

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

WRIT PETITION NO. 1783 OF 2008

Prakash Hari Vallabhdas Shroff

.. Petitioner

v/s.

1. The State of Maharashtra & Ors.

..Respondents

Mr. Girish Godbole i/b. Mr. Drupad Patil and Mr. Parag Tilak for the Petitioner.

Mr. Abhay Patki, Addl.G.P. for the State.

Mr. S.S.Pakale a/w. Saurakh Pakhale, Trupti Puranik for the Respondent MCGM.

Mr. Sujendra Arwika AEDP and Mr. Ganesh Pawar, SEDP Officer of the MCGM, present in the Court.

CORAM : A. A. SAYED &

ANUJA PRABHUDESSAI, JJ.

DATED : 10th JUNE, 2022.

JUDGMENT (Per Anuja Prabhudessai, J.)

1. The Petitioner has invoked writ jurisdiction of this Court for:

(i) withdrawing or canceling notification dated 29.01.2002 issued under 6 of the Land Acquisition Act r/w. Section 126 of Maharashtra Regional Town Planning Act, 1966 (hereinafter referred to as the MRTP Act), in respect of land under CTS No. 528 of Village Kondvita, Andheri.

(ii) Declaration that the purchase notice dated 5.5.1998 is deemed to have been confirmed on 4.11.1998 by virtue of provisions of Section 49(5) of the MRTP Act.

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(iii) Directions against the Planning Authority to make and issue the D.P. remark in respect of the said land to effect that the land is released from the earlier reservation of recreational ground and to allow the Petitioner to utilize the said land for construction for residential purpose,

(iv) To make an endorsement on the sanction Development Plan that the reservation in respect of the said land under CTS No.528 has lapsed by provision under Section 49 of the MRTP Act.

(v) Directions to withdraw/cancel and or to quash and set aside the impugned Award dated 29.11.2008, in Case No. LAQ/752 in respect of land under CTS No.528 of Village Kondvita, Andheri.

2. The Petitioner is the owner of land under CTS Nos. 527, 528, 535, 536, 539 and 542, which was reserved for recreational ground in Development Plan of 1966. In the Draft Development Plan of 1984 the land was again reserved for recreational ground. The revised Draft Development Plan was finalized on 12.11.1992 and published in the Official Gazette dated 26.11.1992 wherein the land was again shown as having been reserved for recreational ground.

3. The Planning Authority initiated acquisition proceedings in respect of land under CTS No.527, 538, 539, 540, 542 along with adjacent lands

belonging to the other owners, which culminated into an Award dated 15.10.1996. The Respondent No.2- Municipal Corporation did not pay compensation in respect of the acquired land, which resulted in filing of Writ Petition No.1553 of 1998 with a prayer for payment of compensation or release of land from reservation. In the course of the hearing of the said petition, the Respondent No.2 Corporation made a statement that it did not require the acquired land and conceded for release of the said land from reservation. Accordingly, by order dated 07.05.1999, the Division Bench of this Court allowed the prayer for release of the land acquired under Award dated 15.10.1996 from reservation in Bombay's Development Plan for recreational ground, and to make it available for the development of residential purpose.

4. The Respondent No.2 Corporation did not initiate proceedings to acquire the land under CTS No.528 and 529. The Petitioner therefore issued notice dated 05.05.1998 under Section 49(1) of the MRTP Act requiring the Planning Authority to purchase the said property. By letter dated 11.06.1998, the Under Secretary of the Government of Maharashtra, Urban Development Department, called upon the Petitioner to furnish certain documents and also to affix Court Fees Stamp of Rs.10/- on the application. The Petitioner forwarded the said documents and the Court Fee under letter dated 22.06.1998. Thereupon on 12.11.1998, the date of hearing was fixed and by letter dated

25.11.1998 the Petitioner was informed that the purchase notice dated 22.06.1998, received on 25.06.1998 was confirmed.

5. The Respondent Corporation did not take steps to acquire the land. Hence, by letter dated 21.06.2000 the Petitioner informed the Respondent No.2 Corporation that since no acquisition proceedings were initiated within one year from the date of confirmation of purchase notice dated 05.05.1998, the reservation of the land is deemed to have been lapsed. The Petitioner thereafter submitted plans for development of the said land.

6. The Respondent issued notification dated 29.01.2002 under Section 6 of the Land Acquisition Act r/w. Section 126 (4) of the MRTP Act. The Petitioner challenged the validity of the said notification in Writ Petition No.2639 of 2004 and sought the following reliefs:-

- (a) withdrawal/ cancellation of the said notification under Section 6 of the Land Acquisition Act,
- (b) Direction to the Planning Authority to issue the DP remark in respect of land under CTS No.528 and 529 (part) and to allow development of the said land for construction purpose,
- (c) Writ of Mandamus directing the Respondent to acquire the land under CTS No.528, 529, mentioned in the letter dated

25.11.1998, confirming the purchase notice,

(d) In the alternative to prayer (c), to release the land from reservation.

