**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.5396 OF 2021**

M/s. Yashashwin Enterprises A Registered Partnership Firm, Through its Partner
Shri. Sachin Pravin Khadke
Age: 29 years, Occupation: Business
Resident of: C/o Shop No.1,
Plot No.470/8, Opposite Bhaskar Market,
M. J. College Road, Jalgaon. ..PETITIONER

VERSUS

1. The State of Maharashtra
Through the Secretary,
Urban Development Department,
Mantralaya, Mumbai.

2. The Collector,
Jalgaon, District Jalgaon.

3. The Land Acquisition Officer,
Jalgaon, District Jalgaon.

4. The Jalgaon Municipal Corporation,
Through it's Commissioner,
Jalgaon Municipal Corporation,
Nehru Chowk, Jalgaon,
District Jalgaon.

5. The Assistant Director of Town Planning,
Jalgaon Municipal Corporation, Jalgaon,
District, Jalgaon. ..RESPONDENTS

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Mr. Mukul S. Kulkarni, Advocate for Petitioner.
Mr. S. P. Tiwari, A.G.P. for Respondent Nos.1 to 3.
Mr. Mehul V. Navandar, Advocate for Respondent Nos.4 and 5.

**AND
WRIT PETITION NO.5403 OF 2021**

M/s. Sarveshwar Associates A Registered Partnership Firm, Through its authorised person
Shri. Pravin Vasudeo Khadke
Age: 57 years, Occupation: Business
Resident of: C/o Shop No.1,
Plot No.470/8, Opposite Bhaskar Market,
M. J. College Road, Jalgaon. ..PETITIONER

VERSUS

1. The State of Maharashtra
Through the Secretary,
Urban Development Department,
Mantralaya, Mumbai.

2. The Collector,
Jalgaon, District Jalgaon.

3. The Land Acquisition Officer,
@ The Sub Divisional Officer, Jalgaon,
Jalgaon, District Jalgaon.

4. The Jalgaon Municipal Corporation,
Through it's Commissioner,
Jalgaon Municipal Corporation,
Nehru Chowk, Jalgaon,
District Jalgaon.

5. The Assistant Director of Town Planning,
Jalgaon Municipal Corporation, Jalgaon,
District, Jalgaon. ..RESPONDENTS

…

Mr. Mukul S. Kulkarni, Advocate for Petitioner.
Mr. P. K. Lakhotiya, A.G.P. for Respondent Nos.1 to 3.
Mr. Vijay B. Patil, Advocate for Respondent Nos.4 and 5.

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AND

WRIT PETITION NO.5525 OF 2021

1. Girish S/o Narayan Pawar,
Age: 48 years, Occup.: Agri and Business,
R/o.: 1202, Impress Building, Kalyan,
District Thane.

2. Sau Rutuja Girish Pawar,
Age: 44 years, Occup.: Agri and Business,
R/o.: 1202, Impress Building, Kalyan,
District Thane.

3. Kaustub Shekhar Latke,
Age: 42 years, Occup.: Agri and Business,
R/o.: B-403, Devi Vihar, Near Lal Chowki,
Kalyan, District Thane.

4. Sau Sonali Kaustub Latke,
Age: 38 years, Occup.: Agri and Business,
R/o.: B-403, Devi Vihar, Near Lal Chowki,
Kalyan, District Thane. ..PETITIONERS

VERSUS

1. The State of Maharashtra
Through Department of Urban Development,
Mantralaya, Mumbai.

2. Principal Secretary,
Department of Urban Development,
Mantralaya, Mumbai.

3. The Collector,
Aurangabad.

4. Special Land Acquisition Officer,
(Special Unit),
Aurangabad.

5. City and Industrial and Development
Corporation Ltd., Though its
Managing Director,
Mumbai.

6. City Industrial and Development Corporation
Ltd.,
Though, its Chief Administrator,
Udyog Bhavan, Town Centre,
New Aurangabad – 431003.

7. Administrator, New Towns,
City Industrial and Development Corporation
Ltd., Waluj Mahanagar, Aurangabad.

8. The Additional Town Planning Officer,
CIDCO, Waluj Mahanagar,
Aurangabad. ..RESPONDENTS

…

Mr. D. P. Palodkar, Advocate for Petitioners.
Mr. S. B. Pulkundwar, A.G.P. for Respondent Nos.1 to 4.
Mr. A. S. Bajaj, Advocate for Respondent Nos.6 to 8.

