

S.S.Kilaje

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 13906 OF 2016

1. Shri. Jeevan Mallapa Tonemare,
Age : 47 years, Occu:
2. Shri. Sachin Kashinath Tonemare,
Age : 43 years, Occu:
Both Residing at : 109, Kambali Gali,
Bazar Peth, Kankavali, Tal.- Kankavali,
District - Sindhudurg. .. Petitioners

Versus

1. The Chief Officer,
Kankavali Nagar Panchayat,
Kankavali, District - Sindhudurg.
2. State of Maharashtra.
3. The Collector,
Sindhudurg District,
Having its office at Oras Bk.,
Taluka Kudal, District Sindhudurg.
4. Sub-Divisional Officer,
Kankavali Sub-Division, Kankavali,
Taluka and District Sindhudurg. .. Respondents

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- Mr. Pradeep Dalvi, Advocate for the Petitioners.
 - Mr. Drupad S. Patil a/w. Mr. Nikhil Pawar, Advocates for Respondent No.1.
 - Ms. M.P. Thakur, AGP for Respondent Nos. 2 to 4

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**CORAM : S. J. KATHAWALLA &
MILIND N. JADHAV, JJ.**

DATE :23 MARCH, 2022

JUDGMENT: (Per : S.J. Kathawalla & Milind N. Jadhav, JJ)

. By the present petition, the Petitioners have prayed for the following reliefs:

"(b) Hon'ble Court be pleased to declare the suit property being free from reservation under the provisions of Section 127 of Maharashtra Regional and Town Planning Act.

(bb) Your Lordships may be pleased to issue an appropriate writ, order or direction, directing the Respondents to lapse the reservation to the extent of the Petitioners' land in R.S. No.220, Hissa No.8A and Hissa No.9, CTS No.1016, total area 69 ares, situated at Kanakavali, Taluka Kanakavali, District Sindhudurg.

(bbb) Your Lordships may be pleased to issue an appropriate writ, order or direction, and to quash and set aside an Award dated 18.04.2016 issued by Sub-Divisional Officer, Kanakavali Sub-Division, Kanakavali, under Section 23 of the Act of 2013 to the extent of the Petitioners' land in R.S. No.220, Hissa Nos.8A and 9, and C.S. No.1016, total area 69 ares, situated at Kanakavali, Taluka Kanakavali, District Sindhudurg."

2. The Petitioners are the owners of land bearing Revisional Survey No.220A/Hissa No.8A and Revisional Survey No.220A/Hissa No.9 bearing CTS Nos.1016 and 1023, totally ad-measuring 69 Ares situated in Tahasil - Kankavali, District - Sindhudurg (hereinafter referred to as "**the said lands**"). The Petitioners have prayed for a declaration that the said lands be declared free from reservation under the provisions of the Maharashtra Regional and Town Planning Act, 1966 ("**the said Act**").

3. It would be necessary to refer to the relevant facts briefly before adjudicating the *lis* in the present Writ Petition.

- 3.1.** The said lands were reserved for the public amenity of 'Playground' by Resolution No.530 dated 01.11.1996 and published in the Maharashtra Government Gazette in Part II on page No.88 on 09.01.1997.
- 3.2.** On 15.12.1999, the State Government granted its sanction to the draft development plan of Kankavali under Section 31 of the said Act and by virtue thereof the said lands were reserved for the public purpose as;

S. N.	Site No.	Desig.	S.N./ CTS No.	Approximate Area in Hect - are	Implementary agency	Modification suggested as per section 28	Remarks
27	27	Playground	CTS No. 1016 1017 1018	0.62.28	Z.P.	Area Admeasuring 0.1672 Hect. has been deleted and adjacent area 0.0216 Hectare has been included.	Revised area 0.4777 Hectors
28	27	Garden	S.No.2 20/8 (pt)	0.11.52	Z.P.	-	-

- 3.3.** After demarcation and preparation of the map of the said lands, on 21.05.2008, the General Body of the Kankavali Nagar Panchayat passed Resolution No.14 for acquisition of the said lands and forwarding the proposal to the Collector, Sindhudurg for seeking financial assistance under the State Government UD-6 Scheme for

implementation of the development plan and develop the reservation.

- 3.4. On 12.11.2010, the Forest Department intimated that the said lands were not covered under the provisions of Section 35(3) of the Indian Forest Act, 1927.
- 3.5. On 04.02.2011, the Respondent No.1 - Chief Officer - submitted the proposal to the Respondent No.3 - Collector for acquisition of the said lands.
- 3.6. On 22.02.2011, the Director of Excavation issued NOC for acquisition in respect of the said lands.
- 3.7. On 15.03.2011, the Respondent No.3 - Collector appointed the Respondent No.4 - Sub-Divisional Officer, Kankavali, Sub-Division (SDO) as Special Land Acquisition Officer (SLAO) to take further steps for acquisition of the said lands.
- 3.8. On 27.09.2011, the SDO directed the Deputy Superintendent of Land Records (DSLRL) to carry out joint measurement of the said lands.
- 3.9. On 12.04.2012, the Respondent No.1- Chief Officer

deposited a sum of Rs.43,17,000/- with the SDO.