7. During the pendency of the petition, the Petitioner was informed that except CTS No.528, reservation of the remaining land, including CTS No.529 (part) was deleted and that the proposal to initiate acquisition proceedings only in respect of CTS No.528 was sanctioned by the General Body of the Respondent No.2 Corporation vide Resolution dated 22.11.1999. A portion of CTS 529 was proposed to be acquired as an access to CTS No.528.

8. By judgment and order dated 24.07.2006, the Division Bench of this Court disposed of the Writ Petition No.2639 of 2004 with direction to the Respondent No.2 to make the Award within 12 months from the date of the order, upon Respondent No.2 depositing the amount of compensation, on requisition for such deposit being made by the Respondent No.3-SLAO. Upon failure to deposit the amount, the SLAO was directed to pass appropriate order, not later than 12 months from the date of the judgment. Liberty was granted to the Petitioner to raise all contentions before the Appropriate Authority or the Court, if finally aggrieved by the Award or otherwise.

9. The SLAO did not pass the Award within 12 months, hence by letters dated 22.10.2007 and 10.03.2008, the Petitioner called upon the Respondent No.3-SLAO, not to pass any Award contrary to the order of the Court, and to close the acquisition proceedings since the reservation is deemed to have been lapsed. By reply dated 18.07.2008, the Petitioner was informed that the acquisition proceedings in respect of the said land was in progress and the proposed Award has been forwarded to the Addl. Collector for approval. The Petitioner therefore filed the present petition challenging Section 6 notification, and seeking deletion of reservation *inter alia* on the ground that the purchase notice dated 05.05.1998 is deemed to have been confirmed on 04.11.1998, and since no steps for acquisition were taken within one year, the reservation is deemed to have lapsed by virtue of sub section (7) of Section 49.

10. In the affidavit-in-reply filed on behalf of the Respondent Nos.1 and 3, it was contended that the Acquiring Body had failed to deposit 2/3rd amount of the compensation and hence the Award could not be passed within the stipulated time. Whereas, in the affidavit-in-reply filed on behalf of the Respondent No.2 Corporation, it was contended that the Respondent No.3-SLAO had not informed the Corporation about the quantum of compensation required to be deposited, and that the

amount was not deposited for want of demand from the Respondent No.3-SLAO.

11. By order dated 07.10.2008, this Court called upon the Respondent to show cause for non-compliance of the order dated 24.07.2006 in Writ Petition No.2639 of 2004. Pursuant thereto, reply came to be filed on behalf of Respondent No.2 stating that an amount of Rs.1,85,28,033/- had been deposited with Respondent No.3 SLAO. In the course of the hearing, it was also reported that the Respondent No.3-SLAO had passed an Award on 29.03.2008, and notice of the Award came to be served on the Petitioner on 05.12.2008.

12. The subsequent events necessitated amendment incorporating prayer to challenge the Award *inter alia* on the ground that no steps for acquisition were taken within the requisite statutory period of one year from the date of confirmation of purchase notice, resulting in lapse of reservation much prior to the issuance of Section 6 notification. The Petitioner also raised a plea of lapsing under Section 127 of MRTP Act for want of steps for acquisition within a period of 10 years from the date of publication of the Development plan. It is contended that the notice issued under Section 49 having been confirmed, the Petitioner was not required to serve a fresh purchase notice under Section 127 of the MRTP Act.

13. The Petitioner claims that there was no reservation as on the date of the declaration under Section 6 as well as the Award and hence the notification as well as the Award is non-est and illegal. The Award is also challenged on the ground that it was not passed within a period of two years from the date of publication of Section 6 notification, resulting in lapsing of entire acquisition proceedings in terms of Section 11(A) of the Land Acquisition Act.

14. Shri Godbole, learned Counsel for the Petitioner, submits that the regulations do not prescribe any form in which the purchase notice is required to be issued. He submits that unlike Section 127, the owner or any other person interested in the land is not required to annex the title or other documents to the purchase notice under Section 49(1) of the MRTP Act, except in a case covered by Section 49(1)(d)(ii) and that the Respondent could not prevent the running of time by calling for documents, when the MRTP Act enables the State Government to call for the report and records from the Planning Authority.

15. Learned Counsel for the Petitioner submits that the purchase notice was issued on 05.05.1998. In terms of provisions of Section 49(5) of the MRTP Act, the Government was required to confirm the said notice within a period of six months from the date of service of the

notice. He submits that since no order was passed within six months from the date of receipt of the notice, in terms of Section 49(5) of the MRTP Act, the notice is deemed to have been confirmed on 04.11.1998.