AND

WRIT PETITION NO.5537 OF 2021

1. Kaustub Shekhar Latke,
Age: 42 years, Occup.: Agri and Business,
R/o.: B-403, Devi Vihar, Near Lal Chowki,
Kalyan, District Thane.

2. Sau Sonali Kaustub Latke,
Age: 38 years, Occup.: Agri and Business,
R/o.: B-403, Devi Vihar, Near Lal Chowki,
Kalyan, District Thane. ..PETITIONERS

VERSUS

1. The State of Maharashtra
Through Department of Urban Development,
Mantralaya, Mumbai.

2. Principal Secretary,
Department of Urban Development,
Mantralaya, Mumbai.

3. The Collector,
Aurangabad.

4. Special Land Acquisition Officer,
(Special Unit),
Aurangabad.

5. City and Industrial and Development
Corporation Ltd., Though its
Managing Director,
Mumbai.

6. City Industrial and Development Corporation
Ltd.,
Though, its Chief Administrator,
Udyog Bhavan, Town Centre,
New Aurangabad – 431003.

7. Administrator, New Towns,
City Industrial and Development Corporation
Ltd., Waluj Mahanagar, Aurangabad.

8. The Additional Town Planning Officer,
CIDCO, Waluj Mahanagar,
Aurangabad. ..RESPONDENTS

…

Mr. D. P. Palodkar, Advocate for Petitioners.
Mr. S. G. Karlekar, A.G.P. for Respondent Nos.1 to 4.
Mr. A. S. Bajaj, Advocate for Respondent Nos.6 to 8.

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CORAM : S. V. GANGAPURWALA &
R. N. LADDHA, JJ.

Judgment Reserved on : 20.10.2021.
Judgment Pronounced on : 23.12.2021.

JUDGMENT (Per S. V. Gangapurwala, J.) :-

1. Rule. Rule made returnable forthwith. With the consent of parties matter is taken up for final hearing at the admission stage.

2. The petitions are based on similar set of facts and involve common question of law. To avoid rigmarole are decided by common judgment.

3. The petitioners in these writ petitions claimed to be the owner of the lands detailed in the petitions. Their lands were reserved under the development plan prepared by the Municipal Council/ Corporation/CIDCO. For a period of 10 years no steps were undertaken by the Planning Authority to acquire the property. The petitioners issued notice under Section 127(1) of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as 'Act, 1966'). The said notice is served upon the Planning Authority. Within the stipulated period of 24 months declaration under Section 126 of the Act, 1966 read with Section 19

of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'Act, 2013') was not issued. The contention of petitioners is that the reservation stands lapsed.

4. The respondents/Planning Authority contends that they had resolved and communicated petitioners that they are ready to give TDR to petitioners and the same is amounts to steps towards acquisition.

5. The aforesaid factual matrix is not disputed.

6. Mr. Palodkar, and Mr. Kulkarni, learned counsel for petitioners submit that, admittedly no steps as contemplated under Section 126 (2) and (4) are initiated by the Planning Authority for acquisition of the property. The declaration under Section 126 (1) of the Act, 1966 read with Section 19 of the Act, 2013 is not issued nor by an agreement the land is acquired. The acquisition stands lapsed. The learned counsel placed reliance on the judgment of the Apex Court in a case of **Girnar Traders Vs. State of Maharashtra and Others** reported in **(2007) 7 SCC 555** and the judgment of the Apex Court in a case of **Balaji Associates Through Its Partners and Others Vs. State of Maharashtra and Others** reported in **(2019) 19 SCC 1.**

7. Mr. Bajaj, learned counsel, Mr. Navandar, learned counsel and Mr. Patil, learned counsel for

Planning Authority submit that, the Planning Authority within the stipulated period of 24 months has offered TDR to petitioners. The same is sufficient compliance and amounts to steps towards acquisition as contemplated under Section 127 (1) of the Act, 1966. The learned counsel referred to Section 126 (1) (b) of the Act, 1966 to substantiate their contentions. The learned counsel rely upon the judgment of the Division Bench of this Court in a case of **Asha Sunil Zawar Vs. The State of Maharashtra** dated **16th September, 2021** in **Writ Petition No.5938/2020.** It is submitted that Division Bench of this Court has held that, granting the compensation of TDR by the Planning Authority is the effective step to commence the acquisition of the reserved land as contemplated in Section 127 of the Act, 1966.

