IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3060 OF 2002
WITH
CHAMBER SUMMONS NO.433 OF 2007
IN
WRIT PETITION NO.3060 OF 2002
WITH
INTERIM APPLICATION NO.586 OF 2020
IN
WRIT PETITION NO.3060 OF 2002
WITH
INTERIM APPLICATION NO.513 OF 2020
IN
WRIT PETITION NO.3060 OF 2002

1.Dr. Abraham Patani of Mumbai,
Indian Inhabitant, Residing at Patani Villa,
Mahakali Caves Road, Andheri (West),
Mumbai : 400093 and

2. Inga Laboratories Private Limited,
a Company incorporated under the
Companies Act, 1956 having its registered
Office at Mahakali Road, Andheri (East),
Mumbai : 400 093. … Petitioners

Versus

1.State of Maharashtra, Department of
Urban Development, Mantralaya,
Mumbai : 400032.

2.Municipal Corporation of Brihanmumbai,
a statutory corporation established under the
Mumbai Municipal Corporation Act, 1888,
Having its Head Office at Mahapalika Marg,
Fort, Mumbai : 400001.

3.Municipal Commissioner for Municipal
Corporation of Brihanmumbai having his
Office at Mahapalika Marg, Mahapalika
Marg, Fort, Mumbai : 400 001.

4.Abode Builders, a firm having its place
Of business at 3 Balquis Apartment,
Mahakali Caves Road, Andheri (East),
Mumbai : 400093.

5. Mehtab Liaq Ahmed Shaikh
Of Mumbai Indian Inhabitant residing
at : Balquis Apartment,
Mahakali Caves Road, Andheri (East),
Mumbai : 400093.

6. Vyaravali Village Development
Association, a society registered under
The Maharashtra Co-operative Societies
Act, 1960 under Reg. No. 42/1993 GBBSD
Maharashtra Rajya Mumbai dated 21.1.1993,
Having its Office at 3 Balquis Apartment,
Mahakali Caves Road, Andheri (East),
Mumbai : 400093.

7.Dr. C. N. Shenoy, President of Vyaravali
Village Development Association having
its Office at 3 Balquis Apartment,
Mahakali Caves Road, Andheri (East),
Mumbai : 400093.

8.Malad Satguru Sadan Co-operative
Housing Society Limited, a Co-operative
Society registered under the Maharashtra
Co-operative Societies Act, 1960 under
Registration No.BOM/HSG/4284 dated
20.7.1974 having its Office at Sohan Singh
Chawl, Jawahar Nagar, Khar (East),
Mumbai : 400051 and

9. Acchar Singh – Secretary of Malad Satguru
Sadan Co-operative Housing Society Limited,
Having its Office at Sohan Singh Chawl,
Jawahar Nagar, Khar (East),
Mumbai : 400051.

10.Special Land Acquisition Officer No.VII,
Mumbai and Mumbai Suburban District
Having his Office at Shree Chhatrapati Shivaji
Maharaj Market, 2nd Floor, Palton Road,
Mumbai : 400001.

11.Additional Commissioner,
Konkan Division, Having his Office at
Old Secretariat Fort, Mumbai : 400032. … Respondents

...

Mr. J.P. Sen, Senior Advocate a/w Mr. Rohan Cama, Mr. J.S. Solomon, Ms. Soniya Putta, Mr. Atharva Sawant and Ms. Devyani Deshmukh i/b M/s. Solomon & Co. for the Petitioners.

Mr. Milind More, Additional G.P. for Respondent Nos.1, 10 and 11-State.

Mr. Girish Godbole, Special Counsel a/w Ms. Sheetal Metakari i/b Mr. Sunil Sonawane for the Respondent No.2 and 3-MCGM.

Mr. Roop M.Vasudeo with Mr. Yashwant Dhanegave for Respondent No.4&5.

Mr. V.V. Tulzapurkar, Senior Advocate a/w Mr. Y.D. Divekar with Mr. Rohan Karande i/b M/s. Divekar & Co. for Respondent Nos.6 to 9.

Mr. Rahul Sinha i/b M/s. DSK Legal for the Applicant in IA 513 of 2020 and IA 586 of 2020.

CORAM : A. A. SAYED &
ABHAY AHUJA, JJ
DATE : 30TH MAY, 2022

JUDGMENT:- (PER COURT)

1. This Writ Petition has been filed by Petitioners for quashing and setting aside the Corporation Resolution dated 10th September 1996 (Exhibit-M to the Petition), Corporation Resolution No. 536 dated 8th December, 1998 (Exhibit-N to the Petition), Corporation Resolution No. 1117 dated 28th October, 2002 (Exhibit-D to the Petition), Notification dated 15th February, 2005 (Exhibit-HH to the Petition) issued by the Respondent No.10 and Notification dated 2nd March, 2006 (Exhibit-LL to the Petition) issued by the Respondent No.11 and Award dated 26th November, 2007 (Exhibit-TT to the Petition) as well as for directions to the Respondents No. 1 to 3 to forbear from taking any action in respect of Petitioners' property being CTS Nos. 23, 24, 26 and 27 of Village Mulgaon, Taluka Andheri (East), Mumbai Suburban District, Mumbai admeasuring about 4453 sq.mtrs. (the "said property").

2. Petitioner No.1 is a citizen of India and the shareholder and Managing Director of Petitioner No.2 Company. Petitioners are owners of the said property and buildings thereon of which land admeasuring about 1634.1 sq. mtrs. belongs to Petitioner No.1 and the remaining portion of about 2819 sq. mtrs. has been conveyed by Petitioner No.1 to Petitioner No.2. The first

Respondent is the State of Maharashtra. Respondent No.2 is the Municipal Corporation of Greater Mumbai (“MCGM”) - Respondent No.3 is the Municipal Commissioner. Respondent No.4 is a firm of builders, who has obtained development rights *inter alia* in respect of property bearing CTS No.17 (part) of Village Vyaravali, admeasuring about 10540 sq. mtrs. adjoining and lying to the East side of the said property of Petitioners. Respondent No.5 is a partner of Respondent No.4. Respondent No.6 claims to be an Association of plot holders in Village Vyaravali, Taluka Andheri. Respondent No.7 claims to be the President of Respondent No.6 Association and Respondent No.8 Society claims to be the owner of land bearing CTS No.17 (part) of Village Vyaravali. Respondent No.9 claims to be the Secretary of Respondent No.8 Society. Respondent No.10 is the Special Land Acquisition Officer No.VII (“SLAO7”), Mumbai and Mumbai Suburban District who has issued Notification under Section 4 of the Land Acquisition Act, 1894 (“LAA”) *inter alia* relating to the said property of Petitioners. Respondent No.11 is the Additional Commissioner, Konkan Division, who has issued Notification under Section 6 of the Land Acquisition Act, 1894 *inter alia* with respect to the said property.

3. In or about 1959, Petitioners purchased the said property and between 1959 and 1965, constructed a building consisting of ground plus three upper floors known as "INGA Building".

4. In the year 1966, a Development plan of Bombay (K East ward) was sanctioned under the Maharashtra Regional Town Planning Act, 1966 (the "MRTP Act") under which a Development plan road connecting Mahakali Caves Road and Central MIDC Road passing through Petitioners' aforesaid property was proposed (the "said road").

5. In March-1975, Petitioners submitted a proposal for construction of residential bungalow on the remaining portion. There was a remark by the Building and Proposals (B&P) Department that the said proposal was *inter alia* affected by Sanctioned Road Line of 60 ft. wide D.P. Road.

6. As the development proposal put up by Petitioners was affected by the said road, Petitioner No.1 was called upon to comply with the various conditions by letter dated 12th November, 1975 of the Executive Engineer of the Respondent-Corporation. Petitioners did not comply with the same in time and got a part of their property developed.

7. On 11th December, 1975, the Architect of Petitioners replied thus :

> *“Remarks from the E.E. (DP) regarding 60 ft. D.P. Road will be obtained”.*

8. Thereafter, Petitioners applied for amalgamation of Plot No. 58/3 (part)and Survey No. 47/7 of Village Mulgaon (CTS No. 23, 24, 26 and 27). The Petitioners also submitted an undertaking containing the terms and conditions. Paragraph 2 of the said undertaking read :

> *“That the sanctioned R.L. Line/proposed Development plan shall be got demarcated at site jointly with the Municipal Survey Branch/ Executive Engineer D.P.”*

9. On 3rd February, 1976, Petitioners’ proposal for construction of residential building / bungalow on a portion of the said property was sanctioned by MCGM under IOD No. CE/6154/BS/II/AK.

10. On 27th April, 1976, the proposal for amalgamation was granted.

11. In or about 1976, the Municipal Corporation, as the Planning Authority for Greater Bombay under the MRTP Act, commenced the proposed revision of the Development plan then in force, in course whereof, the Corporation proposed 18.30 meters (60 feet) wide development road through the said property of Petitioners as proposed under the Development plan of 1966.

12. On 5th December, 1980, Commencement Certificate was issued for commencement of construction of the aforementioned residential bungalow.

13. On 11th April, 1981, the amended plans submitted by the Petitioners for constructing the bungalow were approved and the Petitioners commenced the construction of the said bungalow.

14. According to in the Development plan of 1966, the said road did not pass through any of the portion of the said property, but it was only proposed in the revised Development plan of 1976, pursuant to which there was a proposal to shift the location of the said road southwards, which assertion is disputed by the Respondents.

15. It is submitted on behalf of the MCGM that sometime in the year 1984, pursuant to some complaints received, the Municipal Corporation after examining the matter found that the said D.P. Road under reference was passing through Petitioners' said property and needed slight realignment so as to have smooth passage through Petitioners' land and therefore, the realignment of the D.P. Road was approved under Clause 39 (a) (iii) of the then sanctioned Development Control Rules. The draft revised Development plan contained the provision for the said road passing through Petitioners'

said property. Statedly, Petitioners' did not raise any objection to the said road under the provisions of the MRTP Act.

16. Petitioners thereafter submitted a proposal dated 8th June, 1985 seeking Completion Certificate of residential bungalow and vide letter dated 19th June, 1985, the Executive Engineer (B&P) informed the Architect of the Petitioners that the proposal could not be accepted for various reasons including *"All IOD conditions are not complied with"*. It is submitted that Petitioners had not done the demarcation on site.

17. Thereafter, on 29th April, 1986, in the Draft Revised Development plan submitted by Respondent No.2 for sanction of the State Government under Section 30 of the MRTP Act, proposal for locating a D.P. Road through Petitioners' said property had been retained.

18. On 24th August, 1991, an agreement was executed between Mahal Pictures Pvt. Ltd., as vendors and Respondent No.8 as purchasers and Respondent No.4 as the developers under which, Respondent No.4 acquired development rights of property bearing CTS No. 17 (part) of village Vyaravali admeasuring 10,540 sq. mtrs. lying to the east of the Petitioners'

property.

19. It is submitted on behalf of Petitioners that in 1992, upon coming to know of the proposal to locate a road through the said property of Petitioners' that Petitioners placed their objections in the matter before the concerned Officers of the State Government. The Urban Development Department of Respondent No.1 thereafter recommended deletion of the proposal of locating the D.P. Road through the property of Petitioners' pursuant to which, vide Notification No. TPB 4392/4716 /R-181/92/UD11/ RDP dated 12th November, 1992 issued by the Urban Development Department of the Respondent No.1-State sanctioned the Revised Development plan for K (East) ward with effect from 29th December, 1992. This was subject to 205 modifications specified in the Schedule to the said notification. Under item 146 to the said Schedule the alignment of East-West 60 feet road proposed in the Development plan was changed and the said road was stopped at the eastern boundary of the CTS No. 18 of the said property outside the property of Petitioners.

20. It is submitted on behalf of the Respondent Corporation that around December-1992, association of persons from Vyaravali village raised objections to the Government Notification dated 12th November, 1992

deleting the proposal of locating the said road through the said property of Petitioner rather restricting the same only outside the said property of the Petitioners.

21. It is submitted that the aforesaid Notification was issued pursuant to Resolution No. 854 dated 23rd December-1976, declaring the Corporation's intention to revise the existing D.P., after carrying out survey as required under Section 25 of the MRTP Act, after preparing and publishing the notice under Section 26(1) of the MRTP Act and, inviting objections and suggestions from general public and after considering the suggestions, submitted Draft Plan on 29th April, 1986 under Section 31(1) of the MRTP Act for approval of the State Government.

22. Representations were also made by Respondents No. 4 to 9 to the Respondent No.1-State Government about the importance of the said road.

23. Thereafter, on 4th January, 1993, the Urban Development Department addressed a letter to the Chief Engineer (Development plan) of MCGM asking for a detailed report as to how building permission was granted on the proposed road alignment of sanctioned D.P., and to examine whether

there was a need to have a link road connecting Mahakali Caves Road and Central MIDC Road.

24. There is a communication dated 6th February, 1993 from the Additional Commissioner of Police (Traffic) supporting the need for a connecting road.

25. On 13th March, 1993, it is submitted on behalf of the Corporation that a detailed report was submitted by the Respondent-Corporation pointing out the reasons as to how the building plans were and as to in what circumstances, they had been approved and the fact about the realignment of the D.P. Road as well as the dire need for having the link road.

26. On 7th June, 1993, the Respondent No.1-State Government issued a communication to the Respondent No.3-Municipal Commissioner under Section 37(1) of the MRTP Act to propose a suitable connection road of suitable width for connecting Mahakali Caves Road and Central Road of MIDC Industrial area as a need was felt upon re-examination of the case. The said communication which is at Exhibit-J to the Petition, is reproduced as under:-

"Exhibit "J"

Government of Maharashtra
No. TPB-4389/318/UD-II PDP
Urban Development Department,
Mantralaya,Bombay 400032.
Date : 7.6.1993

To,
The Municipal Commissioner,
Municipal Corporation of Gr. Bombay,
Mahapalika Marg,
Bombay

Sub: K/E Ward, Proposed 18.30 m. road connecting Mahakali Caves Road & Central Road of the MIDC Industrial Area Directive under section 37(1)

Sir,

Upon re-examination of the case it is felt that there is a need for a road connecting Mahakali Caves Road and the Central Road of the MIDC Govt. is therefore pleased to issue a directive u/s. 37(1) of the MR & TP Act, 1966 that the BMC may propose a suitable connection road of suitable width for connecting the above referred to roads and submit the said proposal of minor modification of Govt. for approval at an early date.

However the 18.30 m. road shown in the section 30 plan was found not feasible on site so far as on its western end is concerned. The BMC may satisfy itself about the feasibility of the said road from technicals as well as legal point of view before framing the proposal u/s. 37.

Yours faithfully
sd/-
(S.K. Joshi)
Under Secretary"

27. It is submitted on behalf of the Respondent-Corporation that the said communication is only styled as a directive u/s.37(1) of the MRTP Act for submitting a proposal for minor modifications to the Government.

Petitioners are aggrieved that the Respondent-Corporation failed and neglected to comply with the above directive.

28. It is further submitted on behalf of the Respondents that in 1993, the proposal submitted by the Petitioners seeking Completion Certificate for the bungalow was considered by the Deputy Chief Engineer (DP) and at that stage, it was noticed that while approving the proposal, a condition was laid down by that road line will be got demarcated before starting the work. The plot was affected by 60 ft. wide D.P. Road as shown in the then Sanctioned D.P. of K/East Ward, 1967. However, while giving survey remarks, the alignment of the said D.P. Road was not shown and as such, the approved plans of bungalow did not show the alignment of 60 ft. wide D.P. Road. The Completion Certificate was accordingly granted as if the plot is not affected by the D.P. Road.

29. Thereafter, on 29th January, 1994, the Respondent-Corporation issued occupation certificate in respect of Petitioners' building/ residential bungalow.

30. On 30th July, 1994, the owner of the property bearing CTS No. 18 of Vyaravali, lying to the east of the property of the Petitioners' obtained

sanction for construction of a building consisting of ground plus three upper floors followed by Commencement Certificate dated 10th September, 1994.

31. It is submitted on behalf of the Respondent Corporation that in the year 1994, taking into consideration the deletion of DP Road reservation, the MCGM issued Completion Certificate in favour of Petitioners in respect of bungalow by relying upon revised D.P. remarks of the E. E. (DP).

32. It is submitted by Petitioners that on 1st November, 1994, the then Additional Municipal Commissioner alongwith the Director conducted on-site inspection and disapproved the location of the said road passing through the said property of Petitioners' and recommended framing of alternate proposal for the road.

33. It is submitted on behalf of the Respondent-Corporation that in view of the necessity of the road, the MCGM decided to prescribe a new road under Section 291 of BMC Act and the matter was reconsidered. The MCGM requested the Architect of Petitioners to give consent for the proposed alignment of road and handover land required for road, however, Petitioners refused. The Petitioners suggested alternate alignment passing through the cluster of major slum and Girls' orphanage.

34. Thereafter, on 17th November, 1995, Dr. S. M. Michael submitted complaint before Lokayukta regarding alleged maladministration and misuse of power by the then Municipal Commissioner regarding realignment of the said road.

35. On 23rd May, 1996, the Municipal Commissioner submitted a reply before the Lokayukta informing that though the State Government has advised the Corporation to propose modification of DP under Section 37(1), the Corporation has decided to prescribe new road under Section 291 as procedure for modification under the provisions of Section 37(1) is more time consuming. It was also pointed out that two alternate alignments were proposed: one as suggested by Dr. Patani and other as suggested by Complainant and the same would be placed before the Works Committee/Corporation for approval.

36. Around April-1996, Petitioners submitted building proposal No. CE/6096/WS/AK for constructing additional buildings. On 2nd May, 1996, Building plans submitted by the Petitioner were rejected by the MCGM on the ground of proposed Link Road passing through the property of Petitioner.

37. On 31st July, 1996, the Municipal Corporation directed the Municipal Secretary to obtain necessary approval to the alignment.

38. In the year 1996, Petitioner filed Writ Petition No. 1317 of 1996 challenging the rejection of Building plans. The Sub-Engineer of MCGM filed Affidavit in the said Writ Petition and submitted that due to reconsideration and reintroduction of alignment, the proposal submitted by Petitioners for construction of additional buildings was not approved and same was rejected vide order dated 2nd May, 1996 and the necessity of a link road was highlighted in Paragraph No. (j) which is quoted as under:

> *j) I say that proposed link road virtually connect the Marol Maroshi Road taking off from near Vijay Nagar through the M.I.D.C. Industrial area connecting Mahakali Caves Road and further passing east-west near Sher-e-punjab and though a subway passes over to the west of western Express Highway which further passes through subway under western Railway and connected western side of K/Ward. I say that to complete this linking road over-bridge also been proposed over the pipeline at Vijay Nagar as to avoid a long detour for coming from one to the other side of the pipeline. I say that this proposed link would also relieve the traffic load on the Andheri-Kurla Road, so that Andheri Kurla Road would be available more to the traffic from eastern suburbs to western suburbs and vice-versa and also from the Airport to the other parts of the city. In view of above, I say and submit that since the proposed road link will be vital link, it will be utmost necessary to establish said road and therefore, these respondents have reintroduced the said portion of the link road."*

39. On 21st August, 1996, the Writ Petition No. 1317 was withdrawn

without prejudice to the contention that the MCGM has no right to acquire the property for proposed road under Sections 291 and 296 of the MMC Act. Petitioners' are aggrieved that despite the aforesaid, on 3rd September, 1996, the Works Committee (Suburbs) passed a Resolution No. 217 recommending to the Corporation to grant sanction under Section 291 (a) of the MMC Act to a new road line of 18.30 meter wide (60 ft.) connecting existing Mahakali Caves Road and MIDC Central Road Andheri (East) through the said property was prescribed as marked in alignment S.T.U.P. on the Plan. Resolution No. 217 is reproduced as under:

> *Exhibit "K"*
>
> *"RESOLUTION of the Works Committee (Subs.) No. 217, dated the 3rd September, 1996:*
>
> *Ref: M.C's letter No. Dy. Che/4324/C.C.*
> *Rds & Tr. Dated 31.7.1996.*
>
> *"That it be recommended to the Corporation that, sanction be given under Section 291(a) of the Bombay Municipal Corporation Act, to a new road line of 18.30 Mtr. Wide, (60') connecting the existing Mahakali Caves Road and M.I.D.C. Central Road, Andheri (East), being prescribed as marked in alignment 'S.T.U.P.' o the plan, received with the letter, as proposed.*
>
> *"2. That the Commissioner be requested to bring this Resolution as Urgent Business before any current Meeting of the Corporation."*

It is submitted on behalf of the MCGM that till 2002, this resolution had not been challenged.

40. On 10th September, 1996, Respondent No.2-Corporation passed Resolution No.651 pursuant to which it was decided to restore the said road

passing through Petitioners' said property by exercising powers under Section 291(a) of the MMC Act for connecting the existing Mahakali Caves Road and MIDC Central Road, Andheri (East) by sanctioning a new road line of 18.30 meters (60 feet) wide through the said property of Petitioners' and marked in alignment as S.T.U.P. on the plan. It is submitted on behalf of Petitioners' that the Respondent-Corporation has resorted to the above provision instead of amending the Development plan. Resolution No. 651 is reproduced as under:

Exhibit "M"

"COROPORATION RESOLUTION NO. 651, DATED THE 10TH SEPTEMBER, 1996:

Ref. (i) M.C.'s letter No. Dy.Ch.E./4324/C.C. Rds. & Tr., dated 31.07.1996 (ii) W.C. (Subs) R. No. 217, dated 3.9.1996, and (iii) Letter to M.S. dated 5.9.1996 from Shri Nicholas B. Almeida, Municipal Councillor

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"That sanction be given, under Section 291(a) of the Bombay Municipal Corporation Act, to a new Road line of 18.30 Mtrs. Wide, (60') connecting the existing Mahakali Caves Road and M.I.D.C. Central Road, Andheri (East), being prescribed as marked in alignment S.T.U.P.'s on the plan, received with the letter, as proposed.

"2. That in reply to his aforesaid letter, Shri Nicholas B. Almeida, Municipal Councillor, be informed of the orders passed."

41. On 8th January, 1997, IODs for construction of buildings A, B, C and D on portions of the properties bearing CTS No. 17 (part) and 18 of Vyaravali of a total area of about 27574 square meters were issued by Respondent

No.2-Corporation to Respondent No.5. It is submitted on behalf of the Petitioners that the sanctions in respect of property bearing CTS No. 17/1, 18 and 19 of Vyaravali show that the said properties have adequate access to public roads.

42. On 18th August, 1998, the Improvement Committee of Respondent No. 2- Corporation passed Resolution No. 39.

43. On 8th December, 1998, the following Corporation Resolution No.536 came to be passed giving sanction under Section 126(1) of the MRTP Act for acquisition of land bearing CTS No. 27 (part), 24 (part), 17 (part) and 18 (part) of village Vyaravali and land part of the said property being CTS N. 27 (part) of village Mulgaon, Andheri (East) affected by 18.30 meters wide D.P. road from Mahakali Caves Road to Central MIDC Road affected by 18.30 meters new road line and 18.30 meters D.P. Road from Mahakali Caves Road and Central Road to MIDC:

"Item No. 39

39/Sept.

C. R. No. 536 dt. 8-12-1998

Proposed by Shri Digambar Kandarkar
Seconded by Shri P. V. Chavan

Ref. (i) M. C.'s letter No.AC/Ws/2078 dated 27.3.1998 and (ii) I.C.R. No.39, dated 18.8.1998

That sanction be given (i) under Section 126(1) of the Maharashtra Regional and town planning Act, 1966, as amended upto-date, to an application being made by the Commissioner on behalf of the Corporation, to the State Government, for proceedings being ordered to be taken for acquisition of the land bearing CTS Nos.27 (pt.), 24 (pt.), 17(pt.), 18 (pt.) of Village Vyaravali and CTS No.27 (Pat) of Village Mulgaon Andheri (East), affected by 18.30 Mt. wide sanctioned new roadline and 18.30 mt. wide D. P. Road from Mahakali Caves Road to Central Road of M.I.D.C. Andheri (East), admeasuring approximately (1) 6090 sq. mtrs in residential zone of Vyaravali Village at the rate of Rs.1,830/- per sq. mtrs. and (2) 1,360 sq.mtrs in residential zone of Mulgaon village at the rate of Rs.2,585 per sq. mtrs. as shown bounded blue and red colour, and marked as STUP and SRB, respectively, on the plan bearing No.CHE/DP/8, dated 9.5.1987 received with the letter, for the market value of the land at a total cost not exceeding to Rs.2,76,72,100.00 as detailed in para 5 of the Commissioner aforesaid letter for the purpose of constructing of 18.30 mt. wide D.P. Road, under the provisions of Section 126(2), (3) and (4) of the Maharashtra Regional and Town Planning Act, 1966 as amended upto-date, read with Section 6 of the Land Acquisition Act (I) 1894, as amended upto-date and (ii) Under Section 90(1) and (3) of the M.M.C. Act 1888, to the aforesaid land being purchased by the Commissioner on behalf of the Corporation by an Agreement for the aforesaid purpose as proposed.

