

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.2012 of 2021

With

Writ Petition No.142 of 2020

With

Writ Petition No.7703 of 2019

With

Writ Petition No.730 of 2020

With

Writ Petition No.7872 of 2019

Writ Petition No.2012 of 2021

1. Vijay s/o Pesumal Menghani,
Aged about 42 years,
Occupation- Business,
R/o Vaikunthdham Apartment,
1st Floor, Dakshinamurti Square,
Mahal, Nagpur,
Trading in the name and style
'Vijay Kangan', Kelibag Road,
Mahal, Nagpur.
2. Ambekar Ghee Shop,
Through its partner,
Bhushan s/o Kiran Ambekar,
Aged about 39 years,
Occupation- Business,
R/o Anapurna Niwas,
Ayachit Mandir Road,
Badkas Chowk, Mahal,
Nagpur.
3. Bansilal s/o Parilal Batra,
Aged about 72 years,
Occupation – Business,
R/o 135, Satnami Layout,
Near Ambedkar Square,
Nagpur-440008,
Trading in the name and style
'Shree Ram Mens', Kelibag Road,
Mahal, Nagpur.

4. Prakash s/o Premchand Premani,
Aged about 50 years,
Occupation- Business,
R/o D/503, Pyramid City,
Royal Town, Jaripatka,
Nagpur,
Trading in name and style,
'Pasand Selection', Kelibag Road,
Mahal, Nagpur.
5. Ghanshayam s/o Lakhumal Balwani,
Aged about 66 years,
Occupation – Business,
R/o Plot No.136,
K.K. Nagar-Jaripatka, Nagpur,
Trading in the name and style
'Raj and Raj General Stores',
Kelibag Road, Mahal, Nagpur.
6. Ajay s/o Manohar Sarudkar,
Aged about 50 years,
Occupation- Business,
R/o Jalalpure,
Sharda Chowk, Gandhibagh,
Nagpur,
Trading in the name and style
'Gurukripa Dresses',
Kelibagh Road, Mahal, Nagpur.
7. Khubchand s/o Ramchand Bakhtani,
Aged about 83 years,
Occupation- Business,
R/o Bhaktani Niwas, Petkar Galli,
Near Rajvilas Talkies,
Trading in the name and style
'Kanta General Stores's',
Kelibagh Road, Mahal, Nagpur.

... Petitioners

Versus

1. The State of Maharashtra,
through Secretary,
Urban Development Department,
Mantralaya-32.

2. The Collector,
Nagpur District, Nagpur.
3. The Sub-Divisional Office and
Land Acquisition Office (City),
Nagpur,
Civil Lines, Nagpur.
4. The Nagpur Municipal Corporation,
through its Commissioner,
Civil Lines, Nagpur.

... Respondents

Shri M.G. Bhangde, Senior Advocate, assisted by Shri R.M. Bhangde,
Advocate for Petitioners.

Smt. Ketki Joshi, Government Pleader for Respondent Nos.1 to 3.

Shri C.S. Kaptan, Senior Advocate, assisted by Shri J.B. Kasat,
Advocate for Respondent No.4.

With
Writ Petition No.142 of 2020

1. Kishor s/o. Gurumukhdas Chawla,
Aged about 59 years,
Occupation- Business,
R/o. Plot No.120, Chawla Bhavan,
Chawla Square, Jaripatka, Nagpur
440 014, trading in the name and Style-
"Chawla Selection", Kelibag road, Mahal.
2. Shanta w/o. Tikamdas Khatri,
Aged about 68 years, Major,
Occupation- Business,
R/o Plot No.79, 80, Lane No.2,
Kasturba Nagar, Near Dayanand Park,
Jaripatka, Nagpur-440 014,
trading in the name and Style-
"Gitanjali", Kelibag Road, Mahal. Nagpur.
3. Mahesh s/o. Govardhandas Premani,
Aged about 40 years,
Occupation – Business,
R/o Plot No.76, K.K. Nagar,
Jaripatka, Nagpur.
Trading in the name and style
'Rakhee Vastralaya', Kelibag Road,
Mahal, Nagpur.

4. Navrang Cloth Stores, Kelibag Road, Mahal, Nagpur, through its partners Hemandas s/o. Gopaldas Khatri, Aged about 80 years, Occupation- Business, R/o Behind New English High School, Walkar Road, Mahal, Nagpur.
5. Tapan s/o. Mulchand Sangani, Aged about 50 years, Occupation – Business, R/o Flat No.3, Sukhani Complex, Vaishnodevi Square, Wardhaman Nagar, Nagpur, Trading in the name and style 'Mayur Saree Centre', Kelibag Road, Mahal, Nagpur.
6. Vijay s/o. Amirchand Arora, Aged about 42 years, Occupation- Business, R/o Behind Bhosla Ved Shaala, Ayachit Mandir Road, Mahal, Nagpur, Trading in the name and style 'Vijay Vastra Bhandar', Kelibagh Road, Mahal, Nagpur.
7. Kamal s/o. Veerumal Balwani, Aged about 40 years, Occupation- Business, R/o Behind Punshi Hospital, Bank Colony, Jaripatka, Nagpur, Trading in the name and style 'Raj General Stores', Kelibagh Road, Mahal, Nagpur.
8. ~~Ambekar Ghee Shop, Kelibag Road, Mahal, Nagpur, Through its partner, Bhushan s/o Kiran Ambekar, Aged about 39 years, Occupation- Business, R/o Annapurna Niwas, Ayachit Mandir Road, Badkas Chowk, Mahal, Nagpur.~~

Amendment carried out as per Court's order dated 20.10.2021

Amendment carried
out as per Court's order
dated 20.10.2021

9. ~~Bansilal s/o Parilal Batra,
Aged about 72 years,
Occupation — Business,
R/o 135, Satnami Layout,
Near Ambedkar Square,
Nagpur-440008,
Trading in the name and style
'Shree Ram Mens', Kelibag Road,
Mahal, Nagpur.~~

Amendment carried
out as per Court's order
dated 20.10.2021

10. ~~Prakash s/o Premchand Premani,
Aged about 50 years,
Occupation — Business,
R/o D/503, Pyramid City,
Royal Town, Jaripatka, Nagpur,
Trading in name and style,
'Pasand Selection', Kelibag Road,
Mahal, Nagpur.~~

11. Roshan s/o. Gyanchand Chawla,
Aged about 42 years,
Occupation- Business,
R/o Plot No.71,
"Gyan Chawla Chowk", Behind Samadha
Ashram, Bank Colony,
Jaripatka Nagpur-440 014,
Trading in the name and style
'Maya General Stores',
Kelibag Road, Mahal, Nagpur.

Amendment carried
out as per Court's order
dated 20.10.2021

12. ~~Ghanshyam s/o. Lakhmal Balwani,
Aged about 66 years,
Occupation — Business,
R/o Plot No.136, K.K. Nagar-
Jaripatka Nagpur,
Trading in the name and style
'Raj and Raj General Stores',
Kelibag Road, Mahal, Nagpur.~~

13. Manohar Narayandas Balwani,
Aged about 52 years,
Occupation – Business,
R/o Opposite Mascot Honda,
Kothi Road, Mahal, Nagpur,
Trading in the name and style of
'Ashok General Stores', Kelibagh,
Tulsibagh Road, Nagpur.

14. Nisha w/o. Suryaprakash Kewalramani,
Aged about 53 years,
Occupation- Business,
R/o Jaripatka Nagpur,
Trading in name and style,
'Janvi Dresses', Kelibagh Road,
Mahal, Nagpur.
15. Ravindra s/o. Yashwantrao Bangre,
Aged about 64 years,
Occupation – Business,
R/o Munshi Vada,
Near Natraj Talkies, Mahal, Nagpur,
Trading in the name and style
'Lakshmi Saree',
Kelibag Road, Nagpur.
16. Vinod s/o. Kishanchand Paryani,
Aged about 46 years,
Occupation- Business,
R/o Plot No.68, Sindhu Nagar Society,
Jaripatka Nagpur,
Trading in the name and style
'Paryani Vastra Bhandar',
Kelibagh Road, Mahal, Nagpur.
17. Ravindra s/o. Ramchand Khurana,
Aged about 66 years,
Occupation- Business,
R/o C-402, Pritam Complex, Sudarshan Chowk,
Lakadganj, Nagpur,
Trading in the name and style
'Khurana Saree',
Kelibagh Road, Mahal, Nagpur.
18. ~~Ajay s/o. Manohar Suradkar,~~
~~Aged about 50 years,~~
~~Occupation- Business,~~
~~R/o Jalalpure, Sharda Chowk,~~
~~Gandhibagh, Nagpur,~~
~~Trading in the name and style~~
~~'Gurukripa Dresses',~~
~~Kelibag Road, Mahal, Nagpur.~~

Amendment carried
out as per Court's order
dated 20.10.2021

19. Ashok s/o. Govindlal Gugnani,
Aged about 60 years,
Occupation – Business,
R/o Flat No.303, Shyam Dham Appartment,
Near Ambedkar Square, Nagpur,
Trading in the name and style of
'Swast Kapad Kendra'
Kelibagh Road, Mahal, Nagpur.

