 of the Maharashtra Land Revenue Code, 1966 and would submit that Schedule E of the Maharashtra Land Revenue Code, 1966 enumerates authorities whose order could be appealed and the authorities before whom the appeal could be filed.

38. It is submitted that neither the notification dated 3rd February, 2009 was issued by any of those authorities specified in column 1 of Schedule-E nor State Government had been specified in Column 2 as one of the authorities who could hear any appeal. He invited my attention to section 257 of the Maharashtra Land Revenue Code, 1966 and would submit that the State Government could exercise revisional powers only against any order passed by the Subordinate Officer (Revenue or Survey). The Government of Maharashtra thus had no jurisdiction to exercise any such revisional powers in respect of the notification dated 3rd February, 2009 issued by the State Government.

39. Learned senior counsel invited my attention to section 258 of the Maharashtra Land Revenue Code, 1966 and would submit that the said power of review under the said provision also could not have been exercised since preconditions stipulated under sub-section 2 of section 258 of the Code were not fulfilled. He submits that such powers could be exercised only if there is a discovery of new and important matter of

evidence or something similar to that and in that event the State Government ought to have issued a notice calling upon the petitioner as to why such allotment of the land should not be cancelled after discovery of such new and important matter of evidence. He submits that neither any such notice was issued nor any new important matter or evidence was discovered prior to the beginning of the first hearing which was held on 13th July, 2015.

40. Learned senior counsel placed reliance on the judgment of this court in case of ***Hukumchand Shankarlal Gandhi vs. State of Maharashtra, 2007 (2) Mh.L.J.652*** and in particular paragraphs 8 and 9 and would submit that the power of review under section 258 of the Maharashtra Land Revenue Code are akin to powers of review under Code of Civil Procedure and such power could be invoked only if the circumstances mentioned therein are satisfied. It is submitted that during the first hearing held on 13th July, 2015, the learned Chief Secretary called upon the Government officials present during the hearing to produce documentary evidence indicating that the plot in question i.e. Plot No.3-A was reserved for Municipal school.

41. Learned senior counsel placed reliance on the additional affidavit in reply filed by the Executive Engineer(Development Plan) Eastern Suburban Municipal Corporation of Greater Mumbai and in particular paragraph (8) and would submit that it was clearly admitted in the said paragraph that the layout of the entire land bearing C.T.S.No.518 of Village Chembur belonged to the Government of Maharashtra was lastly approved on 28th May, 1998 and accordingly the said plot was 3-A was not reserved in view of the re-location of the playground of the Municipal Primary school within the same layout.

He submits that in paragraph (11) of the said affidavit, it was however wrongly contended that the plot under reference was shown reserved for school (RE.1.1) in draft development plan 2034.

42. In the said affidavit, it was contended that the said reservation prevailed and plot under reference was required to be developed for the purpose of school. The ownership of the plot under reference was in the name of the State of Maharashtra and the same was available to the Municipal Corporation of Greater Mumbai free of cost for the development of the school for its intended purpose.

43. It is submitted by the learned senior counsel that the District Collector only thereafter had forwarded a copy of the map, opinion on reservation submitted by the Deputy Chief Engineer to the petitioner. He submits that it is thus clear that the report from the Deputy Chief Engineer was emanated upon receipt of letter from the District Collector on 14th July, 2015 i.e. one day after the date of the first hearing which is held on 13th July, 2015.

44. Learned senior counsel for the petitioner relied upon the letter dated 17th July, 2015 i.e. the report from Assistant Engineer, Development Plan (M Ward) signed on 16th July, 2015 and more particularly a note in the said letter and would submit that even the report relied upon by the learned Chief Secretary based on the District Collector's letter dated 27th July, 2015 would confirm that the records of the City Survey Office would supersede those shown in the D.P. remarks plan. He submits that boundary shown in the City Survey Office refers to the said note. The records of the City Survey Office referred to in the said note is the same plan which is issued by the

Deputy Director of Town Planning Greater Mumbai dated 25th May, 1998. He submits that the layout of City Survey No.518 dated 25th May, 1998 in which the total area under the layout of City Survey No.518 had been mentioned as 14,385 sq.mtrs and D/P reservation has been indicated as 8087 sq.mtrs.

45. It is submitted by the learned senior counsel that the map indicated Municipal school adjoining recreation ground and recreation ground was adjoining Plot No.3-A. He submits that it is thus clear that the authentic plan issued by the Deputy Director Town Planning indicates that as late as on 25th May, 1998, Plot No.3-A was not reserved at all and the Municipal school had been reserved in the plot adjoining recreation ground. He submits that the learned Chief Secretary has not considered this submission specifically raised in paragraph (5) of the written argument dated 30th October, 2015 in the impugned order dated 20th January, 2016. The learned Chief Secretary could not have placed reliance on the letter dated 27th July, 2015 from the District Collector and to arrive at an erroneous finding that the said plot bearing no.3-A was reserved for Municipal school even under the sanctioned development plan of 1991.

46. Learned senior counsel placed reliance on the letter dated 30th June, 2015 addressed by the City Survey Officer to the District Collector and would submit that even the said letter would clearly indicate that the land admeasuring 187 sq.mtrs. was open and an action for accommodating the petitioners in both the writ petitions could be accommodated. The said letter would also clearly indicate that there was no reservation for Municipal school on the said plot under Development Control Regulation 1991.

47. It is submitted by the learned senior counsel that the learned District Collector had already called upon the petitioner to pay a sum of Rs.36 lacs by letter dated 6th July, 2010 and had instructed the Slum Improvement Board to handover the unencumbered Government possession of the land to the petitioner. The learned Chief Secretary however did not consider this crucial correspondence exchanged between the parties in the impugned order.

48. Learned senior counsel for the petitioner placed reliance on sections 23, 26, 28, 30 and 31 of the Maharashtra Regional and Town Planning Act, 1966 and would submit that once plot is reserved under Development Control Regulation, 1991 for Municipal school, there was no provision under MRTP Act, which enables the planning authority to once again reserve the very same plot i.e. Plot No.3-A for Municipal school under the sanctioned Development Plan 2034. He submits that under section 38 of the MRTP Act, the power is vested with the planning authority to revise the development plan either partly or separately in the manner in which it laid down. However, if according to the State Government, the planning authority had revised the development plan, it would only mean either that the plot was originally reserved for Municipal school and now stands de-reserved under revised plan or the plot was not reserved originally for the Municipal school and therefore while revising the plan it had been reserved for Municipal school under Development Control Regulation 2034.

49. It is submitted that if the plot was so reserved under the 1991 plan, the question of reserving the same plot again under Development

Control Regulation 2034 did not arise. He submits that in any event, the petitioner has vested right and the Government was bound to follow the procedure contemplated under section 127 of the MRTP Act, 1966. He submits that the petitioner was entitled to be served with the notice by the planning authority, the development authority or as the case may be by an appropriate authority to that effect calling upon them to take steps to acquire the land within 24 months from the date of service of such notice failing which the reservation allotment shall deemed to have lapsed and thereupon the land shall be deemed to be released from such reservation/allotment and shall become available to the petitioner.

50. Learned senior counsel for the petitioner placed reliance on the judgment of Supreme Court in case of ***Balaji Associates Through its Partners vs. State of Maharashtra & Ors., 2019 SCC OnLine SC 1100*** and would submit that the Supreme Court after considering the scope of section 127 of MRTP Act has held that if the appropriate authority has not taken steps to acquire the land within the stipulated period, the reservation would lapse and the same would be available to the owner, to be developed or otherwise permissible. He submits that the principles laid down in the judgment by the Supreme Court would apply to the facts of this case.

51. Learned senior counsel placed reliance on the averments made by the State Government in paragraph (20) of the affidavit in reply filed by Mr.Sunil D.Shinde dated 27th April,2016 admitting that the said plot bearing no. 3-A was not under reservation as a result of reallocation of the reservations of the playground and Municipal Primary school within the said layout. He submits that the said

affidavit would clearly indicate that under DCR 1991 even according to State Government Plot 3-A was not reserved for Municipal Primary school.