2. That sanction also given Section 67(b) of the M. C. Act, to the liability for expenditure being incurred by the Commissioner behond the Current, Financial year, in respect of the acquisition and/or Purchase of the aforesaid land as proposed.

Carried."

44. According to the said Resolution, acquisition of new road line land was allowed to be done under Section 90(1) and (3) of the MMC Act, whereas acquisition of DP Road land was allowed to be done under Section 126(2), (3) and (4) of the MRTP Act.

45. On 5th February, 1999, the Chief Engineer (Development plan) addressed a letter to the Collector to initiate the acquisition proceedings for lands affected by (i) 18.30 meters D.P. Road and (ii) the new road line also of 18.30 meters.

46. On 25th November, 2000, the first Petitioner submitted representation to Municipal Corporation objecting to the proposed road line through the said property of Petitioners as the same was earlier deleted in D.P.

47. On 27th November, 2000, a similar letter was sent by the Architect to the Municipal Corporation stating that the road proposed as DP road was deleted by the State Government while sanctioning the final DP and the proposed road cannot be made resulting in demolition of the existing building.

48. On 17th November, 2000, a joint measurement was carried out and Map bearing M.R. No. 917 of 2000 dated 17th November, 2000 was prepared. It is submitted on behalf of Respondent Corporation that none of the buildings of the Petitioners appear to be affected by the said road, which the Petitioners have been unable to rebut.

49. Thereafter, Representation dated 2nd December, 2000 was addressed by Petitioners to the Deputy Municipal Commissioner, Zone-III.

50. On 29th December, 2000, Petitioners wrote a letter to City Survey Officer, Vile Parle requesting to reduce the width of the road to 13.40 meters from the eastern side of CTS 18 of village Vyarvali since DP Road ended there and was continued by 14.40 meters road southwards in the sanctioned DP. It was also stated therein that a 18.30 meters road would practically touch both the buildings and the said 18.30 meters road could be reduced to a 13.40 meters road since it was a residential area. Respondents submit that this clearly indicates that Petitioners did not have any other objection to the said road passing through the said property.

51. On 5th January, 2001, the Municipal Commissioner addressed a letter to the Improvements Committee seeking sanction to include the said property for acquisition of land affected by 18.30 meters new road line and DP Road.

52. Thereafter, it is submitted on behalf of Petitioners that a meeting was called on 15th January, 2001 of the concerned authorities by the Deputy

Municipal Commissioner when it was proposed to suggest an alternative road to avoid breaking up the said property of the Petitioners.

53. On 13th February, 2001, the Improvement Committee passed Resolution No.207 recommending to the Corporation that in partial modification of the previous Resolution No.39 dated 18th August, 1998 and Corporation Resolution No.536 dated 8th December, 1998, sanction be given to acquire the lands in the said property. It is submitted on behalf of Petitioners that this Resolution was contrary to the Notification dated 12.11.1992.

54. However, on 9th March, 2001, the Respondent-Corporation passed Resolution No. 1167 resolving that as three road lines connecting Mahakali Caves Road and Central MIDC Road were already in existence and there was no need to prescribe any new road line of 18.30 meters on any property of Petitioners and proposal for acquisition of land out of the said property of Petitioners'. It is submitted on behalf of Petitioners that earlier proposal was for construction of road was for the benefit of particular individuals and not for the convenience of general public and therefore it would not be necessary to acquire any land out of the said property of Petitioners.

55. On 30th April, 2001, Respondents No. 6 to 9 filed Writ Petition No. 1072 of 2001 in this Court against the Respondents No. 1 and 2 and Petitioner No. 1 as the Respondents therein, challenging Municipal Corporation Resolution No. 1167 and for directions that Respondents No. 1 and 2 take action under Section 37 of the MRTP Act in terms of the directions of Respondent No.1 as contained in the communication dated 7th June, 1993 (Exhibit-J to the Petition) to modify the Development plan of 1992 so as to include the D. P. Road which was deleted from the sanctioned Development plan of 1992.

56. On 3rd May, 2001, this Court granted ad-interim relief restraining the Respondent No.2-Municipal Commissioner from entertaining any plan from Petitioners for construction.

57. On 20th June, 2001, original files relating to action under Section 291 of the MMC Act were directed to be produced by this Court.

58. On 22nd April, 2002, reply was filed by the then Municipal Commissioner opposing the same and contending that Corporation Resolution No. 1167 dated 9th March, 2001 has been passed by the Respondent No.2 Corporation consisting of elected Councillors unanimously,

was validly passed and that the reasons cited in the said resolution are valid and proper. It was stated therein that Respondent No.1 has directed deletion of the road from the said property of Petitioners after the issue was considered by the RDP Cell constituted by the Urban Development Department.

59. Court Commissioner came to be appointed by this Court vide order dated 13th June, 2002 in Writ Petition No. 1072 of 2001 to factually examine the existence of road with width of 13.40 meters DP Road leading to the property of Petitioners therein viz. Vyaravali Village Development Association and Ors. (being Respondents No. 4 to 8 herein) and another road with a width of 18.30 meters DP Road leading to their property. The Court Commissioner was also to mention in his report whether there was any other access also available to the property of Petitioners in the said Writ Petition.

60. On 19th June, 2002, the Court Commissioner visited the said property and on 25th June, 2002, the Court Commissioner submitted his report. The relevant portion is quoted as under :

> *"As per the Order of Hon'ble High Court, I have verified that there is one D.P. Road 18 meter running East to West from Central Road MIDC towards ends at the boundary of the Respondent No.3, the CTS No. 17 (part) shown in grey*

> *colour in Plan Exhibit 12 and I found the said Road was developed road. So far as the second road with a width of 13.40 mt. is concerned, the said road was closed with tin sheets from the northern side of the property and the alignment of the said 13.40 mt. road in width pointed out to me by Mr. Solomon, claimed by Mr. Atul Patel as the owner of the said property. While entering on this property, the said road was measured and the width of the said road was found as 14 ft. at the end of Southern side of the said road, the width was found as 27'.*

There is no any other access available to the Petitioners' property."

61. In his report dated 25th June, 2002, the Court Commissioner also noted that all the parties had agreed that there was no dispute about the 60 feet wide D. P. Road from Central MIDC road upto CTS No. 24 and that the Commissioner had found that the said road was a developed road.

62. It is submitted that in an Affidavit dated 5th July, 2002 on behalf of the Town Planning Authority opposing admission of Writ Petition No. 1072 of 2001, it was stated that whilst sanctioning the revised Development plan for K East ward, Respondent No.1 directed deletion of road from the said property of Petitioners after the issue was considered by the RDP Cell constituted by the Urban Development Department.

63. On 5th July, 2002, an Affidavit was filed by the Town Planner indicating reason for issuing directives under Section 37 of the MRTP Act

stating that it was on the basis of the representation of Dr. Patani, the first Petitioner herein that the proposed DP Road was deleted while sanctioning the final D.P.

64. Thereafter, on 22nd August, 2022, Rule came to be issued in the said Writ Petition and the ad-interim order dated 3rd May, 2001 was continued.

65. In September, 2002, there was a proposal for reconsideration of Corporation Resolution No. 1167 dated 9th March, 2001 and the agenda recommended revocation of the earlier orders passed by the Improvements Committee and the Corporation and for acquisition of the said property along with CTS No. 27 for 18.30 meter wide DP Road and 18.30 wide new road line. The said resolution is quoted as under:

"Exhibit- "C"
MUNICIPAL CORPORATION OF GREATER BOMBAY
No. MS 12723-C
Office of Municipal Corpn.
Bombay Dt. 14.3.2001

To,
Smt. Manjusha Patil,
Councillor

Ref. : Your letter dated 13.3.2001

Madam,

I am informing you that a resolution has been passed in Municipal General Body Meeting held on 9.3.2001.

Municipal General Body Resolution No. 1167 dated 9-3-2001.

Ref. (1) Letter of Commissioner dt. 5.2.2001 Bearing No. SCO/WS2078 and (2) Resolution of Improvement Committee No. 207 dated 13.2.2001.

Letter from the Municipal Commissioner seeking permission of the Municipal Corporation for acquiring the land affected by the proposed new Road line of 18.30 Mt. Road on CTS No. 23 and 26 and 18.30 Mt. Road from Mahakali Caves to Maharashtra Industrial Development Board's Central Office on Original Village C. S. No. 27.

1. Since there are already three existing Road line there is no need to provide additional Road.

2. Aforesaid proposed acquisition is only for the benefit of some specified persons and it is not in the interest of General Public at large. Therefore, there is no need for the proposed acquisition of the said land and hence it may be filed.

Copy of this resolution be sent to the Improvement committee for information.

sd/-
For Municipal Secretary"

66. On 14th October, 2002, Petitioners took out a Notice of Motion No. 451 of 2002 in Writ Petition No. 1072 of 2001 seeking an order of restraint on the Corporation from reconsidering the Resolution No. 1167 pending the hearing and final disposal of Writ Petition No. 1072 of 2001. The said Notice of Motion came to be disposed of by an order dated 18th October, 2002, whereby it was recorded that the Corporation would be at liberty to reconsider the said Resolution No.1167 dated 9th March, 2001. However, if any fresh Resolution withdrawing the earlier Resolution was passed, such a Resolution would not be given effect to without the leave of this Court.

67. On 28th October, 2002, Resolution No. 1117 was passed by Respondent No. 2 under Section 291(a) cancelling/withdrawing the direction contained in the Resolution No. 1167 and partially modifying Resolution dated 8th December, 1998 sanctioning the acquisition of land from the said property of Petitioners for 18.30 meter new road line. The said resolution is quoted as under:

"Exhibit "D-1"
(Office translation of Resolution No. 1117 dated 28-11-2002 of Mumbai Municipal corporation in Marathi-Exhibit "D")
BRIHANMUMBAI MAHANAGARPALIKA

152 October

M.S.-13069-C
Office of Municipal Corporation
Mumbai - Date : 11-11-2002

To: Shri Ravindra Pawar,
Leader of Nationalist Congress Party

Ref : Your letter dated 11-11-2002

Sir,

Municipal Corporation dated 28-10-2002

I have to inform you that in the meeting of the Councilors held on 28-10-2002 the following Resolution has been passed:-

Municipal Corporation Resolution No. 1117 dated 28-10-2002.
Ref : (1) Municipal Commissioner letter No. ACQ/WS/2078 dated 5-1-2001 (2) Resolution No. 207 dated 13-2-2001 passed by Improvement Committee and (3) Resolution No. 1167 dated 9-3-2001 of Municipal Corporation.

The Municipal Corporation reconsidered decision taken by it pursuant to the Resolution No. 1167 dated 9th March 2001 relating to the acquisition of the lands bearing CTS Nos. 23, 24 and 26 affected by 18.30 metres wide D. P. Road and 18.30 metres wide new road line passing from Mahakali Caves Road, Andheri (East) to Central Maharashtra Industrial Development Corporation Road on CTS No. 27 *of Village Mulgaon and by canceling Order passed pursuant to the above mentioned Resolutions sanction may be accorded as suggested that municipal Corporation now passes Resolution by making slight variation in the Order passed pursuant to Resolution No. 536 dated 8th December, 1998 that "as shown in the plan enclosed along with letter No. CHE/DP 8A dated 17th November, 2000 that the lands bearing CTS Nos. 23,24 and 26 affected by 18.30 metres wide D.P. road and 18.30 metreswide new road line passing from Mahakali Caves Road, Andheri (East) to Central Maharashtra Industrial Development Corporation Road on CTS No. 27 of Village Mulgaon should be acquired without making changes in the rate and total compensation.*

Sd/-
For Municipal Secretary"

68. It is submitted on behalf of Petitioners that the same is for the benefit of the property being developed by Respondents No. 4 and 5. Being aggrieved, Petitioners have filed this Writ Petition on 2nd December, 2002 *inter alia* challenging Corporation Resolution No. 1117.

69. On 10th December, 2002, on an application made on behalf of Petitioners in Writ Petition No. 1072 of 2001 (viz. Respondents No.4 to 8 in this Writ Petition), this Court disposed of Writ Petition No. 1072 of 2001 as infructuous keeping all contentions of the parties open, in view of the present Writ Petition observing that the Court did not intend to go into the legality, correctness and implementation of the Corporation Resolution No. 1117 dated 28th October, 2002, as the same are subject matter of challenge in this Petition. It is submitted on behalf of the MCGM that consequently the earlier order directing that MCGM shall not act on the revised resolution

without leave of the Court also came to an end.

70. Thereafter, the pleadings were sought to be completed by the parties to this Petition.

71. On 8th January, 2003, the Chief Engineer (D.P.) addressed a letter to the SLAO-7 requesting to him to acquire lands as per Corporation Resolution No. 1117 dated 28th October, 2002.

72. On 14th August, 2003, Rule was issued in this Petition.

73. On 10th February, 2005, during the pendency of this Petition, a letter was issued by the Deputy Engineer, Office of the Chief Engineer, Development plan to the Respondent No.10, SLAO-7 stating that no portion of the said property of the Petitioners was reserved for construction of any roads under the revised Development plan and that further action to notify the lands for acquisition as provided under Section 4 of the Land Acquisition Act, 1894 had to be initiated by the SLAO by taking up the matter with the State Government and that the lands affected by the new road line were to be acquired by due process of law for which an application had been made to the State Government making it clear that permission/sanction of State

Government is not necessary for acquiring land under Section 291 of the MMC Act.

74. Vide Notification No. LAQ/764 dated 15th February, 2005 issued by the Respondent No.10-SLAO-7, Mumbai and Mumbai Suburban District under Section 4 of the Land Acquisition Act, 1894, the lands including the lands of Petitioners being part of the said property were sought to be acquired stating that it appeared to the SLAO-7 that the lands including the lands of the Petitioners were needed or likely to be needed for the purpose of 18.30 meters wide new road line joining Mahakali Caves Road and MIDC Central Road, Andheri(E), Mumbai-400 058 and stating that if the Additional Commissioner, Konkan Division was satisfied that the said lands were needed for the said public purpose, a final Notification under Section 6 of the Land Acquisition Act would be published.

75. On 24th March, 2005, the aforesaid notice under Section 4 (1) of the Land Acquisition Act was served on Petitioners, which was objected to by Petitioners vide their Advocate's letter dated 11th April, 2005.

76. On 11th April, 2005, Advocate for the Petitioners submitted objection to Section 4 Notification to SLAO-7 contending that once the State

Government had deleted the proposed D.P. Road, the same could not have been acquired under the MMC Act. It was pointed out that the said Notification dated 15th February, 2005 as also the said Notice dated 24th March, 2005 are for giving effect to Resolution No. 1117 dated 28th October, 2002 passed by Respondent No.2 Corporation and that the acquisition proposed under the said Notification and the said Notice is in violation and breach of the directions contained in the Order dated 18th October, 2002 passed by the Bombay High Court in Writ Petition No. 1072 of 2001. A similar objection was submitted on 10th May, 2005.

77. On 21st April, 2005, Respondent No. 10-SLAO granted inspection to Petitioners and their Architect of the documents relating to the proposed acquisition of portions of Petitioners' property in case No. LAQ/764. It is submitted on behalf of Petitioners that it is only then that the Petitioners came to know that (i) the Deputy Engineer (Development plan) (II) in his letter No. ACQ/WS/2078 dated 10th February, 2005 addressed to Respondent No. 10 SLAO-7 has confirmed that no portion of the properties of the Petitioners bearing CTS Nos. 23,24 and 26 of Mulgaon are reserved for construction of any roads under the revised Development plan for Greater Mumbai K(E) Ward sanctioned in 1993 (ii) these acquisition

proceedings are pursuant to Corporation Resolution No. 1117 of 28th October, 2002, under which Respondent No.2-Corporation has reconsidered decision taken by it under the Corporation Resolution No. 1167 dated 9th March, 2001 relating to acquisition of lands bearing CTS Nos. 23, 24 and 26 of Mulgaon belonging to the Petitioners, that (iii) Respondent No.2-Corporation under cover of letter No. ACQ/WS/2078 dated 24th November, 2003 have deposited with SLAO Rs. 1,21,24,452/- on account of estimated provisional compensation for acquisition of portions of properties of the Petitioners in pursuance to Corporation Resolution No. 1117 of 28th October, 2002 (iv) that copies of IODs dated 30th July, 1996, 15th February, 1997 and 8th January, 1997 relating to properties adjoining the property of the Petitioners are on the record of Respondent No. 10 and show that the proposed acquisition of the Petitioners' properties is for private benefit of developers adjoining properties of the Petitioners and not for public purpose.

78. Thereafter, on 14th December, 2005, Petitioner's Advocate submitted a representation to the Municipal Commissioner stating that the Petitioners would file a Contempt Petition for non compliance of directions dated 18th December, 2002 passed in Writ Petition No. 1072 of 2001 not to implement the new Resolution revoking the Corporation Resolution No. 1167 dated 9th

March, 2001.

79. On 22nd February, 2006, Petitioners filed Contempt Petition No. 21 of 2006 in Writ Petition No. 1072 of 2001 against Respondents No. 1 to 3 and 10 alleging breach of order dated 18th October, 2002 in the said Writ Petition.

80. On 2nd March, 2006, Respondent No.11-Additional Commissioner issued Notification under Section 6 of the Land Acquisition Act directing acquisition of the land for the said road stating that as per Circular dated 30th August, 1974 of Revenue and Forest Department, the Commissioner, Konkan Division has delegated power to Additional Commissioner and further stating that Respondent No.11-Additional Commissioner, Konkan Division is satisfied after considering the report of Respondent No.10-SLAO(7) that the property of the Petitioners is needed to be acquired at public expense at the cost of Municipal Corporation for public purpose of 18.30 meter wide new road joining Mahakali Caves Road and MIDC Central Road.

81. On 18th August, 2006, the Contempt Petition came to be dismissed with the observation that there was no evidence of intention of violation of

order dated 18th October, 2002 and that with the disposal Writ Petition No. 1072 of 2001, order dated 18th October, 2002 passed in the Notice of Motion No. 451 of 2002 in Writ Petition No. 1072 of 2001 became non-existent and inoperative. It was further clarified therein that any observation made in that order would not come in the way of prosecuting this Petition.

82. On 10th December, 2007 on an application made by Petitioners vide Notice of Motion No. 133 of 2007, this Court directed maintaining of status-quo restraining the Respondents No. 1 to 3, 10 and 11 from taking possession of any portion of the said property of Petitioners. Thereafter, the said Notice of Motion was dismissed on 28th July, 2008 with a direction that the order of the status-quo order for a period of 8 weeks.

83. Thereafter, on 12th / 13th December 2007, Petitioners took out an Application to amend the Writ Petition for challenging the Award dated 26th November, 2007. On 14th December, 2007, Petitioners filed written submissions with respect to the interpretation of the MRTP Act vis-a-vis the Bombay Municipal corporation Act. Thereafter, written submissions filed on behalf of Respondents No. 6 to 9 on 7th January, 2008.

84. In or about 4th February, 2008, information with respect to application to State Government, sanction therefrom under Section 91 and other related information was requested for by Petitioners.

85. It is contended on behalf of Petitioners that Respondents have failed to furnish the same.

86. On 8th September, 2008, Special Leave Petition ("SLP") was filed challenging the aforesaid dismissal and on 22nd September, 2008, and the Hon'ble Supreme Court passed order of status-quo with a direction to Petitioners not to put up any construction on the said property, which SLP/Civil Appeal No. 7483 of 2008 has been disposed on 5th December, 2019 continuing the order of status-quo till the disposal of this Writ Petition.

86A. Mr. J. P. Sen, learned Senior Counsel for Petitioners would submit that there are two modes provided by statute for declaring that particular land is needed for public purpose so that the same can be compulsorily acquired under the Land Acquisition Act, 1894: one under the Land Acquisition Act and the other is under the MRTP Act.

87. He would submit that under the Land Acquisition Act, when a land is needed for a public purpose, a preliminary notification is issued under

Section 4 and thereafter, a final notification under Section 6 is issued.

88. He submits that the other mode is under Sections 125 and 126 of the MRTP Act, which provide that any land which is required, reserved or designated in a Regional Plan, Development plan or Town Planning Scheme for a public purpose shall be land needed for a public purpose within the meaning of the Land Acquisition Act. Once land is reserved for a public purpose in a Development plan, it is deemed to be needed for a public purpose and can be acquired under the Land Acquisition Act.

89. He would submit that under the MRTP Act, the Mumbai Municipal Corporation, is the planning authority and in the present case, the proposed reservation for the said road to pass through the said property of Petitioners was not sanctioned by the State Government under Section 31 of the MRTP Act. He submits that in fact, the State Government had expressly disapproved the same and ordered deletion thereof pursuant to Notification dated 12th November, 1992 by the Urban Development Department of the State Government. Learned Senior Counsel submits that State Government had decided that the acquisition of Petitioners' property for the said road was not in public interest and therefore, the same was deleted from the Development Plan.

90. It is submitted on behalf of the Petitioners that under the Scheme of the MRTP Act, the State Government is the ultimate Authority in urban planning; Ld. Senior Counsel would submit that once the State Government has rejected the proposed road in the Development plan, the Municipal Corporation cannot go beyond it.

91. He submits that, it is not open to the Corporation to resort to the mode of acquisition of land under Section 291 (a) of the MMC Act to acquire Petitioners' property for the said road. Only in a situation where there was no decision of the State Government holding that acquisition of the property of Petitioners for a road is not required in public interest, that the Corporation could have considered prescribing a new road line through the said property of Petitioners under Section 291 of the MMC Act. But in the present case, the State Government has while sanctioning the Development plan expressly rejected the proposal for a road. He submits that therefore the Municipal Corporation cannot use powers under Section 291(a) for prescribing a road line. Learned Senior Counsel would submit that under Section 291(a) of the MMC Act, the power is to be exercised in accordance with the Development plan or consistent therewith. It cannot subvert a final Development plan sanctioned by the State Government under the Town

Planning Act which, he submits is binding on the Municipal Corporation by exercising powers under the MMC Act to reinstate a proposal which had been specifically rejected and deleted by the State Government while sanctioning the Development plan proposed by the Corporation as the same would make a mockery of the planning process under the MRTP Act and enable the Municipal Corporation to nullify the provisions contained in the Development plan by exercising powers under the Municipal Acts.

92. Learned Senior Counsel relies upon the following decisions in support of his above contentions:-

- i) *The Municipal Corporation for Gr. Bombay & Anr. Vs. The Advance Builders (India) Private Ltd. & Ors., 1971 (3) SCC 381.*
- ii) *Shri K. Ramdas Shenoy Vs. The Chief Officers, Town Municipal Council Udipi & Ors., (1974) 2 SCC 506.*
- iii) *Santu Kisan Khandwe Vs. Special Land Acquisition Officer No.2, 1995(1) Mh. L. J. 363.*
- iv) *Sirur Municipal Council Vs. State of Maharashtra, 1997(1) Mh. L. J. 610.*
- v) *Sarvajanik Shri Ganeshhotsav Mandal Mumbai Vs. MCGM, 2006 (4) Mh. L. J. 2017.*

93. Learned Senior Counsel submits that the principles as enunciated in the above stated decisions will apply to the present case as the proposed reservation on Petitioners' land has been specifically rejected by the State Government.

94. It is submitted that the MRTP Act is a special Act and a later Act than the MMC Act and its provisions prevail over the general provisions regarding powers of Municipal Corporation to make roads under the MMC Act.