... PetitionersVersus

1. The State of Maharashtra, through
(i) Secretary, Urban Development Department &
(ii) Secretary, Revenue and Forest Department,
Mantralaya, Mumbai-32.
2. The Collector,
Nagpur District, Civil Lines, Nagpur.
3. The Nagpur Municipal Corporation,
through its Municipal Commissioner,
Nagpur.
4. The Assistant Commissioner,
Nagpur Municipal Corporation, Zone No.6,
Gandhibagh, Nagpur.
5. The Sub-Divisional Officer and
Land Acquisition Officer,
Nagpur City, Nagpur.

... Respondents

Shri M.G. Bhangde, Senior Advocate, assisted by Shri R.M. Bhangde,
Advocate for Petitioners.

Smt. Ketki Joshi, Government Pleader for Respondent Nos.1, 2 and 5.

Shri C.S. Kaptan, Senior Advocate, assisted by Shri J.B. Kasat,
Advocate for Respondent Nos.3 and 4.

WithWrit Petition No.7703 of 2019

1. ~~Vijay s/o Pessumal Menghani,
Aged about 42 years,
Occupation – Business,
R/o Vaikunthdham,
1st Floor, Dakshinamurti Square,
Mahal, Nagpur.~~

Amendment carried
out as per Court's order
dated 13.10.2021

2. Laxmandas s/o. Nanakmal Balwani,
Aged about 52 years,
Occupation- Business,
R/o Plot No.3354/554,
Near Sai Mandir, Nagarjuna Colony,
Jaripatka, Nagpur-440 014.
3. Raju s/o. Lalchand Menghani,
Aged about 55 years,
Occupation – Business,
R/o Flat No.F/02,
Vaikunthdham Apartment,
Near Binzani College, Dakshinmurti, Square,
Mahal, Nagpur-440032.

... PetitionersVersus

1. The State of Maharashtra, through
(i) Secretary, Urban Development Department &
(ii) Secretary, Revenue and Forest Department,
Mantralaya, Mumbai-32.
2. The Collector,
Nagpur District, Civil Lines, Nagpur.
3. The Nagpur Municipal Corporation,
through its Municipal Commissioner,
Nagpur.
4. The Assistant Commissioner,
Nagpur Municipal Corporation, Zone No.6,
Gandhibagh, Nagpur.
5. The Sub-Divisional Officer and
Land Acquisition Officer,
Nagpur City, Nagpur.
6. Ashok s/o. Rambhau Chinchmalatpure,
Aged 65 years,
Occupation – retired,
R/o. Near Shani Mandir, Zenda Chowk,
Nagpur.

7. Vijay s/o. Rambhau Chinchmalatpure,
Aged 61 years,
Occupation- Business,
R/o. Ganguly layout, Wardha Road,
Somalwada, Nagpur.
8. Dilip s/o. Rambhau Chinchmalatpure,
Aged 62 years,
Occupation : Business,
R/o. Jaitala Bus Stand,
Jaitala, Nagpur.
9. Arun s/o. Rambhau Chinchmalatpure,
Aged 66 years,
Occupation : retired,
R/o. Kannamwar Nagar,
Behind Hotel Pride, Nagpur.

... Respondents

Shri M.G. Bhangde, Senior Advocate, assisted by Shri R.M. Bhangde,
Advocate for Petitioners.

Smt. Ketki Joshi, Government Pleader for Respondent Nos.1, 2 and 5.

Shri C.S. Kaptan, Senior Advocate, assisted by Shri J.B. Kasat,
Advocate for Respondent Nos.3 and 4.

None present for Respondent Nos.6 to 9.

With
Writ Petition No.730 of 2020,

1. Mrs. Manisha w/o. Anilkumar Panjwani,
Aged about 50 years,
Occupation- Business,
Resident of 530/12, Guru Gobind Singh Niwas,
Near Sarda Tile Studio, Gali No.4,
Juna Bagdganj, Nagpur 440 008.
2. Mrs. Lata Bhagwandas Damani,
Aged about 74 years,
Occupation- Business,
resident of F.N. 302, Jamuna N.I.
CA Road, Near Ambedkar Chowk,
Bagdganj, Nagpur-440 008.
3. Shri Meghraj Basantram Jham,
Aged about 92 years,
Occupation – Business,
Resident of Plot No.18-A,
Wardhaman Nagar, Nagpur-440008.

4. Shri Satish Chimanlal Popali,
Aged about 66 years,
Occupation- Business,
Resident of 304-A, Bhaurao Nagar,
Near VMV College, Nagpur 440 008.
5. Shri Khubchand s/o. Ramchand Bakhtani,
Aged about 80 years,
Resident of Bakhtani Niwas,
Petkar Lane, Mahal, Nagpur-440032.
6. Shri Rajendra s/o. Bahadurchand Sehgal,
Aged about 51 years,
Occupation- Business,
Residing C/o. Shakuntalabai Dolas,
House No.665, Police Naka Road,
Near Patharfod Darwaja, Jalalpura,
Nagpur-440 002.
7. Shri Manoj s/o. Saidittamal Batra,
Aged about 52 years,
Occupation- Business,
Resident of Wakratunda Apartments,
Nagoba Galli, Near Sharad Chowk,
Jalalpura, Mahal, Nagpur-440 032.
8. Shri Tolaram s/o. Daulatram Balwani,
Aged about 62 years,
Occupation- Business,
Resident of Plot No.29,
Opposite Uday Lawn, Laghuvetan Society,
Jaripatka, Nagpur-440 014.

... Petitioners

Versus

1. The State of Maharashtra,
through its Secretary,
Urban Development Department,
Mantralaya, Mumbai-400 032.
2. The Collector,
Nagpur District, Nagpur,
Collectorate Compound,
Civil Lines, Nagpur-440 001.

3. The Nagpur Municipal Corporation,
through its Commissioner,
having its office at Civil Lines,
Nagpur-440 001.

4. The Sub-Divisional Officer and
Special Land Acquisition Officer,
Kelibag Road Widening,
Collectorate Compound,
Civil Lines, Nagpur-440 001.

... Respondents

Shri A.S. Kulkarni, Advocate for Petitioners.

Smt. Ketki Joshi, Government Pleader for Respondent Nos.1, 2 and 4.

Shri C.S. Kaptan, Senior Advocate, assisted by Shri J.B. Kasat,
Advocate for Respondent No.3.

With

Writ Petition No.7872 of 2019

Shri Sunil s/o Rajendra Hatwar,
Aged about 63 years,
Occupation – Business,
Resident of – Near Jivan Bodha Math,
Sudam Road, Itwari,
Nagpur 440002.

... Petitioner

Versus

1. The State of Maharashtra,
through it's Secretary,
Urban Development Department,
Mantralaya, Mumbai.

2. The Collector for Nagpur,
District- Nagpur.

3. The Municipal Commissioner,
Nagpur Municipal Corporation,
Nagpur.

4. The Assistant Municipal Commissioner,
Nagpur Municipal Corporation,
Nagpur.

5. Sub-Divisional Officer & Land Acquisition Officer,
Nagpur.
6. Gajendra s/o Purushottam Gupta,
Aged about 53 years,
Occupation – Private,
R/o Opposite Kalbhirav Mandir,
Kelibag Road,
Nagpur-2.
7. Devendra s/o Purushottam Gupta,
Aged about 51 years,
Occupation – Private,
R/o Opposite Kalbhirav Mandir,
Kelibag Road,
Nagpur-2.
8. Jitendra s/o Purushottam Gupta,
Aged about 50 years,
Occupation – Private,
R/o Opposite Kalbhirav Mandir,
Kelibag Road, Nagpur-2.

... Respondents

Shri Sachin S. Joshi, Advocate for Petitioner.

Smt. Ketki Joshi, Government Pleader for Respondent Nos.1, 2 and 5.

Shri C.S. Kaptan, Senior Advocate, assisted by Shri J.B. Kasat,
Advocate for Respondent Nos.3 and 4.

CORAM : SUNIL B. SHUKRE & ANIL S. KILOR, JJ.