8. Mr. Bajaj, learned counsel for CIDCO further contends that, the Board of CIDCO has passed Resolution bearing No.11833 dated 27.04.2017 thereby resolved to give compensation in the form of 'Development Right Certificate' only towards the acquisition of lands. The petitioners have not challenged the said Resolution. It is further submitted that, the Board of Director passed a Board Resolution No.12310 dated 03.03.2020 thereby resolving that, the process of acquisition of lands in the notified area of the project shall be stopped and/or withdrawn immediately and proposal is also submitted to the State Government on

04.03.2020 to de-notify CIDCO from entire notified are of the WALUJ Maha-Nagar project.

9. The learned counsel for petitioners submit that the judgment of the Division Bench of this Court in a case of **Asha Sunil Zawar Vs. The State of Maharashtra** (supra) did not consider the majority view in case of **Girnar Traders Vs. State of Maharashtra and Others** (supra) and has relied upon the minority view by reproducing the observations made in the minority judgment. The Division Bench of this Court while delivering the judgment in a case of **Asha Sunil Zawar Vs. The State of Maharashtra** (supra) did not consider the judgment of the Division Bench of this Court in Writ Petition No.2840/2012 decided on 24.04.2012 with other connected writ petitions. In the said judgment, the Division Bench of this Court had specifically held that, offer of TDR can be only with by an agreement between the parties. Clauses A and B of sub-Section (1) of Section 126 of the Act, 1966 can be invoked only when there is an agreement between the owner and the Planning Authority. If there is a failure to arrive at an agreement, the only option left for the Planning Authority is to take recourse to the provisions to the Land Acquisition Act, 1894 by acquiring the lands and publication of Notification as contemplated under sub-Section (2) or (4) of Section 126 of the Act, 1966. Similar view is recorded by the Division Bench of this Court under

judgment dated 07.01.2014 in Writ Petition No.7419/2013. Reliance for the same purpose is also placed in a case of **Nirmal Ujwal Credit Co-operative Society Ltd., Nagpur Vs. State of Maharashtra** reported in **(2019) 5 Mh.L.J. 599.** Reliance is also placed on the judgment of the Apex Court in a case of **Shrirampur Municipal Council, Shrirampur Vs. Satyabhamabai Bhimaji Dawkher and Ors.** reported in **(2013) 5 SCC 627** to contend that, steps towards acquisition can only be said to really commence when State Government takes active steps for acquisition of the particular piece of land which leads to publication of declaration under Section 6 of the Land Acquisition Act, 1894. It is contended that in case of **Shrirampur Municipal Council, Shrirampur Vs. Satyabhamabai Bhimaji Dawkher and Ors.** (supra) the Apex Court observed that the Constitutional Bench in a case of Girnar Traders (3) reported in (2011) 3 SCC 1 held that, majority judgment in case of Girnar Traders (2) lays down the correct law and does not require reconsideration. The learned counsel also placed reliance on Clause 11.2.2 of the Unified Development Control and Promotion Regulations For Maharashtra State.

10. We have considered the submissions canvassed by the learned counsel for respective parties.

11. Before adverting to the submissions made

by the learned counsel for parties and the judgments of the Apex Court and the co-ordinate Benches of this Court, it would be relevant to refer to the relevant provisions.

> **126. Acquisition of land required for public purposes specified in plans:**
>
> (1) When after the publication of a draft Regional plan, a Development or any other plan or town planning scheme, any land is required or reserved for any of the public purposes specified in any plan or scheme under this Act at any time the Planning Authority, Development Authority, or as the case may be, 1[any appropriate Authority may, except as otherwise provided in section 113-A, 2[acquire the land,-
>
> (a) by agreement by paying an amount agreed to, or
>
> (b) in lieu of any such amount, by granting the land-owner or the lessee, subject, however, to the lessee paying the lessor or depositing with the Planning Authority, Development Authority or Appropriate Authority, as the case may be, for payment to the lessor, an amount equivalent to the value of the lessor's interest to be determined by any of the said Authorities concerned [3][on the basis of the principles laid down in the Right to Fair Compensation and Transperency in Land Acquisition, Rehabilitation and Resettlement Act, 2013], Floor Space Index (FSI) or Transferable Development Rights (TDR) against the area of land surrendered free of cost and free from all encumbrances, and also further additional Floor Space Index or Transferable Development Rights against the development or construction of the amenity on the surrendered land at his cost, as the Final Development Control Regulations prepared in this behalf provide, or
>
> (c) by making an application to the State