- 3.10. On 28.09.2012 the DSLR issued advanced notices to the Petitioners and other co-owners for fixing date for joint measurement of the said lands.
- 3.11. On 03.05.2012, after completing joint measurement of the said lands, a Report alongwith Map was prepared by the DSLR and forwarded to the SDO.
- 3.12. The SDO thereafter directed the Kankavali Nagar Panchayat to deposit 50% of the compensation.
- 3.13. On 19.06.2013, the Respondent No.1 deposited a sum of Rs.43,55,000/- with the SDO.
- 3.14. On 19.10.2013, the Respondent No.1 deposited another sum of Rs.91,28,000/- with the SDO.
- 3.15. On 14.11.2013, the SDO sought additional documents from the Respondent No.1 which were supplied on 30.11.2013.
- 3.16. On and with effect from 01.01.2014, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("**Act of 2013**")

came into force. However, the corresponding provision under Section 126(2) was amended to include the provisions of the Act of 2013 in the said Section w.e.f. 29.08.2015.

3.17. On 15.01.2014, the Petitioners issued a Purchase notice under the provisions of Section 127 of the said Act. It is stated in the notice as follows:-

"Modification No.7

The site No. 27 is reserved for "Garden". The total area under reservation is 0.6228 Hect. & area admeasuring 0.1672 Hect. deleted from site No. 27 included in residential zone. The area of about 0.0216 Hect. (216 m² area) from C.T.S. No. 1022 included in site No. 27 Area of site No. 27 after modification is approx. 0.4772 Hect. area.

From the year 1999 till 2013 you have not taken steps to acquire property mentioned above. The period of 10 years as per Section 127 of Maharashtra Regional and Town Planning act is already over in 2009 itself. By this notice you are hereby called upon to acquire aforesaid property within period of 1 year from the date of receipt of present notice....."

- 3.18.** On 12.02.2014 the Respondent No.1 replied to the Purchase Notice informing the Petitioners about the intention to acquire the said lands. On the same date, the Respondent No.1 requested the SDO to issue the declaration under the provisions of Section 6 of the Land Acquisition Act, 1894 ("**the Act of 1894**") for acquisition of the said lands.
- 3.19.** On 03.06.2014 the SDO submitted the proposal for acquisition of the said lands to the Respondent No.2 - Collector for approval.
- 3.20.** On 18.07.2014, the Collector granted approval for the acquisition of the said lands.
- 3.21.** On 24.09.2014, the SDO submitted the proposal to the Respondent No.2 - Collector for approval of the draft notification to be issued under Section 6 of the Land Acquisition Act, 1894 ("**Act of 1894**") as the MRTP Act was not amended so as to include the provisions of the Act of 2013 in Section 126 of the said Act.
- 3.22.** On 15.11.2014, the Respondent No.1 deposited a sum of Rs.30,00,000/- with the SDO.

- 3.23.** On 04.12.2014, the SDO submitted the proposal before the Collector for approval to the preliminary notification under Section 11(1) of the Act of 2013.
- 3.24.** On 09.12.2014, the Collector approved the draft notification under Section 11(1) and directed the SDO to publish the same in the Government Gazette.
- 3.25.** On 15.01.2015, the preliminary notification was published in the Government Gazette; and on 17.01.2015 it was published in the newspaper.
- 3.26.** On 26.03.2015, Notices for Hearing of Objections under Section 15(1) of the Act of 2013 were issued to the Petitioners.
- 3.27.** On 06.04.2015, the Petitioners appeared before the SDO and submitted an application for adjournment.
- 3.28.** On 17.05.2015, the Respondent No.1 deposited a further sum of Rs.1,46,20,000/- with the SDO.
- 3.29.** On 16.12.2015, the Town Planning Department supplied the Valuation Report in respect of the said lands.
- 3.30.** On 16.02.2016, the declaration was issued under the

provisions of Section 19(1) of the Act of 2013.