52. It is submitted by the learned senior counsel that the petitioner in Writ Petition No.1977 of 2016 had no *locus standi* at all to object to the allotment of the land to the petitioner in as much as the said petitioner was in unlawful and illegal occupation of the plot in question. The so called authority of the petitioner in Writ Petition No.1977 of 2016 to occupy the said structure was only for a period of 5 years which expired on 9th December,2007. The said petitioner is in unlawful and illegal occupation and thus has no locus to question the allotment of the land to the petitioner. He strongly placed reliance on the terms and conditions of the letter of allotment dated 20th January,2003 in favour of the petitioner in Writ Petition No.1977 of 2016 and would submit that the ownership of the construction/building was of the Government. The custody of the structure was given to the said petitioner on the temporary basis only for the period of five years from the date of the agreement.

53. Learned senior counsel also placed reliance on various correspondence exchanged between the authority and would submit that those correspondence would clearly indicate that the said agreement was in favour of the petitioner in Writ Petition No.1977 of 2016 had expired long back and accordingly was bound to handover vacant possession thereof to the authority to enable the authority to handover the vacant possession thereof to the petitioner. He submits that even according to the State Government, the petitioner in Writ Petition No.1977 of 2016 did not have locus to remain in possession of

the Plot No.3-A beyond 19th December,2007.

54. Learned senior counsel for the petitioner placed reliance on the judgment of Supreme Court in case of ***Raptakos Brett & Co. Ltd. vs. V. Ganesh Property, (1998) 7 SCC 184*** and in particular paragraph (10) and would submit that upon termination of period of lease, the person would be in wrongful occupation and/or unlawful occupation and is not entitled to continue to be in possession. He submits that the respondent no.5 had limited right to use the structure owned by the Government for a period of five years and thus had no right of nature whatsoever in the said structure beyond 19th December,2007.

55. It is submitted by the learned senior counsel that the respondent no.5 had filed revision application on 19th July, 2011 only after the respondent no.3 by his letter dated 24th March,2011 had confirmed that the request of the respondent no.5 could not be acceded based on the recommendation made by the then leader of the opposition Mr.Eknath Rao Khadse by his letter dated 14th February,2011 unless and until allotment of land by the Government of Maharashtra vide Memorandum dated 3rd February,2009 to the petitioner was cancelled. It is submitted that since the letter of allotment dated 3rd February,2009 was based on an order issued in the name of Governor of Maharashtra in view of the Article 166(1) of the Constitution of India, the said order was binding on the State Government. In support of this submission, learned senior counsel placed reliance on the judgment of Supreme Court in case of ***A.A.Padmanbhan vs. State of Kerala & Ors., (2018) 4 SCC 537*** and in particular paragraph 16.

The facts and submissions of the petitioner in Writ Petition No.1977 of 2016 :-

56. The petitioner i.e. Chembur Multipurpose Complex is a society registered under the Societies Registration Act, 1860. It was the case of the petitioner that between 1993 to 1997 MHADA had constructed a structure on the land bearing Plot No.3-A out of the larger piece of land bearing C.T.S.No.518 of Village Chembur and also C.T.S.No.518/8(Part) of Village Chembur. Sometime in the year 1992-1993, the petitioner had applied to the Collector, Mumbai Suburban District for allotment of the said land. On 11th November, 1992, the Collector, Mumbai Suburban District granted permission for construction of gymnasium structure on the suit land. On 21st May, 1993, the Collector, Mumbai Suburban District granted regular NOC for construction of the said gymnasium structure on the suit land. During the period between 1993-1997, the Mumbai Slum Improvement Board constructed the gymnasium structure on the suit land by utilizing the development funds of the local MLA. On 17th December, 1997, the respondent no.3, i.e. the Collector, Mumbai Suburban District allotted and handed over to the petitioner the possession of the suit land along with gymnasium structure standing thereon. The said agreement was for a period of five years from 17th December, 1997 to 17th December, 2002.

57. It is the case of the petitioner that since 1997, the petitioner had made repeated applications to the respondent nos. 1 and 3 for grant of suit land to the petitioner on Occupants Class – 2 basis. Such applications are still pending before the respondent nos. 1 to 3. On 25th May, 1998, the Municipal Authorities sanctioned layout of

Government land bearing C.T.S.No.518 of Village Chembur which includes the suit land. It is the case of the petitioner that on 25th May, 1998, the layout of Government land bearing C.T.S.No.518 of village Chembur was sanctioned by the Municipal Authority. The Plot No.3-A admeasuring 225 sq.mtrs. The total area of C.T.S.No.518 under layout is 14385 sq.mtrs., that the development plan reservations for municipal school and playground are of 8087 sq.mtrs. and as such the net area of land under layout is 6298 sq.mtrs. It is the case of the petitioner that the area under various plots including Plot No.3-A is not covered by the development plan reservations. The development plan was finalized in the year 1991. If the suit land was under reservations for any purpose under the development plan of 1991, the layout of C.S.T.No.518 would not have been sanctioned by the Municipal Authority at all.

58. It is the case of the petitioner that the respondent no.1 illegally proceeded to the allotment of the suit land to the respondent no.5 i.e. the petitioner in Writ Petition No.1569 of 1996 pursuant to certain prior applications made by the respondent no.5. The petitioner being in exclusive physical possession, use and occupation of the suit land since the year 1997 filed an application for revision on 19th July, 2011 before the learned Revenue Minister. The petitioner has set out in detail in the writ petition about the subsequent events to show as to when the orders were passed by the learned Minister (Revenue) from time to time and the orders passed by this court remanding the matter back to the authorities.

59. Learned Chief Secretary passed an order on 20th January, 2016 thereby dismissing the application dated 19th July, 2011 filed by the

petitioner before the learned Minister (Revenue) asking for allotment of the suit land and simultaneously directing the Collector to take possession of the land in question and to handover the possession thereof to the Municipal Corporation of Greater Mumbai to further use as per development plan. The learned Chief Secretary also has set aside the order of grant of land to the petitioner in Writ Petition No.1569 of 2016. The petitioner thus filed Writ Petition No.1977 of 2016 *inter alia praying* for setting aside the order dated 20th January,2016 passed by the learned Chief Secretary and praying for order and direction to hear the review application of the petitioner on merits.

60. Mr. Mendadkar, learned counsel for the petitioner in Writ Petition No.1977 of 2016 invited my attention to some of the documents annexed to the writ petition filed by his client and the averments made in various affidavits filed by the respondents and the findings rendered by the learned Chief Secretary in the impugned order. It is submitted by the learned counsel that the petitioner was granted the suit land on lease by entering into an agreement with the petitioner by the Authority. Since 2002, his client made various efforts to get the said lease of the suit land renewed. The lease was duly renewed by the respondent nos. 1 and 3 for a period of five years and ended on 17th December,2007. The petitioner continued to remain in exclusive possession, use and occupation of the suit land since 1997 till date. He submits that though the petitioner did not file any proceedings against the respondent nos.1 and 3 for seeking renewal of the lease, the petitioner continued to apply for renewal of the lease by writing various letters and by making representations.

61. Insofar as issue of jurisdiction of the learned Minister (Revenue)

and thereafter of the learned Chief Secretary to hear the revision filed by his client is concerned, learned counsel invited my attention to the order passed by this court on 25th February, 2015 and would submit that the petitioner in Writ Petition No.1569 of 2016 had submitted to the jurisdiction of the learned Chief Secretary who was appointed by consent of the petitioners in both these writ petitions with the direction to decide the said revision application filed by the petitioner. The petitioner cannot be allowed to now raise an issue of jurisdiction of the learned Chief Secretary to decide the said revision application. Learned counsel however submits that the entire order passed by the learned Chief Secretary thereby rejecting the application filed by the petitioner and directing the learned Collector, Mumbai Suburban District to take possession of the land and to handover possession of the land to the Municipal Corporation of Greater Mumbai is entirely on wrong and erroneous premise that the said plot of land bearing no.3-A was reserved for the Municipal school in the development plan.

62. On this issue, learned counsel adopts the submissions made by Mr.Rambhadran, learned senior counsel in Writ Petition No.1569 of 2016. He submits that the findings of the learned Chief Secretary that the land in question is reserved in the sanctioned development plan is totally vague and is perverse. The plot of the petitioner did not offend any reservation as canvassed by the respondent nos. 1 to 4. The order passed by the learned Chief Secretary discloses non-application of mind. The plot which is reserved for Municipal school is different and is away from the suit land. He submits that since the petitioner had interest in the suit land, the learned Chief Secretary could not have rejected the application filed by his client on 19th July, 2011 asking for allotment of the land in question.