RESERVED ON : 7th JULY, 2022

PRONOUNCED ON : 8th JULY, 2022

JUDGMENT (PER SUNIL B. SHUKRE, J.) :

1. Rule. Heard finally by consent of the learned counsel appearing for the parties.

2. All these petitions raise common questions of fact and law and, therefore, they are being decided together by this common judgment. However, in order to understand the facts pleaded and the

prayers made in each of the petitions, it is necessary that their summary is made. Their summary is given in the ensuing paragraphs.

Writ Petition No.2012 of 2021 :

3. This petition is filed by seven petitioners. They claim to be the tenants of one shop block each on Kelibag Road, Mahal, Nagpur. The details of their tenancy are mentioned in Paragraph 1 of the petition. These petitioners are aggrieved by the impugned declaration dated 16-10-2020 issued by the respondent No.2- Collector, Nagpur, under Section 126(4) of the Maharashtra Regional & Town Planning Act, 1966 (for short, “the MRTP Act”) read with Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, “the LA Act of 2013) and, therefore, they seek its quashing, as being violative of the provisions of the LA Act of 2013. By this declaration, the respondent No.2- Collector, Nagpur, declared that the land abutting Central Avenue Road from Badkas Square-Kotwali Police Station Square to C.P. & Berar College Road (for short, “the Kelibag Road land”) was needed for the public purpose of road widening. The petitioners have also sought a declaration that the impugned award dated 9-2-2021 passed by the respondent- Sub-Divisional Officer and Land Acquisition Officer (City), Nagpur, in Land Acquisition Case No.4/A/65/2020-21 is neither binding upon them nor can they be dispossessed from their

respective shop blocks pursuant to the impugned award. The petitioners have sought further reliefs such as to declare that the respondents cannot dispossess the petitioners from their respective shop blocks and to restrain the respondents from dispossessing the petitioners from their respective shop blocks without following due procedure of law, as provided under the LA Act of 2013.

4. The petitioners submit that they learnt about passing of the impugned award for the first time on 19-2-2021 and after obtaining the certified copy of the award, they came to know about the publication of the impugned declaration by the respondent No.2 only on 17-10-2020. They further submit that the impugned declaration issued under Section 126(4) of the MRTP Act, though purported to be issued in the manner provided under Section 19 of the LA Act of 2013, which in fact is deemed to be a declaration duly made under Section 19 of the LA Act of 2013, as provided under Section 126(2) of the MRTP Act, does not meet the requirements of Section 19 of the LA Act of 2013, in the sense that it does not identify what is called as the “resettlement area” for the purpose of rehabilitation and resettlement of the affected families. It is also the case of the petitioners that even though the respondent No.3 was well aware of the occupancy of the shop blocks by the petitioners as tenants, neither the notice under Section 21(4) of the LA Act of 2013 has been served

upon the petitioners nor the landlords were called upon by the respondent- Sub-Divisional Officer and Land Acquisition Officer (City), Nagpur, to submit a statement containing the name of every other person possessing any interest in the land or any part thereof, amongst others, under Section 22 of the LA Act of 2013. For these reasons, the petitioners submit that the impugned declaration is unsustainable and the impugned award is a nullity.

5. The petitioners also submit that the impugned award does not determine the amount of compensation payable to the petitioners and they being the tenants, are the persons having interest in the land under acquisition in terms of Section 3(x) of the LA Act of 2013 and, therefore, the impugned award violates Articles 14 and 300-A of the Constitution of India.

6. The petitioners further submit that even though the impugned award has been passed by the respondent- Sub-Divisional Officer and Land Acquisition Officer, the land has not vested absolutely free from all encumbrances in the Planning Authority as per Section 126(1) of the MRTP Act owing to violation of the mandatory provisions of law, as contained in Sections 16, 19, 21, 22 and 31 of the LA Act of 2013, and that as the encumbrance in the nature of rights of the petitioners as tenants continues on the land and building under acquisition, the

petitioners cannot be dispossessed on the basis of the impugned award inasmuch as the impugned award is not binding upon the petitioners.

Writ Petition No.142 of 2020 :

7. This petition initially filed by nineteen petitioners has been reduced to a petition filed by fourteen petitioners, all of whom claim to be the tenants occupying the shop blocks, more particularly mentioned in Paragraph 2 of the petition. The petitioners have challenged the impugned declaration dated 17-8-2019 and have sought a relief of declaration that they cannot be dispossessed from the tenanted premises without following due procedure of law and also a direction restraining the respondents from dispossessing the petitioners without following due procedure of law. The petitioners have further sought striking down of Section 105-A of the LA Act of 2013 as being beyond the powers of the State Legislature and also inconsistent with the provisions of Section 126 of the MRTP Act.

8. The petitioners have filed an amendment application, to which reply has been filed by the contesting respondents. The petitioners have sought to bring on record the additional grounds for questioning the legality and correctness of the impugned declaration. Since we have already heard the arguments of both the sides on the proposed amendments and there being no dispute about these

amendments not changing the nature of the petition, the amendment application, being Civil Application No.1342 of 2021, is hereby allowed. By these amendments, the petitioners contend that the public notice published in newspapers “Loksatta” and “Vidarbha Pukar” both dated 22-1-2019, as alleged by the respondent Nos.2 and 5, is not a notice as contemplated in law, inasmuch as the public notice is about purchase of lands in question by private negotiations and not as per the declaration under Section 19 of the LA Act of 2013, which would mean that no declaration under Section 19 of the LA Act of 2013 has been published in the present case. It is thus contended that the entire land acquisition proceedings are liable to be quashed and set aside.

Writ Petition No.7703 of 2019 :

9. This petition initially filed by three petitioners has been reduced to a petition filed by two petitioners, who claim to be the tenants occupying one shop block each, the details and situation of which are mentioned in Paragraphs 3, 4 and 5 of the petition. The petitioners submit that the respondent No.7, i.e. the landlord of the petitioner No.2, who has, and the respondent Nos.8 and 9, the landlords of the petitioner No.3, who have, sold their respective portions of the tenanted property to the Nagpur Municipal Corporation for consideration. We may clarify here that the petitioner

No.1 having filed Writ Petition No.2101 of 2021 subsequently withdrew his petition and, therefore, this petition, as filed by him, came to be disposed of accordingly.

10. The petitioners submit that the shop blocks occupied by them as tenants are their only source of livelihood and that they have been deprived of their livelihood by the impugned declaration dated 17-8-2019. By this declaration, the respondent No.2- Collector, Nagpur, made a declaration under Section 126(4) of the MRTP Act that the lands referred to as “the Kelibag Road land” earlier was needed for public purpose and, therefore, it would be compulsorily acquired by following due procedure of law. The petitioners submit that they were called upon by the officers of the respondent- Nagpur Municipal Corporation (for short, “the NMC”) to vacate the shop blocks occupied by them within two days and upon failure on their part to vacate the shop blocks, they would be dispossessed by using force. They submit that this was also confirmed by their respective landlords. They submit that the representations made by them to the authorities against the action of the NMC, termed by them as illegal, bore no fruits. Ultimately, the petitioners have filed this petition challenging the impugned declaration and seeking its quashing and setting aside and also praying for the reliefs of declaration that the petitioners cannot be dispossessed without following due procedure of

law and restraining of the respondents from dispossessing the petitioners without following due procedure of law. The petitioners have also sought a declaration that the provisions of Section 105-A of the LA Act of 2013 are *ultra vires* the powers of the State Legislature and also repugnant to and inconsistent with the provisions of Section 126 of the MRTP Act, thereby requiring striking down of Section 105-A of the LA Act of 2013.

11. In support of such prayers, the petitioners have raised several grounds, which are elaborately stated in the memo of petition. Amongst them, following are the principal grounds :

(i) The impugned declaration is illegal as it does not include the declaration of an area identified as the “resettlement area” for the purpose of rehabilitation and resettlement of the affected families, as required by Section 19 of the LA Act of 2013.

(ii) The possession of the petitioners is protected by the provisions of the Maharashtra Rent Control Act, 1999 and their rights of possession as tenants having not been acquired till date, the petitioners cannot be dispossessed till acquisition of their tenancy rights.

(iii) The conditions of Section 38 of the LA Act of 2013 having not been fulfilled, the petitioners cannot be dispossessed. Also, the sale of shop blocks by their respective landlords would not include the leasehold rights of the petitioners and unless the leasehold rights of the petitioners are acquired by paying compensation, the NMC would not have any authority in law to dispossess the petitioners.

(iv) The NMC having made a statement in the affidavit submitted by it in Writ Petitions No.6255 of 2005, 5931 of 2005 and 6467 of 2005 and also in the Review Application, being Misc. Civil Application No.203 of 2007, all of which having been disposed of in terms of the statement made by the NMC in its affidavit, would be bound by its own statement so made therein. The statement was to the effect that the NMC would follow due procedure of law before dispossessing the persons on Kelibag Road and due procedure of law having not been followed by the NMC, the NMC has committed a breach of its own statement made on oath.