Government for acquiring such land under the land [1][under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013], and the land (together with the amenity, if any, so developed or constructed) so acquired by agreement or by grant of Floor Space Index or additional Floor Space Index or Transferable Development Rights under this sections [2][or under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013], as the case may be, shall vest absolutely free from all encumbrances in the Planning Authority, Development Authority, or as the case may be, any Appropriate Authority.]

(2) On receipt of such application, if the State Government is satisfied that the land specified in the application is needed for the public purpose therein specified, or [3][if the State Government (except in cases falling under section 49 [4][and except as provided in section 113-A)] itself is of opinion] that any land included in any such plan is needed for any public purpose, it may make a declaration to that effect in the *Official Gazette*, [5][in the manner provided in section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013], in respect of the said land. The declaration so published shall, notwithstanding anything contained in the said Act, be deemed to be a declaration duly made under the said section:

[1][Provided that, subject to the provisions of sub-section (4), no such declaration shall be made after the expiry of one year from the date of publication of the draft Regional Plan, Development Plan or any other Plan, or Scheme, as the case may be.]

[2][(3)On publication of a declaration under the said [3][section 19], the Collector shall proceed to take order for the acquisition of the land

under the said Act; and the provisions of that Act shall apply to the acquisition of the said land, with the modification that the market value of the land shall be,-

(i) where the land is to be acquired for the purposes of a new town, the market value prevailing on the date of publication of the notification constituting or declaring the Development Authority for such town;

(ii) where the land is acquired for the purposes of a Special Planning Authority, the market value prevailing on the date of publication of the notification of the area as an undeveloped area; and

(iii) in any other case the market value on the date of publication of the interim development plan, the draft development plan, or the plan for the area or areas for comprehensive development, whichever is earlier, or as the case maybe, the date or publication of the draft town planning scheme:

Provided that, nothing in this sub-section shall affect the date for the purpose of determining the market value of land in respect of which proceedings for acquisition commenced before the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972:

Provided further that for the purposes of clause (ii) of this sub-section, the market value in respect of land included in any undeveloped area notified under sub-section (1) of section 40 prior to the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972, shall be the market value prevailing on the date of such commencement.]

[1][(4) [2][notwithstanding anything contained in the proviso to sub section (2) and in sub-section (3), if a declaration] is not made within the period referred to in sub-section (2) (or having been made, the aforesaid period

expired on the commencement of the Maharashtra Regional and Town Panning [3][(Amendment) Act, 1993], the State Government may make a fresh declaration for acquiring the land [4][under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013], in the manner provided by sub-sections (2) and (3) of this section, subject to the modification that the market value of the land shall be the market value at the date of declaration in the *Official Gazette* made for acquiring the land afresh.]

127. Lapsing of Reservations

[1][(1)] If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional Plan, or final Development Plan comes into force [2][or, if a declaration under sub-section (2) or (4) of section 126 is not published in the *Official Gazette* within such period, the owner or any person interested in the land may serve notice, alongwith the documents showing his title or interest in the said land, on the Planning Authority, the Development Authority or, as the case may be, the Appropriate Authority to that effect; and if within [3][twenty four months] from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan.

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

12. The contention of the CIDCO that the Board Resolution dated 27.04.2017 thereby resolving to give compensation in the form of ‘Development Right

Certificate' is not sanctioned by the Government. The said Resolution itself provides as under:

> "Resolved further that, in case no suggestions or objections are received on the proposed modifications, the proposal may directly be submitted by CA (NT) to Government for sanction."

Mr. Bajaj, learned counsel accedes to the fact that the Government has not sanctioned the said Resolution. In view of that, the said Resolution is not operative nor the statute has been amended. The said Resolution would not have legal sanctity and effect.