95. It is further submitted that even under the sanctioned Development plan of 2034, which has come into force on 1st September, 2018, admittedly, there is no reservation for any DP road passing through the property of Petitioners.

96. Learned Senior Counsel would submit that Section 37 of the MRTP Act lays down the statutory procedure for modification of Development plan and it is obligatory on the authorities to follow this procedure in case any decision of the State Government as contained in the sanctioned Development plan is sought to be reopened.

97. Learned Senior Counsel refers to the averments made in the Affidavit of Additional Municipal Commissioner dated 22nd April, 2002, where it is stated that instead of using the cumbersome time consuming process of modifying the Development plan under the provisions of section 37 of the MRTP Act, it was decided to prescribe a road under Section 291 of the MMC Act. He submits that therefore the Corporation's action under Section 291 of

the MMC Act is only to avoid following the procedure under Section 37 of the MRTP Act and therefore, the same is not sustainable in as much as where statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner.

98. Learned Senior Counsel on behalf of Petitioners then refers to the various provisions of the MMC Act.

99. He submits that Section 291 of MMC Act provides that Municipal Commissioner, when authorized by the Municipal Corporation in this behalf, may at any time make a new public street. Section 296 of MMC Act provides that the Commissioner may, subject to the provisions of Sections 90, 91 and 92, acquire any land required for the purpose of making any new public street. Section 90 of the MMC Act confers on the Commissioner power of acquiring property on behalf of the Corporation by agreement. Section 91 of the MMC Act provides that whenever the Commissioner is unable to acquire any immovable property under Section 90 by agreement, the State Government may, in their discretion, upon the application of the Commissioner, made with the approval of the Improvement Committee, order proceedings to be taken for acquiring the same on behalf of the

Corporation as if such property were a land needed for a public purpose within the meaning of the Land Acquisition Act, 1894. Learned Senior Counsel submits that under Section 91 of the MMC Act, any acquisition has to be done with sanction of the State Government granted on the application of the Municipal Commissioner made with the approval of the Improvement Committee. It is submitted on behalf of Petitioners that a copy of the purported Application dated 5th February, 1999 of Chief Engineer, Development plan to the Collector, Mumbai Suburban District on the basis of which Award dated 26th November, 2007 for acquisition of portion of the property of the Petitioners has been passed, which was handed over at the hearing of this Petition, is an application by the Chief Engineer, MCGM to Collector, Mumbai Suburban District and not an Application by the Municipal Commissioner to the State Government for approval under Section 91 of the MMC Act. Learned Senior Counsel would submit that therefore there has been no Application made by the Commissioner to the State Government for sanction under Section 91 of the MMC Act nor has any such document been produced by the Respondent-Corporation or State Government nor is there any sanction by the State Government under Section 91 of the MMC Act to the acquisition of the property of the Petitioners for the purposes of the said connecting road and therefore the acquisition is bad and this Petition deserves to be allowed.

100. Learned Senior Counsel for Petitioners would submit that there is no delegation of powers of the Municipal Commissioner to the City Engineer or any other officer of the Municipal Corporation as has sought to be justified, nor is there any delegation of the powers of the State Government to the Municipal Commissioner or the Additional Municipal Commissioner under that section. That, delegation, if any, of power of the State Government under Sections 4 and 6 of the Land Acquisition Act to the Municipal Commissioner or Additional Municipal Commissioner or Collector or Special Land Acquisition Officer (SLAO) does not include delegation of the powers and discretion of the State Government under Section 91 of the MMC Act to the Municipal Commissioner or Additional Municipal Commissioner or Collector or Special Land Acquisition Officer.

101. Learned Counsel relies upon the decision in the case of ***Girnar Traders Vs. State of Maharashtra, (2007) 7 SCC 555***, in support of the above contentions.

102. Learned Senior Counsel for Petitioners' would also submit that the argument on behalf of counsel for MCGM that sanction or approval by the

State Government under Section 91 of the MMC Act is not required would not hold water in as much as application by Municipal Commissioner to the State Government and approval and order of the State Government for proceedings to be taken for compulsory acquisition of land on behalf of the Corporation are pre-requisites for commencement of proceedings for compulsory acquisition under the LAA. It is submitted that in their absence, the acquisition of land even for a public purpose would be illegal and invalid.

103. He submits that such a permission is not a formality or defect which can be cured and therefore the acquisition must fail.

104. It is submitted that the General Body of the Municipal Corporation has passed unanimous Resolution dated 9th March, 2001 that since there are already three existing road lines, there is no need to provide additional road and the proposed acquisition of property of the Petitioners is only for the benefit of some specified persons and it is not in the interest of general public and that there is no need for the acquisition. It is submitted that the Municipal Corporation has decided that acquisition of the property of the Petitioners for a road is not in public interest.

105. Further, it is submitted that several officers of the Respondent No.1-State Government and Respondent No.2-Municipal Corporation on inspection of the locality and the said property of Petitioners have disapproved of the location of a public road through the property of the Petitioners. The Commissioner appointed by the Bombay High Court for inspection has verified and reported that a development road is available for providing access to the property of Respondents No. 4 to 9.

106. It is further submitted that Respondents No. 4 to 9 have obtained Municipal sanction for construction of the buildings and have carried out the construction. That the sanctions demonstrate that adequate access to public road is available to these properties, as otherwise sanctions for construction of these buildings would not have been granted by the MCGM. It is submitted that the existing road to the property of Respondents No.4 to 9 is 44 feet (13.40 meter) wide, whereas the said Respondents want to have a 60 feet (18.30 meter) wide road through the property of the Petitioners to gain direct access to Mahakali Caves Road and permission for commercial user of premises on the property being developed by Respondents No.4 to 9.

107. That Respondents No.4 to 9 are interested in obtaining sanction for

commercial use of premises on the ground floor of the buildings already constructed by them and they require a public road through the property of the Petitioners, in order to become eligible for such commercial use and that therefore the acquisition of the property of the Petitioners is for private benefit of Respondent Nos.4 to 9 and not for any public purpose.

108. It is further submitted that, the road through the property of the Petitioners is not in public interest, but at the instance of and for promoting private interest of Respondent Nos.4 to 9. The property developed by them is the only property which will benefit by destruction of the property of the Petitioners by construction of the proposed road.

109. Learned Senior Counsel submits that therefore the Respondents have acted with malafides in the said acquisition despite a clear directive from the State Government and deletion of the proposal of the said road from the Development plan pursuant to the 1992 Notification as also resolved by the Corporation Resolution No.1167.

110. Lastly it is submitted that construction of public road through the private property of the Petitioners with a zig-zag alignment in order to avoid cutting existing buildings of the Petitioners will split the property of the

Petitioners into two parts both of uneven shape with significant reduction in frontage on the Mahakali Caves Road.

111. Learned Senior Counsel for the Petitioners would submit that therefore the Petition deserves to be made absolute.

112. Mr. Girish Godbole, learned Counsel on behalf of the Respondent-Corporation has vehemently opposed the submissions made on behalf of Petitioners.

113. Learned Counsel submits that the Corporation had two options, one was to go under Section 37(1) of the MRTP Act and the other to go under Section 291(a) of the MMC Act. That there are two modes provided in the statute for acquiring land, one under the MRTP Act and the other under the MMC Act. Under the MRTP Act, where the land designated in Regional Plan, Development plan or Town Planning Scheme for a public purpose; it shall be deemed to be land needed for a public purpose, within the meaning of Land Acquisition Act and can be acquired by following the procedure of a preliminary Notification under Section 4 and final Notification under Section 6 of the Land Acquisition Act.

114. The other mode is under Section 291 of MMC Act. He submits that it is for the Municipal Corporation to decide whether it would like to exercise the option under the MRTP Act or acquire the same under the MMC Act.

115. Shri. Girish Godbole refers to the scheme of the Mumbai Municipal Corporations Act and draws this Court's attention to Chapter-V, Section 87, with respect to powers of Corporation to acquire and hold immovable property.

116. He also refers to Section 90 (where property is acquired by agreement), 91 (where the procedure is prescribed when property cannot be acquired by agreement). Learned Counsel submits that Section 91(1) provides that whenever the Commissioner is unable to acquire any immovable property under Section 90 by an agreement, the State Government in their discretion, upon the application of the Commissioner, made with the approval of the Improvement Committee and subject to the other provisions of this Act, order proceedings to be taken for acquiring the same, if such property or land is needed for a public purpose within the meaning of the Land Acquisition Act. The amount of compensation awarded and all other charges incurred in the acquisition of such property shall be

paid forthwith by the Commissioner and thereupon, the said property shall vest in the Corporation. Learned Counsel submits that once there is a General Body resolution or a Corporation Resolution, that should presuppose or imply all prior approvals including the Improvement Committee. He further submits that if the Municipal Commissioner can sign an application, the Chief Engineer or the Executive Engineer could also do it. It has been submitted that the Respondent No.2-Corporation has deposited with SLAO Rs. 1,21,24,452/- on account of estimated provisional compensation of acquisition of portions of Petitioners' properties in pursuance of Corporation Resolution No. 1117 dated 28th October, 2002 and the property has already vested in the Corporation.

117. Learned Counsel also refers to Chapter XI of the MMC Act which deals with regulation of streets and in particular refers to Section 289 with reference to the vesting of public streets in the Corporation as well as the powers of the Commissioner in respect of public streets. Pertinently Learned Counsel refers to Section 291 pursuant to which the Commissioner when authorized by the Corporation has the power to lay out and make a new public street under sub-section (a). He submits that the State has no role to play as far as Section 291 is concerned. He would submit that the argument

of Petitioners that under Section 291(a) one would need to go the State Government is not borne out by the said section.

118. Learned Counsel also submits that the Municipal Corporation could have also invoked Section 299 of the MMC Act for acquisition. However it has chosen to acquire under Section 291(a) of the MMC Act for which the Corporation is authorized under the provisions of the MMC Act itself. He would submit that had Section 299 been invoked the compensation would have been payable under Section 301. However, since the acquisition is pursuant to Section 291 the compensation is paid under the LAA.

119. Learned Counsel also draws the attention of this Court to the scheme of the provisions of the MRTP Act. He refers to Sections 22 to 28, 30, 31, 37 and 38 of the said Act.

120. He would submit that in accordance with Section 37, power of modification of a Final Development plan is with the State Government and not in the hands of the Municipal Corporation.

121. He refers to Section 125 of the MRTP Act to submit that the said provision incorporates a deeming fiction in the sense that when the area is

already designated, directly Section 125 can be invoked, as needed for a public purpose, and then the compensation that is to be paid is under the LAA. He also refers to Section 126 and 128 of the MRTP Act and submits that Section 128 is crucial as it recognizes the power of the State Government to acquire land for any other public purpose; therefore, the provisions of the MRTP Act need not be followed, but the provisions of the Land Acquisition Act would need to be followed.

122. Learned Counsel submits that in the present case the land has been acquired under Section 291(a) of MMC Act and that there has been no circumvention of the decision of the State Government or for avoiding compliance with the purported directive of the State Government. He would submit that in the present case the requisite procedures under the MMC Act as well as under the LAA have been duly followed for inter alia acquiring Petitioners' said property for the purposes of the said new road line.

123. Learned Counsel submits that in the Development plan of 1967, the road was there. In the year 1991, the Development plan was revised in respect of the major areas. However, in the year 1992, in respect of the area under consideration, the Planning Authority retained the road, but the State

Government deleted it. He then draws attention of the Court to Section 31 of the MRTP Act with reference to the procedure to be followed for sanction to the Draft Development plan. He then takes us to Section 37 which refers to the modification of Final Development plan. Referring to Section 37 (1), he would submit that where a modification of any part of or any proposal made in a Final Development plan, the Planning Authority may or when so directed by the State Government shall submit the proposed modification to the State Government for sanction within one year from the date of publication of notice in the Official Gazette. However, if the modification proposal is not submitted within the stipulated period, the proposal of modification shall be deemed to have lapsed.

124. He relies upon the decision of the Bombay High Court in the case of ***Shankara N. Shetty Vs. State of Maharashtra, 2008 (1), Bom. C.R.820*** to submit that just as in that case it was held that the provisions of the MRTP Act do not impinge upon the powers of the Municipal Commissioner to prescribe the regular line under Section 297 (1)(a) of the MMC Act, similarly in this case the provision of the MRTP Act would not impinge upon the power of the Corporation under Section 291(a) of the MMC Act. He

submits that this decision would also apply to the facts of this case even under Section 291 of the MMC Act.

125. Learned Counsel also relies upon the decision in the case of ***MCGM Vs. Durgadas Shankarrao Rege & Anr. AIR 1980 Bom 93***. He also relies upon the decision in the case of ***Nagpur Land Developers Association Vs. State of Maharashtra, 2005 (3) Mh.L.J. 881*** to submit that when the land can be acquired under different statutes, it is open for an authority to acquire land under any of the statutes and it is not correct position of law that once the land acquisition proceeding is commenced under the provisions of the MRTP Act, it is not open to resort to the provisions of law under the Land Acquisition Act.

126. It is submitted that the Application dated 5th February, 1999 of the Chief Engineer, Development plan to the Collector Bombay Suburban District on the basis of which the Award dated 26th November 2007 for acquisition of portion of property of Petitioners' has been passed should be treated as sufficient communication to the State Government for approval under Section 91 of the MMC Act.

127. Learned Counsel for the Corporation relies upon an unreported decision of this Court in case of ***Shankar Dhabade Vs. State of Maharashtra (order dated 13th July 2016 in W.P. No. 5955 of 2014)*** and submits that "no informality, clerical error, omission or other defect shall be deemed to render the documents invalid or illegal, if the provisions of the MMC Act have in substance and effect been complied with". He submits that the absence of sanction of State Government under Section 91 of MMC Act is informality or defect which cannot invalidate the proceedings challenged by the Petitioners.

128. He relies upon the decision in the case of ***Sayyed Vs. Shirdi Nagar Parishad (2019) SCC 631*** to submit that public interest deserves precedence over private interest.

129. Learned Counsel for Corporation submits that in the sanctioned Development plan of 1966, a 18.30 mtrs (60 ft.) wide DP road connecting Mahakali Caves Road with the Central MIDC road was proposed through the property of Petitioners and inspite of the proposal, Petitioners obtained sanction for construction of their residential bungalow by agreeing to comply with the conditions of IOD namely "remarks from Executive

Engineer (DP) regarding 60 ft Development plan road". However, Petitioners did not comply with the conditions and instead made direct representation to the State Government for deletion of DP road proposed in the draft Development plan submitted in 1986 by MCGM for sanction of State Government and got the State Government to delete the reservations while sanctioning the Development plan even though there was no provision for the State Government to grant any hearing at the stage of consideration of the draft Development plan submitted by the Planning Authority for sanction of the State Government under Section 30 of the MRTP Act.

130. It is submitted that the actions of Petitioners in obstructing construction of a public road through their property is against public interest causing inconvenience to the public who have to take detour of 3 Km for reaching Mahakali Caves Road and Petitioners are not entitled to any relief in exercise of the Writ jurisdiction. He would submit that therefore it is the Petitioners who have acted malafide.

131. Learned Counsel for the Respondent-Corporation also submits that there is a considerable delay and laches on the part of Petitioners in filing this Petition in December 2002 challenging the Works Committee resolution

No. 217 dated 03/09/1996 recommending sanction under section 291(a) of MMC Act to a new road line of 18.30 mtrs wide (60ft) connecting existing Mahakali Caves Road and MIDC Central Road, Andheri (East) being prescribed through the property of Petitioners and to Corporation resolution no. 651 dated 10th September, 1996 granting sanction is under Section 291 of MMC Act to a new road line through the property of Petitioners and corporation resolution no. 536 dated 8th December, 1998 granting sanction for acquisition of land to a new road line through property of Petitioners.

132. Learned Counsel relies upon decision in the case of **Aflatoon Vs. LT. Governor of Delhi, (1975) 4 SCC 285** and of the decision in the case of **Sawarn Lata & Ors. Vs State of Haryana and Ors. (2010) 4 SCC 532** in support of his contentions and submits that the Petition ought to be dismissed on this ground alone.

133. Learned Counsel for the Corporation also draws our attention to a communication dated 29th December, 2000 of the Petitioners in which Petitioners have requested width of the road proposed through the said property be reduced from 18.30 mtrs to 13.40 mtrs. Learned Counsel submits that by this very request it is apparent that Petitioners have

consented to the road through the said property and have waived any right to object to the same.

134. In rejoinder, it is submitted by Mr. J.P. Sen, Learned Senior Counsel as under.

135. With respect to the proposition by the learned Counsel appearing for Respondent No. 2, MCGM that public interest deserves precedence over private interest, it is submitted that as unanimously resolved by Corporation vide Resolution No.1167 dated 9th March, 2001, the acquisition of Petitioners' property is only for the benefit of some specified persons and it is not in the interest of general public at large. He submits that in any case, even if the acquisition is for public purpose, the same has to be in accordance with law.

136. With respect to the allegation of malafides attributed to Petitioners by the Respondents, it is submitted that there is considerable ambiguity whether under the sanctioned Development plan of 1966 a DP Road was proposed through the property of the Petitioners. Reference is made to the Affidavit dated 22nd April, 2002 of Shri Sitaram Kunte, the then Additional

Municipal Commissioner filed in Writ Petition No. 1072 of 2001, where it has been stated that on perusing the Development plan of 1966 the road probably did not cut through the property of Respondent No. 3 therein viz. Petitioner No. 1 in the present Writ Petition. It is submitted that even assuming that sanctioned Development plan of 1966 showed a proposed DP Road through the property of the Petitioners, admittedly, no steps were taken by the MCGM to acquire the property of the Petitioners for the said purpose. It is submitted that therefore, there is no irregularity in the State Government deleting reservation for DP Road proposed by the MCGM while sanctioning the Development plan of 1992 by notification dated 12th November 1992.

137. It is further submitted that the Occupation Certificate of the residential bungalow of the Petitioners was issued on 29th January 1994 when there was no reservation for DP Road through the property of the Petitioners nor any proposal of MCGM to prescribe a new Road Line under section 291 of the MMC Act through the property of the Petitioners. It is argued that dissatisfaction of the MCGM with the decision of the State Government to delete the reservation for DP Road through the property of the Petitioners suggested by the MCGM cannot be a reason for the MCGM to

resort to section 291 of the MMC Act to the express purpose of avoiding decision of the State Government as required under section 37 of the MRTP Act. It is submitted that the proposed acquisition of the property is not in public interest. It is further submitted that as demonstrated there have been *malafides* on the part of Respondents but not on the part of Petitioners.

138. With respect to the ground of delay and laches as raised on behalf of the Respondent-Corporation, it is submitted that under Sections 291 (a) and 91 of the MMC Act various steps are required to be taken to make a new public street, viz. authorization by the Corporation to the Municipal Commissioner to make a new public street, approval of Improvement Committee, Application by the Municipal Commissioner to the State Government for commencement of proceedings for compulsory acquisition, sanction of State Government for commencement of acquisition proceedings under LAA. It is submitted that until commencement of proceedings for compulsory acquisition under LAA, the matter remained at the stage of a proposal, in respect of which the Petitioners had filed representations and raised disputes. That the Municipal Authorities considered the representations of the Petitioners as evidenced by the Report dated 25th January 2001 submitted by the Assistant Municipal Commissioner recording

the views of the Municipal Officers present at the meeting on 15th January 2001. It is submitted that thereafter, Municipal Corporation unanimously passed Resolution No.1167 dated 9th March 2001 resolving that as there were three road lines connecting Mahakali Caves Road with Central MIDC Road already in existence, there was no need to prescribe any road line through the property of the Petitioners. It is submitted that the proposal for acquisition of land out of the property of the Petitioners for construction of road was for the benefit of private individuals and not for the convenience of general public and therefore it was not necessary to acquire any land out of the property of the Petitioners.

139. It is submitted that on becoming aware of the proposal of reconsideration of Corporation Resolution No.1167, the Petitioners have filed the present Writ Petition and therefore, there has been no delay or laches in filing the present Writ Petition. It is submitted that reliance of the Respondent on the decisions in the cases of **Aflatoon Vs. LT. Governor of Delhi (supra)** and **Sawarn Lata & Ors. Vs State of Haryana and Ors. (supra)**, is misplaced.

140. With respect to the argument that letter dated 29th December 2000 of

the Petitioners, whereby Petitioners requested that the width of the road proposed through the said property be reduced from 18.30 meters to 13.40 meters is a consent by Petitioners and that Petitioners have waived any right to object to the same, it is submitted on behalf of Petitioners that the said suggestion was made by Petitioners out of panic.

141. That after the said letter dated 29th December 2000 there was another letter dated 15th January 2001 pointing out that the space available between the two buildings of the Petitioners is only about 16 feet and the road between two buildings of the Petitioners is not feasible. It is further submitted that in any event suggestion of the Petitioners to reduce the width of the road from 18.30 meters to 13.40 meters has not been accepted by the authorities. It is submitted that despite being convinced that road through the property of the Petitioners is not feasible and is not in public interest, the Corporation has proceeded with the acquisition with malafide intention of benefiting a private party and not in public interest.

142. On behalf of Respondents No. 6 to 9 Dr. Veerendra Tulzapurkar, learned Senior Counsel would submit that the necessity of the said road is highlighted time and again not only by the Government and the Corporation

but also by the Traffic Department. Learned Counsel refers to Affidavit of Deputy Director, Town Planning dated 5th July 2022 (pages 86 to 88 of the Writ Petition) and also letter of Municipal Commissioner to Lokayukta Office dated 23rd May 1996 (at page 250 of the Affidavit of Respondent No. 9 and Secretary of Respondent No. 8). It is further submitted that the Director, is the highest Technical Officer of the Municipal Corporation, Additional Commissioner of Police (Traffic) and others have always supported the proposal for the said road.

143. Learned Senior Counsel refers to the following material in support of his contentions :-

> *(i) The Government while sanctioning the Development plan in 1966 proposed 60ft Wide Road. (page 146 Affidavit of Respondent No. 9, Acchar Singh Exhibit-4 and page 280 of Affidavit of Respondent No. 2, Exhibit-I).*
>
> *(ii) The Additional Commissioner of Police (Traffic Branch) Bombay vide letter dated 06.02.1993 has clearly supported the proposal of the said road. (page 170 of Affidavit of Acchar Singh Respondent No. 9, Exhibit—10).*
>
> *(iii) The Director (Enginerring Services and Projects) of the Municipal Corporation by letter dated 13.03.1993 has emphasised the need of the said rokad (Page 171, Affidavit of Acchar Singh, Respondent No. 9, Exhibit-11).*
>
> *(iv) The Government of Maharashtra vide letter dated 07.06.1993 to the Municipal Commissioner has clearly opined that there is a need for the said road. (Page 60 of Petition Exhibit-J and page 177, Affidavit of Respondent No. 9, Exhibit-12).*

(v) The Government's letter dated 30.12.1993 to the Chief Engineer (DP) of Municipal Corporation calling upon the Corporation to take necessary steps to have the said road. (Page 179, Affidavit of Acchar Singh, Respondent No. 9, Exhibit-13).

(vi) The Sub-Engineer of the Municipal Corporation in his affidavit dated 12.08.1996 filed in Writ Petition No. 1317/1996 has emphasised the need of the said road. (Page 209, Affidavit of Acchar Singh, Respondent No. 9, Exhibit-15).

(vii) Municipal Corporation's Resolution dated 10.09.1996. (Page 65, Exhibit-19 of Petition).

(viii) The Municipal Corporation vide Resolution No. 536 dated 08.12.1998 sanctioned the acquisition of Petitioners' land for the purpose of said road. (Page 66, Exhibit-N of the Petition).

(ix) Municipal Corporation has passed a Resolution dated 28.10.2002 bearing No. 1117 approving the said road. (Page 44, Tran Page 45, Exhibits D-D1 of Petition).

144. It is further submitted that the said road connects Mahakali Caves Road to SEEPZ and Central Road MIDC which in turn is connected to Marol-Maroshi Road, Aarey Colony, Powai and ultimately to Bombay Agra Road (LBS Marg). It is further submitted that Mahakali Caves Road is also connected to the Sher-E-Punjab Pump House road, which in turn is connected to the Western Express High Way (Bombay-Ahmedabad Highway) Sher-E-Punjab Pump House road is connected to Andheri Railway Station. Mahakali Caves Road is connected to Jogeshwari-Vikhroli Link Road which connects Bombay's western suburbs and eastern suburbs. There are very few roads leading to considerable traffic congestion at Andheri-Kurla Road.