(v) The provisions of the LA Act of 2013, in particular Section 19, stand legislatively incorporated in Section 126(2)

of the MRTP Act, as held in the judgment of this Court delivered in Writ Petitions, LD-VC-CW No.1078 to 1098 of 2020 on 7-10-2020 and, therefore, for the acquisition of lands referred to in Section 126(1) of the MRTP Act, the provisions of Section 19 of the LA Act of 2013 are applicable and are required to be followed mandatorily.

(vi) Interplay between Section 105-A of the LA Act of 2013 and Section 126 of the MRTP Act needs to be considered for determining the validity of the impugned notification or the declaration.

(vii) The conflict between Section 126(1) of the MRTP Act and Section 105-A of the LA Act of 2013 needs to be resolved by making harmonious interpretation of both the provisions so as to give effect to them and not rendering any one of them a 'dead letter' of law, and the harmonious construction can be achieved by reading 'may' in sub-section (2) of Section 105-A of the LA Act of 2013 as 'shall' and holding that sub-section (1) of Section 105-A of the LA Act of 2013 using the expression 'subject to' the provisions of Section 105-A(2), will not come into force unless the notification contemplated by sub-section (2) of Section 105 is issued, which notification

has not been issued so far. As a result, the provisions of Section 19 of the LA Act of 2013 will apply to the acquisition of lands referred to in Section 126(1) of the MRTP Act.

(viii) The provisions of sub-section (2) of Section 105-A of the LA Act of 2013 are not directory in nature but are mandatory and this can be gathered by the intention of the Legislature, as manifested from the language used in Section 105-A(1), whereby the mandate that the provisions of the LA Act of 2013 shall not apply to the acquisition of lands under the enactments specified in the Fifth Schedule (the MRTP Act is one of such enactments) has been made subject to sub-section (2) of Section 105-A.

(ix) Unless the word 'may' used in sub-section (2) of Section 105-A of the LA Act of 2013, which imposes a public duty upon the State Legislature is construed to mean 'must', considering the context in which it has been employed the scheme of Section 105-A would be unworkable. This is because of the fact that the LA Act of 2013 has been enacted for the benefit of the land-holders and public good and, therefore, understanding the word 'may' used in sub-section (2) of Section 105-A as optional would only result

in defeating the intention of the Legislature.

(x) Section 105-A of the LA Act of 2013 is a conditional legislation, as it depends for its operation on issuance of notification under sub-section (2) thereof.

(xi) If Section 19 of the LA Act of 2013 is held to be not applicable, there remains no authority of law, as required by Article 300-A of the Constitution of India, for the State Government to compulsorily acquire the land of the citizens, as the provisions of the Land Acquisition Act, 1894 (for short, “the LA Act of 1894”) have been repealed by Section 114 of the LA Act of 2013 and this repeal of the LA Act of 1894 does not get revived by adding Section 105-A of the LA Act of 2013.

(xii) Alternatively, if it is held that the provisions of the LA Act of 1894 are not repealed, the impugned declaration under Section 19 of the LA Act of 2013 would be bad in law on the ground that it has not been issued by the State Government or the Commissioner, as required under Section 6 of the LA Act of 1894.

(xiii) Alternatively, the MRTP Act is a complete Code in respect of the matters dealt with thereunder and, therefore, it is a special law, while the LA Act of 2013 is a general law. When Section 126 of the MRTP Act legislatively incorporates Section 19 of the LA Act of 2013, the provisions of the MRTP Act, it being a special law, would prevail over the provisions of the LA Act of 2013, including Section 105-A thereof, it being a general law.

(xiv) The MRTP Act by itself does not confer power upon the State Government to acquire the lands of the citizens compulsorily and the only source of power of compulsory acquisition of lands is to be found in the Act of 2013.

(xv) The Constitution of India does not empower the State Legislature to amend the law made by the Parliament in the manner so as to efface the law of the Central Legislature and Section 105-A introduced in the LA Act of 2013 by an amendment made under the Maharashtra Act 37 of 2018 has this effect, Section 105-A of the LA Act of 2013 is *ultra vires* the powers of the State Legislature and, therefore, it is liable to be struck down.

(xvi) The assent of the President of India obtained by the State Government to the Maharashtra Act 37 of 2018 being without following the requirements of Article 254(2) of the Constitution of India, which mandates that the State Government must mention in its proposal relevant facts and circumstances, justifying the need for amending the law made by the Parliament which were absent in the proposal, the assent so obtained is void *ab initio* to the extent of insertion of Section 105-A to the LA Act of 2013.

(xvii) Another Bench of this Court has already held in its judgment delivered in Writ Petitions, LD-VC-CW No.1078 to 1098 of 2020 on 7-10-2020 that the LA Act of 2013 is legislatively incorporated under Section 126(1)(b) of the MRTP Act. The provisions of the LA Act of 2013 were incorporated in Section 126(2) of the MRTP Act with effect from 29-8-2015 and Section 105-A of the LA Act of 2013 was added with effect from 26-4-2018, which would mean that the amendment introduced to the LA Act of 2013 subsequent to incorporation of the provisions of the LA Act of 2013 in the MRTP Act would not adversely affect such incorporation by the legislation and, therefore, it is wrong to say that by virtue of Section 105-A of the LA Act of 2013, the provisions made in

the LA Act of 2013 are not applicable to compulsory acquisition of land under Section 126 of the MRTP Act.

(xviii) By virtue of the provisions made in Section 126(1) of the MRTP Act, it is necessary for the acquiring body to provide for compensation not only to the land-owner, but also to the tenant, jointly or separately, and thus mere acquisition of the interest of the land-holder by the acquiring body of the State would not entitle the acquiring body to dispossess the tenant or the lessee whose possession is protected by the Rent Act. Any other interpretation of law would render the statutory mandate “shall vest absolutely free from all encumbrances in the Planning Authority” manifestly arbitrary, which would lead to deprivation of leasehold rights of the lessee or the tenant and would violate the guarantee of Articles 14 and 300-A of the Constitution of India.

(xix) By protecting the leasehold interest of the lessee or the tenant in the property under acquisition, the provisions made under Section 105-A of the LA Act of 2013 would be saved from getting declared unconstitutional.

Writ Petition No.730 of 2020 :

12. This petition is filed by eight petitioners contending that they are the tenants in shop blocks, particularly described in Paragraphs 2 to 9. These petitioners are also seeking quashing and setting aside of the impugned declaration dated 27-8-2019 challenged in the earlier petitions, almost on similar grounds.

Writ Petition No.7872 of 2019 :

13. In this petition, there is a singular petitioner, who seeks a direction to the respondents for issuing a declaration of the area of rehabilitation and resettlement, the petitioner being entitled to the same in his capacity as a tenant of the respondent Nos.6 to 8. The petitioner is also seeking a further direction restraining the respondents from dispossessing the petitioner from the tenanted shop blocks. The petitioner relies upon the mandatory requirement of Section 19(1) of the LA Act of 2013 regarding issuance of a declaration of an area identified as the “resettlement area” for the purposes of rehabilitation and resettlement of the affected families.

14. The replies filed by the respondents- Collector, Nagpur, Sub-Divisional Officer and Land Acquisition Officer, Nagpur, and the NMC take a common stand to defend their action in the present case.

15. The respondents- Collector, Nagpur, and Sub-Divisional Officer and Land Acquisition Officer, Nagpur, have taken a preliminary objection to the maintainability of the petitions in which the landlords have not been joined as parties. According to them, these petitions are bad for non-joinder of necessary parties. They further submit that there is an alternate remedy available to all these petitioners under Section 64 or 75 of the LA Act of 2013, which alternate remedy having not been taken recourse to, the petitions are not maintainable.

16. The respondents- Collector, Nagpur, and Sub-Divisional Officer and Land Acquisition Officer, Nagpur, further submit that a Co-ordinate Bench of this Court in the judgment dated 7-10-2020 rendered in LD-VC-CW-1078 of 2020 and other connected writ petitions, has held that Section 126(2) of the MRTP Act, as amended by the Maharashtra Act 42 of 2015 with effect from 29-8-2015, is an example of legislation by incorporation, thereby incorporating the provisions made in Section 19 of the LA Act of 2013, and, therefore, the provisions of the LA Act of 2013 would be applicable to the acquisition made under Section 126 of the MRTP Act only to the extent of declaration to be made in the manner provided in Section 19 of the LA Act of 2013 and for a further limited purpose of determination of compensation and not any more and thus, no other

provisions relating to resettlement and rehabilitation scheme and so on are applicable to the acquisition made under Section 126 of the MRTP Act.