13. Section 127 of the Act, 1966 becomes operational the moment the land reserved, allotted or designated for any purpose specified in any development plan under this Act is not acquired by agreement within ten years from the date on which the final Regional Plan, or final Development Plan comes into force or if a declaration under sub-section (2) or (4) of section 126 is not published in the *Official Gazette* within ten years. Upon lapse of ten years if no steps are undertaken as contemplated under sub-Section (2) or (4) of Section 126 the owner or any person interested in the land gets a right to serve notice on the Planning Authority, the Development Authority or, as the case may be, the Appropriate Authority and if within 24 months from the date of service of

such notice the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation shall be deemed to have lapsed. Section 127 contemplates acquisition by an agreement and/or publication of declaration as provided under sub-section 2 or 4 of Section 126 of the Act, 1966.

14. Section 126(1) (a) of the Act, 1966 prescribes the mode of acquiring the land by an agreement. Sub-clause (b) of Section 126 deals with the contingencies where the land owner surrenders the land and the Planning Authority grants TDR, FSI in lieu of the amount of compensation. Under Section 126(1)(c), the Planning Authority may make an application to the State Government for acquiring the land under the provisions of the Act, 2013. Sub-section (2) of Section 126 further provides that on receipt of an application viz an application contemplated under Section 126 (1) (c) of the Act, 1966, if the State Government is satisfied that the land specified in the application is needed for the public purpose therein specified, it may make the declaration to that effect in the *Official Gazette*, in the manner provided in Section 19 of the Act, 2013. Sub-section (3) of Section 126 provides the procedure to be adopted for acquisition of the land upon publication of declaration under Section 19 of the Act, 2013. Sub-section (4) of Section 126 further provides that, if a declaration is not made within the period referred to in sub-section (2) of

Section 126, the State Government may make fresh declaration for acquiring the land under the Act, 2013, in the manner provided by sub-sections (2) and (3) of Section 126 of the Act, 1966.

15. Section 126 is self sufficient and provides for each and every contingencies and the mode of acquisition. Section 127 of the Act, 1966 is enacted keeping in view the rights of the land owner or the person interested in the land. In fact, Section 127 acts as a fetter on the power of eminent domain. It is enacted with a view that, the land of a person may not be reserved in perpetuity, so as to deprive such person the fruits of his land. The reservation on land of a person would be a clog on his ownership rights atleast for a period of ten years. For a period of ten years, the owner cannot use the property nor can compel the Planning Authority and/or the State Government to acquire the property, if the Planning Authority is not ready and willing to acquire the same. After lapse of ten years from the date the development plan is prepared and the land of the owner or person interested is kept under reservation, right accrues to the land owner to give a notice. The provision further gives time of 24 months to the Planning Authority and the State Government to take steps for acquisition. The steps for acquisition has been interpreted by the Constitutional Bench of the Apex Court. In a case of **Girnar Traders (3)** reported in **(2011) 3 SCC 1**

the Constitutional Bench of the Apex Court approved the majority view in a case of **Girnar Traders (2)** reported in **(2007) 6 SCC 555.** It has been held by the majority judgment that, the steps for acquisition would mean the declaration under Section 6 of the Land Acquisition Act within a period of 24 months. Now after Act of Act, 2013, the same would be declaration under Section 19 of the Act, 2013.

16. The mode of acquiring the property contemplated under Section 127 (1) of the Act, 1966 is as provided under Section 126 (2) and (4) of the Act, 1966. Section 127 of the Act 1966, specifically excludes Section 126 (1). The reason behind the same appears to be that under Section 126 (1) (a) of the Act, 1966, the acquisition is by an agreement between the parties. For an agreement there has to be consensus ad idem between the parties viz both the parties on their own volition would agree upon. Clause (b) of Section 126 can be invoked if the owner or occupier surrenders the area of land free of cost and free from all encumbrances. In case the land owner or the lessee as the case may be surrenders the land free of cost and free from all encumbrances, then in lieu of the amount, the Planning Authority, Development Authority or Appropriate Authority, as the case may be award Floor Space Index (FSI) or Transferable Development Right (TDR) and further additional FSI or TDR against the development or construction of

the amenity on the surrendered land at his cost. If the parties do not arrive at an agreement for an amount as compensation as contemplated under Clause (a), so also the land owner does not surrender the land as contemplated under Clause (b), then the third option is provided to the Planning Authority by making an application to the State Government for acquiring such land under the provisions of the Act, 2013 and on receipt of an application as contemplated under Clause (c), the State Government if it comes to the conclusion that the land is now required for public purpose, shall make declaration to that effect in the *official gazette* under Section 19 of the Act, 2013. Sub-section (3) further details procedure to be adopted. Sub-section (4) of Section 126 provides that if the declaration is not made within the period referred to in sub-section (2), then the State Government may make a fresh declaration for acquiring land under the provisions of Act, 2013 and in the manner provided in sub-section (2) and (3) of Section 126. Grant of FSI or TDR is an option available to the Planning Authority only in case the land owner surrenders the land free of cost.