145. It is vehemently submitted that the said road would be an important link road and internal road for Andheri East. It is submitted that therefore it is a dire necessity of having internal roads in Andheri East and especially around Mahakali Caves Road and MIDC. It is submitted that, in the absence of road, the entire area between Mahakali Caves Road on western side and central road MIDC on the eastern side has remained undeveloped. It is submitted that if the lands cannot be developed, the consequence is growth of unauthorised constructions and slums.

146. It is also submitted that all concerned owners of lands required for the said road except Petitioners have given their consent to the said road passing through their properties and also to construct the same at their own cost. It is submitted that Respondent No. 6 has already developed the said road except the portion passing through Petitioners' property.

147. With respect to Petitioners' contentions that as the Government has deleted the part of the road which passed through Petitioners' properties from the Development plan, Municipal Corporation cannot take recourse to Section 291 of MMC Act, Dr. Veerendra Tulzapurkar, Learned Senior Counsel for the Respondents No. 6 to 9, would submit that the basis of this argument

is that if a public road is to be constructed in the city of Mumbai then the only method of doing so is reserving the land for that purpose in the Development plan prepared under the MRTP Act and that there is no other method. He would submit that the said basis is fallacious.

148. It is submitted that the Municipal Corporation wants to have a public road on the land in question forming part of the said property and for that purpose it has invoked Section 291 of MMC Act. Section 291 of MMC Act empowers the Municipal Corporation to make provisions for road. It is submitted that acquisition of land for a public road is a different purpose as contemplated by Section 2(f) of the Land Acquisition Act.

149. It is further submitted that in the instant case Notification Under Section 4 and Declaration under Section 6 of the Land Acquisition Act were issued and after giving notice under Section 9, SLAO has made an Award on 26th November 2007. While it is true that the provisions can be made in Development plan for a public road but that does not mean that the Municipal Corporation has no power to propose the public road in exercise of power under Section 291 of MMC Act and then to have acquired the land under the Land Acquisition Act.

150. The MRTP Act does not repeal provisions of MMC Act. The MRTP Act does not repeal Section 291 of MMC Act. There is a presumption that the legislation while enacting a new law is aware of all existing law. The arguments of Petitioners pre-suppose Section 291 of MMC Act. Section 165 of the MRTP Act which is repeal and saving clause indicates the intention of legislature. There is nothing in Section 165 of the MRTP Act or other provisions of the said Act which suggest that Section 291 of MMC Act is repealed or that the Municipal Corporation has lost its power of making a new public road under Section 291 of MMC Act.

151. There is nothing in MRTP Act, which suggests repealing of Section 291 of MMC Act by necessary implication. Far from the repealing, the MRTP Act and the DC Regulations framed thereunder not only recognise the provisions of the MMC Act but also facilitate and aid the provisions of MMC Act and vice a versa.

152. It is submitted that therefore, there is no substance in the argument of implied repeal and that if Petitioners' argument is accepted, it will lead to very strange and disastrous consequences.

153. Further, with respect to the plea of implied repeal, it is submitted that the MRTP Act does not abrogate or repeal the provisions of the Land Acquisition Act in its application to the State of Maharashtra. This provisions slightly modify the Land Acquisition Act as regards the matters contained in a Development plan, whereas the Land Acquisition Act applies in toto and therefore if there is a public purpose as contemplated by Section 2(f) of the Land Acquisition Act, then a Notification under Section 4 can be issued and after following the procedure under the Land Acquisition Act, the land can be acquired for a public purpose including public purpose of road.

154. With respect to the contentions of Petitioners that the only power to make provisions for transport and communication (which includes road, Air-ports, Canals, Railways etc.) is through a Development plan prepared and sanctioned under the MRTP Act, it is submitted that the Development plan under the MRTP Act is to be sanctioned by the State Government. The State Government is not the appropriate authority for construction of Airports, Canals, Railways, National Highways etc. as these powers are with the Central Government. Therefore, if no provision is made in the Development plan for an Airport or for a Railways or for a National Highway, then no such Airport, Canal, Railway, National Highway can be constructed. It is

submitted that this is an absurd conclusion. The MRTP Act enables the State Government to make a suitable provision for Airports, Canals, Railways, National Highways, but that does not take away the power of other authorities or agencies to make a provisions for Airports, Canals, Railways, National Highways, even though no such provision is made in the Development plan. It also does not prevent other authorities from making such provisions at different sites. Section 128 of MRTP Act it is submitted is the answer to the questions. It necessarily contemplates that a land can be acquired under the Land Acquisition Act for a public purpose other than the purposes for which it may have been located, designated or reserved under the Development plan and that once it is so acquired the Development plan is deemed to be properly modified.

155. It is submitted that there are a number of provisions in the MMC Act which have corresponding provisions in the MRTP Act and if one were to go with the logic of implied repeal as submitted on behalf of the Petitioners then the bulk of the provisions of the MMC Act would stand repealed.

156. It is therefore, submitted that the MRTP Act does not repeal MMC Act or any of its provisions. The provisions of the MRTP Act principally deal with

the planning, but that does not take away the power of the Local Authority to meet the requirements of a particular locality. The provisions of the MMC Act and the MRTP Act supplement each other and one aids other in providing public infrastructure and civic amenities to the residents of Mumbai.

157. It is submitted that the power to make a public street under the provisions of the MMC Act is independent of the provisions of the MRTP Act and this is recognized by the MRTP Act itself.

158. As and by way of illustration, it is submitted that Development Control Regulations of Greater Bombay, 1991, are framed in exercise of power under Section 31(1) of MRTP Act. These regulations form a part of the Development plan. Section 2(27) of MRTP Act defines the expression "regulation" and the definition includes regulations made as part of the Development plan. DC Regulation 2(2) *inter alia* lays down the terms and expressions not defined in these regulations shall have the same meaning as in MRTP Act or the BMC Act (now the MMC Act) as the case may be. DC Regulation 17 lays down that every site proposed to be developed shall have access from a public street, the expression public street is not defined by the DC Regulations, it is also not defined by the MRTP Act. This expression is

defined by Section 3 clause (x) of the MMC Act. This definition is relevant and the definition reads as follows:

> *"Section 3 (x) : "public street" means any street heretofore levelled, paved, metalled, channelled, sewered or repaired by the corporation and any street which becomes a public street under any of the provisions of this Act;1 or which vests in the corporation as a public street ;"*

159. DC Regulation 22 refers to a "private street". The expression "private street" is not defined by the DC Regulation or by the MRTP Act. This expression is defined by Section 3 Clause (y) of the BMC Act and the said definition reads as follows:

> *"Section 3 (y) : "private street" means a street which is not a public street;*

160. It is submitted that it is thus, clear that both the expressions public street and private street as used in DC Regulations 17 and 22 respectively have the same meaning assigning to them under the aforesaid provisions of the MMC Act.

161. The Respondents submit that Section 291 of the MMC Act empowers

the Commissioner when authorised by the Corporation to lay out and make a new public street. DC Regulation 17 read with the aforesaid provision of the MMC Act clearly contemplates the construction of a new public street under the MMC Act. DC Regulation 36 lays down that the Commissioner may permit additional FSI on 100% of the area required for road widening or for construction of new roads proposed under the Development plan or that is proposed under the MMC Act. It is submitted that this indicates clearly that a new public street or a road can be developed independently of the “Development plan”. That therefore, the contention of Petitioners that public road can be constructed only as part of the Development plan and not under any other statute would be devoid of merit and ought to be rejected.

162. It is further submitted that the provisions of MRTP Act provide for acquisition of property required for public purposes as specified in the Development plan or in the Town Planning Scheme; that this does not take away the power of the Government to acquire land for public purposes under the Land Acquisition Land.

163. Similarly, there is power to acquire land for a highway under the National Highways Act / State Highways Act. It is submitted that there are

several other statutes which deal with the acquisition of land for public purposes such as MHADA Act, 1976, Maharashtra Slum Act, 1971 etc.

164. By the logic followed by Petitioners, all these Acts would become defunct. Such could not have been the intention of the legislature. It is submitted that it is for the concerned Authorities to decide the provisions of law under which, citizens' land can be acquired for a public purposes and the plurality of legislations would not be an impediment.

165. It is submitted on behalf of Respondents that Petitioners are trying to take advantage of their own wrong viz., they first developed their property without submitting the Development Remarks and when the Corporation officials learnt that the construction of the Petitioner is affected by Development plan Road, they realigned the road in such a manner that though it passes through property of the Petitioners it does not cut through the constructed structure and yet Petitioners misrepresented to the Government that the said road cuts through their property.

166. Reliance is placed by learned Senior Counsel for Respondents No. 6 to 9 upon the decision of this Court in the case of **Shankara N. Shetty And Ors. V/s. The State Of Maharashtra And Ors. Others [2008 (1) MhLJ 740].**

167. Learned Senior Counsel also draws the attention of this Court to the decision of the Apex Court in the case of **Municipal Council, Palai Through the Commissioner of Municipal Council Palai V/s. T. J. Joseph and Others [AIR 1963 SC 1561]** in support of his contentions.

168. Dr. Tulzapurkar, learned Senior Counsel for Respondents No.6 to 9 submits that there is a presumption against an implied repeal and that so long as Section 291 of the MMC Act exists, power under Section 291 of the MMC Act would also exist. Learned Senior Counsel has referred to Paragraphs 9, 13, 17 and 18. He submits that for implying a repeal, there has to be what is often called such a positive repugnancy between the two provisions of the old and the new statutes that they cannot be reconciled and made to stand together. He submits that for implying repeal, it is also to be considered whether the two statutes relate to the same subject matter and have the same purposes and whether the new statute purports to replace the old one in its entirety or only partially. He submits that the basis of the doctrine of implied repeal is that there is a presumption that the legislature which must be deemed to know that the existing law did not intend to create any confusion in the law by retaining conflicting provisions and, therefore, when the Court applies this doctrine, it does no more than give effect to the intention of the legislature ascertained by it in the usual

way i. e., by examining the scope and the object of the two enactments.

169. Dr. Tulzapurkar would submit that in the present case Section 37 of the MRTP Act and Section 291(a) of the MMC Act are both enabling set of provisions and can be used by the appropriate authority, viz. the Municipal Corporation in this case, as and when it chooses. He submits that the intention of the legislature appears to allow the two sets of the provisions as in the case of **Palai V/s. T. J. Joseph and Others (supra)** to co-exist. He submits that therefore there cannot be any implied repeal of Section 291(a) in the face of the subsequent Section 37(1) of the MRTP Act. He submits that therefore the acquisition by the Respondent-Corporation of the said property for the said road under Section 291(a) of the MMC Act is legal and valid.

170. Learned Senior Counsel also submitted that the object and the purpose of the Development plan is to provide for planning at macro level for the entire urban area, whereas this is a case of micro planning affecting only one locality and it is not reasonable to expect the Respondent-MCGM to be put to the trouble of following procedure under Section 37 of the MRTP Act.

171. It is submitted that therefore, there is no substance in the arguments of the Petitioners. The residents of locality are entitled to have a benefit of a public road and one or two persons cannot be permitted to hold the rest of the Society to ransom. It is submitted that Respondents therefore be permitted to construct the said road.

172. Rebutting the submissions made by Dr. Virendra Tulzapurkar, Mr. Sen, learned Senior Counsel on behalf of Petitioners submits that it is not the case of Petitioners that there is any implied repeal of Section 291 of the MMC Act. It is submitted that in case there is a void under MRTP Act and there is no decision of the State Government disapproving proposal of MCGM for a Development plan Road or there is no directive of State Government to MCGM to propose a road but not through the property of the Petitioners and sufficient justification for not proposing a road while framing the Development plan, then it may be permissible to resort to powers under Section 291 of the MMC Act. It is submitted that in view of the previous binding decision as well as directive of the State Government without recourse to Section 37 of the MRTP Act, sanction of the Development plan by the State Government, exercise of powers under Section 291 of the MMC

Act is colorable exercise of power for the benefit of private parties and not for any public purpose. Rebutting the above submissions, it is submitted on behalf of Petitioners that Section 37 of the MRTP Act deals with modification of Sanctioned Development plan and does not make a distinction between major or minor modification. It is further submitted that once Development plan is sanctioned, land use has to be in conformity with the sanctioned user under the sanctioned Development plan. In the sanctioned Development plan of 1992 as well as 2034, the permissible user of the property is residential and except for portion along Mahakali Caves Road, no portion of the property of Petitioners is shown as reserved for any public purpose. Learned Senior Counsel would submit that the object and purpose of MRTP Act and the requirement of sanction of Development plan for the entire city is to make provision for lands required for public purposes as also to provide security of land use by the owners/ occupants so that land owners can plan use of their property in conformity with the sanctioned Development plan without the threat of sudden expropriation.

173. We have heard Mr. J.P. Sen, learned Senior Advocate a/w Mr. Rohan Cama, Mr. J.S. Solomon. Ms. Soniya Putta, Mr. Atharva Sawant and Ms. Devyani Deshmukh i/b M/s. Solomon & Co. for the Petitioners. Mr. Girish

Godbole, Special Counsel a/w Ms. Sheetal Metakari i/b Mr. Sunil Sonawane for the Respondent No.2 and 3-MCGM. Mr. Roop M. Vasudeo with Mr. Yashwant Dhanegave for Respondent No.4 and 5. Mr. V.V. Tulzapurkar, Senior Advocate a/w Mr. Y.D. Divekar with Mr. Rohan Karande i/b M/s. Divekar & Co. for Respondent Nos.6 to 9. Mr. Milind More, Additional G.P. for Respondent Nos.1, 10 and 11-State. Mr. Rahul Sinha i/b M/s. DSK Legal for the Applicant in IA 513 of 2020 and IA 586 of 2020.

174. Before proceeding it would be first appropriate to consider the plea of delay and laches raised by the Learned Counsel for the Respondent Corporation. From the factual matrix narrated above, it is noted that the primary challenge is to the Impugned Corporation Resolution No. 1117 which was passed on 28th October, 2002. We are unable to accept the plea of delay and laches taken up on behalf of the Respondent Corporation in as much as the Petition has been filed in the month of December 2002. A two month period to take a decision to challenge this Resolution in our view is not unreasonable. It would therefore not be necessary for us to go into the explanation given by the Petitioners for the purported delay. The Works Committee Resolution No. 217 of 1996 followed by Corporation Resolution 651 of 1996 dated 10th September, 1996 and Corporation Resolution No.

536 of 1998 dated 8th December, 1998 are all in the context of the Corporation Resolution No. 1117 of 2002 and need not be taken out of context to justify this plea. We therefore reject this plea raised on behalf of the Respondent Corporation. In our view therefore the decisions in **Aflatoon Vs. LT. Governor of Delhi (supra)** and **Sawarn Lata & Ors. Vs State of Haryana and Ors. (supra)** would not be relevant being distinguishable on facts.

175. The relevant dates and events narrated above in our view are undisputed.

176. Considering the factual matrix and the rival submissions made by Learned Senior Counsel and Counsel for the parties, the issue that arises for our consideration is whether the Municipal Corporation can take recourse to the provisions of section 291(a) of the MMC Act for acquisition of land passing through the said property of the Petitioners for a new road line even though the State Government had earlier under section 37(1) of the MRTP Act purportedly to delete the proposed road passing through the property of the Petitioners from the Development plan. This in view of the contention of

the Petitioners that public road can only be constructed only as part of the DP under the MRTP Act and not any other statute.

177. Before answering this question, it would be apposite to first refer to the MMC Act. The MMC Act is the law that regulates the municipal administration of the city of Mumbai. For our purposes Chapter V on Municipal Property and Liabilities is relevant. This chapter contains a clear and comprehensive procedure regarding the acquisition and disposal of property and the control of the MCGM in respect thereof in addition to a portion of the chapter relating to municipal liabilities which determine the liabilities and regulate the repayment of debts due by the Municipality.

178. Section 87 contains powers of Corporation as to acquisition of property which is quoted as under.

> *"87. Powers of corporation as to acquisition of property - The corporation shall, for the purpose of this Act, have power to acquire and hold movable and immovable property, whether within or without the limits of Brihan Mumbai."*

This Section provides that the Corporation has the power to acquire and hold movable and immovable properties.

179. Pursuant to Section 90, the Corporation could acquire land by an

agreement. The relevant portion of Section 90 is quoted as under :

> "***90. Acquisition of immovable property by agreement.*** *- (1) Wherever it is provided by this Act that the Commissioner may acquire or whenever it is necessary or expedient for any purpose of this Act that the Commissioner shall acquire, any immovable property, such property may be acquired by the Commissioner on behalf of the corporation by agreement subject to the provisions of sub-section (3)……."*

180. Section 91 provides for acquisition of land otherwise than by agreement. Section 91(1) provides that whenever the Commissioner is unable to acquire any immovable property under Section 90 by an agreement, the State Government may, in its discretion, upon the application of the Commissioner, made with the approval of the Improvement Committee and subject to the other provisions of this Act, order proceedings to be taken for acquiring the same, if such property or land is needed for a public purpose within the meaning of the LAA. The amount of compensation awarded and all other charges incurred in the acquisition of such property shall be paid forthwith by the Commissioner and thereupon, the said property shall vest in the Corporation. Section 91 is quoted as under:

> *"91. Procedure when immovable property cannot be acquired by agreement. - (1) Whenever the Commissioner is unable to acquire any immovable property under the last preceding section by agreement the State Government may, in their discretion, upon the application of the Commissioner, made with the approval of the Improvement Committee and subject to the other provisions of this Act order proceedings to be taken for*

> *acquiring the same on behalf of the corporation, as if such property were a land needed for a public purpose within the meaning of the Land Acquisition Act, 1870.*
> *(2) The amount of compensation Awarded and all other charges incurred in the acquisition of any such property shall, subject to all other provisions of this Act be forthwith paid by the Commissioner and thereupon the said property shall vest in the corporation."*

181. Chapter-XI of the MMC Act which deals with regulation of streets is also relevant. Under Section 289 pertaining to the vesting of public streets in the Corporation, it is clearly stated that all streets which have become public streets vest in the Corporation. Section 289 is quoted as under.

> *"289. Vesting of public streets in the corporation. - (1) All streets within Brihan Mumbai being or which at any time become public streets, and the pavements, stones and other materials thereof shall, vest in the corporation and be under the control of the Commissioner:*
> *Provided that no public street which on the day immediately preceding the date of the coming into force of the Bombay Municipal (Extension of Limits) Act, 1950, or the day immediately preceding the date of the coming into force of the Bombay Municipal Further Extension of Limits and Schedule BBA (Amendment) Act, 1956, vested in Government shall, unless the State Government so directs, vest in the corporation by virtue of this sub-section.*
> *Powers of Commissioner in respect of public street.*
> *(2) The Commissioner shall from time to time cause all such streets to be levelled, metalled or paved, channelled, altered and repaired, as occasion shall require; he may also from time to time widen, extend or otherwise improve any such street or cause the soil thereof to be raised, lowered or altered and may*

place and keep in repair fences and posts for the safety of foot passengers:
Provided that no widening, extension or other improvement of a public street, the aggregate cost of which will exceed ten lakhs rupees shall be undertaken by the Commissioner unless or until such undertaking has been authorised by the Corporation.
(3) With the sanction of the corporation the Commissioner may permanently close the whole or any part of a public street:
Provided that such sanction of the corporation shall not be given unless, one month at least before the meeting at which the matter is decided, a notice signed by the Commissioner has been put up in the street or part of a street which it is proposed to close, informing the residents of the said proposal, nor until the objections to the said proposal, if any, made in writing at any time before the day of the said meeting, have been received and considered by the corporation."

182. We observe from sub-section (2) of Section 289 that it is the responsibility of the Commissioner to maintain such public streets. Sub-section (3) of Section 289 empowers the Commissioner to permanently close the whole or any part of a public street with the sanction of the Corporation. It is significant to note that the proviso describes the specific procedure as to how the sanction of the Corporation is to be obtained particularly with respect to the notice and dealing with objections of the public.

183. Under Section 291 the Commissioner, when authorized by the Corporation has the power to layout and make a new public street under sub-section (a).

184. Section 291 is quoted as under:

> *"291. Power to make new public streets. - The Commissioner, when authorised by the corporation in this behalf may at any time-*
> *a) lay out and make a new public street;*
> *(b) agree with any person for the making of a street for public use through the land of such person, either entirely at the expense of such person or partly at the expense of such person and partly at the expense of the corporation, and that such street shall become, on completion, a public street;*
> *(c) declare any street made under an improvement scheme duly executed in pursuance of the provisions of the City of Bombay Improvement Act, 1898, or the City of Bombay Improvement Trust Transfer Act, 1925, to be a public street."*

185. In the present case, we are not concerned with sub-sections (b) or (c).

186. We observe that under Section 291(a), as long as the Commissioner is authorized by the Corporation he has the power to lay out and make a new public street. The section does not speak of any approval or sanction of the State Government. Therefore the argument on behalf of Petitioners that one would need to go to the State Government is not borne out by the said Section. The State therefore, has no role to play as far as Section 291 is concerned. Acquisition of land for a public road is for a public purpose as contemplated by Section 2(f) in the LAA and therefore the same can be acquired under the LAA.

187. Section 296 of MMC Act provides that the Commissioner may, subject to the provisions of Sections 90, 91 and 92, acquire any land required for the purpose of making any new public street. Section 296 is quoted as under:

> *"296. Power to acquire premises for improvement of public streets*
> *(1) The Commissioner may, subject to the provisions of sections 90, 91 and 92—*
> *(a) acquire any land required for the purpose of opening, widening, extending, or otherwise improving any public street or of making any new public street, and the buildings, if any, standing upon such land;*
> *(b) acquire in addition to the said land and the buildings, if any, standing, thereupon, all such land with the buildings, if any, standing thereupon, as it shall seem expedient for the corporation to acquire outside of the regular line, or of the intended regular line, of such street;*
> *(c) lease, sell or otherwise dispose of any land or building purchased under clause (b).*
>
> *(2) Any conveyance of land or of a building under clause (c) may comprise such conditions as the Commissioner thinks fit, as to the removal of the existing building, the description of new building to be erected, the period within which such new building shall be completed and other such matters."*

188. Sections 297 to 301 of the MMC Act provide for preservation of regular line in public streets. Section 297 authorizes the Commissioner to prescribe a line on each side of any public street or upon receiving authority from the Corporation prescribe a fresh line in substitution for any lines. Section 297 is quoted as under:

> "*297. Prescribing the regular line of a street*
> *(1) The Commissioner may :—*
> *(a) prescribe a line on each side of any public street: Provided that in the case of any public street in the suburbs the regular line of a public*

street operative under any law in force in any part of the suburbs on the day immediately preceding the date of coming into force of the Bombay Municipal (Extension of Limits) Act, 1950, and in the case of any public street in the extended suburbs the regular line of a public street operative under any law in force in any part of the extended suburbs on the day immediately preceding the date of the coming into force of the Bombay Municipal [Further Extension of Limits and Schedule BBA (Amendment) Act, 1956] shall be deemed to be a line prescribed by the Commissioner under this clause.

(b) from time to time, but subject in each case to his receiving the authority of the corporation in that behalf, prescribe a fresh line in substitution for any line so prescribed or for any part thereof provided that such authority shall not be accorded— (i) unless, at least one month before the meeting of the corporation at which the matter is decided, public notice of the proposal has been given by the Commissioner by advertisement in local newspapers as well as in the Official Gazette, and special notice thereof, signed by the Commissioner, has also been put up in the street or part of the street for which such fresh line is proposed to be prescribed, and (ii) until the corporation have considered all objections to the said proposal made in writing and delivered at the office of the municipal secretary not less than three clear days before the day of such meeting.

(2) The line for the time being prescribed shall be called "the regular line of the street".

(3) No person shall construct any portion of any building within the regular line of the street except with the written permission of the Commissioner, who shall, in every case in which he gives such permission, at the same time report his reasons in writing to the Standing Committee."