16. Learned Counsel for the Petitioner submits that Section 49(7) of the MRTP Act, mandates making of an application within one year from the date of confirmation of the notice. The application for acquisition made by the Executive Engineer (D) of Respondent No.2 Corporation, does not meet the requirements of Section 49(7), since the power of Planning Authority under Section 49 can be exercised only by the Municipal Commissioner. Furthermore, the application for acquisition, which was made to the State Government on 20.11.1999, was beyond the period of one year from the date of confirmation of purchase notice viz. 04.11.1998 resulting in lapsing of reservation. He submits that since reservation had lapsed prior to issuance of Section 6 notification, the land was available for the purpose of development. Consequently, issuance of notification under Section 126(2) and subsequent award is illegal and non-est. Reliance has been placed on the following decisions:-

(i) C.V. Shah & A.V.Bhat vs. State of Maharashtra 2006(3) Bom CR 216;

(ii) Neela Balkrishna Dharap vs. State of Maharashtra W.P. 8890 of 2014 order dt. 30.08.2019;

- (iii) Mehta Laiq Ahmed Shaikh vs. State of Maharashtra W.P.No. 2827 of 2014;*
- (iv) Chhabildas vs. State of Maharashtra 2018 2 SCC 784;*
- (v) A-One Land Developers vs. State of Maharashtra W.P. No. 9587 of 2017 order dt.20.11.2019;*
- (vii) Hassina Kadbuddin Shaikh & Ors. vs. Karad Municipal Council & Ors. W.P.No. 3229 of 2018 , order dated 29.08.2018;*
- (viii) Pune Timber Merchants vs. State of Maharashtra 2015 13 SCC 544;*
- (ix) Hasmukhrai Mehta vs. State of Maharashtra 2015(3) SCC 154.*
- (x) Erach Bohman Khavar vs. Tukaram Shridhar Bhat & Anr (2013) 15 SCC 655;*
- (xi) Mohd. Ibrahim Abdul Khalique vs. Director of Town Planning, Pune & Ors. 2015(6) ALL MR 79;*
- (xii) Municipal Corporation of Gr. Bombay vs. Dr. Hakimwadi Tenants Association & Ors. 1988(Supp) SCC 55;*
- (xiii) Sarnam Singh vs. Pushpa Devi & Ors 1988 (Supp) SCC 65;*
- (xiv) Perfect Machine Tools Co. Ltd. vs. State of Maharashtra & Ors. (2017) 16 Mh.L.J. 482;*
- (xv) Dhanpal Baburao Chougule & Ors. vs. State of Maharashtra & Ors.*

17. Per contra, Shri Pakale, learned Counsel for the Respondent No.2 Corporation submits that the owner of the property referred to in clauses (a), (b), (c) and (d) of Section 49(1) has to claim that the land has become incapable of reasonably beneficial use in its existing state, or where planning permission is given subject to conditions, that the land cannot be rendered capable of reasonably beneficial use by the carrying out of the permitted development in accordance with the conditions. He submits that the letter dated 05.05.1998 does not contain such averments and hence the same cannot be construed as a valid purchase notice under Section 49 (1) of the MRTP Act. He submits that communication dated 05.05.1998 is nothing but a request under Section 50 of MRTP Act.

18. Mr. Pakale learned Counsel for the Corporation submits that the purchase notice was not accompanied by the relevant documents. The said documents were furnished only on 22.06.1998, and hence by communication dated 07.11.1998, the Petitioner was informed that the date of hearing in respect of purchase notice dated 22.06.1998 was fixed on 12.11.1998. The Petitioner participated in the inquiry without raising any objections as regards the date of purchase notice. He therefore contends that the Petitioner now cannot turn around and state that the purchase notice was issued on 05.05.1998 and that the final order dated

25.11.1998 confirming the purchase notice dated 22.06.1998 is bad in law or beyond the statutory period.

19. Mr. Pakale further submits that in the absence of pleadings, the Respondent Corporation was unable to controvert the contention of the Petitioner that the Chief Engineer was not competent to make an application for acquisition. Moreover, being a pure question of fact, the same cannot be permitted to be raised at a belated stage. On merits, he submits that Section 49(7) merely contemplates making of an application for acquisition. The Appropriate Authority had submitted an application to take steps towards acquisition and the Respondent Corporation had accorded sanction to the said proposal vide Resolution No.438. The Respondent Corporation having complied with the mandate, there is no deemed lapsing of reservation. He further submits that no such grounds were raised by the Petitioner in the previous Writ Petition No.2693 of 2004, and that the Petitioner is now estopped from raising these issues and getting the land released from reservation.