17. The three modes provided under Section 126 (1) are distinct and separate and do not overlap. Section 126 (1)(a) is operative only if the property is acquired by an agreement i.e. both the parties on their own volition agree at a consideration amount and by an agreement the

property is acquired. The land owner also has got an option to surrender the land free of cost and upon surrender of the land is entitled for FSI/TDR against the area of land surrendered and also further additional FSI or TDR against the development or construction of the amenities on the surrendered land at his cost. In case land is not acquired by an agreement between the parties nor land owner surrenders the land, then the only option left to the Planning Authority is to make an application to the State Government for acquiring such land under the provisions of the Act, 2013 as contemplated under Section 126 (1) (c).

18. Section 127 of the Act, 1966 is incorporated to remove the clog on the ownership of the person whose land is reserved. The said provision contemplates that if no steps for acquisition are undertaken within 24 months from the date of service of notice as contemplated under sub-section (2) or (4) of Section 126, then reservation stands lapsed and steps for acquisition as contemplated under Section 127 is a declaration under Section 19 of the Act, 2013 as is held by the majority view in a case of **Girnar Traders (2)** (supra). Within a period of 24 months, the declaration under Section 19 of the Act, 2013 is required to be issued. The provision nowhere bestows right upon the Planning Authority, Development Authority or the Appropriate Authority as the case may be to compel the land owner to

accept the FSI or TDR against his consent. It is only if the land owner on his own volition surrenders the land free of cost, then in that case he is given right to accept the FSI or TDR.

19. The majority view in case of **Girnar Traders (2)** (supra) has observed thus:

> **54.** When we conjointly read Sections 126 and 127 of the MRTP Act, it is apparent that the legislative intent is to expeditiously acquire the land reserved under the Town Planning Scheme and, therefore, various periods have been prescribed for acquisition of the owner's property. The intent and purpose of the provisions of Sections 126 and 127 has been well explained in *Municipal Corpn. of Greater Bombay case v. Dr. Hakimwadi Tenants' Assn.* reported in *1988 Supp SCC 55* If the acquisition is left for time immemorial in the hands of the authority concerned by simply making an application to the State Government for acquiring such land under the LA Act, 1894, then the authority will simply move such an application and if no such notification is issued by the State Government for one year of the publication of the draft regional plan under Section 126(2) read with Section 6 of the LA Act, wait for the notification to be issued by the State Government by exercising suo motu power under sub-section (4) of Section 126; and till then no declaration could be made under Section 127 as regards lapsing of reservation and contemplated declaration of land being released and available for the landowner for his utilisation as permitted under Section 127. Section 127 permitted inaction on the part of the acquisition authorities for a period of 10 years for dereservation of the land. Not only that, it gives a further time for either to acquire the land or to take steps for acquisition of the land within a period of six months from the date of service of notice by the landowner for dereservation. The steps towards commencement of the acquisition in such a situation would necessarily be the steps for acquisition and not a step which may not result into acquisition and merely for the purpose of seeking time so that Section 127 does not come into operation.

56. The underlying principle envisaged in Section 127 of the MRTP Act is either to utilise the land for the purpose it is reserved in the plan in a given time or let the owner utilise the land for the purpose it is permissible under the town planning scheme. The step taken under the section within the time stipulated should be towards acquisition of land. It is a step of acquisition of land and not step for acquisition of land. It is trite that failure of authorities to take steps which result in actual commencement of acquisition of land cannot be permitted to defeat the purpose and object of the scheme of acquisition under the MRTP Act by merely moving an application requesting the Government to acquire the land, which Government may or may not accept. Any step which may or may not culminate in the step for acquisition cannot be said to be a step towards acquisition.