The submissions made by the learned Additional Government Pleader on behalf of the respondent nos. 1 to 3 in Writ Petition No.1569 of 2016 :-

63. Ms. Shastri, learned Additional Government Pleader invited my attention to various exhibits annexed to both these petitions and various averments made in the affidavits filed by the respondent nos. 1 and 3 and also by the Municipal Corporation. It is submitted by the learned counsel that in the sanctioned development plan of 1991 of 'M' Ward plot bearing C.T.S.No.518 Part of Survey No.14 admeasuring 225 sq.mtrs. of Chembur was reserved for Municipal Primary school. She invited my attention to Exhibits 1 and 3 of the affidavit filed by the learned Tahsildar dated 27th April,2016 and filed by Mr.Londhe dated 19th July, 2019 respectively. She submits that the said sanctioned development plan of 1991 underwent reservation after 20 years under the provisions of the MRTP Act in the year 2008.

64. It is submitted that in the sanctioned draft revised development plan of 2034, the said land bearing no.518 (Part) of Survey No.14 admeasuring 225 sq.mtrs. of Chembur was again shown as reserved for Municipal Primary school. The said revised development plan of 2034 was sanctioned under section 31 of the MRTP Act to come in force on 1st September,2018. The said revised development plan of 2034 also shows area of 225 sq.mtrs. of C.T.S.No.518 Part of Plot No.3-A of Chembur being land in question from the area of 11113.90 sq.mtrs. of CST No.518 of Chembur as reserved for Municipal school vide reservation bearing No.RE.1.1. She relied upon affidavit in reply filed by the Municipal Corporation on 21st August,2019.

65. It is submitted by the learned counsel that the said gymnasium was constructed by MHADA on C.T.S.No.518 of Survey No.14, Plot No.3-A of Chembur pursuant to the sanction granted by the State Government from the MLA fund. The petitioner in Writ Petition No.1977 of 2016 had applied for handing over the constructed gymnasium to the said petitioner for maintenance in the year 1997. On 17th December,1997, the said gymnasium was handed over to the said petitioner on temporary basis for five years for maintenance.

66. Insofar as the petitioner in Writ Petition No.1569 of 2016 is concerned, it is submitted by the learned counsel for the respondent nos. 1 to 3 that the said petitioner was allotted the said plot bearing no.3-A, admeasuring 225 sq.mtrs. for constructing a hall for conducting religious rites, post death on occupancy basis on such terms and conditions as Collector deem fit after recovering and on payment of market value of land. The petitioner however by its letter dated 9th March,2009 had requested the State Government to fix price of 1998 or of September 2002 and not of 2009. It is submitted that the Collector of Mumbai Suburban District by letter dated 6th July, 2010 had called upon the petitioner in Writ Petition No.1569 of 2016 to deposit Rs.36 lacs for an area of 225 sq.mtrs. at the rate of Rs.16,000/- per sq.mtrs. worked out on the basis of the ready reckoner 2009 towards occupancy price.

67. The petitioner however by its letter dated 3rd December,2010 imposed the condition that the Collector to first remove structure from plot and shall handover vacant possession thereof to the petitioner. The petitioner did not deposit the determined amount of occupancy price and thus the Collector was not able to issue any allotment letter with

conditions or either into agreement as required under the law. In the meanwhile the Collector had addressed various letters to the Mumbai Slum Board of MHADA to remove the temporary structure on the said land and to handover the possession of the land to the petitioner in Writ Petition No.1569 of 2016. She invited my attention to the letter dated 24th March,2011 and would submit that Mumbai Slum Board of MHADA however had informed that the said authority was only an implementing agency and thus the act of demolition and taking over possession was to be carried out only by the Collector, Mumbai Suburban District.

68. Learned counsel relied upon various orders passed by the learned Minister (Revenue) and would submit that the petitioner in Writ Petition No.1569 of 2016 was absent during the hearing on 4th June, 2012. It is submitted by the learned counsel that the Municipal Corporation by the letter dated 17th July, 2015 had placed on record that the said plot was reserved for Municipal Primary school as per sanction development plan 1991 and also was shown to be reserved for Municipal Primary school in draft development plan 2034 in commercial and residential zone. It is submitted that on 20th January, 2016, after giving notice to the respondent no.5 (petitioner in Writ Petition No.1977 of 2016) and the State Authority has already taken possession of the suit land vide possession receipt dated 23rd September,2016. Learned counsel invited my attention to the said possession receipt which is annexed to the synopsis filed by the respondent nos. 1 to 3.

69. It is submitted by the learned counsel that pursuant to the order dated 26th July, 2019 passed by this court directing the parties that the

survey of the land to be carried out at site for identification, the Municipal Corporation after joint survey, filed report cum affidavit confirming that the plot in question was reserved for Municipal school in development plan. It is submitted that insofar as Government Memo dated 3rd February, 2009 issued in favour of the petitioner in Writ Petition No.1569 of 2016 is concerned, the said memo has not fructified into any agreement/sanad and/or letter of allotment by the Collector in favour of the petitioner with terms and conditions since the petitioner did not pay the determined amount of occupancy price as demanded by the Collector in view of Government Memorandum dated 3rd February, 2009.

70. Insofar as the submission of the learned senior counsel for the petitioner in Writ Petition No.1569 of 2016 that the State Government did not have any power to review its own order under section 258 of the Maharashtra Land Revenue Code is concerned, it is submitted by the learned counsel that the learned Chief Secretary who had stepped into the shoe of the learned Minister (Revenue) by virtue of the consent order passed by this court on 25th February, 2015 in Writ Petition No.2865 of 2014 has rightly reviewed the decision of the authority by exercising power under section 258 of the Maharashtra Land Revenue Code and has cancelled the sanction of the land in favour of the petitioner by Government Memorandum dated 3rd February, 2009 as the same was reversed in the sanction development plan for the municipal school and could not be used as per the Government Memorandum dated 3rd February, 2009.

71. It is submitted by the learned counsel that the State Government has power also under section 257 of the Maharashtra Land Revenue

Code to revise action/decision of the subordinate authority and has rightly dismissed the application dated 19th July, 2011 filed by the respondent no.5 (petitioner in Writ Petition No.1977 of 2016) for allotment of the land. She submits that both the petitioners in these two petitions who were parties to the said Writ Petition No.2865 of 2014 has given no objection to the learned Chief Secretary to decide the issue. Learned Chief Secretary had followed the principles of natural justice and after affording opportunity of hearing, had passed detailed speaking order dated 20th January,2016. She submits that the Municipal Corporation has already identified the suit plot at site through joint survey pursuant to the order dated 26th July, 2019 passed by this court. She submits that section 258(4) of the Maharashtra Land Revenue Code will not apply in this case as there is no review sought by a party to earlier proceedings. The review was done as per the order of this court dated 25th February,2015.

72. It is submitted by the learned counsel that the State Government has power to entertain review also even after 90 days by condoning delay as provided in section 251 of the Maharashtra Land Revenue Code. The parties can file review within 90 days from the date of knowledge. She placed reliance on the judgment of this court in case of ***Nilesh Vijay Deshmukh vs. Mathurabai Bhikanrao Deshmukh, 2005(6) Bom.C.R.909*** and more particularly paragraphs 6 to 9 and 11.

73. It is submitted by the learned counsel that though the reasons cannot be supplanted in the order passed by the authority by recording reasons in the affidavit in reply, since the land in question is already reserved for Municipal school in the sanctioned development plan of 1991 and sanction development plan of 2034 and in view of the fact

that the sanction of land was made mainly on the basis of the application made by the individual, bodies of organization or institution dehors an invitation or advertisement by State whereby the relevant issues regarding allotment of land which was required to be considered by the authorities, this court shall not interfere with the order passed by the learned Chief Secretary by exercising its extraordinary jurisdiction under Article 226 of the Constitution of India.