20. Learned Counsel for the Respondent submits that the previous petition, having been disposed of on merits by judgment and order dated 24.07.2006, the present petition is hit by the doctrine of constructive res judicata. He submits that the liberty given by the Court to raise all the contentions before Appropriate Authority or before the Court cannot be

interpreted to mean that the Petitioner was given blanket permission to raise all challenges which would amount to over reaching the order passed by the Division Bench. He submits that issue relating to the application of Section 11A of the Land Acquisition Act is no more res integra in view of the decision of the Constitution Bench of the Supreme Court in case of ***Girnar Traders vs. State of Maharashtra & Ors. 2011(3) SCC 1.*** He submits that the Award has been passed and the compensation has been deposited. He submits that if the acquisition proceeding is quashed after such inordinate delay, it would frustrate the right of the State as contemplated under Section 126 as well as Section 127 of the Act.

21. Reliance has been placed on the following decisions:-

(i) Mehtab Laiq Ahmed Shaikh vs. Municipal Corporation of Greater Mumbai and Ors 2012 (2) BCR 50

(ii) Shiv Chander More & Ors vs. Lieutenant Governor & Ors 2014 (11) SCC 744

(iii) Prakash Rewadmali Gupta vs. Lonavala Municipal Council 2002 (2) BCR 484

(iv) Maharashtra State Mining Corporation vs. Sunil 2006 LawSuit(SC) 329

(V) Mohammed Ibrahim Abudl Khalique vs. Director of Town Planning, Maharashtra State, Central Bldg, Pune and Others

Writ Petition No. 9253 of 2010

22. In rejoinder, Mr. Godbole submits that unlike Section 127, the owner or any other person interested in the land is not required to annex the title or other documents to the purchase notice issued under Section 49(1) of the MRTP Act. He further submits that the Respondents having accepted the date of purchase notice to be 05.05.1998, are estopped from disputing the date of service of purchase notice. He further submits that notice under Section 49 or 127 is required to be construed liberally. On the issue of res judicata, it is submitted that liberty was granted to the Petitioner to raise all the contentions before the Appropriate Authority or the Court, if finally aggrieved or otherwise. It is submitted that, the plea that the Application dated 20.11.1999 was sent without valid authority of law and resolution was specifically pleaded and that there is no denial of the said plea and there are no pleadings of ratification. Relying upon the decision of the Apex Court in ***Chabildas vs. State of Maharashtra (2018) 2SCC 784*** it is submitted that an application for acquisition which is required to be made by the Planning Authority is essentially an application as contemplated by Section 126. The power exercised under Section 126 (1)(c) is to be exercised by the Planning Authority, and therefore the Municipal Commissioner is not entitled to make an application without prior approval of the General Body.

23. We have perused the records placed before us and considered the submissions advanced by the learned Counsel for the respective parties. The present case concerns issuance of purchase notice under Section 49(1) and deemed lapsing under Section 49(7) and 127 of the MRTP Act. Hence it would be relevant to refer to the provisions under Section 49, 126 and 127 of the MRTP Act, which read thus:

Section 49 - Obligation to acquire land on refusal of permission or on grant of permission in certain cases. - (1) Where--

(a) any land is designated by a plan as subject to compulsory acquisition, or

(b) any land is allotted by a plan for the purpose of any functions of a Government or local authority or statutory body, or is land designated in such plan as a site proposed to be developed for the purposes of any functions of any such Government, authority or body, or

(c) any land is indicated in any plan as land on which a highway is proposed to be constructed or included, or

(d) any land for the development of which permission is refused or is granted subject to conditions, and any owner of land referred to in clause (a), (b), (c) or (d) claims--

(i) that the land has become incapable of reasonably beneficial use in its existing state, or

(ii) (where planning permission is given subject to conditions) that the land cannot be rendered capable of reasonably beneficial use by the carrying out of the

*permitted development in accordance with the conditions;
or*

(e) the owner of the land because of its designation or allocation in any plan claims that he is unable to sell it except at a lower price than that at which he might reasonably have been excepted to sell if it were not so designated or allocated, the owner or person affected may serve on the State Government within such time and in such manner, as is prescribed by regulations, a notice (hereinafter referred to as "the purchase notice") requiring the Appropriate Authority to purchase the interest in the land in accordance with the provisions of this Act.

(2) The purchase notice shall be accompanied by a copy of any application made by the applicant to the Planning Authority, and of any order or decision of that Authority and of the State Government, if any, in respect of which the notice is given.

(3) On receipt of a purchase notice, the State Government shall forthwith call from the Planning Authority and the Appropriate Authority such report or records or both, as may be necessary, which those authorities shall forward to the State Government as soon as possible but not later than thirty days from the date of their requisition.