- 3.31.** On 08.03.2016, statutory notices under Section 21(2) were published by the Collector for intending to take possession of the said lands and calling for claims to compensation and all interests in the said lands. The Petitioners refused to accept service of the notices.
- 3.32.** On 28.03.2016, draft award was published by the Collector.
- 3.33.** On 18.04.2016, final award was declared under the provisions of Section 23 of the Act of 2013 declaring compensation of Rs.3,01,25,699/- to the Petitioners.
- 3.34.** On 20.04.2016, statutory notices under Section 38(1) were issued to the Petitioners to accept compensation declared under the award so that the Collector could take possession of the said lands.
- 3.35.** On 30.04.2016, the Respondent No.4 - SDO took physical possession of the said lands in the presence of witnesses. One of the owner namely Shri. Pranav Prakash Kamat handed over possession of the portion of his lands i.e. Survey No.222/5 (part). The possession of the said lands

was delivered to the Respondent No.1.

- 3.36.** On 03.05.2016, the Respondent No.4 - SDO directed the concerned Tahsildar and Talathi to mutate the name of the Municipal Council as owner of the said lands in the revenue record.
- 3.37.** By Mutation Entry No.9990 dated 29.07.2017 the name of the Municipal Council, Kankavali was recorded in the 7/12 extract of the said lands.
- 3.38.** In the year 2018, all adjacent and similarly acquired lands were amalgamated and a separate Survey No.220B/6 was assigned.
- 3.39.** On 21.06.2019, the Municipal Council published a tender notice in the public newspaper "Pudhari" for development of Survey No.220B/6.
- 3.40.** On 20.07.2019, work order was issued to the successful bidder and the work of constructing the stadium on Survey No.220B/6 commenced and substantial construction of the sports stadium has been constructed.

4. Before we advert to the submissions made by the parties, it is necessary to record the following:

- i. The present Petition was filed on 30.09.2016, seeking the sole relief of declaration that the said lands are free from reservation under the provisions of section 127 of the said Act.
- ii. On 27.06.2018 this Court issued notice to the Respondent No.1 - Chief Officer, Kankavali Nagar Panchayat.
- iii. On 13.07.2021 this Court after hearing the Advocates, passed the following order:

" The grievance of the Petitioners in the present Writ Petition is that the Respondents have till date not taken any steps to acquire the subject land despite a Notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (MRTP Act), being served on Respondent No.1 as far back as on 15th January, 2014.

2. However, the learned Advocate appearing for Respondent No.1 states that the subject land has been acquired and the compensation for the same is deposited with the Government Treasury.

3. Though the above Writ Petition is served on Respondent No.1 sometime in the year 2018, no reply has been filed by the Respondent No.1 till date. The learned Advocate representing Respondent No.1 is unable to answer the queries put to him by the Court on the ground that he was not given notice of today's hearing.

4. In view thereof, Respondent Nos.1 and 2 shall file their comprehensive Affidavit/s on or before 19th July, 2021 and forward copies of the same to the Advocates for the Petitioners as well as to the Court Associate.

5. *Stand over to 22nd July, 2021, high on board."*

- iv. On 19.07.2021 Respondent No.1 filed Affidavit-in-Reply, *inter alia*, stating that after following the due process of law the said lands were acquired under the provisions of Act of 2013. A copy of the statutory Award dated 18.04.2016 declared under Section 23 of the Act of 2013 was annexed to the Affidavit-in-Reply.
- v. The Petitioners thereafter amended the original petition on 16.09.2021 and challenged the statutory award dated 18.04.2016 to the extent of the Petitioners' said lands.

5. Mr. Pradeep Dalvi, learned Advocate appearing on behalf of the Petitioners has made the following submissions:

- i. that on the date of the issue of the declaration under Section 19(1) of the Act of 2013 i.e. on 16.02.2016, the reservation of the said lands had lapsed in view of the statutory provisions of Section 127 of the said Act;
- ii. that the acquisition of the said lands was required to be completed within 12 months from the date of receipt of the purchase notice (15.01.2014) either by issuing the declaration under Section 6 of the Act of 1894 or under Section 19(1) of the Act of 2013;

- iii. that the declaration in the present case admittedly is issued on 16.02.2016 i.e. after a lapse of 25 months from the date of the purchase notice; hence the purchase notice deserves to be made absolute and the entire acquisition proceedings be set aside and quashed;
- iv. that the Respondent No.1 in collusion with the Respondent Nos.3 and 4 have prepared false and bogus records pertaining to taking over possession of the said lands; that the possession of the said lands is with the Petitioners and no notice was issued to the Petitioners before taking over possession by the Awal Karkoon (clerk) on 30.04.2016 as alleged.