57. It may also be noted that the legislature while enacting Section 127 has deliberately used the word “steps” (in plural and not in singular) which are required to be taken for acquisition of the land. On construction of Section 126 which provides for acquisition of the land under the MRTP Act, it is apparent that the steps for acquisition of the land would be issuance of the declaration under Section 6 of the LA Act. Clause (*c*) of Section 126(1) merely provides for a mode by which the State Government can be requested for the acquisition of the land under Section 6 of the LA Act. The making of an application to the State Government for acquisition of the land would not be a step for acquisition of the land under reservation. Sub-section (2) of Section 126 leaves it open to the State Government either to permit the acquisition or not to permit, considering the public purpose for which the acquisition is sought for by the authorities. Thus, the steps towards acquisition would really commence when the State Government permits the acquisition and as a result thereof publishes the declaration under Section 6 of the LA Act.

58. The MRTP Act does not contain any reference to Section 4 or Section 5-A of the LA Act. The MRTP Act contains the provisions relating to preparation of regional plan, the development plan, plans for comprehensive developments, town planning schemes and in such plans and in the

> schemes, the land is reserved for public purpose. The reservation of land for a particular purpose under the MRTP Act is done through a complex exercise which begins with land use map, survey, population studies and several other complex factors. This process replaces the provisions of Section 4 of the LA Act and the inquiry contemplated under Section 5-A of the LA Act. These provisions are purposely excluded for the purposes of acquisition under the MRTP Act. The acquisition commences with the publication of declaration under Section 6 of the LA Act. The publication of the declaration under sub-sections (2) and (4) of Section 126 read with Section 6 of the LA Act is a sine qua non for the commencement of any proceedings for acquisition under the MRTP Act. It is Section 6 declaration which would commence the acquisition proceedings under the MRTP Act and would culminate into passing of an award as provided in sub-section (3) of Section 126 of the MRTP Act. Thus, unless and until Section 6 declaration is issued, it cannot be said that the steps for acquisition are commenced.

20. The Apex Court has held that, the publication of the declaration under sub-sections (2) and (4) of Section 126 read with Section 6 of the LA Act is a sine qua non for the commencement of any proceedings for acquisition under the Act, 1966. Now Section 6 of the Land Acquisition Act is replaced by Section 19 of the Act, 2013. The Apex Court had considered the entire scheme of Section 126 and 127 of the Act, 1966 and the majority view in case of **Girnar Traders (2)** (supra) is upheld by the Constitutional Bench in case of **Girnar Traders (3)** (supra).

21. The Division Bench of this Court in Writ Petition No.2840/2012 decided on 24.04.2012 has also held that in absence of any agreement between the land holder and the planning authority viz

Corporation, the only mode available for the Municipal Corporation to takeover the land is by taking recourse to the said Act of 1894 read with sub-sections (2) to (4) of the said Act of 1966. It is further held that, Cause (a) and (b) of sub-section (1) of Section 126 can be invoked only when there is an agreement between the owner/occupier and the Corporation and that the agreement must satisfy the tests laid down in the Indian Contract Act, 1872. If there is failure to arrive at the agreement, the only option left for the Corporation is to take recourse to the provisions of the Act of 1894 by acquiring the land. Similar view was adopted by the Division Bench in its judgment dated 07.01.2014 in Writ Petition No.7419/2013.

22. In case of **Godrej and Boyce Manufacturing Company Limited Vs. State of Maharashtra and Ors.** reported in **(2009) 5 SCC 24** the land owners themselves claimed that for constructing the roads they are entitled to Floor Space Index or Transferable Development Rights for the whole of the surface area of the roads. The land owners had voluntarily surrendered their lands. In addition, they constructed on their respective pieces of land the Development Plan roads at their own cost and as per the specifications stipulated in the relevant rules. The dispute between the parties was limited to the question of extent of FSI or TDR admissible for the roads constructed on the surrendered lands at the owners cost. It is in that context, the Apex Court was interpreting the word 'against'.

23. The lawyers appearing before the Division Bench of this Court deciding the case **Asha Sunil Zawar Vs. The State of Maharashtra** (supra) did not bring to the notice of the Division Bench the judgments of the co-ordinate Benches of this Court as referred to above, wherein it has been held that the TDR/FSI does not amount to the step for acquisition and it is only in case the land owner surrenders the land and/or there is an agreement between the parties, then the grant of FSI/TDR is only permissible. The lawyers appearing therein pointed out the minority view in the case of **Girnar Traders (2)** (supra).