189. We observe that as far as a line on each side of any public street is concerned, the Commissioner has the freedom to do it on his own but as far as prescribing a fresh line is concerned in substitution of any prescribed line, Commissioner is required to receive the authority and again as in the case of Section 289(3), the section describes the specific procedure as to how the sanction of the Corporation is to be obtained particularly with respect to the

notice and dealing with objections of the public.

190. Section 298 refers to setting back buildings to regular line of street. Here also the Commissioner has power on his own to rebuild, take down or remove or reconstruct any part of a building abutting on a public street within the regular line of such street. Also the Commissioner has such powers that when any building or any part thereof within the regular line of a public street falls down or is burnt down or is taken down under Section 351 or 354 or otherwise, the Commissioner has power to take possession within the regular line. Section 298 is quoted as under:

> *"298. Setting back buildings to regular line of the street*
> *(1) If any part of a building abutting on a public street is within the regular line of such street, the Commissioner may, whenever it is proposed—*
> *(a) to rebuild such building or to take down such building to an extent exceeding one-half thereof above the ground level, such half to be measured in cubic feet ; or*
> *(b) to remove, re-construct or make any addition to any portion of such building, which is within the regular line of the street, in any order which he issues, under section 345 or 346, concerning the rebuilding, alteration or repair of such building require such building to be set back to the regular line of the street.*
> *(2) When any building, or any part thereof within the regular line of a public street, falls down, or is burnt down, or is taken down whether under the provisions of section 351 or 354 or otherwise, the Commissioner may at once take possession on behalf of the corporation of the portion of land within the regular line of the street therefore occupied by the said building, and, if necessary, clear the same.*
> *(3) Land acquired under this section shall thence forward be deemed a part of the public street and shall vest, as such, in the corporation."*

191. Under Section 299, the Commissioner has power to acquire and to take possession of any land with enclosing wall, hedge or fence or platform, verandah or step or other structure within the regular line and to clear the same if the same structure is abutting on a public street. Here also there is a provision of written notice as to the procedure to be followed.

192. Section 299 (1) is quoted as under:

> *"299. Acquisition of open land or of land occupied by platforms, etc, within the regular line of a street*
> *(1) If any land not vesting in the corporation, whether open or enclosed, lies within the regular line of a public street, and is not occupied by a building, or if a platform, verandah, step or some other structure external to a building abutting on a public street, or a portion of a platform, verandah, step or other such structure, is within the regular line of such street, the Commissioner may, after giving to the owner of the land or building not less than seven clear days' written notice of his intention so to do, take possession on behalf of the corporation of the said land with its enclosing wall, hedge or fence, if any, or of the said platform, verandah, step or other such structure as aforesaid, or of the portion of the said platform, verandah, step or other such structure aforesaid which is within the regular line of the street, and, if necessary, clear the same and the land so acquired shall thence forward be deemed a part of the public street"*

193. Under Section 300 the Commissioner has power with the approval of the standing committee to rebuild or alter or repair a building which abuts on a public street, is in the rear of the regular line of a public street in an order he issues under section 354 or 346 of the MMC Act.

194. Section 300 is quoted as under:

"300. Setting forward of buildings to regular line of the street
(1) If any building which abuts on a public street is in rear of the regular line of such street the Commissioner may, whenever it is proposed—
(a) to rebuild such building, or
(b) to alter repair such building in any manner that will involve the removal or re-erection of such building, or of the portion thereof which abuts on the said street, to an extent exceeding one-half of such building or portion thereof above the ground-level, such half to be measured in cubic feet, in any order which he issues, under section 345 or 346, concerning the rebuilding, alternation or repair of such building, permit or, with the approval of the standing committee, require such building to be set forward to the regular line of the street.
(2) For the purposes of this section, a wall separating any premises from a public street shall be deemed to be a building; and it shall be deemed to be a sufficient compliance with a permission or requisition to set forward a building to the regular line of a street if a wall of such materials and dimensions as are approved by the Commissioner is erected along the said line."

195. Section 301 provides for compensation to be paid in respect of the aforesaid acquisitions.

196. It is clear from the above that the MMC Act contains very specific and detailed procedures to be followed for acquisition of land under various sections.

197. Let us also consider the provisions of the MRTP Act, 1966 pertaining to land acquisition. The MRTP Act is a town planning legislation which provides for planning, the development and control of the use of land and to confer upon public authorities such as municipalities, power in respect of the acquisition of land for planning and development purposes. The law

provides for preparation of schemes called Development plan in respect of land with the object of controlling development, securing proper sanitary and other conveniences such as parks, playgrounds, preserving existing buildings of architectural or historical interest and places of natural interest or beauty and of protecting existing amenities. Chapter III which pertains to Development plan contains provisions for procedure for declaration of intention, preparation, submission and sanction to Development plan, procedure for preparing and sanctioning Development plans, provisions for interim Development plans and comprehensive Development plans.

198. Sections 21 to 31 and 37 are set forth as under:

> "*21. Development plan:-*
> *(1) As soon as may be after the commencement of this Act, but not later than three years after such commencement, and subject however, to the provisions of this Act, every Planning Authority shall carry out a survey, prepare an existing land-use map and prepare a draft Development plan for the area within its jurisdiction, in accordance with the provisions of a Regional plan, where there is such a plan publish a notice in the Official Gazette and in such other manner as may be prescribed stating that the draft Development plan has been prepared and submit the plan to the State Government for sanction. The Planning Authority shall also submit a quarterly Report to the State Government about the progress made in carrying out the survey and prepare the plan.*
> *(2) Subject to the provisions of this Act, every Planning Authority constituted after the commencement of this Act shall, not later than three years from the date of its constitution, declare its intention to prepare a draft Development plan, prepare such plan and publish a notice, of such preparation in the Official Gazette and in such other manner as may be prescribed and submit the draft Development plan to the State Government for sanction.*
> *(3) On an application made by any Planning Authority, the State*

Government may having regard to the permissible period specified in the preceding sections, from time to time, by order in writing and for adequate reasons to be specified in such order, extend such period.
(4) If the declaration of intention to prepare Development plan under section 23 is not made or if the draft Development plan is not submitted to the State Government as aforesaid for sanction by any Planning Authority within the period specified or within the extended period, the concerned Divisional Joint Director or Deputy Director of Town Planning and Valuation Department or an officer not below the rank of an Assistant Director of Town Planning nominated by him, as the case may be, may after declaring the intention, carry out necessary survey of the area and prepare an existing land-use map in consultation with the Director of Town Planning and prepare such Development plan and publish a notice in the Official Gazette and in such other manner as may be prescribed stating that such plan has been prepared and submit it to the State Government for sanction, and may recover the cost thereof from the funds of the Planning Authority, notwithstanding anything contained in any law relating to the said fund. Such officer shall exercise all the powers and perform all the functions of a Planning Authority which may be necessary for the purpose of preparing a Development plan and publishing a notice as aforesaid and submitting it to the State Government for sanction.
4A. If at any stage of preparation of the draft Development plan, the time fixed under sections 25, 26 and 30 for doing anything specified in the said sections lapses, the Planning Authority shall be deemed to have failed to perform its duty imposed upon it by or under the provisions of this Act and any work remaining to be done up to the stage of submission of the draft Development plan under section 30 shall be completed by the concerned Division Joint Director or Deputy Director of Town Planning and Valuation Department or an officer nominated by him not below the rank of Assistant Director of Town Planning, as the case may be. The said officer shall exercise all the powers and perform all the duties of a Planning Authority which may be necessary for the purpose of preparing a Development plan and submitting it to the State Government for sanction and may, notwithstanding anything contained in any other law relating to the funds of the Planning Authority, recover the cost thereof from such funds: provided that, the said Officer shall exercise all the powers and perform all the duties of the Planning Authority within such period as may be specified by an order by the Director of Town Planning, having regard to the stage of preparation of Development plan: provided further that, the period specified under the first proviso shall not exceed the original period stipulated under the relevant section.

(5) If any local authority which is a Planning Authority is converted into, or amalgamated with, any other local authority or is sub-divided into two or more local authorities, the Development plan prepared for the area by that Planning Authority so converted, amalgamated or sub-divided shall with such alterations and modifications as the State Government may approve be the Development plan for the areas of the new Planning Authority or Authorities into or with which the former Planning Authority is converted, amalgamated or sub-divided.

22. Contents of Development plan:-
A Development plan shall generally indicate the manner in which the use of land in the area of a Planning Authority shall be regulated, and also indicate the manner in which the development of land therein shall be carried out. In particular, it shall provide so far as may be necessary for all or any of the following matters, that is to say,-
(a) proposals for allocating the use of land for purposes, such as residential, industrial, commercial, agricultural, recreational;
(b) proposals for designation of land for public purpose, such as schools, colleges and other educational institutions, medical and public health institutions, markets, social welfare and cultural institutions, theatres and places for public entertainment, or public assembly, museums, art galleries, religious building and government and other public buildings as may from time to time be approved by the State Government;
(c) proposals for designation of areas for open spaces, playgrounds, stadia, zoological gardens, green belts, nature reserves, sanctuaries and dairies;
(d) transports and communications, such as roads, high-ways, park ways, railways, water-ways, canals and airports, including their extension and development;
(e) water supply, drainage, sewerage, sewage disposal, other public utilities, amenities and services including electricity and gas; (f) reservation of land for community facilities and services;
(g) proposals for designation of sites for service industries, industrial estates and any other development on an extensive scale;
(h) preservation, conservation and development of areas of natural scenery and landscape;
(i) preservation of features, structures or places of historical, natural, architectural and scientific interest and educational value and of heritage buildings and heritage precincts;
(j) proposals for flood control and prevention of river pollution;
(k) proposals of the Central Government, a State Government, Planning Authority or public utility undertaking or any other authority established by law for designation of land as subject to acquisition for public

purpose or as specified in a Development plan, having regard to the provisions of section 14 or for development or for securing use of the land in the manner provided by or under this Act;

(l) the filling up or reclamation of low lying, swampy or unhealthy areas, or levelling up of land;

(m) provisions for permission to be granted for controlling and regulating the use and development of land within the jurisdiction of a local authority including imposition of fees, charges and premium, at such rate as may be fixed, by the State Government or the Planning Authority, from time to time for grant of an additional Floor Space Index or for the specific permissions or for the use of discretionary powers under the relevant Development Control Regulations, and also for imposition of conditions and restrictions in regard to the open space to be maintained about buildings, the percentage of building area for a plot, the location, number, size, height, number of storeys and character of buildings and density of population allowed in a specified area, the use and purposes to which buildings or specified areas of land may or may not be appropriated, the sub-division of plots the discontinuance of objectionable users of land in any area in reasonable periods, parking space and loading and unloading space for any building and the sizes of projections and advertisement signs and boardings and other matters as may be considered necessary for carrying out the objects of this Act.

22A. Modifications of a substantial nature:- In section 29 or 31, the expression "of a substantial nature" used in relation to the modifications made by the Planning Authority or the officer appointed by the State Government under sub-section (4) of section 21 (hereinafter referred to as "the said Officer") or the State Government, as the case may be, in the draft Development plan means,-

(a) reduction of more than fifty per cent., or increase by ten per cent., in area of reservations provided for in clauses (b) to (i) of section 22, in each planning unit or sector of a draft Development plan, in sites admeasuring more than 0.4 hectare in the Municipal Corporation area and 'A' class Municipal area and 1.00 hectare in 'B' Class and 'C' Class Municipal areas;

(b) all changes which result in the aggregate to a reduction of any public amenity by more than ten per cent, of the area provided in the planning unit or sector in a draft Development plan prepared and published under section 26 or published with modifications under section 29 or 31, as the case may be;

(c) reduction in an area of an actually existing site reserved for a public amenity except for marginal area upto two hundred square metres required for essential public amenity or utility services;

(d) change in the proposal of allocating the use of certain lands from one zone to any other zone provided by clause (a) of section 22 which results in increasing the area in that, other zone by ten per cent in the same planning unit or sector in a draft Development plan prepared and published under section 26 or published with modifications under section 29 or 31, as the case may be;
(e) any new reservation made in a draft Development plan which is not earlier published under sections 26, 29 or 31, as the case may be;
(f) alternations in the Floor Space Index beyond ten per cent of the Floor Space Index prescribed in the Development Control Regulations prepared and published under section 26 or published with modifications under section 29 or 31, as the case may be.

23. Declaration of intention to prepare Development plan:-
(1) A Planning Authority shall, before carrying out a survey and preparing an existing-land-use map of the area as provided in section 21, by a resolution make a declaration of its intention to prepare a Development plan; and shall despatch a copy of such resolution with a copy of a plan showing only the boundary of the entire area proposed to be included in the Development plan to the State Government. The said Officer shall also make a similar declaration and submit a copy thereof to the State Government. The Planning Authority or the said Officer, as the case may be, shall also publish a notice of such declaration in the Official Gazette, and also in one or more local newspapers in the prescribed manner, inviting suggestions or objections from the public within a period of not less than sixty days from the publication of the notice in the Official Gazette.
(2) A copy of the aforesaid plan shall be open to the inspection of the public at all reasonable hours at the head office of the Planning Authority and Local Authority.

24. Town Planning Officer:-
Every Planning Authority shall, at the time of declaration of intention to prepare Development plan, resolve to appoint a person possessing such qualification as may be prescribed, to be the Town Planning Officer for carrying out surveys of the area of a Planning Authority preparing an existing-land-use map thereof and formulating proposals of a Development plan of that area for submission to the Planning Authority. There after, the Planning Authority shall, with the previous sanction of the State Government, appoint such person as a Town Planning Officer.

25. Provisions for survey and preparation of existing land-use map:-
After the declaration of intention of a Planning Authority or the said Officer to prepare a Development plan but not later than six months

from the date of such declaration or not later than such further time as the State Government may from time to time extend, a Planning Authority or the said Officer shall carry out a survey of the lands within the jurisdiction of the Planning Authority and prepare an existing land-use map indicating the existing use of land therein: provided that, the period so extended shall not in any case exceed one year in the aggregate.

26. Preparation and publication of notice of draft Development plan:-
(1) Subject to the provisions of section 21, a Planning Authority or the said officer shall, not later than two years from the date of notice published under section 23, prepare a draft Development plan and publish a notice in the, Official Gazette and in such other manner as may be determined by it stating that the Development plan has been prepared. The notice shall state the name of the place where a copy thereof shall be available for inspection by the public and that copies thereof or extracts therefrom certified to be correct shall be available for sale to the public at a reasonable price, and inviting objections and suggestions within a period of Thirty days from the date of notice in the Official Gazette: Provided that,in case of Municipal Corporation having population of ten lacs or more, as per the latest census, the period for inviting objections and suggestions shall be sixty days from the date of notice in the Official Gazette. Provided further that, the State Government may, on an application of the Planning Authority, by an order in writing, and for reasons to be recorded from time to time, extend the period for preparation and publication of notice of the draft Development plan. Provided also that, the priod so extended shall not in any case, exceed, -
(i) twenty-four months, in the aggregate, in case of Municipal Corporation of Planning Authority, as the case may be, having population of one crore or more, as per the latest census figures;
(ii) twelve months in the – aggregate, in case of Municipal Corporation having population having ten lacs or more, but less than one crore as per the latest census figures; and
(iii) six months, in the aggregate, in any other case.
(2) The notice shall also state that copies of the following particulars in relation to the Draft Development plan are also available for inspection by the public and copies thereof, or extracts therefrom certified to be correct, are also available for sale to the public at a reasonable price at the place so named, namely:- (i) a report on the existing-land-use map and the surveys carried out for the purpose of preparation of the draft plan;
(ii) maps, charts and a report explaining the provisions of the draft

Development plan;
(ii-a) map showing the planning units or sectors unalterable till the Development plan is revised;
(iii) regulations for enforcing the provisions of the draft Development plan and explaining the manner in which the permission for developing any land may be obtained from the Planning Authority or the said officer, as the case may be;
(iv) a report of the stages of development by which it is proposed to meet any obligations imposed on the Planning Authority by the draft Development plan;
(v) an approximate estimate of the cost involved in acquisition of lands required by the Planning Authority for the public purposes, and also cost of works, as may be necessary.

27. Provision of Regional Plan to be considered:- Where any area within the jurisdiction of a Planning Authority is included in a Region, the Planning Authority or as the case may be, the said officer shall have regard to, and be guided by, the proposals made in any draft Regional plan or any final Regional Plan, as the case may be, while preparing the draft Development plan: Provided that, where the Planning Authority or the said Officer is of the opinion that any provision of a draft Regional plan or the final Regional plan, as the case may be, needs any modification, the Planning Authority or as the case may be, the said Officer may carry out such modification- (a) in the case of a draft Regional plan, with the concurrence of the Regional Board; and (b) in the case of a final Regional Plan, with the approval of the State Government.

28. Objections to draft Development Plan:-
(1) Subject to the provisions of this Act, if within the time allowed under sub-section (1) of section 26 any person communicates in writing to the Planning Authority or the said officer any suggestions or objection relating to the draft Development plan, the Planning Authority or the said officer may, after considering the report of the Planning Committee under sub-section (2) and the suggestions or objections received by it or him, modify or change the plan in such manner as it or he thinks fit.
(2) The Planning Authority or the said Officer shall forward all objections and suggestions received by it to a Planning Committee consisting of three members of the Standing Committee of the Planning Authority and such additional number of persons, not exceeding four, appointed by the Director of Town planning having special knowledge or practical experience of matters relating to town and country planning or environment or relating to both for consideration and report:
Provided that, where a Planning Authority is not a local authority, the

Planning Committee shall consist of such members as the Planning Authority may determine:

Provided further that, where the Divisional Joint Director or Deputy Director of the Town Planning and Valuation Department or an Officer nominated by him under sub-section (4) of section 21, as the case may be, exercises the powers and performs the duties of the Planning Authority, then the Planning Committee may consist of such Divisional Joint Director or Deputy Director or, as the case may be of such Officer.

Provided also that, where the State Government or any person or persons appointed under section 162, exercise the powers and perform the duties of a Planning Authority or Development Authority, then the Planning Committee may consist of the State Government or the person or persons so appointed:

Provided also that, the Planning Committee contemplated in the preceding provisos shall also consist of such additional number of persons, not exceeding four, appointed by the Director of Town Planning having special knowledge or practical experience of matters relating to town and country planning or environment or relating to both.

(3) The Planning Committee, shall, on receipt of objections and suggestions, make such inquiry as it may consider necessary, and give a reasonable opportunity of being heard to any person including representatives of Government departments who may have filed any objections or made any suggestions in respect of the draft Development plan, and after considering the same, the Planning Committee shall submit its report to the Planning Authority or as the case may be, the said Officer within a period of two months from the date of its appointment, or within such extended period as the Planning Authority may specify.

(4) Not later than two months, after the receipt of the report of the Planning Committee, the Planning Authority or the said Officer shall consider the report including the objections and suggestions received by it or him and make a list of such modifications or changes and carry out the same in the draft Development plan, as it or he may consider proper. The Planning Authority or the said officer shall publish, in the Official Gazette and in not less than two local newspapers, the list of modifications or changes made in the draft Development plan for information of the public.

29. Modification made after preparing and publishing notice of draft Development Plan (Deleted)

30. Submission of draft Development plan:-

(1) The Planning Authority or as the case may be, the said Officer shall submit the draft Development plan along with the list of modifications

or changes made in the draft Development plan under sub-section (4) of section 28 to the State Government for sanction within a period of six months from the date of publication of the notice in the Official Gazette, regarding its preparation under section 26.

Provided that, the State Government may, on an application by a Planning Authority or the said Officer by an order in writing, and for adequate reasons which shall be recorded, extend from time to time the said period by such further period as may be specified in the order but not in any case exceeding,-(i) twenty-four months, in the aggregate, in case of Municipal Corporation having population of one crore or more, as per the latest census figures; (ii) twelve months, in the aggregate, in case of Municipal Corporation having population of ten lacs or more, but less than one crore, as per the latest census figures; and (iii) six months, in the aggregate, in any other case.

(2) The particulars referred to in sub-section (2) of section 26 shall also be, submitted to the State Government.

31. Sanction to draft Development plan:-

(1) Subject to the provisions of this section, and not latter than six months from date of receipt of such plan from the Planning Authority, or as the case may be, from the said Officer, the State Government may, after consulting the Director of Town Planning by notification in the Official Gazette sanction the draft Development plan submitted to it for the whole area, or separately for any part thereof, either without modification, or subject to such modifications as it may consider proper, or return the draft, Development plan to the Planning Authority or as the case may be, the said Officer for modifying the plan as it may direct or refuse to accord sanction and direct the Planning Authority or the said Officer to prepare a fresh Development plan:

Provided that, the State Government may, if it thinks fit, whether the said period has expired or not, extend from time to time, by a notification in the Official Gazette, the period for sanctioning the draft Development plan or refusing to accord sanction thereto, by such further period not exceeding,- i) twenty-four months, in the aggregate, in case, the area of such Development plan falls in the jurisdiction of a Metropolitan Planning Committee constituted under the Maharashtra Metropolitan Planning Committees (Constitutions and Functions) (Continuance of Provisions) Act, 1999; (ii) twelve months, in the aggregate, in any other case, as may be specified in such notification:

Provided further that, where the modifications proposed to be made by the State Government or submitted by the Planning Authority under section 30 and propose to be approved by the State Government without any further change are of a substantial nature with respect to the draft

Development plan published under section 26, the Government shall publish a notice in the Official Gazette and also in not less than two local newspapers inviting objections and suggestions from any person in respect of the proposed modifications within a period of one month, from the date of such notice:

Provided also that, if the Government does not publish its decision by notification in the Official Gazette, regarding sanctioning the draft Development plan submitted to it, for the whole area, or separately for any part thereof, either without modification, or subject to such modifications as it may consider proper, or return the draft Development plan to the Planning Authority, or as the case may be, the said Officer for modifying the plan as it may direct or refuse to accord sanction and direct the Planning Authority or the said Officer to prepare a fresh Development plan, within the period under this section, such draft Development plan shall be deemed to have been sanctioned as submitted to the Government under section 30, on the date immediately following the date of expiry of the period under this section:

provided also that, where any modification submitted by the Planning Authority or, as the case may be, the said Officer, under section 30 is of substantial nature with respect to the draft Development plan published under section 26, such modification shall not be deemed to have been sanctioned and the Government shall publish a notice regarding such modifications of substantial nature and the provisions relating to publication of the notice in the Official Gazette and two local newspapers for obtain suggestions and objections as stipulated in the second proviso, shall apply.

(2) The State Government may appoint an officer of rank not below that of a Group A Officer and direct him to hear any such person in respect of such objections and suggestions and submit his report thereon to the State Government within one year from the date of publication of notice under second proviso to sub-section (1);

(3) The State Government shall before according sanction to the draft Development plan take into consideration such objections and suggestions and the report of the officer.

Provided that, the time-limits as provided in sub-sections (1) and (2) shall not apply for according sanction to the modifications published under sub-section (1):

Provided further that, the Government shall take final decision regarding such modifications within one year from the date of receipt of the report from the officer appointed under sub-section (2).

(4) The State Government shall fix in the notification under sub-section (1) a date not earlier than one month from its publication on which the final Development plan shall come into operation.

(4A) The State Government may, by notification in the Official Gazette, delegate all the powers and functions under this section to the Director of Town Planning in such cases and subject to such conditions, if any, as may be specified in such notifications.

(5) If a Development plan contains any proposal for the designation of any land for a purpose specified in clauses (b) and (c) of section 22, and if such land does not vest in the Planning Authority, the State Government shall not include that in the Development plan, unless it is satisfied that the Planning Authority will be able to acquire such land by private agreement or compulsory acquisition not later than ten years from the date on which the Development plan comes into operation.

(6) A Development plan which has come into operation shall be called the "final Development plan" and shall, subject to the provisions of this Act, be binding on the Planning Authority.

37. Modification of final Development plan.-

(1) Where a modification of any part of or any proposal made in a final Development plan, the Planning Authority may, or when so directed by the State Government shall, within ninety days from the date of such direction, publish a notice in the Official Gazette and in such other manner as may be determined by it inviting objections and suggestions from any person with respect to the proposed modification not later than one month from the date of such notice; and shall also serve notice on all persons affected by the proposed modification and after giving a hearing to any such persons, submit the proposed modification with amendments, if any, to the State Government for sanction within one year from the date of publication of notice in the Official Gazette. If such modification proposal is not submitted within the period stipulated above, the proposal of modification shall be deemed to have lapsed:

Provided that, such lapsing shall not bar the Planning Authority from making a fresh proposal.