(4) On receiving such records or reports, if the State Government is satisfied that the conditions specified in sub- section (1) are fulfilled, and that the order or decision for permission was not duly made on the ground that the applicant did not comply with any of the provisions of this Act or rules or regulations, it may confirm the purchase notice, or direct that planning permission be granted without condition or subject to such conditions as will make the land capable of reasonably beneficial use. In any other case, it may refuse to confirm the purchase

notice, but in that case, it shall give the applicant a reasonable opportunity of being heard.

(5) If within a period of six months from the date on which a purchase notice is served the State Government does not pass any final order thereon, the notice shall be deemed to have been confirmed at the expiration of that period.

(6) Omitted.

(7) If within one year from the date of confirmation of the notice, the Appropriate Authority fails to make an application to acquire the land in respect of which the purchase notice has been confirmed as required under section 126, the reservation, designation, allotment, indication or restriction on development of the land shall be deemed to have lapsed; and thereupon, the land shall be deemed to be released from the reservation, designation, or, as the case may be, allotment, indication or restriction and shall become available to the owner for the purpose of development otherwise permissible in the case of adjacent land, under the relevant plan.

Section 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 Act, Rehabilitation and Re-settlement Act, 2013), Floor Space Index (FSI) or Transferable Development Rights (TDR) against the area of land surrendered free of cost and free from all encumbrances, and also further additional Floor Space Index or Transferable Development Rights against the development or construction of the amenity on the surrendered land at his cost, as the Final Development Control Regulations prepared in this behalf provide, or

(c) by making in application to the State Government for acquiring such land (under the provisions of Right to Fair Compensation and Transparency in Land Acquisition Act, Rehabilitation and Re-settlement Act, 2013), and the land (together with the amenity, if any so developed or constructed) so acquired by agreement or by grant of Floor Space Index or additional Floor Space Index or Transferable Development Rights under this section (or under the provisions of Right to Fair Compensation and Transparency in Land Acquisition Act, Rehabilitation and Re-settlement 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 Act, Rehabilitation and Re-settlement 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 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 of publication of the draft Town Planning Scheme:

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

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

(4) Notwithstanding anything contained in the proviso to sub-section (2) and 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 Right to Fair Compensation and Transparency in Land Acquisition Act, Rehabilitation and Re-settlement 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.

Section 127 - Lapsing of reservations. - *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, along with 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 twentyfour 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.”

24. In **Chabildas** (supra) the Hon’ble Supreme Court has considered the scope and ambit of Section 49, 126 and 127 of the MRTP Act, and has held thus:

“ 8. The scheme of Section 49 of the MRTP Act is to lay down

timelines within which the appropriate authority must make an application to acquire the land in respect of which a purchase notice has been confirmed. The moment any of the conditions specified in sub-section (1) are met, the owner or person affected may serve on the State Government, within the time and manner prescribed by the Regulations, a purchase notice requiring the appropriate authority to purchase the interest in the land in accordance with the provisions of this Act.

9. On the receipt of the purchase notice as per sub-section (3), the State Government is to forthwith call from the planning authority or the appropriate authority such report or records as may be necessary, which the authority shall then forwarded to the State Government as soon as possible but not later than 30 days from the date of requisition.

10. In sub-section (4), if the State Government is satisfied that the conditions specified in sub-section (1) are fulfilled, it may either confirm the purchase notice; refuse to confirm the purchase notice; or direct that planning permission be granted with or without conditions...

11. The object of Section 49 is thus clear that once a purchase notice is received by the authorities, there arises, as the marginal note to the section also indicates, an obligation to acquire land. The timelines contemplated by the section also indicate that the owner or person affected cannot be left to hang indefinitely without a decision to follow up the purchase notice by acquisitions of the land in question.

...

13. Under Section 126(1)(c), when after the publication of draft regional plan or development or other plan, any land is required or reversed for a public purpose, the appropriate authority may make an application to the State Government, for acquiring such land under the Land Acquisition Act. Under sub-section (2) thereof, on receipt of such application, if the State Government is satisfied that the land specified in the application is needed for the public purpose specified therein, then excepting the cases falling under Section 49, the State Government may make a declaration under Section 6 of the Land Acquisition Act, to that effect. However, such declaration under Section 126(2) must be made within period of one year from the date of publication of the plan in question.

14. A purchase notice may be served under Section 49, after the expiry of one year from the date of publication of the plan in question, in which case Section 126(2) of the Act will not apply. Under Section 126(4), the State Government may make a declaration under Section 6 subject to the modification that the market value of the land shall be the market value at the date of the declaration in the Official Gazette made for acquiring the land. But this does not mean that the State Government has carte blanche to do as it pleases. Ordinarily, the State Government is bound to act under Section 126(4) within a reasonable time from the appropriate authority making an application to acquire the land. This should ordinarily be within a period of one year from the date such an application is made. However, if such declaration is not made within the aforesaid period, it will be

open for the aggrieved person to move the Court to direct the State Government to make the requisite declaration immediately.