74. Learned counsel placed reliance on the following judgments :-

- (a) Judgment of this court in case of ***Subhash Nimchand Mutha vs. State of Maharashtra & Ors., 2016(3) Mh.L.J.198*** and in particular paragraphs 8 and 9.
- (b) Judgment of Supreme Court in case of ***Saroj Screens Pvt. Ltd. vs. Ghanshyam & Ors., 2012 (11) SCC 434*** and in particular paragraph 38.
- (c) Judgment of this court in case of ***Mohamadiya Welfare Society vs. State of Maharashtra, 2012(5) Mh.L.J. 644*** and in particular paragraphs 6 to 11.

75. Insofar as submission of the learned senior counsel for the petitioner in Writ Petition No.1569 of 2016 that the reservation of the plot in question once shown in the development plan of 1991 and thus could not be once again shown in the development plan 2034 for the same purpose is concerned, it is submitted by the learned counsel that the development plan and the Town Planning are ongoing process. Due to changes occurred from time to time depending upon the local needs the development plan cannot be static. The development plan had undergone revision under the provisions of MRTP Act after 20 years.

There is no automatic lapses or reservation. In support of this submission, learned counsel placed reliance on the judgment of this court in case of ***Brijlal K. Bhate vs. Municipal Council, 2006(5) Bom.C.R. 430*** and in particular paragraphs 15 to 20.

76. Learned counsel distinguished the judgment in case of ***Balaji Associates vs. State in Hon'ble Supreme Court in Civil Appeal No.6661 of 2019*** and would submit that the judgment would not apply to the instant case since no one has issued purchase notice under section 127 of the MPTP Act to enable planning authority to initiate acquisition process. There is thus no question of lapsing of reservation. She submits that in any event, no right was created in favour of the petitioner in Writ Petition No.1569 of 2016 in the land in question and thus the question of applicability of section 127 of the MRTP Act does not apply.

77. It is submitted by the learned counsel that the development plan when sanctioned is a part of the statute and there can be no estoppel against the provisions of law or the statute. In support of this submission, learned counsel placed reliance on the judgment of Supreme Court in case of ***Pune Municipal Corporation vs. Promoter and Builder, 2004 (10) SCC 796***. Learned counsel for the respondent nos. 1 and 3 placed reliance on the judgment of this court in case of ***Shakti Commercial Premises Society Ltd. vs. State of Maharashtra and others, 2012(5) Mh.L.J.147*** and in particular paragraph 17 in support of the submission that this court shall not exercise its extraordinary jurisdiction under Article 226 of the Constitution of India in the facts of this case. It is submitted that since no legal right was created in favour of either of the petitioners, no such alleged rights

could be enforced by issuance of writ. Learned counsel tenders a copy of the reservation register showing the list of the proposed/existing reservations for public purpose in the revised development plan (draft) 1981 – 2001 and would submit that the said register clearly indicates that the plot in question was reserved for Municipal Primary school.

The submissions made by Mr.Kedar Dighe, Assistant Government Pleader for the respondent nos. 1 to 3 in Writ Petition No.1977 of 2016:-

78. Learned A.G.P. adopts the submissions by Ms.Shastri, learned Additional Government Pleader for the respondent nos. 1 to 3 in Writ Petition No.1569 of 2016. Learned A.G.P. placed reliance on the affidavit in reply filed by Mr.Shinde, affirmed on 27th April,2016 in Writ Petition No.1569 of 2016 and also affidavit in reply filed by the Deputy Director of Town Planning dated 19th July, 2019 and would submit that the documents annexed to the said affidavit would clearly indicate that the Plot No.3-A was reserved for Municipal school. It is submitted by the learned A.G.P. that the possession of the suit land has been already taken over by the State Government. The name of the State Government has been already included in the property card.

79. Insofar as Writ Petition No.1977 of 2016 is concerned, it is submitted by the learned A.G.P. that admittedly there was no extension of the lease granted in favour of the petitioner in that matter since 2007. The petitioner did not make any application for renewal thereafter. The said petitioner was trespasser on the suit land and had no locus to file the said writ petition. Learned counsel relied upon the first allotment letter dated 17th December, 1997 in favour of the

petitioner and would submit that the said period of five years had expired in the year 2002. Even if any extension was granted for five years, the same has also expired in the year 2007. He submits that this court shall not exercise extra ordinary jurisdiction under Article 226 of the Constitution of India under the facts of this case.

Submissions made by the Municipal Corporation of Greater Mumbai, respondent no.4 in both the writ petitions

80. Learned counsel submits that the plot in question was reserved for Municipal school in the development plan 1991 as well as in development plan 2034. He submits that it is not the case either of the petitioner that the said Plot No.3-A reserved for the Municipal school in the year 1991 plan was relocated. He submits that both the development plans are in public domain. He tenders a copy of the development plan. He submits that the larger plot was reserved for the Municipal school which included Plot No.3-A. Neither of the petitioner has produced any record to show that the Plot No.3-A was relocated in the development plan 2034. Learned counsel placed reliance on regulation 11(4) of the Development Control Regulation 1991 and would submit that in development plan of 2034, the reservation for Municipal school shown in development plan 1991 is re-shifted to Plot No.3-A in Development plan 2034.

81. Learned counsel placed reliance on para (6) of the affidavit in reply filed by the respondent no.4 in Writ Petition No.1569 of 1996 and the annexures thereto and would submit that the said copy of the sanction revised development plan 1991 of 'M' Ward would clearly indicate that the plot bearing C.T.S.No.518(Part) sub-plot of village

Chembur is reserved for Municipal Primary school. He submits that when the draft development plan was published on 25th February, 2015, the said plot was reserved for Municipal school and is situated in commercial residential zone. Learned counsel submits that the draft development plan 2034 has been already sanctioned finally by the State Government.

82. It is submitted by the learned counsel that under the provisions of the MRTP Act, relocation of the reserved plot is permissible. He submits that the findings of fact recorded by the learned Chief Secretary in the impugned order that the plot in question is reserved for primary Municipal school being not perverse and is based on the documents produced by the parties on record cannot be interfered with by this court. Learned counsel for the respondent no.4 placed on record judgment of Supreme Court in case of Manohar Joshi vs. State of Maharashtra & Ors., (2012) 3 SCC 619 and in particular paragraph 55 in support of the submission that under the provisions of the MRTP Act, the Government has power to revise the sanctioned development plan under the mode and manner prescribed under the said Act and more particularly under section 37 thereof.

83. It is submitted by the learned counsel that there was no sanction letter in favour of the petitioner in Writ Petition No.1569 of 2016 culminated into an agreement and thus no rights were of any nature whatsoever were created in favour of the petitioner in the suit land. The petitioner thus was not an interested person claiming any right. Learned counsel for the Municipal Corporation placed reliance on the report dated 6th September, 2019 showing the sanctioned revised development plan remarks for the land shown bounded in blue on the

plan annexed to the said report. In support of his submission, learned counsel submits that the land in question was reserved for the Municipal Primary school. Learned counsel placed reliance on the regulation 11(4) of the Development Control Regulations 1991 in support of his submission that the purpose of designations/reservations was shifted and/or interchanged in the development plan.

Rejoinder by Mr.Rambhadran, learned senior counsel for the petitioner in Writ Petition No.1569 of 2016

84. It is submitted by the learned senior counsel that the parties by consent cannot confer jurisdiction on the authorities which did not have jurisdiction to decide the matter. He submits that no application for condonation of delay was made by the petitioner in Writ Petition No.1977 of 2016 although such application was filed beyond the time prescribed under section 258(i) (iv). He submits that the respondent nos. 1 to 3 had already addressed various letters in the Writ Petition No.1977 of 2016 calling upon the said parties to handover the vacant possession of the suit land to the Collector to enable the Collector to handover possession thereof to his client. It is submitted that the learned Chief Secretary in the impugned order did not state that he had exercised the review jurisdiction. 1991 Development Plan was not considered by the learned Chief Secretary. It was not the case of the petitioner that the plot in question was initially reserved and relocated in the development plan 2034.

85. Insofar as submission of the learned counsel for the respondent nos. 1 to 3 that the petitioner had not made payment of the consideration amount is concerned, learned counsel tendered

correspondence forming part of the first writ petition filed by his client and would submit that the petitioner had always offered to pay the amount of Rs.36 lacs immediately to the learned Collector on receipt of confirmation that the suit structure on the plot had been removed by the petitioner in Writ Petition No.1977 of 2016.