(1A) If the Planning Authority fails to issue the notice as directed by the State Government, the State Government shall issue the notice, and thereupon, the provisions of sub-section (1) shall apply as they apply in relation to a notice to be published by a Planning Authority.

(1AA) (a) Notwithstanding anything contained in sub-sections (1), (1A) and (2), where the State Government is satisfied that in the public interest it is necessary to carry out urgently a modification of any part of, or any proposal made in, a final Development Plan of such a nature that it will not change the character of such Development plan, the State Government may, on its own, publish a notice in the Official Gazette, and in such other manner as may be determined by it, inviting objections and suggestions from any person with respect to the proposed

modification not later than one month from the date of such notice, and shall also serve notice on all persons affected by the proposed modification and the Planning Authority.
(b) The State Government shall, after the specified period, forward a copy of all such objections and suggestions to the Planning Authority for its consideration. The Planning Authority shall, thereupon, submit its say to the Government within a period of one month from the receipt of the copies of such objections and suggestions from the government.
(c) The State Government shall, after giving hearing to the affected persons and the Planning Authority and after making such inquiry as it may consider necessary and consulting the Director of Town Planning, by notification in the Official Gazette, publish the approved modification with or without changes, and subject to such conditions as it may deem fit, or may decide not to carry out such modification. On the publication of the modification in the Official Gazette, the final Development plan shall be deemed to have been modified accordingly.
(1B) Notwithstanding anything contained in sub-section (1), if the Slum Rehabilitation Authority appointed under section 3A of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 is satisfied that a modification of any part of, or any proposal made in, a final Development plan is required to be made for implementation of the Slum Rehabilitation Scheme declared under the said Act, then, it may publish a notice in the Official Gazette, and in such other manner as may be determined by it, inviting objections and suggestions from any person with respect to the proposed modification not later than one month from the date of such notice; and shall also serve notice on all persons affected by the proposed modification, and after giving a hearing to any such persons, submit the proposed modification with amendments, if any, to the State Government to sanction.
(2) The State Government may, make such inquiry as it may consider necessary and after consulting the Director of Town Planning by notification in the Official Gazette, sanction the modification with or without such changes, and subject to such conditions as it may deem fit, or refuse to accord sanction. If a modification is sanctioned, the final Development plans shall be deemed to have been modified accordingly.

199. Section 31 refers to the procedure for sanctioning the draft Development plan. Section 31 is quoted as under:

"*31. Sanction to draft Development plan:-*

(1) Subject to the provisions of this section, and not latter than six months from date of receipt of such plan from the Planning Authority, or as the case may be, from the said Officer, the State Government may, after consulting the Director of Town Planning by notification in the Official Gazette sanction the draft Development plan submitted to it for the whole area, or separately for any part thereof, either without modification, or subject to such modifications as it may consider proper, or return the draft, Development plan to the Planning Authority or as the case may be, the said Officer for modifying the plan as it may direct or refuse to accord sanction and direct the Planning Authority or the said Officer to prepare a fresh Development plan:

Provided that, the State Government may, if it thinks fit, whether the said period has expired or not, extend from time to time, by a notification in the Official Gazette, the period for sanctioning the draft Development plan or refusing to accord sanction thereto, by such further period not exceeding,- i) twenty-four months, in the aggregate, in case, the area of such Development plan falls in the jurisdiction of a Metropolitan Planning Committee constituted under the Maharashtra Metropolitan Planning Committees (Constitutions and Functions) (Continuance of Provisions) Act, 1999; (ii) twelve months, in the aggregate, in any other case, as may be specified in such notification:

Provided further that, where the modifications proposed to be made by the State Government or submitted by the Planning Authority under section 30 and propose to be approved by the State Government without any further change are of a substantial nature with respect to the draft Development plan published under section 26, the Government shall publish a notice in the Official Gazette and also in not less than two local newspapers inviting objections and suggestions from any person in respect of the proposed modifications within a period of one month, from the date of such notice:

Provided also that, if the Government does not publish its decision by notification in the Official Gazette, regarding sanctioning the draft Development plan submitted to it, for the whole area, or separately for any part thereof, either without modification, or subject to such modifications as it may consider proper, or return the draft Development plan to the Planning Authority, or as the case may be, the said Officer for modifying the plan as it may direct or refuse to accord sanction and direct the Planning Authority or the said Officer to prepare a fresh Development plan, within the period under this section, such draft Development plan shall be deemed to have been sanctioned as submitted to the Government under section 30, on the date immediately following the date of expiry of the period under this section:

provided also that, where any modification submitted by the Planning

Authority or, as the case may be, the said Officer, under section 30 is of substantial nature with respect to the draft Development plan published under section 26, such modification shall not be deemed to have been sanctioned and the Government shall publish a notice regarding such modifications of substantial nature and the provisions relating to publication of the notice in the Official Gazette and two local newspapers for obtain suggestions and objections as stipulated in the second proviso, shall apply.

(2) The State Government may appoint an officer of rank not below that of a Group A Officer and direct him to hear any such person in respect of such objections and suggestions and submit his report thereon to the State Government within one year from the date of publication of notice under second proviso to sub-section (1);

(3) The State Government shall before according sanction to the draft Development plan take into consideration such objections and suggestions and the report of the officer.

Provided that, the time-limits as provided in sub-sections (1) and (2) shall not apply for according sanction to the modifications published under sub-section (1):

Provided further that, the Government shall take final decision regarding such modifications within one year from the date of receipt of the report from the officer appointed under sub-section (2).

(4) The State Government shall fix in the notification under sub-section (1) a date not earlier than one month from its publication on which the final Development plan shall come into operation.

(4A) The State Government may, by notification in the Official Gazette, delegate all the powers and functions under this section to the Director of Town Planning in such cases and subject to such conditions, if any, as may be specified in such notifications.

(5) If a Development plan contains any proposal for the designation of any land for a purpose specified in clauses (b) and (c) of section 22, and if such land does not vest in the Planning Authority, the State Government shall not include that in the Development plan, unless it is satisfied that the Planning Authority will be able to acquire such land by private agreement or compulsory acquisition not later than ten years from the date on which the Development plan comes into operation.

(6) A Development plan which has come into operation shall be called the "final Development plan" and shall, subject to the provisions of this Act, be binding on the Planning Authority."

200. Section 37 refers to the procedure for modification of Final Development plan. It is pertinent to note that for any modification to be

made in the Final Development plan, the Planning Authority may or when so directed by the State Government shall by following the procedure therein submit the proposed modification to the State Government for sanction. It is clear from sub-section (2) of Section 37 that the control of this procedure is with the State Government and not in the hands of the Municipal Corporation. Section 37 is quoted as under:

> *"37. Modification of final Development plan. - (1) Where a modification of any part of or any proposal made in a final Development plan is of such a nature that it will not change the character of such Development plan, the Planning Authority may, or when so directed by the State Government shall, within ninety days from the date of such direction, publish a notice in the Official Gazette and in such other manner as may be determined by it inviting objections and suggestions from any person with respect to the proposed modification not later than one month from the date of such notice; and shall also serve notice on all persons affected by the proposed modification and after giving a hearing to any such persons, submit the proposed modification (with amendments, if any), to the State Government for sanction.*
> *(1A) If the Planning Authority fails to issue the notice as directed by the State Government, the State Government shall issue the notice, and thereupon, the provisions of sub-section (1) shall apply as they apply in relation to a notice to be published by a Planning Authority.*
> *(1AA) (a) Notwithstanding anything contained in sub-sections (1), (1A) and (2), where the State Government is satisfied that in the public interest it is necessary to carry out urgently a modification of any part of, or any proposal made in, a final Development plan of such a nature that it will not change the character of such Development plan, the State Government may, on its own, publish a notice in the Official Gazette, and in such other manner as may be determined by it, inviting objections and suggestions from any person with respect to the proposed modification not later than one month from the date of such notice, and shall also serve notice on all persons affected by the proposed modification and the Planning Authority.*
> *(b) The State Government shall, after the specified period, forward a copy of all such objections and suggestions to the Planning Authority for its consideration. The Planning Authority shall, thereupon, submit its say*

to the Government within a period of one month from the receipt of the copies of such objections and suggestions from the government.

(c) The State Government shall, after giving hearing to the affected persons and the Planning Authority and after making such inquiry as it may consider necessary and consulting the Director of Town Planning, by notification in the Official Gazette, publish the approved modification with or without changes, and subject to such conditions as it may deem fit, or may decide not to carry out such modification. On the publication of the modification in the Official Gazette, the final Development plan shall be deemed to have been modified accordingly.

(1B) Notwithstanding anything contained in sub-section (1), if the Slum Rehabilitation Authority appointed under section 3A of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 is satisfied that a modification of any part of, or any proposal made in, a final Development plan is required to be made for implementation of the Slum Rehabilitation Scheme declared under the said Act, then, it may publish a notice in the Official Gazette, and in such other manner as may be determined by it, inviting objections and suggestions from any person with respect to the proposed modification not later than one month from the date of such notice; and shall also serve notice on all persons affected by the proposed modification, and after giving a hearing to any such persons, submit the proposed modification (with amendments, if any) to the State Government for sanction.

(2) The State Government may, make such inquiry as it may consider necessary and after consulting the Director of Town Planning by notification in the Official Gazette, sanction the modification with or without such changes, and subject to such conditions as it may deem fit, or refuse to accord sanction. If a modification is sanctioned, the final Development plans shall be deemed to have been modified accordingly."

201. Chapter VII pertains to land acquisition.

202. Section 125 of the MRTP Act deals with compulsory land acquisition.

"125. Compulsory acquisition of land needed for purposes of Regional Plan, Development plan or town planning etc.

Any land required, reserved or designated in a Regional plan, Development plan or town planning scheme for a public purpose or purposes including plans for any area of comprehensive development or for any new town shall be deemed to be land needed for a public *purpose within the meaning of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013: Provided that, the procedure specified in sections 4 to 15 (both inclusive) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 shall not be applicable in respect of such lands."*

203. Sections 126 to 128 of the MRTP Act are quoted as under:

"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 113A 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 and 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 in 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 sections 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 if the State Government (except in cases falling under section 49 and except as provided in section 113A) 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 may be, 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 and 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 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 twelve 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.

128. Power of State Government to acquire land for purpose other than the one for which it is designated in any plan or scheme
(1) Where any land is included in any plan or scheme as being reserved allotted or designated for any purpose therein specified or for the purpose of Planning Authority or Development Authority or Appropriate Authority and the State Government is satisfied that the same land is needed for a public purpose different from any such public purpose or purpose of the Planning Authority, Development Authority or Appropriate Authority, the State Government may notwithstanding anything contained in, this Act, acquire such land under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
(1A) Save as otherwise provided in this Act or any other law for the time being in force where any land included in any plan or scheme as being reserved, allotted or designated for any purpose therein specified or for the purposes of a Planning Authority or Development Authority or Appropriate Authority, is being acquired by the State Government under the provisions of the Maharashtra Industrial Development Act, 1961, for the Maharashtra Industrial Development Corporation being the Special Planning Authority deemed to have been appointed as such under sub-section (1A) of section 40, the provisions of sub-sections (2) and (3) of this section shall mutatis mutandis, apply to such acquisition proceedings.
(2) In the proceedings under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation

and Resettlement Act, 2013, the Planning Authority, or Development Authority or Appropriate Authority, as the case may be, shall be deemed to be a person interested in the land acquired; and in determining the amount of compensations to be Awarded, the market value of the land shall be assessed as if the land had been released from the reservation, allotment or designation made in the any plan or scheme or new town, as the case may be, and the Collector or the Court shall take into consideration the damage, if any, that Planning Authority or Development Authority or Appropriate Authority, as the case may be, may sustain by reason of acquisition of such land under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, or otherwise, and the proportionate cost, of the Development plan or town planning scheme or new town, if any, incurred by such Authority and rendered abortive by reason of such acquisition.

(3) On the land vesting in the State Government under section 38 or 40 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, as the case may be, the relevant plan or scheme shall be deemed to be suitably varied by reason of acquisition of the said land."

204. The Corporation has two options to acquire the said land for public road, one is by making a modification to the final Development plan by following the procedure under Section 37 of the MRTP Act and the other by making and laying out a new public street under Section 291(a) of the MMC Act. The Corporation exercised the option of going under Section 291(a) of the MMC Act instead of Section 37 of the MRTP Act which is what has been questioned in the Petition.

205. What emerges from the above elucidation of the provisions of the MMC Act and the MRTP Act that the schemes of land acquisition in both the statutes are not in conflict with each other, though there are overlaps, which in our view only aid and supplement each other. We observe that the power to acquire and make a public street under the provisions of the MMC Act are distinct from the provisions of the MRTP Act. The provisions of the MRTP Act do not repeal the provisions of the MMC Act. There is a presumption that the legislature while enacting a new law (MRTP Act) is aware of all existing law. When the MRTP Act was enacted, the legislature was aware of the existence of the MMC Act including the provisions contained in the MMC Act relating to making of new public road. There is nothing in Section 165 of the MRTP Act or any other provisions thereof to suggest that Section 291 is repealed or that the Municipal Corporation has lost its power of making a new public road under Section 291 of the MMC Act. Though there is mention of certain provisions of the Town Planning Act, 1954 and the Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 as being repealed, but there is no mention of any of the provisions of the MMC Act. Further, the provisions of the MRTP Act and the DC Regulations not only recognize the provisions of the MMC Act, but they also facilitate and aid the provisions of the MMC Act and vice-versa. In our view there is also no

substance in the Petitioner's contention that the only power to make provisions for transport including roads is through the Development plan prepared and sanctioned under the MRTP Act. Section 128 contemplates that land can be acquired under the Land Acquisition Act for public purpose, other than the purposes for which it may have been allocated, designated or reserved under the DP. The MMC Act contains several Chapters dealing with several different matters which are also covered by the provisions of the MRTP Act and other statutes. The legislature while enacting the provisions of the MRTP Act was aware of the existence of the similar provisions contained in the MMC Act as well, but that does not mean that the MRTP Act would repeal those provisions of the MMC Act. The provisions of the MRTP Act deal principally with the planning but that does not take away the power of the Municipal Corporation to develop a necessary link road. In fact, the provisions of the MMC Act and the MRTP Act supplement and aid each other in providing better infrastructure and civic amenities.

206. It is settled law that the true test for deciding implied repeal or repugnancy between statutes is whether the provisions are so irreconcilably inconsistent that one can't operate in the existence of the other. In the present case, as discussed above, the provisions of the MMC Act are not inconsistent but supplement and aid the provisions of the MRTP Act.

207. The Hon'ble Supreme Court in the case of **Municipal Council, Palai Through the Commissioner of Municipal Council, Palai V/s. T. J. Joseph and Others (supra)** has in Paragraph 9 observed as under:

> *"It is undoubtedly true that the legislature can exercise the power of repeal by implication. But it is equally well-settled that there is a presumption against an implied repeal. Upon the assumption that the legislature enacts laws with a complete knowledge of all existing laws pertaining to the same subject the failure to add a repealing clause indicates that the intent was not to repeal existing legislation. This presumption will be rebutted if the provisions of the new Act are so inconsistent with the old ones that the two cannot stand together.*
>
> *There is no rule of law to prevent repeal of a special statute by a later general statute and, therefore, where the provisions of the special statute are wholly repugnant to the general statute, it would be possible to infer that the special statute was repealed by the general enactment. A general statute applies to all persons and localities within its jurisdiction and scope as distinguished from a special one which in its operation is confined to a particular locality. Therefore, where it is doubtful whether the special statute was intended to be repealed by the general statute the court should try to give effect to both the enactments as far as possible. "*

208. As seen above, Section 22 of the MRTP Act deals with the contents of the Development plan and deals with making provision for transport, communication, roads, highways etc., including their extension and development. Therefore, under the DP a provision can be made for a new road and once it is made, provisions of Section 125 and 126 apply. As mentioned earlier, the land can be acquired under the provisions of the Land Acquisition Act either by an agreement with the owner of the land or by

issuance of notice under Section 4 and by taking further steps under the Land Acquisition Act. Section 128(1) of the MRTP Act read with Section 128(3) clearly indicates that once land is acquired under the Land Acquisition Act, the relevant Development plan or town planning scheme is deemed to be suitably modified by reason of such acquisition of land. Just because the MRTP Act provides for acquisition of property required for public purpose as specified in DP or TPS, it does not take away the power of Government to acquire land for a public purpose under the Land Acquisition Act.

209. There are similar powers under the National Highways Act, State Highways Act as well as MHADA Act, Maharashtra Slum Act. We agree with the submissions of the Respondents that there are several statutes which deal with acquisition of land for public purposes, for eg. MHADA Act, 1976, the Maharashtra Slum Act, 1971 as well as the MMC Act. In the same way, just because there is power under the MRTP Act to acquire land that does not mean that the Corporation cannot exercise powers under the provisions of the MMC Act including Section 291(a). It is for the concerned authorities to decide the provisions of law under which property or land can be acquired for a public purpose.

210. The decision of this Court in the case of **Shankara S. Shetty and Others V/s. The State of Maharashtra and Others (supra)** has already taken a view that in exercise of power under Section 297(1) (a) of the MMC Act, the Corporation can prescribe a regular road line and this cannot be regarded as something contrary to the provisions of the Development plan on the ground that the Development plan contains no such regular line. This Court has held that the provisions of the MRTP Act do not impinge on the power of the Municipal Commissioner to prescribe the regular line under Section 297(1)(a) of the MMC Act. Paragraphs 3 to 7 of the said decision (authored by his Lordship Hon'ble Dr. Justice D.Y. Chandrachud as his Lordship then was) are usefully quoted as under:

> *"3. Affidavits in reply have been filed in these proceedings by the Respondents. The Deputy Chief Engineer (Traffic) of the Municipal Corporation has filed an affidavit dated 2nd March, 2007 in which it has been stated that the Corporation has prescribed a regular line for a 150 ft. wide road in accordance with the provisions of Section 297(1)(a) of the Mumbai Municipal Corporation Act, 1888 for the portion between Sakinaka and Asalfa village. Further a new road line was prescribed from Asalfa village upto L. B. S. Marg, Ghatkopar in accordance with Section 291 of the Act. The structures of the Petitioners fall within the regular line prescribed between Sakinaka and Asalfa village. In accordance with the request made by MMRDA which was implementing the project, the Municipal Corporation demarcated a portion of the regular line between Sakinaka and Asalfa village at site.*
>
> *4. MMRDA has clarified in its affidavit that the road alignment is prepared by the Municipal Corporation. The function of MMRDA is to carry out the actual process of road widening*

which includes demolition of encroachments coming within the road line and rehabilitation in accordance with law. MMRDA has stated that it is strictly following the road alignment, the plan furnished by the Municipal Corporation and has not deviated there from. MMRDA has denied that it has deviated from the Development plan to favour the structures situated on one side of the road. According to MMRDA the Petitioners who are eligible for rehabilitation will be rehabilitated in a brand new authorized structure.

5. In an affidavit filed by the Deputy Director of Town Planning it has been clarified that CTS Nos.248 (Part) and 249 situated along the Andheri - Kurla Link Road are shown as site No. 387 in the sanctioned Development plan of 'L' ward. The revised Development plan was sanctioned by the First Respondent on 7th May, 1992 and came into force on 2nd July, 1992. Under the location plan the land falls under site No. 387 and is under reservation for the purpose of a bus depot partly, while the remaining area is earmarked for the Development plan road. Regulation 9-IV (b) of the Development Control Regulations of Greater Mumbai, it has been submitted, envisages proposed widening of existing roads/ streets as envisaged by the Development plan or by the prescription of a regular line of street under the Mumbai Municipal Corporation Act, 1888. The Deputy Director of Town Planning has stated that there is no rigid concept of road widening under which an existing road can only be widened with reference to the center of the road and it is open to the Municipal Corporation to fix the regular line of street under Section 297.

6. Having heard the learned Counsel appearing on behalf of the contesting parties, we do not find that there is any merit in the grievance raised in the Petition. Section 297(1) (a) of the Mumbai Municipal Corporation Act, 1888 empowers the Municipal Commissioner to fix the road line. The provision is to the following effect.

"297. Prescribing the regular line of a street - (1) The Commissioner may (a) prescribe a line on each side of any public street:

Provided that in the case of any public street in the suburbs the regular line of a public street operative under any law in force in any part of the suburbs on the day immediately preceding the *date of coming into force of the Bombay Municipal (Extension of Limits) Act, 1950, and in the case of any public street in the extended suburbs the regular line of a public street operative under any law in force in any part of the extended suburbs on the day immediately preceding the date of the coming into force of the Bombay Municipal [Further Extension of Limits and Schedule BBA (Amendment)] Act, 1956 shall be deemed to be a line prescribed by the Commissioner under this clause.*

7. In the present case, the regular line is prescribed under Section 297(1)(a) for a 150 wide road. As clarified in the affidavit filed by the Deputy Director of Town Planning, site No. 387 in the revised Development plan of 'L' ward is under reservation for the purpose of a bus depot in part and for the Development plan road for the remaining part. The Municipal Corporation is empowered to fix the regular line under Section 297. This exercise cannot be regarded as being contrary to the provisions of the Development plan. The provisions of the Maharashtra Regional Town Planning Act, 1966 do not impinge upon the power of the Municipal Commissioner to prescribe the regular line under Section 297(1) (a). In fact the Development Control Regulations for Greater Mumbai, 1991 which are referable to the provisions of Section 22 (m) of the Act, contemplate in table IV of Regulation 9 that it is for the Municipal Corporation to deal with proposals for the widening of an existing road or a street envisaged either in the Development plan or by prescription of regular line of street under the Bombay Municipal Corporation Act, 1888. There is therefore no illegality in the action of the Municipal Corporation. MMRDA is an implementing agency. As the affidavit before the Court filed by MMRDA states, MMRDA is carrying out the work of road widening including the demolition of encroachments strictly in accordance with the road alignment plan furnished by the Municipal Corporation. There is no basis for the Court to accept the contention of the Petitioners that in all instances, it is mandatory to follow the center line of the existing road for carrying out road widening. Insofar as the Petitioners are concerned, a statement has already been made by MMRDA that those who are eligible will be rehabilitated in new authorized structures in accordance with law and the prevailing policy."

211. In our view the same logic would apply to exercise of power under Section 291 of the MMC Act as in the case of Section 297 as observed in the case of **Shankara S. Shetty and Others V/s. The State of Maharashtra and Others (supra)**. We are of the view that the provisions of the MRTP Act do not impinge upon the provisions of Section 291 of the MMC Act or affect the powers of the Municipal Commissioner in any manner to make a provision for a new road which is not contained in the Development plan. The intention of the legislature is to allow the two sets of provisions viz. Section 291(a) of the MMMC Act and Section 37 of the MRTP Act to coexist.

212. We agree with Dr. Tulzapurkar that the object and the purpose of the Development plan is to provide for planning at macro level for the entire urban area, whereas this is a case of micro planning affecting only one locality and it would neither be necessary nor reasonable to expect the Respondent-MCGM to be put to the trouble of following procedure under Section 37 of the MRTP Act.

213. It is not in dispute that in the Development plan of Bombay (K-East) Ward sanctioned in 1966 under the MRTP Act, a DP road connecting Mahakali Caves Road and Central MIDC Road passing through Petitioners aforesaid property was proposed. This Road was proposed as a 60 ft., wide

road and had the approvals of not only the engineering and project department of the Corporation but also of the traffic police. In 1984 when the DP was being revised, the DP also contained provision for the said road passing through Petitioners' property, but no objection was raised on behalf of Petitioners then and Petitioners also got their property developed. The draft DP was submitted to the Government for sanction in 1992 and it is only after such submission that a representation was made on behalf of Petitioners objecting to the same. After which, the Government of Maharashtra purportedly issued a directive dated 7th June, 1993 to the Respondent-Corporation.