15. But the matter does not end here. Thereafter, Section 127 kicks in. If a declaration under Section 6 of the Land Acquisition Act is not made within a period of 10 years from the date on which a plan comes into force under sub-section (4) of Section 126, the owner or any person interested in the land may serve a purchase notice on the authorities, and if within one year from the date of service of such notice, the land is not acquired or no steps are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed.

...

22. It is, thus, clear that the scheme of Sections 126 and 127 would leave nobody in doubt, for the reason that if a period of 10 years has elapsed from the date of publication of the plan in question, and no steps for acquiring the land have been taken, then once a purchase notice is served under Section 127, steps to acquire the land must follow within a period of one year from the date of service of such notice, or else the land acquisition proceedings would lapse.

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

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

23.2 If within the period specified in Section 49(7), the appropriate authority makes the requisite application, then the State Government may acquire the land by making a declaration under Section 6 of the Land Acquisition Act as set out under Section 126(4), wherein the market value shall be the market value of the land as on the date of Section 6 declaration. Ordinarily, such declaration must be made within 1 year of the date of receipt of the requisite application. In case this is not done, it will be open to the aggrieved person to move the Court to direct the State Government to make the requisite declaration immediately.

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

25. Reverting to the factual matrix of the case, it is not in dispute that the subject land was reserved for recreation ground in the Development Plan initially in August 1966 till 1984, and again in Draft Revised Plan published on 13.04.1984 and sanctioned on 12.11.1992. The Petitioner had issued a notice dated 05.05.1998 purportedly under Section 49(1) of the MRTP Act calling upon the Respondent to purchase the land. By letter dated 11.06.1998 Under Secretary, Urban Development

Department called upon the Petitioner to furnish (i) two additional copies of the purchase notice along with enclosures (ii) location plan of the land (as per Development Plan proposal and in scale 1 :4000) (iii) record of rights of the land / CTS Plan and (iv) Power of Attorney / Authority letter given by the original owner for serving the purchase notice and (v) to affix court fee stamp of Rs.10/- to the application. The Petitioner forwarded the said documents vide letter dated 22.06.1998 which has been considered as a purchase notice under Section 49(1) of the MRTP Act.

26. The Respondent has challenged the validity of the purchase notice on the ground that the said letter does not indicate that the Petitioner is covered by Section 49(1)(d)(i) and (ii). It is alleged that the purchase notice does not meet the requirements of Section 49(1). It is pertinent to note that sub-section (1) of Section 49 specifies conditions, which when satisfied enables the owner or affected person to serve the purchase notice on the State Government requiring the Appropriate Authority to purchase the interest in the land. The Division Bench of this Court in *Aone Land Development (supra)* has held that “*Sub section 1 of Section 49 on its plain reading is indicative of several contingencies pertaining to the land of an owner and all the contingencies are carved out as independent exigencies and this can very well be inferred since the word ‘or’ is indicative that each exigency /situation is to be read*

distinctively.” The Division Bench of this Court thus held that the contingencies contemplated in clauses (a), (b), (c), (d) and (e) are mutually exclusive and independent of each other and thus rejected similar contentions raised by the counsel for the Corporation in the said case. We do not find any reason to deviate from the said observations.

27. Section 49(1) stipulates issuance of notice within such time and in such manner as prescribed by regulation. It is not in dispute that the regulations do not prescribe any form or the manner in which the notice is to be given. In the absence of such regulations, the owner of the land or the person affected cannot be expected to issue a notice in any particular form or manner.

28. It is to be noted that the object of the notice is to call upon the Authority to acquire the land which is referred to in clauses (a) to (e) of Sub-section (1) of Section 49. While considering validity of notice issued under Section 127 of the MRTP Act, the Division Bench of this Court in C.V.Shah and A.V. Bhat has held that the notice need not set out all the facts in details of the reservation/designation. It is only an intimation to the party concerned to acquire the land so reserved, designated or allotted in the Development plan.

29. The notice dated 05.05.1998 discloses CTS numbers of the land

under reservation, it specifies that the said land was reserved for recreational ground in the sanctioned Development Plan of Bombay in August 1966, Draft Revised Plan published on 30.04.1984, and Draft Development Plan which was finalized on 12.11.1992 and published in the Gazette on 26.11.1992. By the said notice, the Petitioner had called upon the Government to delete the reservation and in the alternative to purchase the said land in compliance with the provisions under Section 49 of the MRTP Act. The Respondent did not raise objection regarding validity of the Purchase Notice. On the contrary, the Respondent called upon the Petitioner to furnish certain documents specified in letter dated 11.06.1998 and subsequently vide a letter dated 25.11.1998, informed the Petitioner that the Government was pleased to confirm the Purchase Notice in respect of land under Survey Nos.528 and 529 as well as land under Survey Nos.535 and 536. It is thus evident that the Appropriate Authority was not only fully aware of the contents and purport of the notice but had also acted on the said notice. Hence challenge to the validity of the Purchase Notice is sans merits.