17. The respondents- Collector, Nagpur, and Sub-Divisional Officer and Land Acquisition Officer, Nagpur, submit that the Land Acquisition Officer has complied with the requirements of Section 21 of the LA Act of 2013 by publishing a public notice in the manner provided thereunder. They further submit that the notice published in two local newspapers was uploaded on the official website and was also displayed on the notice board of the offices of Collector, Tahsildar, Talathi, Nagpur Municipal Corporation and Town Planning. They further submit that as the names of any of the petitioners having not been registered as tenants in the city survey record and that no document having been placed before the Land Acquisition Officer showing tenancy of any of the petitioners, there was no reason for the Land Acquisition Officer to believe that there are other persons having interest in the subject-property. Thus, they submit that there is no breach of Section 21(4) or Section 22 of the LA Act of 2013.

18. The NMC has also taken a similar preliminary objection as taken by the Collector and the Sub-Divisional Officer and Land Acquisition Officer. It also maintains that the public notice, as

required under Section 21 of the LA Act of 2013, was issued and published in the manner provided thereunder. It also submits that the city survey record did not show that any of the petitioners was tenant and, therefore, there was no occasion for the Land Acquisition Officer to have issued any notice to the petitioners. It submits that in response to the public notice published in the manner provided under law, 42 objections raised by the landlords were received and they were disposed of as per law. It further submits that the impugned award having been passed under Section 37(1) of the LA Act of 2013 has attained finality and as the compensation awarded by the Land Acquisition Officer has also been deposited fully with the Land Acquisition Officer, the land has vested absolutely free from all encumbrances in the NMC in terms of Section 126(1) of the MRTP Act read with Section 38 of the LA Act of 2013.

19. The NMC has denied the petitioners to be the tenants of their respective landlords, although in some petitions, there is a passing reference by the NMC to some of the petitioners being tenants on the property, which is the subject-matter of acquisition.

20. The NMC further submits that by application of Section 105-A of the LA Act of 2013, the procedure prescribed under the LA Act of 2013 and its various provisions have not been made applicable to the

acquisition of land made under Section 126(1) of the MRTP Act. It is also submitted that Section 105-A of the LA Act of 2013 is not a conditional legislation and that it does not depend for its operation upon issuance of notification by the State Government directing that any of the provisions of the LA Act of 2013 shall apply to the cases of land acquisition under the enactments specified in the Fifth Schedule.

21. The NMC further submits that the petitioners are not the persons interested within the meaning of Section 3(x) of the LA Act of 2013, because the said Act is not applicable to the acquisition under the MRTP Act and that their claims for rehabilitation and resettlement are unsustainable for the same reasons. It further submits that the petitioners do not have any right to receive notice or hearing, though they may have a right against their landlords and that they can raise their objections before the appropriate forum, as the amount of compensation is already determined by the competent authority. In any case, the NMC further submits that the petitioners cannot forestall the development of the project by raising frivolous and unsustainable objections. The NMC further submits that the MRTP Act is a complete code and it is enacted with the object of proper, orderly and rapid development of areas in the town and for executing the plans, projects and schemes for such development and also to provide for matters connected therewith. It is further submitted that the acquisition of

lands made under the provisions of the MRTP Act are not done as per the provisions of the LA Act of 2013 and if there is some reference to some provisions of the LA Act of 2013 in various Sections of the MRTP Act, that is only for the limited purpose of fulfilling the requirements of those particular provisions in the LA Act of 2013 and, therefore, it cannot be said that all the provisions of the LA Act of 2013 would be applicable to the acquisition of land made under the MRTP Act. It is submitted that it is for these reasons that the notification or the declaration for compulsory acquisition of lands for public purpose has been made here under Section 126(2) of the MRTP Act.

22. The NMC further submits that Section 126 of the MRTP Act contemplates one single scheme for acquisition of land and that it recognizes only one person interested and does not envisage different categories of persons, such as owner, tenant, licensee and so on, for the purpose of determination and payment of compensation. It is further submitted that nowhere in the MRTP Act or the LA Act of 2013, has it been provided that firstly the Land Acquisition Officer shall decide the rights of the landlords, pass an award and then would proceed to decide the rights of the tenants, occupiers or licensees and pass different awards.

23. On the aforesaid grounds, it is urged by the respondents-Collector, Nagpur, Sub-Divisional Officer and Land Acquisition Officer, Nagpur, and the NMC that the petitions be dismissed.

24. In Writ Petition No.7703 of 2019, the petitioners have impleaded the landlords of the respective petitioners as party-respondents, but none of them has filed any reply. In the other petitions, however, the landlords have not been joined as the party-respondents.

25. Shri M.G. Bhangde, learned Senior Advocate, appearing for the petitioners in Writ Petition Nos.2012 of 2021, 142 of 2020 and 7703 of 2019, has made his submissions raising various points, which we have already incorporated in this judgment as the grounds taken in those petitions, and, therefore, to save this judgment from repetition, the same are not reproduced now. We would, however, refer to that part of his argument, which is not elaborately stated in the grounds taken in these petitions. He has made the lead argument and, therefore, that part of the argument, which does not come to the fore elaborately from the grounds taken in these petitions, would be referred to.

26. Shri Bhangde, learned Senior Advocate, submits that even though the prayer questioning the legality of the award dated 9-2-2021 has been given up, it is not the law that the award cannot be quashed *qua* the petitioners in a case where it is found that the award is not binding upon the petitioners challenging it on various grounds.

27. Shri Bhangde, learned Senior Advocate, submits that the impugned declaration under Section 126(4) of the MRTP Act is bad in law for several reasons. He points out that this declaration does not fulfill the requirements of Section 19 of the LA Act of 2013, as it does not identify any area as the “resettlement area” for the purpose of rehabilitation and resettlement of the affected families by following due procedure prescribed in Chapter IV of the LA Act of 2013, in particular the provisions of Sections 16 and 18 of the said Act. He further submits that if it is held that the identification of an area as the “resettlement area” in the declaration issued in pursuance of Section 19 of the LA Act of 2013 is not required to be incorporated in the declaration issued thereunder, there would be a possibility of issuing different declarations in different cases, or in other words, there would be one kind of declaration in one case where the area of resettlement is identified and there would be another kind of declaration where no resettlement area is identified. He further

submits that it is the mandate of rule of equality and rule against arbitrariness that the benefits arising from one Act are made available equally to all the beneficiaries and, therefore, only because the acquisition of land is being made under Section 126(1) of the MRTP Act, the benefit of rehabilitation and resettlement cannot be denied to the affected families and the interested persons, especially the persons having tenancy rights protected under the Maharashtra Rent Act as defined under Section 3(x) of the LA Act of 2013, like the petitioners.

28. Shri Bhangde, learned Senior Advocate, further submits that the landlords of some of the petitioners have executed sale-deeds in favour of the Nagpur Municipal Corporation for the purpose of transferring the ownership of the lands, in terms of Section 126(1)(a) of the MRTP Act, but, those landlords cannot agree to transfer interest of even the tenants, as the scheme of Section 126(1) of the said Act indicates that the rights of a lessee are recognized and in appropriate cases, a lessee can be compensated by payment of suitable amount or grant of transferable development right (TDR) against the area of land surrendered free of cost and free from all encumbrances. He also submits that once the tenancy is created, the transfer of ownership of the property and even destruction of house or building constructed on such property does not determine the tenancy right of occupant, which are incidental to the contract of lease and it continues to exist between

the parties. He further submits that it is settled principle of law that a person can only transfer to any person a right, title or interest in any tangible property which he is possessed of to transfer for consideration or otherwise and, therefore, a person cannot transfer that interest to the other person, which he himself does not possess in tangible property. He further submits that without following the mandatory provisions of the LA Act of 2013 and without taking care of interest of the tenants, like the petitioners, the respondent- authorities are not statutorily entitled to take forcible possession of the land in question, which is occupied by the petitioners as tenants, there being a constitutional protection granted against dispossession of tenants without following due procedure of law. He also submits that without lawful termination of the tenancy, the petitioners cannot be dispossessed from the lands in question.

29. Shri Bhangde, learned Senior Advocate, further submits that when Section 125 of the MRTP Act lays down that any land required, reserved or designated in a 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 the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, it necessarily means that the Land Acquisition Officer complies with the provisions of Sections 16 to 18 of

the LA Act of 2013, which deal with the rehabilitation and resettlement scheme to be formulated by the Administrator, especially when Section 125 of the MRTP Act does not say that the provisions of Sections 16 to 18 of the LA Act of 2013 shall not be applicable to compulsory acquisition of land needed for a public purpose within the meaning of Section 125 of the MRTP Act.