86. Learned senior counsel for the petitioner placed reliance on section 38 of the MRTP Act and would submit that the plot reserved in a development plan cannot be reserved again in the fresh development plan. Learned counsel disputed the submission of Mr.Shastri, learned Additional Government Pleader on the ground that the suit land was allotted to the petitioner was not allotted for any commercial use and thus the provisions of allotment of commercial land would not apply to the facts of this case.

87. Learned senior counsel distinguished the judgment of this court in case of **Nilesh Vijay Deshmukh** (supra) on the ground that in that case the application for condonation of delay was made and the delay was condoned by the Additional Commercial. This court had upheld the said order by relying upon the provisions of Limitation Act, 1973. However, in the facts of this case, the land in question was allotted to the petitioner by notification dated 3rd February,2009 whereas the revision application was filed on 19th July, 2011 without filing any application for condonation. The learned Chief Secretary did not state in the impugned order that he was exercising the power of review under section 258 of the Maharashtra Land Revenue Code.

88. Insofar as reservation book relied upon by the learned Additional Government Pleader is concerned, it is submitted that the said extract

from the reservation book indicated reservation for the public purpose on 518 (Part). The State Government has also produced a notification which also indicates that '518'. He made an attempt to point out the discrepancy in the said reservation book. If the area reserved for Municipal school includes Plot No.3-A, in that event certificate uploaded on the website would have indicated not only the B.D.Shukla School but also temporary structure of which continued to exist on Plot No.3-A.

89. It is submitted by the learned senior counsel that the District Collector vide his letter had intimated the market ready reckoner fixed at Rs.36 lacs only by letter dated 6th July, 2010. The petitioner vide letter dated 3rd December, 2010 was ready and willing to handover the cheque/pay order in the sum of Rs.36 lacs subject to handing over vacant and peaceful possession of the plot free from all encumbrances. After exchanging this correspondence, the respondent nos. 1 and 3 had written various letters which would indicate that the authority wanted to take steps to demolish the suit structure. The matter was pending before the Revenue Minister for quite sometime. There were two orders for remand of the proceedings passed by this court. The State Government never raised any objection that due to alleged non payment of the consideration amount, they were not in a position to take steps to handover the vacant and peaceful possession of the plot to the petitioner. Learned Chief Secretary has not cancelled the allotment of the land on the ground that the petitioner has not paid a sum of Rs.36 lacs.

90. It is submitted by the learned senior counsel that it was not the ground in the impugned order for cancellation of the allotment in

favour of the petitioner that the said land itself was allotted dehors an invitation or advertisement. The State Government itself had allotted the said land to the petitioner and thus cannot be allowed to raise such plea. The said allotment was made for social cause post death under Rule 40 of the Maharashtra Land Revenue Disposal of Government Land (Rules) 1971 and thus there was no question of any auction or inviting bids before allotment of the said land to the petitioner. Learned senior counsel distinguished the judgment of Supreme Court in case of ***Saroj Screens Pvt. Ltd.*** (supra) and also the judgment of this court in case of ***Mohamadiya Welfare Society*** (supra).

REASONS & CONCLUSION

91. I shall first decide whether the impugned order passed by the learned Chief Secretary, State of Maharashtra on 20th January, 2016 thereby cancelling the allotment of the land to the petitioner in Writ Petition No.1569 of 2016 and directing to hand over possession thereof to the Municipal Corporation of Greater Mumbai was without jurisdiction or not. To decide this issue, it would be appropriate to refer to some of the facts in these petitions.

92. It was the case of the petitioner in Writ Petition No.1569 of 2016 that by a notification issued by under Secretary, Revenue & Forest Minister, the petitioner was intimated that an area of 225 sq. mtrs. had been allotted to the petitioner for constructing a hall to conduct religious ceremony post death by charging the market value as prevalent under the Maharashtra Land Revenue Code, 1971 (for short “MLR Code”), Rule 40 and subject to certain provisions. Insofar as the petitioner in Writ Petition No.1977 of 2016 is concerned, it was the

case of the petitioner that the petitioner in that writ petition was granted permission to occupy Gymnasium structure on the suit land by the Collector, Mumbai Suburban District on 11th November, 1992 on various terms and conditions.

93. On 25th May, 1993, the Collector had granted regular NOC for construction of Gymnasium on the structure of the suit land. Between 1993 and 1997, the Mumbai Slum Improvement Board constructed the Gymnasium structure on the suit land by utilizing the development fund of the local MLA. On 17th December, 1997, the Collector allotted and handed over to the said petitioner possession of the suit land along with Gymnasium structure standing thereon on lease which was for a period of five years from 17th December, 1997 to 17th December, 2002. It was the case of the petitioner in the said writ petition that the said lease was extended for a period of five years in the year 2003 ending with 17th December, 2007. The Collector, however did not renew the said lease in favour of the said petitioner even after expiry of renewal on 17th December, 2007.

94. It was the case of the petitioner in the said Writ Petition No.1977 of 2016 that the said suit plot was allotted to the petitioner in Writ Petition No.1569 of 2016 in the year 2009. The petitioner in the said Writ Petition No.1977 of 2016 was aggrieved by the said letter of allotment in favour of the petitioner in Writ Petition No.1569 of 2016. The petitioner in Writ Petition No.1977 of 2016 accordingly applied for revision of the order dated 3rd February, 2009 by filing an application on 19th July, 2011 before the learned Revenue Minister, Learned Revenue Minister passed an order on the said revision application on 4th June, 2012 and was pleased to set aside the said

order dated 3rd February, 2009 by which the said suit plot was allotted to the petitioner in Writ Petition No.1569 of 2016.

95. This Court by an order dated 29th January, 2013 in Writ Petition No.1921 of 2012 filed by the petitioner in Writ Petition No.1569 of 2016 was pleased to set aside the order dated 4th June, 2012 passed by the learned Revenue Minister and directed the Revenue Minister to pass a fresh order after hearing the petitioner in both the writ petitions. The Revenue Minister passed a fresh order on 10th August, 2014 thereby cancelling the allotment of the suit land granted in favour of the petitioner in Writ Petition No.1569 of 2016.

96. On 25th February, 2015 in Writ Petition (Lodging) No.2868 of 2015 filed by the petitioner in Writ Petition No.1569 of 2016 impugning the said order passed by the learned Revenue Minister dated 10th August, 2014, this Court was pleased to set aside the said order. In the said order passed by this on 25th February, 2015, this Court recorded that after the change in the State Government, the present Revenue Minister was the same person, who was the Leader of the Opposition in the previous Government and had recommended the allotment of land in question to the petitioner in Writ Petition No.1977 of 2016. In these circumstances, this Court was of the view that the matter be decided by some other person or authority, instead of the Revenue Minister. This Court accordingly held that the matter be decided by the Chief Secretary, State of Maharashtra to which the learned counsel for the petitioner in Writ Petition No.1569 of 2016 and in Writ Petition No.1977 of 2016 recorded their no objection.

97. Pursuant to the said order dated 25th February, 2015 passed by

this Court, the petitioner in both the writ petitions who were parties to the said Writ Petition (Lodging) No.2868 of 2014 appeared before the learned Chief Secretary, State of Maharashtra and made their rival submissions. The petitioner in Writ Petition No.1659 of 2016 raised an issue of jurisdiction of the learned Chief Secretary, State of Maharashtra to decide the said revision application filed by the petitioner in Writ Petition No.1977 of 2016. Learned Chief Secretary, State of Maharashtra passed an order dated 20th January, 2016 thereby dismissing the application dated 19th July, 2011 filed by the petitioner in Writ Petition No.1977 of 2016 asking for allotment of the suit land. By the said order, learned Chief Secretary, State of Maharashtra has set aside the order of grant of the suit land to the petitioner in Writ Petition No.1569 of 2016 and directed the Collector, Mumbai Suburban District to take possession of the suit land within 60 days from the date of the said order and to hand over possession of the suit land to the Municipal Corporation of Greater Mumbai for further use as per the development plan. Being aggrieved by the said impugned order, both the petitioners have filed separate writ petition which were heard together and are being disposed of by this common order.