30. It is contended that the purchase notice having been issued on 05.05.1998, the same is deemed to have been confirmed on 04.11.1998. It is to be noted that the notice dated 05.05.1998 was issued by an Advocate on behalf of Mehtab Laiq Ahmed Shaikh, the Power of Attorney of the original owner, the Petitioner herein. Upon receipt of the

notice dated 05.05.1998, the Under Secretary, Urban Department, called for certain documents, which were furnished under letter dated 22.06.1998. The letter dated 22.06.1998, under which the documents were furnished has been considered as a Purchase Notice. It is true that unlike Section 127, Section 49 does not stipulate that the notice should be served along with “*the documents showing his title or interest in the said land*”. The only document which is required to be annexed to the Purchase Notice, as per Sub-section (2) of Section 49, is a copy of application, if any, made by the Applicant to the Planning Authority and any order or decision of the Authority and of the State Government, if any, in respect of which the notice is given. Furthermore, sub-section (3) of Section 49 also enables the State Government to call from the Planning Authority and the Appropriate Authority such report or records or both as may be necessary. Thus the State Government or the Planning Authority cannot extend the statutory time by calling for the records to which it has access. Nevertheless, as it has been held by the Hon’ble Supreme Court in Dr. Hakim Wadi Tenants Association (supra), “*it cannot be posited that the period of six months would necessarily begin to run from the date of service of Purchase Notice under Section 127 of the Act. The condition pre-requisite for the running of time under Section 127 is the service of a valid purchase notice. It is needless to stress that the Corporation must prima facie be satisfied that the notice served was by the owner of the affected land or any person interested in*

the land. But, at the same time, Section 127 of the Act does not contemplate an investigation into title by the Officers of the Planning Authority, nor can the officers prevent the running of time if there is a valid notice.”

31. As noted above, the notice was issued by an Advocate on behalf of the Power of Attorney holder of the Petitioner. Though the State Government or the Planning Authority had access to the records of right, and the Development plan, it did not have access to the Power of Attorney/ Authority letter given by the original owner, which was essential to determine that the purchase notice was in fact served by or on behalf of the owner of the land. As a matter of fact, scrutiny of the Power of Attorney was essential for determining validity of the purchase notice. Hence, the Advocate's notice dated 05.05.1998, which was not accompanied by the Power of Attorney cannot be construed as a valid purchase notice.

32. By letter dated 07.11.1998 which referred to purchase notice dated 22.06.1998, the Petitioner was informed that the hearing was fixed on 12.11.1998. The Petitioner attended the said hearing without raising any objection as to the date of purchase notice as recorded in the letter dated 07.11.1998. The Respondent No.1 confirmed the purchase notice vide

letter dated 25.11.1998, which was within six months from the date of furnishing the power of attorney vide letter dated 22.06.1998. We are therefore unable to accept the contention of learned Counsel for the Petitioner that the notice was deemed to have been confirmed on 4.11.1998.

33. The Corporation took a resolution on 18.11.1999 and on 20.11.1999 made a requisite application under Section 49(7) of the MRTP requiring the State Government to acquire the land under the provisions of Land Acquisition Act. The requisition letter under Section 49(7) was made within one year from the date of confirmation of purchase notice. Nevertheless, the State Government did not make a declaration under Section 6 of the Land Acquisition Act as set out under Section 126(4) within one year from the date of receipt of requisite application, but made such declaration only on 29.01.2002. Since the Award was not passed and the compensation was not deposited /paid, the Petitioner filed a Writ Petition No. 2639 of 2004 to issue writ of mandamus or any other appropriate writ, order or direction (i) to withdraw and /or cancel the notification under Section 6 of the Land Acquisition Act and proceedings pursuant thereto, (ii) to delete the D.P. remarks and to permit the Petitioner to utilize the land for construction or residential purpose (iii) to acquire the land mentioned in the letter confirming the purchase notice or in the alternative to release the land

from reservation. The said petition was disposed of by this Court by judgment dated 24.07.2006, whereby directions were given to make the Award within 12 months from the date of the order, upon depositing the compensation before the Land Acquisition Officer as per his requisition. Liberty was given to the Petitioner to raise all contentions to which they are entitled to before the Appropriate Authority or before the Court, if finally aggrieved by the Award or otherwise.