30. Shri Bhangde, learned Senior Advocate, submits that Section 19 of the LA Act of 2013, finding its place in Section 126(2) of the MRTP Act, is an instance of legislation by incorporation and, therefore, it is necessary that individual notices are served upon the occupiers of the lands or the tenants, like the petitioners, and that it is also incumbent upon the Collector to comply with the requirements of Section 22 of the LA Act of 2013. He also submits that the power to take possession of the lands under Section 38 of the LA Act of 2013 can be exercised only after ensuring that the full payment of compensation as well as rehabilitation and resettlement entitlements is paid or are tendered to the entitled persons within the time stipulated thereunder and that would mean that even if vesting of land occurs in terms of Section 126(1) of the MRTP Act, it is so only with the encumbrance of the interest of the tenants and not absolutely free. He, therefore, submits that the provisions of the MRTP Act, in particular Sections 125 and 126 thereof, and the provisions of the LA

Act of 2013, particularly Sections 16 to 22, are required to be harmoniously interpreted so that they co-exist and do not frustrate the legislative intent behind them or otherwise there would be anarchy in governance by rule of law.

31. Shri Bhangde, learned Senior Advocate, also submits that Section 105-A of the LA Act of 2013 having been brought in the Statute Book subsequent to incorporation of Section 19 in Section 126(2) of the MRTP Act, has no application to compulsory acquisition made in terms of sub-sections (1) and (2) of Section 126 of the MRTP Act. He also argues for invalidity of Section 105-A of the LA Act of 2013 and alternatively the need for harmoniously interpreting it with the other provisions of law, including those contained in Section 126 of the MRTP Act.

32. The argument so advanced by Shri Bhangde, learned Senior Advocate, is endorsed to and adopted by the learned counsel appearing for the petitioners in Writ Petition Nos.7872 of 2018 and 730 of 2020.

33. The NMC in its submissions, is led by Shri C.S. Kaptan, learned Senior Advocate. Shri Kaptan has dismissed all the points raised by Shri Bhangde for the petitioners in five writ petitions, viz.

Writ Petition Nos.2012 of 2021, 142 of 2020, 7703 of 2019, 730 of 2020 and 7872 of 2019, contending that they are not tenable in law.

34. Shri Kaptan, learned Senior Advocate, has taken a preliminary objection to the maintainability of all the petitions and the grounds taken by him are two-fold. He submits that in four out of five writ petitions, the landlords of the petitioners, all of whom are claiming to be tenants, have not been joined as the party-respondents. Secondly, he submits that even though the petitioners are seeking quashing and setting aside of the impugned declarations issued under Section 126(4) of the MRTP Act for compulsory acquisition of the lands stated therein and also seeking a declaration that the impugned award is not binding upon them and is liable to be quashed only *qua* the petitioners, they are doing so only with a view to protect their interest as tenants of the shop blocks, the lands of which have been acquired. He further submits that by the own submission of the petitioners, their interest as tenants in the property in question can be protected by payment of an amount of compensation equivalent to their interest and tendering of their rehabilitation and resettlement entitlements, if eligible. In other words, he submits, the whole challenge raised by the petitioners revolves around payment of amount of compensation and making available to them their resettlement and rehabilitation benefits, if found entitled, and for such

reliefs, alternate remedy is already available under Section 64 or Section 75 of the LA Act of 2013, which alternate remedy has not been resorted to by the petitioners. He, therefore, submits that all the petitions are liable to be rejected as not maintainable.

35. Shri Kaptan, learned Senior Advocate, submits that the MRTP Act is a complete code and, therefore, compulsory acquisition of land provided under Section 126 of the MRTP Act would have to be made only in accordance with the provisions of the MRTP Act. He submits that the LA Act of 2013 is a general law, while the MRTP Act being a complete code in itself is a special law and, therefore, the general law would give way to the special law barring the exceptions provided in the special law itself. He further submits that Section 19 of the LA Act of 2013 included in section 126(2) of the MRTP Act is an example of legislation of incorporation and, therefore, the LA Act of 2013 would be applicable to the compulsory acquisition of land under the MRTP Act only to the extent as provided under Section 19 of the LA Act of 2013.

36. Shri Kaptan, learned Senior Advocate, further submits that there is no right of notice or hearing to the tenants under the scheme of Section 126 of the MRTP Act and in any case, the provisions relating to publication of a public notice and the requirement of serving of

individual notices upon the owners, can be said to be complied with in the present case. He submits that the names of all the petitioners having not been recorded as tenants in the city survey record, there was no reason for the Land Acquisition Officer to take recourse to the provisions made under Section 21(4) and also Section 22 of the LA Act of 2013. He also submits that even though Section 19(1) of the LA Act of 2013 refers to identification of the resettlement area, it does not apply to acquisition of land made under the MRTP Act, as there is no specific provision made for it in the MRTP Act and, therefore, Section 19 of the LA Act of 2013 would have to be applied to the acquisition of land made under Section 126 of the MRTP Act with such modification as is consistent with the scheme of Section 126 of the MRTP Act. He also submits that even otherwise, the provisions of the LA Act of 2013 have been generally not made applicable to the acquisition of land under the MRTP Act by virtue of Section 105-A of the LA Act of 2013.

37. Shri Kaptan, learned Senior Advocate, further submits that the petitioners could not be held to be the persons interested within the meaning of Section 3(x) of the LA Act of 2013, because this Act has not been made applicable to the acquisition of the land under the MRTP Act by virtue of the exceptions to provisions made in Section 105-A of the LA Act of 2013. He further submits that while

resolving the conflict, if any, between the MRTP Act and the LA Act of 2013, a distinction between the acquisition made in the former Act and the acquisition made in the latter Act is required to be borne in mind, as the acquisition of the land under the former Act is not an acquisition merely for the public purpose, but it is also an acquisition for ensuring planned development of a city while the acquisition of land envisaged in the LA Act of 2013 is only for the public purpose and, therefore, not all the provisions of the LA Act of 2013 would be applicable to the acquisition of land made under the MRTP Act except for those provisions which are legislatively incorporated in the MRTP Act. He also submits that Section 105-A of the LA Act of 2013 is not a conditional legislation and is not dependent for its operation on the notification issued under sub-section (2) of Section 105-A of the LA Act of 2013. He also submits that Section 105-A of the LA Act of 2013, neither discriminates against a particular section of persons having interest in land nor goes against the provisions made under Section 126 of the MRTP Act and, therefore, no legal right of the petitioners is violated.

38. The learned Government Pleader for the State has submitted her argument on similar lines as that of the learned Senior Advocate for the NMC and to a greater extent thereof, she has adopted it as well.

39. We would first deal with the preliminary objection as to the maintainability of the petitions raised by the respondents on the grounds stated earlier. Refuting those grounds, Shri Bhangde, learned Senior Advocate, submits that in the present cases (four writ petitions), there is no need to implead the landlords as the party-respondents for the reason that there is no dispute about the petitioners occupying the shop blocks as tenants of their respective landlords. Besides, he submits that there is sufficient documentary proof placed on record by the petitioners which proves the status of the petitioners as tenants of their respective landlords. Shri Kaptan, learned Senior Advocate, submits that there is no specific admission given by the NMC regarding petitioners being the tenants of their respective landlords. Although, he admits that in one paragraph of the reply of the NMC, it is stated that the petitioners being mere tenants on the property which is the subject-matter of acquisition, would not have any substantive right over the property. He submits that this pleading has been made only with a view to indicate the nature of right of the petitioners in the property under acquisition and cannot be taken to be an admission given by the Nagpur Municipal Corporation about the petitioners being tenants of their respective landlords. He also points out from the pleadings made in other paragraphs of the reply of the NMC that there is a specific denial by the NMC of the

factum of tenancy.