6. *PER CONTRA*, Mr. Drupad Patil alongwith Mr. Nikhil Pawar learned Advocates appearing for the Respondent No.1 - Chief Officer - Kankavali Nagar Panchayat have drawn our attention to the Affidavit-in-Reply dated 19.07.2021 and the Additional Affidavit-in-Reply dated 25.11.2021, both filed by the Respondent No.1 and made the following submissions:

- i. that the statutory purchase notice is defective and not in compliance with the provisions of section 127 of the said Act on the following grounds:

(a) the development plan of Kankavali was sanctioned vide final notification dated 30.09.1999. In this plan lands admeasuring 6228 sq.mtrs. from out of CTS No. 1016, 1017 and 1018 were reserved for the public purpose of 'playground' and designated as 'Site No. 27'; whereas lands admeasuring 1152 sq.mtrs. from out of survey No. 28, 220/8 were reserved for the public purpose of 'garden' and designated as 'Site No. 28'. In the purchase notice served by the Petitioners it is stated that lands admeasuring 4772 sq.mtrs. from out of survey No. 28, 220/8 and 220/9 are reserved for the public purpose of garden as Site No. 27. This statement describing the said lands on the face of record is incorrect as the said lands are reserved for playground and designated as Site No. 27 and not Site No. 28 as per the final sanctioned development plan;

(b) the Petitioners did not provide the title documents alongwith the purchase notice and therefore the said notice does not comply with the mandatory / statutory provisions of Section 127(1) of the said Act which state that 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 /

appropriate authority / development authority as the case may be.

(c) Mr. Patil has vehemently contended that the purchase notice is defective and invalid on the face of record; that apart pertinent documents are also required to be enclosed with the purchase notice and non-submission of the relevant documents would invalidate the purchase notice and deem it to be defective.

- ii. that in the present case the said lands were reserved for the public amenity of "Playground" as Reservation site No.27 in the final Sanctioned Development Plan of Kankavali City and have been acquired under provisions of the Act of 2013; that after following the due process of law and declaration of the statutory award possession of the said lands has been taken; that the rights of the Petitioners have extinguished and the said lands stand vested in the Kankavali Nagar Panchayat;
- iii. that the Respondent No.1 - Chief Officer initiated the process of acquisition of the said lands alongwith several other lands in the vicinity in the year 2008 for developing the various reservation sites; that several steps as

envisaged under the Act of 1894 were taken before 01.01.2014 and thereafter under the Act of 2013 as applicable. In the present case the statutory Award 18.04.2016 was passed under the provisions of Section 23 of the Act of 2013; that the Petitioners had complete knowledge of the acquisition proceedings which had commenced and they had participated in the said proceedings; that the Petitioners deliberately suppressed this material information when initially approaching this Court in September 2016; that the Petitioners ought to have disclosed that the acquisition proceedings of the said lands stood completed and should have challenged the same in the first instance;

- iv. that the said lands have already stood acquired and vested in the Kankavali Nagar Panchayat under the provisions of the Act of 2013; that possession of the said lands has already been taken by the SDO and handed over to the Kankavli Nagar Panchayat; as such the rights of the Petitioner in the said lands are extinguished; that the Petitioners participated in the acquisition process prior to the filing of the petition and even thereafter; further even though the petition was filed on 30.09.2016, the same

was not pressed by the Petitioners for a period of almost 5 years.

- v. that the preliminary notification under Section 11(1) of the Act of 2013 was issued by the State Government on 09.12.2014 upon being satisfied about the acquisition of the said lands for the designated public purpose; the preliminary notification was published in the Government Gazette on 15.01.2015 as provided; that the preliminary notification is not challenged by the Petitioners in any proceedings, as such the Petitioners are now estopped from raising any grievance regarding the challenge to the final notification under Section 19(1) and the Award under Section 23 of the Act of 2013.
- vi. that the provisions of Sections 125, 126 and 127 of the said Act came to be amended in August 2015; by the amendment it was stated that the provisions of Sections 4 to 15 of the Act of 2013 would not apply for compulsory acquisition of land needed for the purpose of the Regional Plan, Development Plan and Town Planning etc.; that as such only after coming into force of the said Amendment Act, 2015, with effect from 29.08.2015, it became clear that the provisions of Sections 4 to 15 of the Act of 2013

will not apply to the compulsory acquisitions initiated under the said Act; therefore Respondent Nos.3 and 4 cannot be blamed for issuance of the preliminary notification dated 09.12.2014 under Section 11 of the Act of 2013, that under a genuine and bonafide belief the entire acquisition procedure was initiated and scrupulously followed to the hilt by the Respondents;

- vii. that the challenge to the entire acquisitions proceedings and the statutory Award now raised in the year 2021 is belated and suffers from gross delay and laches; that the entire procedure prescribed under the Act of 2013 is duly followed before the passing the award dated 18.04.2016.