34. It is pertinent to note that in the previous writ petition the Petitioner had not challenged the validity of the application under sub-section 7 of Section 49 of the MRTP Act. On the contrary, the Petitioner had sought directions to acquire the land. The prayer for acquisition of land has been granted by this Court. The Petitioner having accepted the said judgment is estopped from challenging the legality of the application for acquisition under Section 49(7). Furthermore, having waived the statutory right and accepted the judgment in Writ Petition No.2639 of 2004, which has finally decided the rights relating to lapsing of reservation, the Petitioner cannot fall back on notice dated dated 05.05.1998 r/w. 22.06.1998 to claim relief of lapsing or de-reservation. At this stage, it would be relevant to refer to the decision of the Division Bench of this Court in Mehtab Laiq Ahmed Shaikh (supra), wherein on similar set of facts the Division Bench of this Court has held that “*it can never be said that the order of the Division Bench stands set aside*”

simply because the Division Bench has given liberty to apply to the Petitioner. Even if the doctrine of res-judicata may not be applicable to writ petitions, the principles in that behalf can certainly be made applicable. If a petition is dismissed on merits, the Petitioner cannot file subsequent petition asking the Court to ignore the order passed in earlier proceedings totally. Even on the principle of estoppel, judicial propriety and public policy, this Court cannot ignore the earlier order by which the rights of the Petitioner have already been decided and adjudicated by the Court by giving detail reasons and cannot allow the Petitioner to reopen the question about purchase notices de novo... We may state that the rights of the parties are already decided in connection with lapsing of reservation on the basis of 74 purchase notice, and on merits since the claim is rejected, it would not be proper to entertain subsequent petition specially when the said order has not been set aside in the review petition. Simply because liberty to apply was given in the review petition, it cannot be interpreted that the Division Bench while deciding the review petition has reached any conclusion that the reservation in view of the first purchase notice shall stand lapsed. In a judicial proceeding, if the rights of the parties are already decided and if the earlier proceedings are not set aside or not disturbed, subsequent proceedings on the same points cannot be entertained.”

35. In the instant case, as noted above, the Petitioner has not

challenged the previous judgment whereby this Court directed the Respondent to acquire the land within one year, and consequently rejected the challenge to Section 6 notification and prayer for de-reservation. This being the position, the Petitioner cannot be permitted to once again raise challenge to Section 6 notification and/or to claim lapsing of reservation on the basis of notice dated 05.05.1998 r/w. 22.06.1998 simply because he was granted liberty to raise all the issues before the Appropriate Court or Authority. Liberty given to the Petitioner cannot be construed as a permission to challenge Section 6 notification in a fresh petition. As rightly contended by Shri Pakale, learned Counsel for the Respondent-Corporation, such interpretation will have an effect of nullifying the previous judgment which has attained finality.

36. The contention of the Petitioner that the reservation stands lapsed under Section 127 of the MRTP Act is devoid of any merits. In Chabildas supra no purchase notice under Section 127 of the MRTP Act was served after 10 years had elapsed. However, in view of the inordinate delay, the Hon'ble Supreme Court under Article 142 of Constitution of India held that the reservation and acquisition proposals stood lapsed. However, it was made clear that in future cases that may arise under Section 49 of the MRTP Act, the procedure under Section 127 of the Act must be followed. This would mean that after 10 years

had lapsed, a second purchase notice had to be served under Section 127 of the Act, and in the absence of such notice, there can be no lapsing on the basis of the previous notice served under Section 49 of the MRTP Act. In the instant case, the period of 10 years specified in Section 127 had lapsed. The Petitioner had not served any notice under Section 127 and cannot seek any relief under Section 127 on the basis of notice dated 05.05.1998 r/w. 22.06.1998, particularly in view of waiver of the statutory right in the previous petition.

37. The Constitution Bench of the Hon'ble Supreme Court in *Girnar Tradings, supra*, has held that the MRTP Act is a self contained Code. The provisions introduced in the Land Acquisition Act are limited to the extent of acquisition of land, payment of compensation and recourse to legal remedies provided under the Act can be read into an acquisition controlled by the provisions of Chapter VII of the MRTP Act but with a specific exception that the provisions of the Land Acquisition Act in so far as they provide different time frames and consequences of default thereof, including lapsing of acquisition proceedings cannot be read into the MRTP Act. Section 11A of the Land Acquisition Act being one of such provisions cannot be applied to the acquisitions under Chapter VII of the MRTP Act. Hence, the Petitioner cannot challenge the acquisition proceedings under MRTP Act, based on Section 11A of the Land Acquisition Act.

38. Under the circumstances, and in view of discussion supra, the Petition has no merits and is accordingly dismissed.

(ANUJA PRABHUDESSAI, J.)

(A.A.SAYED, J.)