40. While it is true that some documents, like rent receipts, electricity bills, receipts issued by the Shops and Establishments Department, etc., have been placed on record by the petitioners in four petitions where the respective landlords have not been joined as the party-respondents to prove their tenancy, these documents cannot be taken to be proof of tenancy of the petitioners in the absence of any counter view offered by the persons whose tenants the petitioners may be. It is also true that there is a passing reference made in one paragraph of reply of the NMC about the petitioners being mere tenants having no substantive right over the subject-property. But, in our view, it makes sense in law to take the pleadings containing what is called as admissions as a whole and shun their disjunctive and piecemeal reading to avoid any misreading of the pleadings, lest there is change or distortion of meaning conveyed. Any attempt to pick out one or two statements from the whole pleadings may result in confusion in the sense that the statements isolated from the rest may convey one meaning individually and the statements taken together may connote different meaning collectively. That is why in the case of *Dharmwati Bai v. Shir Singh*, AIR 1991 M.P. 18, it was held that “It is settled law that an admission of any party has to be read in its entirety and no statement out of context can constitute admission of any fact”,

which view commends to us. That means the pleadings of a party made in its return are required to be considered in their entirety and they cannot be understood by picking out one or two statements conveying one meaning individually and conveying different meaning collectively. It then follows that the averment of the NMC to the effect that the petitioners are merely tenants in the subject-property and, therefore, do not have any substantive right over the subject-property has to be understood in the light of all the averments and denials made in its return. In other paragraphs of the reply of the NMC, there is a specific denial made by the NMC to the factum of tenancy of the petitioners. The NMC has also submitted that the tenants cannot assert any individual and distinctive right apart from the right of the owner of the property under acquisition. An overall consideration of all these pleadings would only show that the NMC, while denying tenancy of the petitioners, has only submitted that the claim raised by a tenant cannot be admitted independently of the claim of the owner of the property of the land under acquisition. We, therefore, do not find any substance in the submission of the learned Senior Advocate for the petitioners that there is an admission given by the NMC and there is enough proof about the tenancy of the petitioners, thereby obviating the need for impleadment of their landlords as respondents.

41. Even if it is accepted, for the sake of argument, that the NMC has admitted the tenancy of the petitioners, still such admission cannot prove the tenancy of the petitioners, as the admission has not been given by the respective landlords of the petitioners. It is well settled that the admission of a party is the best proof of a fact, but the admission must come from a proper person and not from a person who is not aware of the existence of the fact. The relationship between the landlord and the tenant is based upon an agreement between these two parties and, therefore, it is only these two parties who are aware of the nature of the relationship and the terms and conditions on which the relationship rests. A party like NMC is a stranger to an agreement of tenancy or lease and, therefore, the NMC would not have any knowledge about the nature and the terms and conditions of the agreement and as such, it cannot have any capacity to comment upon the relationship of landlord and tenant or even admit or deny the same. List of persons whose admissions are relevant is to be found in the provisions of Sections 18 to 20 of the Indian Evidence Act, 1872. For examining the issue as to whether the statement made by the NMC could be considered as admission of tenancy of the landlords not party to these proceedings or not, the provisions of Section 18 of the Evidence Act would be relevant. For convenience, they are reproduced as under :

“18. Admission by party to proceeding or his agent.-- Statements made by party to the proceeding, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorised by him to make them, are admissions.

By suitor in representative character.--Statements made by parties to suits, suing or sued in a representative character, are not admissions, unless they were made while the party making them held that character.

Statements made by--

(1) party interested in subject-matter.--persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested, or

(2) person from whom interest derived.--persons from whom the parties to the suit have derived their interest in the subject-matter of the suit,

are admissions, if they are made during the continuance of the interest of the persons making the statements.”

It would be clear from the above-referred provisions that the NMC is not a party or person covered by any of the entities referred to therein. The NMC is, therefore, not a proper party to admit or deny

the relationship of a landlord and tenant that may be existing between the present petitioners and their respective landlords. The admission supposedly given by the NMC in the present case, of course we do not see it to be there, is, at its best akin to giving of hearsay evidence by a party not having any personal knowledge of the transactions between the petitioners and their respective landlords. It is, therefore, obvious that in order to establish the claim of the petitioners as tenants, presence of their respective landlords, at least as party-respondents, is necessary. They are, however, absent in four out of five petitions and, therefore, the petitions in which the respective landlords have not been joined as party-respondents are bad in law for non-joinder of necessary parties and as such not maintainable. However, in one petition, being Writ Petition No.7703 of 2019, the respective landlords have been joined as the party-respondents and, therefore, this petition would not be hit by the deficiency of non-joinder of the necessary parties.

42. The respondents have also argued about availability of alternate remedy under Section 64 or Section 75 of the LA Act of 2013, which has not been resorted to by the petitioners. Shri Kaptan, learned Senior Advocate for the NMC, relies upon the decision of the Supreme Court in the case of *May George v. Special Tahsildar and others*, reported in (2010) 13 SCC 98. Shri Bhangde,

learned Senior Advocate, submits that it is not necessary for the petitioners to take recourse to this remedy inasmuch as this remedy is insufficient and inefficacious to redress the grievances of the petitioners, keeping in view the various objections raised by the petitioners, such as not providing of resettlement and rehabilitation benefits and compensation of the amount proportionate to the interest of the petitioners, not serving the individual notices upon the petitioners, applicability of various provisions of the LA Act of 2013 to the acquisition of land under the MRTTP Act, invalidity of Section 105-A of the LA Act of 2013, Section 105-A being a conditional legislation, and so on. He also submits that the terms of reference under Section 64 of the LA Act of 2013 are very specific and they do not permit any consideration of the issues which are beyond the scope of the terms of reference and which is also the law laid down by the Supreme Court in *Oshiar Prasad and others v. Employers in Relation To Management of Sudamdih Coal Washery of M/s Bharat Coking Coal Limited, Dhanbad, Jharkhand*, reported in (2015) 4 SCC 71.

43. The objection as to the maintainability taken on the ground of availability of alternate remedy and the arguments made in support of and against the objection can be appreciated by examining the scope of Sections 64 and 75 of the LA Act of 2013. Section 64(1) and 75 are reproduced as under :

“64. Reference to Authority.-- (1) *Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Authority, as the case may be, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, the rights of Rehabilitation and Resettlement under Chapters V and VI or the apportionment of the compensation among the persons interested:*

Provided that the Collector shall, within a period of thirty days from the date of receipt of application, make a reference to the appropriate Authority.

Provided further that where the Collector fails to make such reference within the period so specified, the applicant may apply to the Authority, as the case may be, requesting it to direct the Collector to make the reference to it within a period of thirty days.”

“75. Particulars of apportionment to be specified.-- *When there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be conclusive evidence of the correctness of the apportionment.”*

44. A bare perusal of Section 75 of the LA Act of 2013 would show that the remedy thereunder may not serve as a proper and

adequate remedy for the petitioners, as it is available only when there is an agreement between several persons interested, in the apportionment of the compensation. However, this is not so in case of Section 64 of the said Act, as the power of the referral authority to decide the objections of the person interested, who has not accepted the award, is quite wide. The reference under Section 64 of the said Act can raise objections to (i) the measurement of land, (ii) the amount of compensation, (iii) the person to whom it is payable, (iv) the rights of rehabilitation and resettlement under Chapters V and VI, and (v) the apportionment of the compensation among the persons interested. All such objections are perfectly within the scope of reference under Section 64 of the said Act and, therefore, can be effectively decided by the referral authority. Of course, the referral authority would have no jurisdiction to travel beyond the terms of reference while answering the reference, as held in the case of *Oshiar Prasad* (supra). But, within the scope of terms of reference, the referral authority, under Section 64 of the said Act, does have jurisdiction to answer the objections referred to above.

45. All the objections taken by the petitioners, whether relating to grant of amount of compensation proportionate to their interest; whether relating to grant of rehabilitation and resettlement entitlements; whether relating to other incidental questions, can be

decided by the referral authority. The issues incidental to the main power would be such as non-service of individual notices upon the tenants and the effect of such non-service, and the stage when the Collector can take possession of the land by virtue of the provisions made in Section 38 of the LA Act of 2013. Ultimately, the right of the person interested does not, as held in the case of *May George* (supra), go beyond his entitlement to receive the monetary compensation and also resettlement benefit, if entitled thereto. Therefore, whatever objections of the persons interested are with regard to the validity of the declaration or notification issued under Section 126(4) of the MRTP Act and whatever may be the claims of the persons interested regarding the impugned award not binding on them, they are required to be examined and decided only from the perspective of the limited right of such persons, which is a right about receiving proportionate compensation amount and other benefits, like resettlement and rehabilitation entitlements promised under the LA Act of 2013, if permitted in law. It then follows that all these objections can always be effectively decided from the view point of eligibility and the entitlement of the persons interested to receive the compensation amount and resettlement and rehabilitation benefits, and that means all the petitioners do have an efficacious alternate remedy to take recourse to and which they ought to have taken but have not. We are, therefore, of the view that there is a great substance in the objection

taken in this regard by the learned Senior Advocate for the NMC and as such we find that on this count, the petitioners, who have not taken recourse to the efficacious alternate remedy available under Section 64 of the LA Act of 2013, are not entitled to any relief in exercise of extra-ordinary jurisdiction of this Court under Article 226 of the Constitution.

46. There is, however, one more aspect of availability of efficacious alternate remedy, which needs to be considered before we express our final opinion on this issue. We would deal with it now.