7. Ms. M. P. Thakur, learned AGP appearing on behalf of the Respondent Nos.2 to 4 has referred to the Affidavit-in-Reply dated 01.11.2021 filed by Mr. Jitendra Bhople, Joint Director, Town Planning, Konkan Division and has adopted the submissions made by Mr. Patil on behalf of the Respondent No.1. Ms. Thakur has drawn our attention to the submissions made in paragraph Nos.6 to 8 of the Affidavit-in-Reply filed by the Respondent Nos.2 to 4 which are reproduced hereinunder:

"6. I say and submit that the Planning Authority, Kankavali Nagar Panchayat had already submitted land acquisition proposal on

04.02.2011 to the Collector of the District. The Collector, Sindhudurg has issued primary notification dated 09.12.2014 under section 11 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which is published in Gazette dated 15.01.2015. The Collector, Sindhudurg has issued final notification dated 16.02.2016 under Section 19 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which is published in Gazette dated 03.03.2016 and Award was declared under Section 30 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 on 18.04.2016.

7. I say and submit that before the new land acquisition, Rehabilitation and Resettlement Act 2013 came in force, the earlier Land Acquisition Act, 1894 has been in force and according to its various provisions were have equivalent provisions read with the relevant provisions of the said Act. For the acquisition of lands reserved in Development Plan, basic concept behind that was the lands which are reserved for public purpose in the Development Plan have once notified under the said Act for suggestion /objection in Government Gazette then again the primary notification under land Acquisition Act, regarding the same land is required for same public purpose does not require, because chance for public hearing was given once. Therefore in such cases only final declaration under relevant provision of Land Acquisition Act have been made. As the Land Acquisition Act, 1894 was repealed by Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 to match the equivalent provision of new Act with the relevant provisions of the said Act, the process to that effect to incorporate necessary amendments to MRTP Act were proposed. Meanwhile considering the urgency of land acquisition for public purpose in present matter the District Collector has acquired the land as per the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

8. I say and submit that as per the affidavit submitted by the Chief Officer of Nagar Panchayat Kankavali to this High Court on dated 19.07.2021, as on today the land acquisition procedure has been completed and land is in possession and also in the name of Planning Authority. The Planning Authority has already started the construction work on site. The lands acquired for public purpose of Play ground and Garden after following the legal procedure of the relevant Act, therefore cannot be deleted from public purpose."

7.1. Mr. Thakur submitted that concrete steps to acquire the said lands were initiated in the year 2011; preliminary notification

dated 09.12.2014 was issued under Section 11 of the Act of 2013 by the Collector and published in the Government Gazette on 15.01.2015; substantial sum in excess of Rs. 3 crores was deposited by the Respondent No.1 with the SDO i.e. the SLAO in the present case; declaration dated 16.02.2016 under the provisions of Section 19(1) of the Act of 2013 was issued by the Collector and published in the gazette on 03.03.2016 and the statutory award dated 18.04.2016 was declared under the provisions of Section 23 of the Act of 2013.

7.2. Ms. Thakur submitted that the Petitioners had complete knowledge of the aforementioned acts, despite which, when the Petitioners first approached this Court in the year 2016, the Petitioners suppressed the aforementioned facts and merely filed the Petition on the ground of lapsing of reservation. Ms. Thakur submitted that it is pertinent to note the steps taken in a given case in order to gather the intention of the acquiring body and the Special Land Acquisition Officer respectively for acquisition of the subject land in question; that in the present case the process for acquisition of the said lands including various other lands in the vicinity of the said lands was initiated by demarcation and preparation of the map of the reserved lands from the year 2008 onwards and the State Government thereafter provided financial assistance to the Kankavali Nagar Panchayat under the State Government Urban Development UD - 6

Scheme for implementation of the Development Plan; that it requires to be noted that the proposal for acquisition of the said lands was forwarded to the Collector on 04.02.2011 and thereafter substantial sums in excess of Rs.3 cores were deposited in tranches by the Respondent No.1; that the Petitioners were aware as they had participated in the statutory process and therefore deliberately chose not to challenge the statutory award dated 18.04.2016 and hence the Petition deserves to be dismissed.

7.3. Ms. Thakur has also submitted that the purchase notice given by the Petitioners is defective on the face of record as it gives an incorrect description of the said lands and the reservation of the said lands.

8. We have perused the pleadings and heard the learned counsel appearing for the respective parties. Submissions made are on pleaded lines.

9. Before we proceed to adjudicate the issue, it will be apposite to refer to the statutory provisions which we may find necessary to refer to. This is an acquisition under the provisions of the said Act (MRTP Act, 1966). Hence, Section 126 and 127 of the said Act are relevant provisions for the purpose of determining the case in

hand. That apart it is seen that in the present case the acquisition process for acquisition of the said lands was about to commence under the provisions of the Act of 1894, but due to the enactment of the Act of 2013, the acquisition was carried out and completed under the provisions of the Act of 2013. Hence, it will be relevant to refer to the some of the provisions of the Act of 2013 also.