214. The Communication dated 7th June, 1993 from the Urban Development Department of the Government of Maharashtra to the MCGM purported to be a directive under Section 37(1), in our view cannot be said to be a conclusive direction not to construct a road through Petitioners property. It appears that the issue may be with regard to the width of the road as the language suggests that 18.30 meter road was found not feasible. Moreover despite the same, in the last paragraph there is a direction to the Respondent Corporation to satisfy itself regarding the feasibility of the said road from technical as well as legal point of view before framing the proposal under Section 37.

215. It is not in dispute that on 3rd September, 1996, the Works Committee of the Respondent Corporation passed Resolution No. 217 recommending to the Corporation that sanction be given under Section 291 of the MMC Act to a new roadline of 18.30 meters width connecting Mahakali Caves Road and MIDC Central Road, Andheri (East) through the property of the Petitioners. Pursuant to the above on 10th September, 1996, the Corporation passed Resolution No. 651 to the effect that sanction be given under Section 291(a) of the MMC Act. On 18th August, 1998 the Improvement Committee passed Resolution No. 39 pursuant to which on 8th December, 1998, Corporation Resolution No. 536 to the effect that sanction be given to an application being made by the Commissioner on behalf of the Corporation to the State Government for proceedings to be ordered for acquisition of land forming part of Petitioners land for construction of 18.30 meters new roadline and 18.30 meters DP Road under the provisions of Section 126 of the MRTP Act read with Section 6 of Land Acquisition Act and Sections 90(1) and (3) of the MMC Act for land being purchased for Commissioner by an agreement. Thereafter, Corporation Resolution No. 1167 was passed on 9th March, 2001 holding that there was no need for the proposed acquisitions. However, the same came to be cancelled/withdrawn

by Corporation Resolution No.1117 dated 28th October, 2002 stating that the Corporation had reconsidered its decision and that the Corporation passes a Resolution for 18.30 meters wide DP Road and 18.30 meters wide new road line and to acquire lands therein CTS Nos. of Petitioners No. 23, 24 and 26 of Petitioner's property for the same. On 24th November, 2003 the Respondent Corporation deposited with the SLAO Rs.1,21,24,452 on account of estimated provisional compensation for acquisition of Petitioner's properties for the new road line of 18.30 meters width pursuant to the aforesaid resolution. Thereafter on 10th February, 2005, a letter came to be addressed from the Deputy Engineer (DP) to the SLAO-7 that the lands affected would be acquired under LAA after which on 15th February, 2005 a notification No. LAQ/764 was issued by SLAO under Section 4 of the LAA. On 24th March, 2005 notice under Section 4(1) of the LAA was served by Respondent No. 10 on Petitioners. A final notification under Section 6 of the LAA came to be issued on 2nd March, 2006. Thereafter on 26th November, 2007 the SLAO issued the Award.

216. All the aforesaid corporation resolutions are part of a series of a long drawn process leading to the acquisition of lands for the new roadline and are intricately connected to one and another as can be clearly observed from their contents reproduced herein and have to be read as a whole for

ascertaining the true and correct meaning which is, that as and when a need was felt for a suitable road connecting from Mahakali Caves Road to Central MIDC Road, Andheri East, the same was proposed through the processes of Improvement Committee, Works Committee, various Corporation resolutions leading upto Corporation Resolution No. 1117 pursuant to which the acquisition was proceeded with under Section 291(a) of the MMC Act. We have therefore no doubt that the requirements of Section 91 are satisfied. There is an application made to the State Government with the approval of the Improvement Committee/ Works Committee. It is the State Government that has initiated the land acquisition proceedings, has received the compensation through the SLAO, issued notifications under Sections 4 and 6 of the LAA and also issued the Award. Therefore the action of the State Government pursuant to the provisions of the Land Acquisition Act in taking steps for acquisition and acquiring the property for a public purpose of the said road under the LAA is also complete and as such the said property legitimately vests in the Corporation.

217. On 5th February, 1999, the Chief Engineer (Development plan) addressed a letter to the Collector to initiate the acquisition proceedings for

lands affected by (i) 18.30 meters D.P. Road and (ii) the new road line also of 18.30 meters.

218. Petitioners have contended that under Section 91 of the MMC Act, the application has to be signed by the Commissioner and not the Chief Engineer. It is to be stated that the requirements of Section 91, viz., the application on behalf of the State Government, the Improvement Committee resolution and the State Government's approval are all satisfied. On 13th February, 2001, the Improvement Committee passed Resolution No.207 recommending to the Corporation that in partial modification of the previous Resolution No.39 dated 18th August, 1998 and Corporation Resolution No.536 dated 8th December, 1998, sanction be given to acquire the lands in the said property.

219. In this context, learned Counsel for the Respondent-Corporation has rightly placed reliance upon a decision of this Court in the case of **Shankar Dabhade & Ors. Vs. State of Maharashtra & Ors. in Writ Petition No. 5955 of 2014 along with other connected Petition** (authored by Hon'ble Mr. Justice A.S. Oka, as His Lordship then was), where it has been observed that no informality, clerical error, omission or other defects which does not affect the merits of the case shall be deemed to render the acts invalid or illegal. We

are of the view that even if the absence of the sanction of the State Government under Section 91 of the MMC Act is an informality or defect it cannot be invalidate the acquisition proceedings challenged by Petitioners. Paragraph 8 of the said decision is relevant and is quoted as under :-

> *"8 Even going by the case of the petitioner, the State Government by the impugned notification dated 27th January 2013 has sanctioned a part of the draft Development plan (second revision) with modifications within the extended time specified under the proviso to sub-section (1) of section 31. The delay is only in publishing the notification in the Official Gazette. The emphasis under sub-section (1) of section 31 is on the State Government taking a decision one way or other on a draft plan submitted to it within the time specified therein. If the State Government takes a decision and issues a notification containing the said decision within the time specified under sub-section (1) of section 31, there will be a compliance with the requirements of section 31. The outer limit fixed by sub-section (1) of section 31 for the State Government taking a decision on the draft Development plan by issuing a notification is certainly mandatory as sub-section (1) uses the words "not later than six months from the date of receipt of such plan". As the section stood on the date of the impugned notification, the period of six months could be extended by a maximum period of further six months. The act of publishing a notification issued by the Government in the Official Gazette is a ministerial act. Therefore, if a decision is taken by the State Government on the draft plan by issuing a notification within the time provided in the section, the notification is not vitiated because there is a delay in publication of the notification in the Official Gazette which is a ministerial act. This part of sub-section (1) requiring the publication of the notification in the Official Gazette within the time provided in sub-section (1) appears to be directory. A statutory provision can be partly mandatory and partly directory. In the present case, it is not the case made out that the impugned notification dated 27th May 2013 is ante dated. Apart from the fact that this part of the provision is directory, there is one more reason*

why the delay in publication of the impugned notification in Official Gazette is not fatal. Section 150 of the MRTP Act which reads thus:
"150.Validation of acts and proceedings:-
(1) No act done or proceeding taken under this Act, shall be questioned on the ground merely of-
(a) the existence of any vacancy in, or any defect in the constitution of a Regional Board, Planning Authority, or Development Authority;
(b) any person having ceased to be a member; (c) any person associated with a Regional Board, under section 10 having voted in contravention of the said section;
(d) the failure to serve a notice on any person, where no substantial injustice has resulted from such failure; or
(e) any omission, defect or irregularity not affecting the merits of the case." *(emphasis added)*

In our view, the failure to publish the impugned notification in the Official Gazette within the period of six months or twelve months, as the case may be is an irregularity or a defect not affecting the merits of the case. Hence, the act done by the Government cannot be questioned on the ground of the delay in publication of the impugned notification in Official Gazette."

220. In our view, these are mere informalities or defects which cannot be deemed to render the acts invalid or illegal, if the provisions of the MMC Act have in substance been complied and acted upon. Once there is a General Body resolution that would presuppose or imply the approval of the Improvement Committee. Also Corporation Resolution No. 1117 dated 28th October, 2002 would fortify the fact that the members of the Corporation have ratified the decision. Also as stated above, the provisions of the MMC Act contain very specific procedures to be followed for acquisition of land for

various purposes. However no such specific requirement is mentioned in Section 291(a) of the MMC Act and hence the procedure followed for acquisition of land in the present case is valid. Therefore the decision in the case of **Girnar Traders v. State of Maharashtra (supra)** where the acquisition was under Section 126 of the MRTP Act would in our view would not be relevant.

221. As noted on 28th October, 2002, Resolution No. 1117 was passed by Respondent No. 2 cancelling/withdrawing the direction contained in the Resolution No. 1167 and partially modifying Resolution dated 8th December, 1998 sanctioning the acquisition of land from the said property of Petitioners for 18.30 meter new road line. This clearly indicates that the proposal was sanctioned by the General Body Resolution of the Corporation viz., approved by elected Councilors which would imply due authority as per law.

222. Also with respect to the sanction by the State Government, we have already observed that SLAO acts on behalf of the Government and as such the State Government has acquiesced in the said proceedings.

223. A perusal of some of the provisions of the LAA would suggest the implied approval / sanction of the State Government e.g. the expression

'corporation' owned or controlled by State is contained in Section 3(cc) means anybody corporate established *inter alia* by or under a State Act. The expression 'land acquisition officer' as defined in Section 3 (eee) means an officer appointed as such by the State Government by notification in the Official Gazette. Further, Section 3-1A of the LA Act provides that the powers conferred on the Commissioner by or under this Act shall be the powers exercisable by him in relation to the acquisition of land for those purposes only for which the State Government is the proper government.

224. Looked at whichever way, the acquisition proceedings under Section 291(a) are duly authorized, the requirements of Section 91 having been satisfied.

225. We have already observed that there are various modes by which acquisition can be made under various statutes by different authorities. The Corporation as also observed earlier had the option to either go with the process as set out under the MRTP Act and *inter alia* seek a modification under Section 37(2) of the MRTP Act and have the connecting road through the property of the Petitioner restored and then follow the consequential procedure therein or go under Section 291(a) as it has done by following the procedure under the MMC Act as has been narrated in the factual matrix set

out earlier, having observed the provisions of the MRTP Act do not impinge upon the provisions of the MMC Act .

226. In the facts of this case, it is amply clear that Petitioners have not only been granted opportunity to object to the proposal and have also consciously made their suggestions / submissions / representations and they cannot be now heard to raise objection to the same by way of this Petition, but the communication dated 29th December, 2000, in our view the request of Petitioners to reduce the width of the road proposed through the said property from 18.30 meters to 13.40 meters cannot be said to be waiver of right to challenge a Corporation resolution.

227. It is however not practicable to afford a personal hearing to consider the objections to the proposal as that would have to be by the Councillors, who have given the authority to the Municipal Commissioner. In our view, once the public purpose is granted and the authority of the Municipal Corporation given and the new road line is prescribed, all that remains is to take possession of a land as and when it is convenient and feasible for the Municipal Corporation to do so, which in our view, has been done in accordance with Section 291(a) of the MMC Act. The usual notice of the

intention to take possession would be sufficient as there would be no question of giving any hearing to the owner as there is nothing on which the owner needs to be heard and, therefore, there is no question of any procedural discrimination, as alleged. In this context it would be relevant to quote Paragraph 35 of the decision in the case of **Municipal Corporation of Greater Bombay Vs. Durgadas Shankarro Rege & Another (supra)** as the same brings out the three ways in which the procedural discrimination may arise. The said Paragraph is quoted as under :-

> *"35. This brings us to the question of procedural discrimination raised by the first respondent. According to learned Counsel for the first respondent, procedural discrimination arises in three ways: (1) there is no provision in the Act for personal service of the notice of the proposal to prescribe a fresh regular line of the street upon the owners of the properties likely to be affected thereby, (2) there is no provision for giving a personal hearing to a person who has filed his objections to such a proposal, and (3) there is no provision for any inquiry to be held by the Municipal Commissioner in determining compensation nor any right to the owner affected to be heard before such compensation is determined nor is there any provision for a reference or appeal to 3 judicial tribunal against the amount of compensation determined by the Municipal Commissioner."*

228. Paragraphs 37, 38 and 39 of the said decision are also appropriate and are quoted as under :-

> *"37. Let us also see why personal hearing is provided for by section 5A of the Land Acquisition Act. It is because of the type of*

objections which can be filed to the proposed acquisition. The type of objections which can be raised can be seen from the rules for the guidance of officers made by the Governor-in-Council under section 55 of the said Act by G. O. No. 9173 Revenue, dated October 4, 1926. These objections have to be specific such as:

"(i) the notified purpose is not genuinely or properly a public purpose;

(ii) the land notified is not suitable for the purpose for which it is notified;

(iii) the land is not so well suited as other land;

(iv) the area proposed is excessive;

(v) the objector's land has been selected maliciously or vexatiously;

(vi) the acquisition will destroy or impair the amenity of historical or artistic monuments and places of public resort; will take away important public rights of way or other conveniences or will desecrate religious buildings, graveyards and the like."

38. *These are objections which require to be heard and determined. It is obvious that hardly any one of these objections could have any relevance when a fresh regular line of the street is to be prescribed. Can it be contended that prescribing a regular line of the street, whether original or in substitution of the line already prescribed, is not a public purpose? It cannot be for, obviously this is a public purpose. Is it possible for a property owner to raise the other objections listed above ? The regular line of the street would have to be either a straight line or a regular curve. Can a property-owner say that the regular line of the street should pass through the properties of his neighbours but not his own ? That would be tantamount to saying that the regular line of the street should not be regular but should be zig-zag. Can he say that his land has been selected maliciously and vexatiously when the regular line proposed to be prescribed passes regularly and uniformly through his property as also through the properties of his neighbours? The nature of the objections which can be*

raised to the proposed prescription of a fresh regular line are from their vary nature so limited and restricted that no personal hearing is necessary for their consideration.

39. Further, since under section 297(2) of the Act the authority to the Municipal Commissioner is to be given by the Municipal Corporation at one of its meetings, one wonders by whom the personal hearing contended for by the first respondent is to be given, Under section 297 (1)(b)(ii) it is for the Municipal Corporation to consider all objections to the proposal. In such a case the personal hearing suggested by the first respondent could only be given by the Municipal Corporation, that is, by the Councillors who have to give to the Municipal Commissioner the authority of the Corporation in a meeting of the Municipal Corporation. Such a hearing is impracticable. Once the public purpose is granted and the authority of the Municipal Corporation given and the fresh regular line is prescribed, all that remains is to take possession of land falling within the regular line of the street when it is open or become open, as and when it is convenient and financially feasible for the Municipal Corporation to do so. For this section 299 provides for a seven days' notice of the intention to take possession to be given to the owner of the land or building when the land is unbuilt upon. There is no question then of giving any hearing to the owner, for there is nothing on which he can be heard. We thus see no procedural discrimination in the absence of a provision for personal service of notice or in the absence of any provision for a personal hearing."

229. We are also in respectful agreement with the decision of this Court in the case of **Nagpur Land Developers Association, Through its President and Others Vs. State of Maharashtra and Others (supra)**, where it has been observed that the land can be acquired under different statutes and it is

open for the acquiring body to acquire the land under either of the statutes and it is not the correct position of law that once the land acquisition proceeding is commenced under the provisions of the MRTP Act, it is not open to the State Government to resort to the acquisition under the provisions of the Land Acquisition Act. Paragraphs 21, 22, 24 and 38 are relevant and are quoted as under :-

> *"21. The learned counsel for the petitioner has raised an interesting question of law vis-a-vis the acquisition power of the State Government under the provisions of the MRTP Act, 1966 and the Land Acquisition Act , 1894. The sole judgment which was relied upon by the learned counsel for the petitioner in support of the aforesaid contention is the judgment of the Apex Court in the case of Municipal Corporation of Greater Bombay v. Industrial Development Investment Company. Before we deal with the said judgment, in our view, the contention is fundamentally erroneous. It ignores the fact that there are two parallel modes available to the State Government for acquisition of the land (i) under the Town Planning Act and (ii) under the Land Acquisition Act. It is by now well settled that the power of acquiring the land is the power in the nature of eminent domain of the State Government. This power of eminent domain can be exercised by the State Government in diverse mode and methods. There are large number of Acts which provide for acquisition of land for public purpose, it is possible that a public purpose can be overlapping under various statute's under which the acquisition of land is provided. It is also equally settled law that it is for the State Government to determine and decide in the facts and circumstances of the case under which of the provisions of the statute the power has to be exercised for acquiring the said land. This mode and method of acquiring the land is essentially the sovereign power of the State Government and it is the exclusive domain of the State Government to decide and determine. In our view, similar argument was advanced as far back as in 1970 when it was contended that the provisions of*

the MRTP Act, 1966 which provide for acquisition of the land is violative of the fundamental rights of the petitioners because this provision insofar provision of compensation are concerned, are not in pari materia with the provisions of the Land Acquisition Act, 1894. It was contended before the Apex Court that the power of the State Government to choose to acquire the land under the Land Acquisition Act and the MRTP Act, 1966 is unguided and unbriddled power and results in arbitrary and discriminatory action and, therefore, the provisions of the said Act are ultra vires. This very argument was based on the similar principle of law which has been canvassed before us that having resorted to the provisions of one Act the State is not permitted to resort to the provisions of other Act. The Apex Court in the case of State of Gujarat v. Shantilal Mangaldas while repelling the argument has answered by observing that the power of the State to acquire the land being in the nature of eminent domain and if more than one mode is provided then it is the State Government to decide and determine which mode is to be applied. The Apex Court has repelled the challenge which is somewhat similar to the challenge raised in the present petition in the following words.

53. It was urged that in any event the statute which permits the property of an owner to be compulsorily acquired by payment of market-place at a date which is many years before the date on which the title of the owner is extinguished is unreasonable. This Court has, however, held in Smt. Sitabai Debi and Anr. v. State of West Bengal that a law made under Clause (2) of Article 31 is not liable to be challenged on the ground that it imposes unreasonable restrictions upon the right to hold or dispose of property within the meaning of Article 19(1)(f) of the Constitution. In Smt. Sitabai Debi's case an owner of land whose property was requisitioned under the West Bengal Land (Requisition and Acquisition) Act, 1948, questioned the validity of the Act by a writ petition filed in the High Court of Calcutta on the plea that it offended Article 19(1)(f) of the Constitution. This Court unanimously held that the validity of the Act relating to acquisition and requisition cannot be questioned on the ground that it offended Article 19(1)(f) and cannot be decided by the criterion under Article 19(5). Again the validity of the statute cannot depend upon whether in a given case it operates harshly. If the *scheme came into force within a reasonable distance of time from the date on which the declaration of intention to make a scheme was notified, it could not be contended that fixation of compensation according to the scheme of Section 67 per se made the scheme invalid. The fact that considerable time has elapsed since the declaration of intention to make a scheme, cannot be a ground for declaring the section ultra vires. It is also contended that in cases where no reconstituted plot is allotted to a person and his land is wholly appropriated for a public purpose in a scheme, the owner would be entitled to the value of the land as prevailing many years before the extinction of interest without the benefit of the steep rise in prices which has taken place all over the country. But if Section 71, read with Section 67 lays down a principle of valuation, it cannot, be struck down on the ground that because of the exigencies of the scheme, it is not possible to allot a reconstituted plot to an owner of land covered by the scheme.*

54. Our attention was invited to Sections 81 and 84 of the Bombay Town Planning Act, 1955. Section 81 merely provides that the land needed for the purpose of a Town Planning scheme or Development plan shall be deemed to be land needed for a public purpose within a meaning of the Land Acquisition Act, 1894. This provision only declares what is implicit in the scheme of the Act. Section 84 only contemplates a special class of cases in which the land which is included in a town planning scheme is needed by the State Government for a public purpose other than that for which it is included in the scheme. In such a case the State Government may make a declaration to that effect and the provisions of the Land Acquisition Act, 1894 as modified by the Schedule apply. We are not concerned in this case with any such notification issued by the Government, nor has it any relevance to the question in issue.

55. One more contention which was apparently not raised on behalf of the first respondent before the High Court may be briefly referred to. Counsel contends that Section 53 and 67 in any event infringe Article 14 of the Constitution and were on that account void. Counsel relies principally upon that part of the judgment in P. Vajravelu Mudaliar's case (supra) which deals with the infringement of the equality clause of the Constitution by the impugned Madras Act.

Counsel submits that it is always open to the State Government to acquire lands for a public purpose of a local authority and after acquiring the lands to vest them in the local authority. If that be done, compensation will be payable under the Land Acquisition Act, 1894, but says counsel, when land is acquired for a public purpose of a local authority under the provisions of the Bombay Town Planning Act the compensation which is payable is determined at a rate prevailing many years before the date on which the notification under Section 4 of the Land Acquisition Act is issued. The argument is based on no solid foundation. The method of determining compensation in respect of lands which are subject to the town-planning scheme is prescribed in the Town Planning Act. There is no option under that Act to acquire the land either under the Land Acquisition Act or under the Town Planning Act. Once the draft town-planning scheme is sanctioned, the land becomes subject to the provisions of the Town Planning Act, and on the final town-planning scheme being sanctioned, by statutory operation the title of the various owners is readjusted and the lands needed for a public purpose vest in the local authority. Land required for any of the purposes of a town planning scheme cannot be acquired otherwise than under the Act, for it is a settled rule of interpretation of statutes that when power is given under a statute to do a certain thing in a certain way the thing must be done in that way or not at all : Taylor v. Taylor. Again it cannot be said that because it is possible for the State, if so minded, to acquire lands for a public purpose of a local authority, the statutory effect given to a town planning scheme results in discrimination between persons similarly circumstanced. In P. Vajravelu Mudaliar's case (supra) the Court struck down the acquisition on the ground that when the lands are acquired by the State Government for a housing scheme under the Madras Amending Act, the claimant gets much smaller compensation than the compensation he would get if the land or similar lands were acquired for the same public purpose under the Land Acquisition Act, 1894. It was held that the discrimination between persons whose lands were acquired for housing schemes and those whose lands were acquired for other public purposes could not be sustained on any principle of reasonable classification founded on intelligible differentia which had a rational relation to the object *sought to be achieved. One broad ground of distinction between P. Vajravelu Mudaliar's case (supra) and this case is clear : the acquisition was struck down in P. Vajravelu Mudaliar's case (supra) because the State Government could resort to one of the two methods of acquisition-- the Land Acquisition Act, 1894, and the Land Acquisition (Madras Amendment) Act, 1961-- and no guidance was given by the Legislature about the statute which should be resorted to in a given case of acquisition for a housing scheme. Power to choose could, therefore, be exercised arbitrarily. Under the Bombay Town Planning Act, 1956, there is no acquisition by the State Government of land needed for a town planning scheme. When the Town Planning Scheme comes into operation the land needed by a local authority vests by virtue of Section 53 (a) and that vesting for purposes of the guarantee under Article 31(2) is deemed compulsory acquisition for a public purpose. To lands which are subject to the scheme, the provisions of Sections 53 and 67 apply, and the compensation is determined only in the mariner prescribed under the Act. There are therefore two separate provisions one for acquisition by the State Government, and the other in which the statutory vesting of land operates as acquisition for the purpose of town planning by the local authority. The State Government can acquire the land under the Land Acquisition Act, and the local authority only under the Bombay Town Planning Act. There is no option to the local authority to resort to one or the other of the alternative methods which result in acquisition. The contention that the provisions of Sections 53 and 57 are invalid on the ground that they deny the equal protection of the laws or equality before the laws must, therefore, stand rejected."*

22. Fifteen years down the line, similar issue was raised again before the Supreme Court in the case of Prakash Amichand Shah v. State of Gujarat and Ors., reported in AIR 1986 SC 468. At that point of time also, the issue was raised that the method of compensation prescribed under the provisions of the Town Planning Act and the Land Acquisition Act being totally different, it is not permissible for the State Government to pick and choose one of the provisions of the Act for the purposes of carrying on acquisition of the land. The Court has held that it is for the State Government to determine the manner and method under which the said acquisition should be carried out.