24. We have been told that, Division Bench of this Court that had delivered the judgment in **Asha Sunil Zawar Vs. The State of Maharashtra** has stayed it in a Review Application filed by the parties.

25. Reliance was also placed on Unified Development Control and Promotion Regulations For Maharashtra State (hereinafter referred to as 'Regulations'), more particularly, Clauses 11.2.1, 11.2.2 and 11.2.3. Clause 11.2.1 states that, TDR is compensation in the form of Floor Space Index (FSI) or Development Rights which shall entitle the owner for construction of built-up area subject to provisions in the regulation. Clause 11.2.2 details the cases eligible for TDR. It states that, compensation in terms of TDR shall be permissible for lands under various reservations for public purposes which are subjected to

acquisition, proposed in draft or final development plan, prepared under Act, 1966 and other cases. Clause 11.2.3 clarifies circumstances where the TDR are not permissible to be granted.

26. Reading Clause 11.2.2 of the Regulations it is manifest that the compensation in terms of TDR shall be permissible in respect of the circumstances incorporated in Clause 11.2.2. It does not state that, it is compulsory for the land owners to accept TDR. More over, Clause 11.2.4 provides as to how the TDR can be generated. It states that, TDR is against the surrender of land. The said clause clarifies that for surrender of gross area of the land which is subjected to acquisition, free of cost and free from all encumbrances, the owner shall be entitled for TDR or DR irrespective of the FSI permissible or development potential of such land to be surrendered and also that of land surrounding to such land. It further states that for non-congested or designated area on development plan, TDR/DR area of surrendered land is permissible two times of the area of surrendered land and congested area of the development plan, TDR/DR is three times the area of the surrendered land. The Development Right Certificate (DRC) is issued only after the land is surrendered to the authority, free of cost and free from all encumbrances. The same is clarified in Clause 11.2.4 (b). The quantum of TDR is available only on surrendered land and in case of owner or lessee

constructing amenities with the prior approval of the authority on the surrendered plot at his own costs. Reading 11.2.4 it is clear that, generation of the Transferable Development Rights (TDR) is against the surrender of land.

27. More over, Sections 127 and 126 of the Act, 1966 leave no room for doubt that the only mode prescribed for acquisition upon service of notice under Section 127 (1) is as contemplated under sub-section (2) and (4) of Section 126 of the Act and Section 126(1)(b) is excluded. The intention of legislature is primararily to be gathered from the language used which means that attention should be paid to what has been said, as also to what has not been said. As a consequence a construction which requires for its support addition or substitution of words or which result in rejection of words as meaningless has to be avoided. It is well established that, it is contrary to all rules of construction and interpretation to read words into an Act. The Courts would normally not add or substitute words in the provisions, more particularly, when the language used in the provisions is unambiguous, clear and does not admit of any other interpretation. Reading Section 127 and 126 of the Act, 1966 conjointly and harmoniously it is evident that the only mode prescribed for acquisition upon service of notice under Section 127(1) is as contemplated under sub-sections 2 and 4 of Section 126 of the Act and 126(1)(b) is specifically

excluded. If Section 126(1)(b) is to be read into the modes of acquisition enumerated under sub-Section 127(1), the same would tantamount to adding words to Section 127(1) and doing violence to the said provision, the same is not permissible.

28. As the Division Bench of this Court delivering the judgment in case of **Asha Sunil Zawar Vs. The State of Maharashtra** (supra) has stayed the judgment in the Review Application filed before it and there are earlier judgments of the co-ordinate Benches of this Court holding the field and the same were not referred to by the advocates before the Divisions Bench deciding the case in **Asha Sunil Zawar Vs. The State of Maharashtra** (supra) and we have taken the same view as the co-ordinate Benches have taken earlier, we do not feel it necessary to refer the issue to the Larger Bench.

29. In light of the above, we hold that as no steps for acquisition are initiated within a period of 24 months from the date of service of notice under Section 127 of the Act, 1966, the reservation stands lapsed.

30. The State Government shall issue necessary Notification under Section 127(2) of the Act, 1966.

31. Rule accordingly made absolute in above terms.

(R. N. LADDHA)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/December-21