9.1. Sections 126 and 127 of the said Act are set out hereunder:

"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, [any appropriate Authority may, except as otherwise provided in section 113-A,] 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 [on the basis of the principles laid down in the Right to Fair Compensation and Transparency 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 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 section [or under the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013], as the case may be, shall vest absolutely free, 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 [if the State Government (except in cases falling under section 49 [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*, [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:

[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.]

[(3) On publication of a declaration under the said [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 of 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 purpose 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.]

[(4) [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 Planning [Amendment Act, 1993, the State Government may make a fresh declaration for acquiring the land [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)] If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final regional plan, or final Development Plan comes into force [or, if a declaration under sub-section (2) or (4) of section 126 is not published in the *Official Gazette* within such period, the owner or any person interested in the land may serve notice, alongwith the documents showing his title or interest in the said land, on the Planning Authority, the Development Authority or, as the case may be, the Appropriate Authority to that effect; and if within [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.

[(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*.]"

9.2. Sections 15, 19 and 24 of the Act of 2013 are relevant and are reproduced hereunder :

"15. Hearing of objections.- (1) Any person interested in any land which has been notified under sub-section (1) of section 11, as being required or likely to be required for

a public purpose, may within sixty days from the date of the publication of the preliminary notification, object to-

- (a) the area and suitability of land proposed to be acquired;
- (b) justification offered for public purpose;
- (c) the findings of the Social Impact Assessment report.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard in person or by any person authorised by him in this behalf or by an Advocate and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under sub-section (1) of section 11, or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him along with a separate report giving therein the approximate cost of land acquisition, particulars as to the number of affected families likely to be resettled, for the decision of that Government.

(3) The decision of the appropriate Government on the objections made under sub-section (2) shall be final.

19. Publication of declaration and summary of Rehabilitation and Resettlement. – When the appropriate Government is satisfied, after considering the report, if any, made under sub-section (2) of section 15, that any particular land is needed for a public purpose, a declaration shall be made to that effect, along with a declaration of an area identified as the —"resettlement area" for the purposes of rehabilitation and resettlement of the affected families, under the hand and seal of a Secretary to such Government or of any other officer duly authorised to certify its orders and different declarations may be made from time to time in respect of different parcels of any land covered by the same preliminary notification irrespective of whether one report or different reports has or have been made (wherever required).

(2) The Collector shall publish a summary of the Rehabilitation and Resettlement Scheme along with declaration referred to in sub-section (1):

Provided that no declaration under this sub-section shall be made unless the summary of the Rehabilitation and Resettlement Scheme is published along with such declaration:

Provided further that no declaration under this sub-section shall be made unless the Requiring Body deposits an amount, in full or part, as may be prescribed by the

appropriate Government toward the cost of acquisition of the land:

Provided also that the Requiring Body shall deposit the amount promptly so as to enable the appropriate Government to publish the declaration within a period of twelve months from the date of the publication of preliminary notification under section 11.

(3) In projects where land is acquired in stages, the application for acquisition itself can specify different stages for the rehabilitation and resettlement, and all declarations shall be made according to the stages so specified.

(4) Every declaration referred to in sub-section (1) shall be published in the following manner, namely:

- (a) in the Official Gazette;
- (b) in two daily newspapers being circulated in the locality, of such area of which one shall be in the regional language;
- (c) in the local language in the Panchayat, Municipality or Municipal Corporation, as the case may be, and in the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil;
- (d) uploaded on the website of the appropriate Government;
- (e) in the affected areas, in such manner as may be prescribed.

(5) Every declaration referred to in sub-section (1) shall indicate,—

- (a) the district or other territorial division in which the land is situated
- (b) the purpose for which it is needed, its approximate area; and
- (c) where a plan shall have been made for the land, the place at which such plan may be inspected without any cost.

(6) The declaration referred to in sub-section (1) shall be conclusive evidence that the land is required for a public purpose and, after making such declaration, the appropriate Government may acquire the land in such manner as specified under this Act.

(7) Where no declaration is made under sub-section (1) within twelve months from the date of preliminary notification, then such notification shall be deemed to have been rescinded:

Provided that in computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded:

Provided further that the appropriate Government shall have the power to extend the period of twelve months, if in its opinion circumstances exist justifying the same:

Provided also that any such decision to extend the period shall be recorded in writing and the same shall be notified and be uploaded on the website of the authority concerned.