98. It was vehemently contended by Mr. Rambhadran, learned senior counsel appearing for the petitioner in Writ Petition No.1569 of 2016 that at the first instance, learned Revenue Minister could not have entertained the revision application filed by the petitioner in Writ Petition No.1977 of 2016 and thus on remand of the proceedings by this Court by an order dated 25th February, 2015, learned Chief Secretary, State of Maharashtra also could not have decided the said revision application. It is vehemently urged by the learned senior counsel that even if the said order 25th February, 2015 passed by this

Court is considered as an order by consent of both the parties, that order would not confer any jurisdiction upon the learned Chief Secretary, State of Maharashtra, since he did not have any such jurisdiction to entertain the revision application under any of the provisions of the MLR Code. It is the case of the petitioner in Writ Petition No.1569 of 2019 that since the learned Chief Secretary, State of Maharashtra had stepped into the shoes of the learned Revenue Minister, learned Revenue Minister not having been jurisdiction to decide the revision application, no power would be conferred on the learned Chief Secretary, State of Maharashtra to decide the said revision application.

99. Insofar as the judgment of the Supreme Court in case of **Zuari Cement Limited** (supra), in case of **Vijay Narayan Thatte & Ors.** (supra) and in case of **Chiranjilal Shrilal Goenka** (supra) relied upon by the learned senior counsel for the petitioner in Writ Petition No.1569 of 2016 in support of the submission that even by consent of parties, no such jurisdiction could be conferred on the authority who did not have jurisdiction is concerned, there is no dispute about the proposition of law laid down by the Supreme Court in the aforesaid three judgments. A question that arises for consideration of this Court is whether the learned Revenue Minister proceeded at the first instance had jurisdiction to entertain such revision application under section 258 of the MLR Code or not.

100. Mr. Rambhadran, learned senior counsel in Writ Petition No.1569 of 2016 invited my attention to sections 247, 257 and 258 of the MLR Code which provides for Appeal, Revision and Review respectively against some of the orders specifically provided therein.

Section 247 of the MLR Code provides for appeal against certain orders and the Appellate Authority before whom the appeal could be preferred. Schedule – E of the MLR Code prescribes the authority whose order can be appealed and the authorities before whom the appeal can to be filed. It is not the case of the petitioner in Writ Petition No.1977 of 2016 or the State Government that the impugned order was passed by the Revenue Minister at the first instance and thereafter by the learned Chief Secretary, State of Maharashtra under section 247 of the MLR Code. In my view, reliance thus placed by the learned senior counsel on section 247 of the MLR Code is misplaced.

101. A perusal of the application filed by the petitioner in Writ Petition No.1977 of 2016 dated 19th July, 2011 to the learned Revenue Minister indicates that by the said application, the petitioner in that writ petition had requested to consider assigning the suit land to the petitioner and simultaneously to cancel the order of allotment of the suit land in favour of the petitioner in Writ Petition No.1569 of 2016. No specific provision of the MLR Code was mentioned in the said application dated 19th July, 2011 by the petitioner in Writ Petition No.1977 of 2016. Learned Revenue Minister had entertained the said application filed by the petitioner in Writ Petition No.1977 of 2016 twice and had decided in favour of the said petitioner. This Court by an order dated 9th January, 2013 while setting aside the first order passed by the learned Revenue Minister had relegated the said revision application filed by the petitioner to the learned Revenue Minister for *denovo* consideration. Both the parties had accordingly appeared before the learned Revenue Minister pursuant to the said order of remand dated 9th January, 2013. The petitioner had raised an objection about jurisdiction before the learned Revenue Minister as well as

before the learned Chief Secretary.

102. A perusal of the application dated 19th July 2011 filed by the petitioner in Writ Petition No.1977 of 2016 before the learned Revenue Minister indicates that the said application was not in the nature of the Revision. It further indicates that by the said application dated 19th July 2011, the said petitioner had applied for cancellation of the allotment of suit land in favour of the petitioner in Writ Petition No.1569 of 2016 which was admittedly made on 3rd February 2009. By the said application, the petitioner in Writ Petition No.1977 of 2016 had also requested the Revenue Minister to consider the assignment of the suit plot in favour of the said petitioner.

103. Under Section 257 of the said Code, the State Government and any revenue or survey officer, not inferior in rank to an Assistant or Deputy Collector or a Superintendent of Land Records, in their respective departments, may call for and examine the record of any inquiry or the proceedings of any subordinate revenue or survey officer, for the purpose of satisfying itself or himself, as the case may be, as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer. Proviso to Section 257, however, provides that no such proceedings shall be initiated by any revenue or survey officer after expiry of a period of five years from the date of decision or order of the sub-ordinate officer except with the previous permission of the State Government.

104. Section 257(4)(1) of the said Code clearly provides that Revision of an order issued under sub-section (1) or (2) by any officer

referred to therein shall not be permissible; but it shall be lawful for the State Government alone to modify, annual or reverse any such order issued under sub-section (1) or (2) of Section 257 of the said Code. Sub-section (4)(1) to Section 257 was added by Maharashtra Act No.XI of 2016 w.e.f. 5th February 2016. Proviso to Section 257(1) was inserted by Maharashtra Act No.XI of 2016 w.e.f. 5th February 2016. A perusal of the order passed by the learned Chief Secretary, Government of Maharashtra on 20th January 2016 clearly indicates that the said order was passed after about 7 years of the order of allotment of suit plot in Writ Petition No.1569 of 2016. There was no application for condonation of delay filed by the petitioner in Writ Petition No.1977 of 2016 before the Revenue Minister.

105. Under Section 258 of the said Code, the State Government and every revenue or survey officer is empowered either on its or his own motion or on the application of any party interested, review any order passed by itself or himself or any of its or his predecessors in office and pass such orders in reference thereto as it or he thinks fit. Sub-section (2) of Section 258 of the said Code clearly provides that no order shall be reviewed except on the following grounds, namely (i) discovery of new and important matter or evidence; (ii) some mistake or error apparent on the face of the record and (iii) any other sufficient reason. Section 258(1)(iv) of the said Code provides that no order affecting any question of right between private persons shall be reviewed except on an application of a party to the proceedings, and no such application for review of such order shall be entertained unless it is made within ninety days from the passing of the order.

106. In my view, even if the said impugned order dated 20th January 2016 and the subsequent orders passed by the learned Revenue Minister and thereafter by the learned Chief Secretary were passed on an application filed by the petitioner in Writ Petition No.1977 of 2016 was considered as an application for review, the said application was filed much after expiry of 90 days from the date of allotment of suit land in favour of the petitioner on 3rd February 2009. Admittedly, the application was made by the petitioner in Writ Petition No.1977 of 2016 before the learned Revenue Minister only on 19th July 2011. No application for condonation of delay was made by the petitioner in Writ Petition No.1977 of 2016. In my view, since the initial order passed by the learned Revenue Minister on 4th June 2012 allowing the said application dated 19th July 2011 itself was passed on an application which was barred by law of limitation prescribed under Section 258(4) of the said Code, all subsequent orders passed by the learned Revenue Minister and thereafter by the learned Chief Secretary upon remand were also on the said application filed by the petitioner in Writ Petition No.1977 of 2016 which was barred by limitation under Section 258(4) of the said Code.

107. This Court in the case of ***Hukumchand Shankarlal Gandhi Vs. State of Maharashtra (supra)*** has held that the powers of review under Section 258 are akin to the powers of review under Civil Procedure Code and such powers could be invoked only if the circumstances mentioned therein are satisfied. A perusal of the impugned order clearly indicates that none of those conditions set out in Section 258 (2) of the said Code were at all satisfied by the petitioner in Writ Petition No.1977 of 2016.

108. The petitioners in both the writ petitions have addressed this Court on merits of their case at great length. This Court shall now decide whether any of the petitioners in the aforesaid two writ petitions have even otherwise made out a case for grant of any reliefs in the said application dated 19th July 2011 before the learned Revenue Minister and ultimately before the learned Chief Secretary upon remand of the matter by this Court.

109. A question that arises for consideration of this Court is even if the learned Chief Secretary could not have exercised the powers of revision/review, whether any of the petitioner is entitled to any relief in the writ petition or whether the impugned order shall be interfered with at the instance of either of the petitioners who have not been able to establish any right in the property in question.