Thus, the Court held that the power of acquisition vested in the State Government under the Town Planning Act and the Land Acquisition Act being independent to each other, the said acquisition proceedings can be maintained for public purpose under either of the said statutes. The Apex Court has held in the aforesaid judgment as under :--

18. "The first contention urged by the learned counsel for the appellant is that it being possible in this instant case to acquire the land of the appellant either under the Land Acquisition Act, 1894 which is more favourable to the owner of the land both from the point of view of the procedural safeguards and from the point of view of the quantum of compensation payable for the land which includes solatium payable under Section 23(2) thereof than the Act which does not provide for appeals against many of the orders passed by the Town Planning Officer under Section 32 of the Act and does not authorise payment of solatium in addition to the market value of the land, the acquisition of the land under the Town Planning Scheme under Section 53 of the Act is discriminating and violative of Article 14 of the Constitution which guarantees equality before law and equal protection of the laws. This question is no longer res integra. In Zandu Pharmaceutical Works Ltd. v. G.J. Desai, Civil Appeal No.1034 of 1967 decided on 28th August, 1969 (reported in 1969 UJ (SC) 575) dealing with the very provisions of the Act this Court observed thus :

"When the Town Planning Scheme comes into operation the land needed by a local authority vests by virtue of Section 53(a) and that vesting for purposes of the guarantee under Article 31(2) is deemed compulsory acquisition for a public purpose. To lands which are subject to the scheme, the provisions of Sections 53 and 67 apply, and the compensation is determined only in the manner prescribed by the Act. There are therefore two separate provisions one for acquisition by the State Government, and the other in which the statutory vesting of land operates as acquisition for the purpose of town planning by the local authority. The State Government can acquire the land under the Land Acquisition Act, and the local authority to resort to one or the other of the alternative methods which result in acquisition. Hence the provisions of Sections 53 and 67 are not invalid on the

ground that they deny equal protection of the laws or equality before the laws."

19. "In order to appreciate the contentions of the appellant it is necessary to look at the object of the legislation in question as a whole. The object of the Act is not just acquiring a bit of land there for some public purpose. It consists of several activities which have as their ultimate object the orderly development of an urban area. It envisages the preparation of a Development plan, allocation of land for various private and public uses, preparation of a Town Planning Scheme and making provisions for future development of the area in question. The various aspects of a Town Planning Scheme have already been set out. On the final Town Planning Scheme coming into force under Section 53 of the Act there is an automatic vesting of all lands required by the local authority, unless otherwise provided, in the local authority. It is not a case where the provisions of the Land Acquisition Act, 1894 have to be set in motion either by the Collector or by the Government."

20. "The divesting of title takes place statutorily, Section 71 of the Act provides for payment of compensation to the owner of an original plot who is not provided with a plot in the final scheme, or if the contribution to be levied from him under Section 66 of the Act is less than the total amount to be deducted therefrom under any of the provisions of the Act. Section 73 of the Act provides for payment due to be made to any person by the local authority by adjustment of account as provided in the Act. Section 32 of the Act lays down the various duties and powers of the Town Planning Officer which he has to discharge and exercise for the benefit of the whole community. All his functions are parts of the social and economic planning undertaken and executed for the benefit of the community at large and they cannot be done in isolation. When such functions happen to be integral parts of a single plan which in this case happens to be an urban Development plan, they have to be viewed in their totality and not as individual acts directed against a single person or a few persons. It is quite possible that when statutory provisions are made for that purpose, there would be some difference between their impact on rights of individuals at one stage and their impact at another stage. As we have seen in this very Act there are three types *of taking over of lands --first under Section 11, secondly under Section 53 and thirdly under Section 84 of the Act, each being a part of a single scheme but each one having a specific object and public purpose to be achieved. While as regards the determination of compensation it may be possible to apply the provisions of the Land Acquisition Act, 1894 with some modification as provided in the Schedule to the Act in the case of lands acquired either under Section 11 or under Section 84 of the Act, in the case of lands which are needed for the local authority under the Town Planning Scheme which authorises allotment of reconstituted plots to persons from whom original plots are taken, it is difficult to apply the provisions of Land Acquisition Act, 1894. The provisions of section 32 and the other financial provisions of the Act provide for the determination of the cost of the scheme, the development charges to be levied and contribution to be made by the local authority etc. It is only after all that exercise is done the money will be paid to or demanded from the owners of the original plots depending on the circumstances governing each case. If in the above context the Act has made special provisions under Sections 67 to 71 of the Act for determining compensation payable to the owners of original plots who do not get the reconstituted plots it cannot be said that there has been any violation of Article 14 of the Constitution. It is seen that even there the market value of the land taken is not lost sight of. The effect of the provisions in Sections 67 to 71 of the Act has been explained by this Court in Maneklal Chhotalal v. M.G. Makwana, and in State of Gujarat v. Shri Shantilal Mangaldas (supra)."*

24. In our view on the basis of the principle that the land can be acquired under different statute and, it is open for the State Government to acquire the land under either of the statutes, the argument of the petitioner must fail. It is not the correct proposition of law that once the land acquisition proceeding is commenced for acquisition under the provisions of the MRTP Act, 1966, it is not open to the State Government to resort to the acquisition under the provisions of the Land Acquisition Act. However, in the present case, such a broad proposition of law does not arise for two basic reasons. Firstly, because the land even if acquired under the MRTP Act, 1966 pursuant to the provisions of Section 40 of the said Act still for the *purpose of acquisition under Section 126 (2), the resort has to be to the provisions of the Land Acquisition Act because the MRTP Act, 1966 does not contemplate a detailed procedure for the purpose of acquisition of the said land. The second reason, in our view, is that Section 40 amends the provisions of Section 113 of the MRTP Act, 1966. Section 113 itself contemplates that with reference to the Special Planning Authority notification under Section 40 can be issued and under Section 115 of the Act as modified by Section 40 of the MRTP Act, 1966 it provides that the land can be acquired by the State Government by resorting to the provisions of the Land Acquisition Act. For both the aforesaid reasons also, the contention raised by the learned counsel for the petitioner must fail because even if the argument of the petitioners counsel is accepted that once having commenced the acquisition proceedings under Section 40 it must follow the same statute still in view of the fact that the statute itself prescribes the provisions for resorting to the Land Acquisition Act; it is permissible for the State Government to acquire the land under Land Acquisition Act. However, the learned counsel for the petitioner has vehemently contended by relying upon the judgment of the Apex Court in the case of Municipal Corporation of Greater Bombay v. Industrial Development Investment Company (supra) that the State is not entitled to resort to the Land Acquisition Act once a notification is issued under Section 40 of MRTP Act, 1966. Firstly, the contention of the learned counsel for the petitioner must be rejected because that is the judgment which is of two judges Bench. Both the Judges have differed on the principal issue which was canvassed before the Apex Court. In view of the differing judgment of both the judges, it is not permissible to accept the contention of the learned counsel for the petitioner by relying upon the view of one of the two judges as a binding precedent under Article 141 of the Constitution of India. Secondly, the other Judge concurred only on the point of delay and thus the said appeal was allowed and writ petition filed by the petitioner in that case before the High Court was dismissed. In our view the predominant contention raised by the petitioners is not even supported by the observation of the Apex Court even in the opinion of K. Ramaswamy, J. on the principal question of law. It is because in that case, the principle question of law was whether it is permissible* *for the State Government to change a public purpose in the mid-stream of the acquisition proceeding. It was not the case where the acquisition was resorted under the provisions of one Act was subsequently continued under the different Act. The facts of that case set out in paragraph 8 of the judgment indicate that originally a sewage treatment plant was proposed to be located in 35 acres of land reserved under Block 'A' and the final proposal was filed under Section 41 of the MRTP Act, 1966. However, the said proposal was changed and the reservation was shifted from City Survey No. 503 in Block A to the new proposal in Block H of the very same proposal. Consequently the argument advanced was that the reservation of the land being shifted, the original public purpose prescribed is abandoned and the substituted public purpose which was to utilise the land for residential, commercial, paracommercial and social facilities purpose cannot permit an acquisition to be continued for Dharavi Sewage Purification Plan being the original public purpose. It was the contention before the Apex Court that the shifting of the reservation has released the land of the petitioner from reservation and therefore the consequently acquisition proceedings which had in that case almost reached upto the stage of passing of the Award must fail. Thus, in our view, the judgment of the Apex Court is not an authority for proposition of law advanced by the petitioners that the land having sought to be acquired under the provisions of the MRTP Act, 1966, cannot be thereafter acquired under the provisions of the Land Acquisition Act, 1894. Even on this principal point, another Judge of the Apex Court, namely, Majmudar, J. has totally differed. In the dissenting judgment, the learned Judge (Majmudar, J.) has expressly stated as under :--*

> *32. However, I may mention at this stage that observations made by my learned brother J. K. Ramaswamy in connection with utilisation of land acquired under the Maharashtra Regional Town Planning Act (hereinafter referred to as the 'MRTP Act') for one public purpose to be used for another public purpose are with great respect not found by me to be apposite, I therefore record my reasons for the said view.*

33. Even though the proposal under Section 126(1) is for acquisition of land for a specified public purpose if the planning authority wants *to acquire the land subsequently for any other public purpose earmarked in the modified scheme as has happened in the present case that is if the appellant Corporation which had initially proposed to acquire the land for extension of sewerage treatment plant wanted subsequently to acquire the same land for its staff quarters then such a purpose must be specifically indicated in the plan meaning thereby that the land must be shown to be reserved for the staff quarters of the Corporation and then the Special Planning Authority which had become the appropriate planning authority i.e. BMRDA would be required to issue afresh proposal under Section 126(1) read with Section 40(3) and Section 116 of the MRTP Act and follow the gamut thereafter. So long as that was not done the earlier proposal under Section 126(1) and the consequential notification by the State Government under Section 126(2) which had lost their efficacy could not be revitalised. I also do not subscribe to the general observation that a sitting tenant of the land which comes to be subjected to acquisition proceedings under Sections 4 and 6 of the Land Acquisition Act, in no case can challenge the said acquisition proceedings. In appropriate cases such a challenge can be levelled by the tenant concerned having sufficient subsisting interest in the land. In my view therefore on merits the learned Single Judge as well as the Division Bench had rightly held that the respondent's writ petition had good case on merits.*

38. In our view, the challenge for the acquisition proceedings by the learned counsel lacks bona fides. It is because if the notification issued under Section 40 notifying CIDCO as the special Planning Authority is taken into consideration and the argument of the learned counsel for the petitioners is accepted that thereafter the acquisition must take place pursuant to the provisions of Section 126(2) of the MRTP Act, 1966 and not under Section 4 of the Land Acquisition Act, then in that event the compensation payable to the petitioners would be of a market value of much earlier date than otherwise compensation payable in the present case by taking into consideration Section 4 notification. However, the learned counsel for the petitioners contended that by virtue of the subsequent notification the whole acquisition has lapsed and/or proceedings has become invalid. In our opinion, the contention lacks bona fides because, it is not only *the owners who are challenging the said proceedings but, it is the builders and contractors who are supporting the owners having an interest in contesting the present litigation. In fact, in our view the landowners are going to be benefited by virtue of a subsequent notification under Section 4 of the Land Acquisition Act because the date of market value being in subsequent point of time they will get a better compensation. However, the contractors and builders are not interested in compensation of the acquired land but, they are interested in developing the land by themselves and selling the same to various third parties. In our view, for such an object the whole development project of Meghdoot new Town as well as establishment of international standard of cargo hub cannot be scuttled. In view thereof, we are of the opinion that none of the present petitions has any merit therein and the same are liable to be dismissed.*

230. In the light of the above discussion we are of the view that the Respondent-Corporation has validly taken recourse to the provisions of Section 291(a) of the MMC Act for acquisition of land passing through the property of Petitioner for a new road line.

231. Learned Senior Counsel for Petitioners has relied upon the decision of the Hon'ble Supreme Court in the case of ***The Municipal Corporation for Gr. Bombay & Anr. Vs. The Advance Builders (India) Private Ltd. & Ors., (supra)*** to submit that the powers under Section 291 of the MMC Act cannot be exercised by MCGM for circumventing the decision of the State Government of deleting a reservation from the Development plan and for avoiding compliance with the directive of the State Government in exercise of powers

under Section 37 of the MRTP Act.

232. In the said decision it has been held that since development and planning are primarily for the benefit of the public, the Corporation is under an obligation to perform its duty in accordance with the provisions of the Act and where the statute imposes a duty the performance or non-performance of which is not a matter of discretion, a mandamus may be granted ordering that to be done which the statute requires to be done. We fully bow down to this principle. However, considering what we have held with respect to the discretion of the Corporation to exercise its powers either under Section 37 of the MRTP Act or to go under the provisions of Section 291 (a) of the MMC Act and have observed that both the provisions can co-exist, this decision would not lend any assistance to the case of Petitioners.

233. Reliance has also been placed on the decision in the case of ***Shri K. Ramdas Shenoy Vs. The Chief Officer, Town Municipal Council Udipi & Ors. (supra)***, where it has been held that Municipality cannot act in disregard of the sanctioned town planning scheme and vary or modify the scheme and allow conversion of a lecture hall situate in a residential area into a cinema theater. It has been submitted that the Municipality acts for the public

benefit in enforcing the scheme. Where the Municipality acts in excess of the powers conferred by the Act or abuses those powers, then in those cases it is not exercising its jurisdiction irregularly or wrongly, but it is usurping powers which it does not possess.

234. That was a case of a scheme pursuant to sanction of the plan for conversion of the Kalyana Mantap-cum-Lecture Hall into a cinema having been granted in a residential area.

235. The Hon'ble Supreme Court observed that the Municipality had no power to convert the lecture hall into cinema theater as no provision in the statue has been shown to support such an exercise of power. In the facts of the case at hand, admittedly, there are two modes by which the property/land could have been acquired for the purposes of the said road; as we have already held that the said power under Section 291(a) of the MMC Act has been legitimately exercised by the Commissioner to *inter alia* acquire land out of the said property for the purposes of the said road, the question of conversion or lack of power would not arise. Therefore, the said findings in the case of ***Shri K. Ramdas Shenoy Vs. The Chief Officer, Town Municipal Council Udipi & Ors.(supra)*** would not be relevant in the facts of this case.

236. Learned Senior Counsel for Petitioners has also relied upon the decision in the case of ***Santu Kisan Khandwe Vs. Special Land Acquisition Officer No.2 (supra)*** to submit that if a valid modification in the Development plan was required to be modified once again, the prescribed authorities were bound to follow the procedure prescribed in Section 37 of the MRTP Act. In this regard, it must be stated that as we have observed that the Municipal Corporation has legitimately exercised its option under Section 291(a) of the MMC Act to proceed with the acquisition of part of Petitioners' said property for the said road and for a new road line and there is no necessity of revising the sanctioned Development plan, the decision in the case of ***Santu Kisan Khandwe Vs. SALO (supra)*** is not applicable to the facts of this case being clearly distinguishable. In any event, we have already observed that since 1966 the sanctioned Development plan had the provision of the said road to pass through the Petitioners' said property which had been retained throughout except the Notification dated 12/11/1992. The communication dated 7th June, 1993 purported to be a directive of the State Government under Section 37 of the records in the 2nd paragraph that the BMC may satisfy itself about the feasibility of the said road from technical as well as legal point of view before framing the

proposal under Section 37, in our view, cannot be a mandatory directive from the State Government to the Municipal Commissioner so as to completely give up the idea of the said road connecting Mahakali Caves Road and the Central MIDC road to pass through Petitioners' said property, but was only a direction to consider the feasibility from legal and technical perspective before framing any proposal under Section 37 of the MRTP Act. It is, therefore, that the Resolution no. 217 dated 3rd September, 1996 of the Works Committee came to be passed recommending to the Corporation that sanction be given under Section 291(a) of the MMC Act to a new road line of 18.30 meters wide connecting the existing Mahakali Caves Road with the MIDC Central road, Andheri (East) and that Commissioner was requested to bring the resolution as an urgent business before the then current meeting of the Corporation. The said Resolution of the Works Committee was followed by Corporation Resolution No. 651 dated 10th September, 1996 and reiterated the need for sanction to be given under Section 291 (a) of the MMC Act to the said new road line. This Resolution was followed up by Corporation Resolution No. 536 dated 8th December, 1998, which clearly referred to the sanction of the new road line along with the 18.30 meters DP road. Therefore CR No.1117 came to be passed for the said connector road.

237. We now come to the decision in the case of ***Sirur Municipal Council Vs. State of Maharashtra (supra)***, relied upon by the learned senior Counsel on behalf of Petitioners to submit that the MRTP Act provides for a complete scheme for preparation and finalisation of the Development plan and it also provides for machinery for making minor modification to such plan, if such modification become necessary in future. We do not see any reason to differ from the said observation. However, in view of our observation that a legitimate option has been exercised by the Municipal Corporation to propose a new road line under Section 291(a) of the MMC Act the said decision would not be of any relevance.

238. With respect to the reliance by learned Senior Counsel for Petitioner on the decision in the case of ***Sarvajanik Shri Ganeshhotsav Mandal Mumbai Vs. MCGM (supra)***, to submit that this Court has emphasized that land used in the city must strictly be in conformity with the Development plan, it is observed that the said observation was in the context of area reserved for play ground under the DP sanctioned by the State Government, which could not be used or truncated by permitting any another public purpose, we observe/find that is not the case here that an open area reserved for play ground has been permitted to be converted into road or something else. This

is a case where the much needed link between Mahakali Caves Road and Central MIDC Road has been provided for as a new road line under Section 291(a) of the MMC Act. Therefore, in our view, reliance upon this judgment also is not relevant.

239. We note from the submissions on behalf of the MCGM that there are reports on record showing the necessity of the connector road and that the joint reports suggest that no damage would be caused to the buildings in the vicinity by virtue of the said road.

240. On 25th June, 2002, the Court Commissioner submitted his report. The relevant portion is quoted as under :

> *"As per the Order of Hon'ble High Court, I have verified that there is one D.P. Road 18 meter running East to West from Central Road MIDC towards ends at the boundary of the Respondent No.3, the CTS No. 17 (part) shown in grey colour in Plan Exhibit 12 and I found the said Road was developed road. So far as the second road with a width of 13.40 mt. is concerned, the said road was closed with tin sheets from the northern side of the property and the alignment of the said 13.40 mt. road in width pointed out to me by Mr. Solomon, claimed by Mr. Atul Patel as the owner of the said property. While entering on this property, the said road was measured and the width of the said road was found as 14 ft. at the end of Southern side of the said road, the width was found as 27'.*

There is no any other access available to the Petitioners' property."

241. It is clear from the Court Commissioner's report that the road was available only upto Petitioner's property and therefore in our view the need for the balance of the connector road to pass through Petitioners property as has been proposed. In his report dated 25th June, 2002, the Court Commissioner also noted that all the parties had agreed that there was no dispute about the 60 feet wide D. P. Road from Central MIDC road upto CTS No. 24 and the Commissioner had found that the said road was a developed road.

242. We observe that the proposed road line connects Mahakali Caves Road to SEEPZ and Central Road MIDC (Industrial Area) which in turn connected to Marol-Maroshi Road, RA Colony, Powai and ultimately to LBS Marg. The Mahakali Caves Road is also connected to Sher-E-Punjab Pump House Road which in turn connected to Western Express Highway. The Sher-E-Punjab Pump House Road is connected to Andheri Railway Station. The Mahakali Caves Road is connected to Jogeshwari-Vikhroli Link Road which connects Bombay's Western Suburbs to Eastern Suburbs. Since there are very few roads connecting to the Eastern and the Western Suburbs leading to considerable traffic congestion on Andheri-Kurla Road, the said road, would

be an important link road and internal road for Andheri-East. We also cannot be oblivious to the fact that 20 years have passed since 2002 when this Petition was filed and the traffic congestion leading to the necessity of the said road would have only mounted. We also observe from the submissions on behalf of Respondent Corporation that it would be in public interest to have the said road in as much as lack of it is causing inconvenience to public who have to take a detour of 3 kms for reaching Mahakali. We also have to agree with the submissions made on behalf of the Respondents that the residents of the locality are entitled to have the benefit of a public road. There is therefore a dire necessity of having internal link road in Andheri-East around Mahakali and MIDC. We are, therefore, of the view that it is in public interest that the said road passing through the said property of Petitioners viz., CTS No.23, 24 and 26 of village Mulgaon be allowed to be constructed/developed.

243. The Corporation in our view is the best judge in such matters. In our view, it would be in public interest to permit the Respondent Corporation to develop the said road from the said property of Petitioners. The challenge in the Petition must therefore fail.

244. We remind ourselves of the decision of the Supreme Court in the case of **Sayyed Ratanbhai Sayeed (Dead) Through Legal Representatives and Others V/s. Shirdi Nagar Panchayat and Another [(2016) 4 Supreme Court Cases 631]** that public interest deserves precedence over private interest. Paragraphs 58, 59 and 60 of the said decision are apt and are quoted as under:

> *"58. The emerging situation is one where private interest is pitted against public interest. The notion of public interest synonymises collective welfare of the people and public institutions and is generally informed with the dictates of public trust doctrine – res communious i.e. by everyone in common. Perceptionally health, law and order, peace, security and a clean environment are some of the areas of public and collective good where private rights being in conflict therewith has to take a back seat. In the words of Cicero "the good of the people in the chief law".*
> *59. The latin maxim "Salus Populi Est Suprema Lex" connotes that health, safety and welfare of the public is the supreme in law. Herbert Broom, in his celebrated publication, "A Selection of Legal Maxims" has elaborated the essence thereof as hereunder:*
> *"This phrase is based on the implied agreement of every member of the society that his own individual welfare shall, in cases of necessity, yield to that of the community; and that his property, liberty and life shall, under certain circumstances, be placed in jeopardy or even sacrificed for the public good." The demand of public interest, in the facts of the instant case, thus deserve precedence.*
> *60. A Constitution Bench of this Court in K.T. Plantation Private Limited and Another vs. State of Karnataka (2011) 9 SCC 1 in the context, amongst others, of the right to Page 55 55 compensation under Article 300A of the Constitution of India did observe hereunder in paragraph 134: (SCC p. 44)*
>
> *"134. Hugo Grotius is credited with the invention of the term "eminent domain" (jus or dominium eminens) which implies that public rights always overlap with private rights to property, and in the case of public utility, public rights take precedence. Grotius sets two conditions on the exercise of the power of eminent domain: the first*

requisite is public advantage and then compensation from the public funds be made, if possible, to the one who has lost his right. Application of the above principle varies from countries to countries. German, American and Australian Constitutions bar uncompensated takings. Canada's Constitution, however, does not contain the equivalent of the taking clause, and eminent domain is solely a matter of statute law. The same is the situation in the United Kingdom which does not have a written constitution as also now in India after the Forty fourth Constitution Amendment." (emphasis supplied)

It was propounded that deprivation of property within the meaning of Article 300A, generally speaking, must take place for public purpose or public interest. The concept of eminent domain, which applies when a person is deprived of his property postulates, that the purpose must be primarily public and not private interest, being merely incidentally beneficial to the public. That the concept of public purpose had been given a fairly expansive meaning and that it ought to be a condition precedent for invoking Article 300A, was emphasized. It was held that for deprivation of a person of his property under Article 300A, requirement of public purpose is a precondition, but no compensation or nil compensation or its illusiveness has to be justified by the State on judicially justiciable standards. That property rights at times are compared to right to life which determine access to the basic means of sustenance and considered as imperative to the meaningful exercise of other rights guaranteed under Article 21 was noted. It was concluded that public purpose is an inviolable, prerequisite for deprivation of a person of his property under Article 300A and that the right to claim compensation is inbuilt in that article and when a person is deprived of his property, the State has to justify both the grounds which may depend on the scheme and object of the statute, legislative policy and other related factors."

245. In view of the above discussion, we do not deem it necessary to deal with the allegations and counter allegations of *malafides* made by the parties or any of the other contentions.

246. In the circumstances, we are of the view that Petitioners are not entitled to any relief. The Petition is dismissed. No costs.

247. All Interim orders stand vacated and all Interim Applications accordingly stand disposed.

248. All concerned to act on an authenticated copy of this order.

(ABHAY AHUJA, J.) **(A. A. SAYED, J.)**

DATE : 30TH MAY, 2022

1. Learned Counsel for Petitioners seeks continuation of the order of status-quo dated 28th July, 2008, for a period of 12 weeks.

2. Learned Counsel for the Respondent-Corporation strongly opposes the said Application.

3. In view of the fact that the order of status-quo has operated till date, we stay this order for a period of 8 weeks from the date of uploading of this order/judgment.

(ABHAY AHUJA, J.) **(A. A. SAYED, J.)**