24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.—

(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,—

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or (b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

10. We may now proceed to analyse the facts of the present case in the light of the aforesaid statutory provisions.

10.1. In the present case, admittedly the process for acquisition

of the said lands reserved for "Playground " (Reservation Site No. 27) was initiated on 21.05.2008 when the resolution of the General Body of the Kankavali Nagar Panchayat resolved to demarcate, survey, prepare the map of the said lands and forward the proposal for acquisition to the Collector. The Nagar Panchayat has also received substantial funds under the Urban Development - (UD-6) Financial Assistance Scheme for implementation of the development plan during the years 2012-13 to 2015-16. It is the case of the Nagar Panchayat that the financial assistance received from the State Government has been deposited with the SDO i.e. the Special Land Acquisition Officer as 100% compensation in tranches, which is in excess of Rs. 3 crores for the said lands. It is seen that the most critical step after issuance of the preliminary notification dated 09.12.2014 is the enquiry to be conducted under the provisions of Section 15 of the Act of 2013. Section 15 relates to hearing of objections and gives every opportunity to the owner / objector or any person interested in the land which is notified for acquisition under Section 11(1). In the present case the statutory notices under Section 15 were issued to the Petitioners and the petitioners attended the hearing fixed by the Collector on 06.04.2015 but did not raise any objection. In the present case the provisions of Sections 16 to 18 of the Act of 2013 would not apply as they deal with Rehabilitation and Resettlement issues; the said lands being completely vacant lands and not occupied by any inhabitants

would therefore fall outside the purview of Sections 16 to 18 of the Act of 2013. After conducting the enquiry under Section 15 and hearing the objections on 06.04.2015, the declaration under 19(1) was issued on 16.02.2016. Petitioners have asserted that since no steps were taken for a period of almost 25 months after giving the Purchase Notice, the said lands have become free from reservation. We however do not entirely agree with the Petitioners' case.

10.2. We may usefully refer to Section 127 to remind ourselves of the language used by the legislature. Sub-section 1 of Section 127 needs to be read as a whole though it clearly states that if a declaration under 126(2) is not published in the Official Gazette within the prescribed period and if the appropriate authority within 24 months from the date of service of the purchase notice does not acquire or takes no steps for acquisition of the subject land then the reservation of the subject land shall be deemed to have lapsed. Having the facts of the case before us and the submissions made by the Respondents, the question that now needs due consideration is what importance is to be attached to the steps taken by the Respondents viz. the Nagar Panchayat, the Collector and the SDO i.e. the Special Land Acquisition Officer (SLAO) prior to the issuance of the declaration under Section 19(1) to which reference is made in Section 127(2) of the said Act and thereafter. Admittedly there is delay in issuing the

declaration under Section 19(1) of the Act of 2013. Looking into the facts of the present case which have alluded to hereinabove it is clear that the action of the Respondents is lethargic in issuing the declaration under Section 19(1) on 16.02.2016 and publishing the same in the Government Gazette on 03.03.2016. In our view, the act on the part of the Respondents of issuing the Section 19(1) declaration on 16.02.2016 is an act of gross lethargy especially when the facts in the present case clearly bring out the intention and decision of the Respondents to acquire the said lands; all events / acts preceding the declaration point towards concrete steps for acquisition of the said lands. However, in view of the specific language of Section 126(2) as amended with effect from 29.08.2015 and read with the provisions of Section 127(1), it is clear that there has been delay in issuing the declaration beyond the prescribed period.

11. However in the present case, the trigger to invoke the above provisions is the purchase notice and we may now turn our attention to the contents of the purchase notice dated 15.01.2014 given by the Petitioners. The purchase notice *prima facie* refers to the said lands i.e. land under acquisition as follows:

"The site No. 27 is reserved for "Garden". The total area under reservation is 0.6228 Hect. & area admeasuring 0.1672 Hect. deleted from site No. 27 included in

residential zone. The area of about 0.0216 Hect. (216 m² area) from C.T.S. No. 1022 included in site No. 27 Area of site No. 27 after modification is approx. 0.4772 Hect. area."

11.1. We have perused the purchase notice carefully. The final sanctioned development plan for Kankavali was sanctioned on 15.12.1999 under the provisions of Section 31 of the said Act. The description of the said lands appearing in the purchase notice is taken by the Petitioners from Exhibit 'A' to the Petition. The document at Exhibit 'A' is not the final sanctioned development plan of Kankavali City approved under Section 31 of the said Act. This document at Exhibit 'A' is a copy of the Modifications made by the Planning Authority to the draft development plan under Section 28(4) of the said Act. In this document, the description of the said lands is stated at Modification No.7 and it reads thus:-

"The site No. 27 is reserved for "Garden". The total area under reservation is 0.6228 Hect. & area admeasuring 0.1672 Hect. deleted from site No. 27 included in residential zone. The area of about 0.0216 Hect. (216 m² area) from C.T.S. No. 1022 included in site No. 27 Area of site No. 27 after modification is approx. 0.4772 Hect. area. "