110. It was the case of the petitioner in Writ Petition No.1977 of 2016 that the said society had applied for allotment of suit land in the year 1992. On 11th November 1992, the Collector had granted permission for construction of a Gymnasium structure on the suit land. The Collector had granted regular NOC for construction of Gymnasium structure on the suit land on 21st May 1993. The said Gymnasium structure was constructed by the Mumbai Slum Improvement Board during the period between 1993-1997 by utilizing the development funds of the local MLA. On 17th December 1997, the Collector had handed over the suit land to the petitioner in Writ Petition No.1977 of 2016 along with Gymnasium structure on lease for a period of 5 years from 17th December 1997 to 17th December 2002.

111. It was the case of the said petitioner that the said lease was renewed for a period of 5 years ending with 17th December 2007. It is an admitted position that the said lease granted in favour of the petitioner in Writ Petition No.1977 of 2016 was thereafter was not renewed. Application for allotment of the suit land was made only 19th July 2011 before the learned Revenue Minister by filing revision application.

112. A perusal of Clause 6 of the Agreement executed between the Collector and the petitioner in Writ Petition No.1977 of 2016 clearly indicates that the said agreement was in force for a period of 5 years from the date of execution of the said agreement. The said Gymnasium structure owned by the Government was given to the petitioner on temporary basis. The Collector, Mumbai Suburban District had thereafter called upon the petitioner in the said writ petition to hand over vacant possession of the suit plot to the Collector by addressing several letters. The petitioner, however, did not hand over possession thereof to the Collector and continued to be in possession for quite some time in respect of the said suit plot. It is the case of the Collector that the Collector ultimately took possession of the suit plot from the said petitioner in Writ Petition No.1977 of 2016.

113. Learned counsel for the petitioner in Writ Petition no. 1977 of 2016 could not dispute that the lease granted in respect of the said structure by the Collector, Mumbai Suburban District was not renewed beyond 2002. Mr. Dighe, Assistant Government Pleader appearing in Writ Petition No. 1977 of 2016 has already brought on record the document to show that the possession of the said structure has been

already taken by the State Government from the petitioner in Writ Petition No. 1977 of 2016. Supreme Court in case of ***Raptakos Brett & Co. Ltd.*** (supra) has held that upon termination of period of lease, the person would be in wrongful occupation and/or unlawful occupation and is not entitled to continue to be in possession of the leasehold plot. The petitioner in the Writ Petition No. 1977 of 2016 had limited right to use the said structure owned by the Government for the period during which the said lease subsisted.

114. In my view, the petitioner in the Writ Petition No. 1977 of 2016 thus has no locus to challenge the allotment of the suit land made in favour of the petitioner in Writ petition No. 1569 of 2016. The principles of law laid down by the Supreme Court in case of ***Raptakos Brett & Co. Ltd.*** (supra) would apply to the facts of this case. Learned counsel for the petitioner in Writ Petition No. 1977 of 2016 could not produce any documents either before the learned Revenue Minister or before the learned Chief Secretary in support of the submission that it had any right, title or interest of any nature whatsoever subsisting in favour of the said petitioner in the suit structure after expiry of the lease period. Merely because few letters were addressed by the said petitioner to the Collector, Mumbai Suburban District for renewal of lease, that would not create any right in favour of the petitioner in the said suit structure. I am thus not inclined to interfere with the impugned order passed by the learned Chief Secretary at the instance of the petitioner in Writ Petition No. 1977 of 2016.

115. I shall now decide whether the petitioner in Petition No. 1569 of 2016 has established any right, title or interest of any nature whatsoever in the suit plot and whether at the instance of the said

petitioner, any interference is warranted in the impugned order passed by the learned Chief Secretary or not.

116. In so far as the petitioner in Writ Petition No. 1569 of 2016 is concerned, the State of Maharashtra had issued a notification on 3rd February, 2009 informing that the suit land admeasuring about 225 sq. mtrs. was allotted to the petitioner for constructing a hall to conduct religious ceremonies post death etc. subject to charging market value as prevalent under Maharashtra Land Code, 1966 subject to the various conditions set out therein. A perusal of the correspondence exchanged between the petitioners in that matter with the authority indicates that the petitioner had requested the Collector, Mumbai Suburban District to fix the land price as prevalent in August 1998 when the petitioner had applied for the said land whereas the decision to allot the said land was taken in the month of August-September 2002.

117. The petitioner however made it clear that if due to any reasons, the request of the petitioner was not found acceptable, the land value be fixed as prevalent in August-September 2002 when the suit land was allotted to the petitioner. The learned Collector, Mumbai Suburban District thereafter had called upon the petitioner to pay a sum of Rs.36,00,000/- in accordance with the Rule 40 of the Maharashtra Land Revenue (Allotment of Government Land) Regulations, 1971 by letter dated 6th July, 2010. The petitioner however had requested the learned Collector, Mumbai Suburban District to give vacant and peaceful possession of plot, free of encumbrances at the earliest to the petitioner.

118. It is the case of the Collector, Mumbai Suburban District that since the petitioner did not pay the said amount of Rs.36,00,000/-, no agreement could be entered into between the petitioner and the State Government in respect of the said land or any other writing so as to create any interest in favour of the petitioner in support of the said suit land. The petitioner has not produced any proof to show that the petitioner had paid the said amount of Rs.36,00,000/- to the State Government as demanded by the learned District Collector by letter dated 6th July, 2010 till date. The Collector, Mumbai Suburban District has not handed over the vacant possession of the said suit plot to the petitioner. In my view, merely on the basis of the said allotment letter issued in favour of the petitioner, the petitioner could not claim any right, title or interest of any nature whatsoever in respect of the suit plot in view of the petitioner not paying the market value in respect of the said land nor entered into any agreement with the State Government.

119. A perusal of the record indicates that after remand of the matter by this Court to the learned Chief Secretary, the learned Chief Secretary inquired from the officials present in the meeting held on 13th July, 2015 as to whether the suit land was reserved for any public purpose in the development plan. In view of the said query raised by the learned Chief Secretary in the said meeting, the Government Officials present in the meeting produced various documents before the learned Chief Secretary and informed that the suit land was reserved for Municipal School in the development plan 1991. The documents produced by the official including the City Survey Plan were admittedly furnished to the petitioners in both the matter. The petitioner in Writ Petition No.1569 of 2016 also made various

comments on the documents produced by the official before the learned Chief Secretary.

120. The respondents had also filed various affidavits in reply to the Writ Petition No. 1569 of 2016 to place on record that the suit land was already reserved for the Municipal School in the Development Plan 1991 and thereafter in Development Plan 2034 for the same purpose and more particularly Plot No.3A, C.T.S.No.518. Pursuant to the order passed by this Court on 26th July, 2016, in view of the rival contentions of the parties in respect of the reservations of the suit land for Municipal School in the Development Plan 1991 and Development Plan 2034, this Court recorded the statement made by the learned counsel for the parties that the survey could be carried out by the respective officials of the City Survey Department, Municipal Corporation and the Town Planning Department to identify the plot in question, which was the subject matter of both the writ petitions.

121. This Court accordingly directed that the concerned Development Plan 1991 and sanctioned Development Plan 2034 also shall be carried to the site at the time of site inspection. This Court directed the Executive Engineer, Development Plan to prepare a site report after such visit and to place it on record duly identifying the plot in question and to survey the suit plot already reserved for Municipal School in the Development Plan 1991 and/or sanctioned Development Plan 2034 for the same purpose or not. This Court also directed that at the time of carrying out such survey, the parties shall carry out survey of the plot numbered as 3A and thereafter identify whether such plot was already reserved for the Municipal School in Development Plan 1991 and sanctioned Development Plan 2034.

122. Pursuant to the said order passed by this Court, the parties and the officials from the Survey Department, Municipal Corporation and Town Planning Department alongwith the representative of the petitioners visited the suit plot. The Executive Engineer (Development Plan) Eastern Suburban, Municipal Corporation of Greater Mumbai filed an affidavit dated 21st August, 2019 annexing various documents after visiting the suit property in compliance with the order passed by this Court. In the said affidavit, it is stated that as per the measurement carried out at site by City Survey officials, Plot No.3A, C.T.S. No.518 period is reserved for the Municipal School (RE.1.1) having area of 225 sq.mtrs. The said survey was carried out in presence of staff of City Survey Officer, Executive Engineer (D.P.) E.S., Deputy Director (Town Planning) and also the representatives of the petitioners. It was stated that the suit plot was reserved for Municipal School having area of 225 sq.mtrs. Statements made in the said affidavit are accepted.