11.2. It is pertinent to note that the State Government granted sanction under Section 31 of the said Act to the final development plan of Kankavali City on 30.09.1999 and it came into effect from 15.12.1999. In the final development plan, the reservation of the

said lands was changed / modified by the State Government as depicted in para 4.2 hereinabove. The document at Exhibit 'A' referred to and relied upon by the Petitioners to describe the said lands in the Purchase Notice refers to Site No.27 as reserved for Garden. This however stands modified in the final development plan by the State Government wherein Site No.27 is designated as 'Play Ground' and Site No.28 is designated as 'Garden' alongwith the respective change in areas. The Respondent No.1 has filed on record Appendix - A, Development Plan of Kankavali - Sites reserved for various public purposes at Page Nos.1 to 13 in the compilation of documents. Hence the purchase notice does not refer to the correct description of the said lands as per the final sanctioned development plan. The Purchase Notice clearly refers to the description of the said lands as modified by the town planning office and published in the Maharashtra Government Gazette on 25.03.1999, which is an incorrect description. Further it is seen that the purchase notice admittedly does not enclose any documents showing the title of the Petitioners or interest of the Petitioners in the said lands. Hence on these counts we arrive at an unequivocal conclusion that the purchase notice is defective and an invalid purchase notice.

12. We have also noted the fact that the Petitioners were aware of the Award dated 18.04.2016 and have deliberately not

challenged the same in the first instance when the Petition was filed in the year 2016. Even after passing of the Award substantial steps have been taken by the Respondents; possession of the said lands has been taken by the Respondents; the entire gamut of lands acquired have been amalgamated and the public purpose has been implemented which is in the public domain. It is only as late as in September - 2021 that the Petitioners have now sought to challenge the Statutory Award dated 18.04.2016, when they had complete knowledge of the same and had participated in the entire acquisition proceedings.

13. Though we are aware of the fact that the provisions of Section 126(2) as amended refer to the declaration under section 19(1) of the Act of 2013 to be issued within a period of 24 months, the antecedent facts in the present case and the subsequent facts pursuant to the declaration dated 16.02.2016 also deserve to be considered as effective steps in the process of acquisition of the said lands; just as the Respondents have been lethargic in not adhering to the strict mandatory provisions of publishing the declaration under Section 19(1) within the prescribed period, the Petitioners are also equally guilty of gross delay in approaching this Court.

13.1. In the present case, acquisition process was initiated under the Act of 1894, however, before issuing the preliminary

notification, the Act of 2013 came into force w.e.f. 01.01.2014. Under Section 24(1)(a) of the Act of 2013 it is stated that if no award has been declared under Section 11 of the Act of 1894 then all provisions of the Act of 2013 relating to determination of compensation shall apply to the acquisition. However, Section 126(2) was amended for including the provisions of the Act of 2013 w.e.f. 29.08.2015. Admittedly, in the present case substantial time was spent by the Respondents in following the procedure under Sections 4 to 15 of the Act of 2013. It is seen that though the preliminary notification was issued on 09.04.2014 under section 11(1) of the Act of 2013, after almost 14 months the declaration under Section 19(1) was issued. The intention of the Respondents to acquire the said lands was however clear. The same has also been implemented. The Petitioners were aware of the steps taken by the Respondents for acquisition of the said lands. However, when the Petition was originally filed on 30.09.2016, it was filed only on the ground that there was a delay in issuing the declaration under section 19(1) of the Act of 2013 after the service of purchase notice and therefore there was lapsing of the reservation of the said lands. It was incumbent upon the Petitioners to have narrated the entire sequence of events from the year 2008 onwards which was to their knowledge. The Petitioners admittedly suppressed the said facts which are glaring in nature.

14. However, we would like to determine the present Writ Petition on the admissibility and validity of the purchase notice. The purchase notice is a very valuable statutory right possessed by the owner of the lands, whose lands are under reservation. Though no particular format is prescribed for the purchase notice, what is required is that the purchase notice is addressed to the correct authority and gives the correct description of the subject property under reservation. In the present case at hand, the correct description of the property under reservation is not given. That apart, as required and observed, the necessary documents are also not enclosed with the purchase notice. Hence, on this fundamental omission on the part of the Petitioners, we hold that the purchase notice dated 15.01.2014 is defective and not maintainable.

15. In view of the above discussion and findings and specifically with reference to the fact that the purchase notice issued by the Petitioners is defective and not maintainable on the face of record as it does not describe the said lands under reservation correctly in consonance with the provisions of Section 127(2) of the said Act, we are inclined to dismiss the Writ Petition. Writ Petition is accordingly dismissed. However, there shall be no order as to costs.

[MILIND N. JADHAV, J.]

[S. J. KATHAWALLA, J.]