123. It is vehemently urged by the learned senior counsel for the petitioner that the Municipal Corporation had taken inconsistent stand before this Court in respect of the purpose of reservation of the suit plot in the development plan 1991 and thereafter in development plan 2034. It was also urged by the learned senior counsel that if according to the Municipal Corporation or the State Government, the suit plot was already reserved in the development planning 1991, the same could not be reserved for the same purpose once again in the development plane 2034. It was also urged by the learned senior counsel that the plot bearing no.3A of C.T.S. No. 518 was not reserved either in the development plan 1991 or development plan 2034.

124. Affidavit in reply filed by the learned Tahsildar on 27th April, 2016 and filed by Mr. Londhe dated 19th July, 2019 and the reservation register showing the list of the proposed/existing reservations for public purpose in the revised development plan (draft) 1981 – 2001 clearly indicates that the plot in question was reserved for Municipal Primary School under the development plan 1991. Under Section 31 of the M.R.T.P. Act the State Government is empowered to modify the development plan however after following the procedure prescribed under the said Act. The Government is competent to make minor or substantial modification/variations in the draft development plan.

125. There is no substance in the submission made by the learned senior counsel for the petitioner that the suit plot even if was reserved for municipal school in the development plan 1991 could not have been reserved once again for the same public purpose in the development plan 2034 being in contrary to Section 38 of M.R.T.P. Act. Under Section 31 of the M.R.T.P. Act, Government is empowered to make minor or substantial modification in the draft development plan. The said draft development plan was modified not only in respect of any isolated plot. The submission of the learned senior counsel is *ex-facie* contrary to Section 31 of the M.R.T.P. Act and thus cannot be accepted.

126. Sections 26 to 37 of the M.R.T.P. Act deals with preparation and publication of notice of draft development plan, objections to draft development plan, modification thereof, submission of draft development plan, sanction to draft development plan, interim development plan, plan for areas of comprehensive development, preparation of development plan for additional area, development plan

sanctioned by the State Government before commencement of M.R.T.P. Act, development plan prepared prior to enactment of M.R.T.P. Act and modification of final development plan. It is thus clear that the complete machinery and detail procedure is prescribed under the M.R.T.P. Act for preparation and finalization of the development plan. The modification of the development plan is on going process and is warranted from time to time depending upon the local need and the changes warranted. There is no automatic lapses of reservation.

127. Section 38 of the M.R.T.P. Act clearly provides that atleast once in 20 years from the date on which a development plan has come into operation and where a development plan is sanctioned in parts, then atleast once in 20 years from the date on which the last part has come into operation, the planning authority shall at any time when directed by the State Government to revise the development plan either wholly or in parts separately after carrying out necessary express survey and preparing land-use map of the area within its jurisdiction. The provisions of Sections 22 to 28, 30 and 31 shall in so far as they can be made applicable to apply in respect of such revision of the development plan.

128. In my view, Sections 23, 26, 28, 30 and 31 of the M.R.T.P. Act pressed in service by the learned senior counsel for the petitioner in support of the submission that once plot is reserved in the development plan for municipal school, there is no provisions under the M.R.T.P. Act empowering the planning authority to once again reserve the same plot for the municipal school under the sanctioned development plan 2034 is misplaced. Be that as it may, a perusal of the record clearly

indicates that before finalizing the development plan 2034, the notice was issued by the State Government inviting objections in accordance with the provisions of the M.R.T.P. Act. In response to the said notice, the petitioner had also raised an objection vide its letter dated 24th November, 2015 to the learned Chief Secretary (DP), Municipal Corporation of Greater Mumbai. It was the case of the petitioner itself that in the draft plan of 2034, Designation Survey October 2015 which was uploaded on 30th October, 2015 on the website on the Municipal Corporation inviting comments from the public indicated that the plot allotted to the petitioner was being shown in the draft plan as reserved for Municipal school. By the said letter, the petitioner had requested the Chief Engineer (DP) to forthwith delete the reservation of the plot for Municipal school. It was contended that the subject matter was subjudiced and therefore the said plot could not have been reserved for municipal school under the development plan 2034 at all.

129. It is thus clear that even according to the petitioner, the suit plot bearing no.3A was reserved for municipal school in the draft development plan 2034. The petitioner thus cannot be allowed to now contend that the said plot bearing no.3A allotted to the petitioner was not subject matter of any reservation for municipal school either in development plan 1991 or development plan 2034. The petitioner does not dispute that the said development plan 2034 is now already finalized.

130. Supreme Court in case of **Manohar Joshi** (supra) has clearly held that there are only two methods by which modification of the final development plan can be brought about. One is where the proposal is such that it will not change the character of development plan, which is

known as minor modification and for which the procedure laid down is under Section 37 of the Act. The other is where the modification is of substantial nature, which is defined under Section 22-A of the M.R.T.P. Act. In that case, the procedure as laid down under Section 29 is required to be followed. There is also one more analogous provisions though it is slightly different i.e. one provided under Section 50 of the Act, for deletion of the reservation where appropriate authority (other than the planning authority) no longer requires the designated land for particular public purpose and seeks deletion of the reservation thereon.

131. It is thus clear that since there was no change of public purpose as municipal school for which the land was reserved in development plan 1991 it would not change the character of development plan and would fall under Section 37 of the M.R.T.P. Act and could be retained in the subsequent revised development plan unless sought to be deleted under Section 50 of the M.R.T.P. Act by the appropriate authority other the planning authority. It is not the case of the petitioner that the said suit plot reserved for municipal school in the development plan 1991 was sought to be deleted in the development plan 2034 for the purpose of municipal school. On the contrary, the petitioner itself that had applied for deletion of the said plot shown for municipal school in the draft development plan 2034. The judgment of Supreme Court in case of **Manohar Joshi** (supra) on this issue would clearly apply to the fact of this case.

132. Regulation 11(4) of the Development Control Regulation for Greater Mumbai, 1991 provided that in case of specific designation/reservation in the development plan, the commissioner, with the consent of the interested persons may shift, interchange the

designation/reservations in the same or on adjoining lands/buildings to which an excess is available or has to be provided and the same is not encumbered provided that the area of such designation/reservations is not reduced. The submission of the learned senior counsel for the petitioner is also contrary to Regulations 11(4) of the Development Control Regulations for the Greater Mumbai, 1991. The suit plot already reserved for municipal school in 1991 development plan, could not have been even allotted to any of the petitioners.

133. In so far as the reliance placed on Section 127 of the M.R.T.P. Act by learned senior counsel for the petitioner in support of the submission that the petitioner was entitled to serve the notice along with a documents showing his title or interest in the said land on the planning authority or the development authority as the case may be is concerned, since this Court is of the view that the petitioner has not established any right, title or interest of any nature whatsoever in the suit plot no such provision can be invoked by the petitioner. Be that as it may, the reservation of any plot in the final development plan would lapse only if the procedure prescribed under Section 127 of the M.R.T.P. Act by the owner or any person interested in the land by serving notice along with documents showing his title or interest in the said land is followed and if the planning authority does not acquire or no steps are commenced for its acquisition within the time contemplated. In this case, the said situation has not arisen at all. Judgment of Supreme Court in case of ***Balaji Associates Through its Partners*** (supra) relied upon by the learned senior counsel for the petitioner would not assist the case of the petitioner.

134. In my view, since the petitioner is not able to independently demonstrate any right, title or interest in the suit plot which was cancelled by the impugned order with the directions to the Municipal Corporation to handover the possession thereof to the Municipal Corporation, Greater Mumbai, I am not inclined to interfere with the impugned order passed by the learned Chief Secretary in the facts and circumstances of this case. Both the petitions are devoid of merit.

135. I therefore pass the following order:-

- (i) Writ Petition Nos.1569 of 2016 and 1977 of 2016 are dismissed. Rule is discharged.
- (ii) There shall be no order as to costs.

(R.D. DHANUKA, J.)

136. Learned counsel appearing for the petitioner in Writ Petition No.1569 of 2016 seeks continuation of the *ad-interim* order passed by this Court. In view of the fact that possession of the property in question has been already taken by the State Government, no case is made out for continuation of the *ad-interim* order. The oral application for continuation of the *ad-interim* order is accordingly rejected.

(R.D. DHANUKA, J.)