47. Shri Bhangde, learned Senior Advocate, has submitted that the provisions of Section 105-A of the LA Act of 2013 are not available to the acquisition of land made under Section 126 of the MRTP Act and it would then only mean that the compulsory acquisition of land made under Section 126 of the MRTP Act would have to be done by following not only Section 19 of the LA Act of 2013, but also all other relevant provisions. The learned Senior Advocate has also questioned the constitutionality and legality of Section 105-A and has alternatively submitted that unless condition of sub-section (2) of Section 105-A is fulfilled, sub-section (1) of the said Section would not become operative. We have already stated that Shri Kaptan, learned Senior Advocate for the respondent- Nagpur Municipal Corporation, has

expressed his disagreement with these submissions, for the reasons mentioned earlier. In our view, these submissions of the learned Senior Advocate for the petitioners cast a cloud over our finding that there is an efficacious alternate remedy available under Section 64 of the LA Act of 2013, and, therefore, we need to examine the issue thoroughly. We think, on examination of the nature of amendment introduced in sub-section (2) of Section 126 of the MRTP Act by the Maharashtra Act 42 of 2015 with effect from 29-8-2015, we may get clarity on the issue. By this amendment, the declaration that any land included in a draft regional plan, a development or any other plan or town planning scheme is needed for a public purpose, must be issued in the manner provided in Section 19 of the LA Act of 2013. The amendment also gives a deeming effect to such a declaration that, notwithstanding anything contained in the LA Act of 2013, it shall be a declaration duly made under Section 19 thereof. Such inclusion of the provision of Section 19 of the LA Act of 2013 has been held to be a legislation by incorporation and not by reference in the Constitution Bench judgment of the Supreme Court in the case of *Girnar Traders (3) v. State of Maharashtra and others*, reported in (2011) 3 SCC 1. The same view is reiterated by the Supreme Court in the later case of *Union of India and another v. Tarsem Singh and others*, reported in (2019) 9 SCC 304. This view of *Girnar Traders (3)* (supra) has also been followed in the cases of *Shri Chandrakant Mahadev Patil and*

Ors. v. State of Maharashtra and Ors., reported in *2018 SCC OnLine Bom 2825*; and *Mehtab Laiq Ahmed Shaikh and another v. State of Maharashtra and others*, reported in *2017(6) Mh.L.J. 408 (FB)*, and by a Co-ordinate Bench of this Court in LD-VC-CW-1078 of 2020 decided on 7-10-2020

48. Once it is held that inclusion of Section 19 of the LA Act of 2013 in Section 126(2) of the MRTP Act is an incidence of legislation by way of incorporation, ordinarily any amendment made to the LA Act of 2013 subsequent to incorporation of Section 19 in the MRTP Act would not be applicable to the MRTP Act, unless the later amendment to provision incorporated in the MRTP Act, is required to be necessarily read in the incorporated provision in order to save the MRTP Act from becoming unworkable and ineffectual. The law in this regard is to be found in *Girnar Traders (3)* (supra) in which the Supreme Court, while quoting the relevant observations made in the case of *State of M.P. v. M.V. Narasimha*, reported in *(1975) 2 SCC 377*, held thus :

“114. In M.V. Narasimhan the Court while applying the principle of legislation by incorporation had read the amendment to Section 21 of the Penal Code, 1860 defining a “public servant” into the provisions of the Prevention of Corruption Act, 1947. The Court clarified that when provisions of a later Act borrowed the provisions of IPC, the

same became an integral and independent part of the subsequent Act and, therefore, usually remained unaffected by any repeal or amendment in the previous Act. But the Court, while spelling out the exceptions to the rule of legislation by incorporation, had applied one of such exceptions where the reading of the amended provisions of the earlier statute into the later enactment becomes necessary as non-incorporation thereof would render the subsequent Act wholly unworkable and ineffectual. The significant dictum of the Court in this case after noticing other judgments: (SCC p. 385, para 14)

“14. ‘It seems to be no less logical to hold that where certain provisions from an existing Act have been incorporated into a subsequent Act, no addition to the former Act, which is not expressly made applicable to the subsequent Act, can be deemed to be incorporated in it, at all events if it is possible for the subsequent Act to function effectually without the addition.’ ”

49. In the present case, non-reading of the provisions made in Section 105-A of the LA Act of 2013, particularly Section 105-A(1), into the provisions of the MRTP Act, in our considered view, is not going to render the MRTP Act as unworkable and ineffectual. In *Girnar Traders (3)* (supra), the Supreme Court has held in clear terms that both the Acts, the MRTP Act and the LA Act of 1894, are self-contained codes within themselves and when the State Legislature while enacting the MRTP Act had referred to the specific Sections of

the LA Act of 1894 in the provisions of the State Act (the MRTP Act), none of the Sections of the LA Act of 1894 require application generally or *mutatis mutandis*. It has further held that on the contrary, there is a specific reference to certain Sections and/or content/language of the Section of the Land Acquisition Act in the provisions of the MRTP Act, and, therefore, the provisions of the LA Act of 1894 introduced in the MRTP Act are limited to the extent of acquisition of land, payment of compensation and recourse to legal remedies provided under the LA Act of 1894 and only these provisions can be read into an acquisition controlled by the provisions of Chapter VII of the MRTP Act but with a specific exception provided in the MRTP Act itself. These observations have been made, see Paragraphs 123 and 191 of *Girnar Traders (3)* (supra), while considering the provisions of the MRTP Act on the one hand and the provisions of the LA Act of 1894 on the other. These observations still hold good in law as the words, “The Land Acquisition Act, 1894” or its individual Sections, finding their respective places in different provisions of the MRTP Act have now been substituted by the words, “The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013” and relevant Sections of the LA Act of 2013. The new Act, the LA Act of 2013, containing an elaborate procedure for acquisition of land and determination of compensation, etc., and also dealing with the additional rights, we may add, has not

lost its basic character as a general law. As such, the above-referred observations would apply equally to the LA Act of 2013 and it would then mean that only those provisions of the LA Act of 2013 would be applicable to the acquisition of land made under Section 126 of the MRTP Act, which have been specifically incorporated therein. This would negative the submission of the learned Senior Advocate for the petitioners that by inclusion of the words, “within the meaning of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013” in Section 125 of the MRTP Act, all the provisions of the LA Act of 2013, have been made applicable to acquisitions under the MRTP Act.

50. A logical corollary to the afore-stated conclusion would be in making inapplicable that provision of Section 105-A, introduced in the LA Act of 2013, subsequent to incorporation of Section 19 of the said Act in Section 126(2) of the MRTP Act, Section 105-A has been introduced in the LA Act of 2013 by the State amendment vide Maharashtra Act 37 of 2018, brought into force with effect from 26-4-2018, which bars application of the provisions of the LA Act of 2013, to the MRTP Act. This provision is to be found in Section 105-A(1). For the sake of clarity, we find it necessary to reproduce here Section 105-A in its entirety. It reads thus :

“105-A. Provisions of this Act not to apply to certain Maharashtra Acts or to apply with certain modifications.--

(1) Subject to sub-section (2), the provisions of this Act shall not apply to acquisition of land under the enactments specified in the Fifth Schedule.

(2) The State Government, may, by notification within one year from the date of commencement of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Maharashtra Amendment) Act, 2020, direct that any of the provisions of this Act, relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fifth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to the compensation, rehabilitation and resettlement as may be specified in the notification, as the case may be:

Provided that, no such notification shall be issued except on a resolution passed by both Houses of the State Legislature”.

It would be clear from the above-referred provisions that while sub-section (1) is a provision containing general statement of inapplicability of the LA Act of 2013 to enactments specified in Fifth Schedule, sub-section (2) is a provision of enabling nature giving power to the State Government to create exception to general bar

under sub-section (1) by notifying the enactments to which provisions of the LA Act of 2013 would apply in future. This is all the more so because, sub-section (1) of Section 105-A itself has been made subject to the provision made in sub-section (2) thereof. So, what is affected here by principle of legislation by incorporation is sub-section (1) and not sub-section (2) of the LA Act of 2013, and that too as long as there is no notification issued by the State Government under Section 105-A(2). It is a matter of record that till date no notification has been issued under Section 105-A(2) of the LA Act of 2013. That means, Section 105-A(1) would not have any effect of nullifying the applicability of the provisions of the LA Act of 2013 introduced in the MRTP Act by way of an incorporative legislation and that includes Section 19 of the LA Act of 2013 for the present.

51. We thus find that the provision of Section 105-A(1) having been brought into the LA Act of 2013 subsequent to incorporation of Section 19 in Section 126(2) of the MRTP Act in the year 2015 and there being no notification issued under Section 105-A(2), would not apply to Section 126(2) of the MRTP Act and, therefore, all the requirements of Section 19, wherever they are applicable, would have to be fulfilled while making acquisition of land in terms of the provisions made in Section 126 of the MRTP Act.

52. Having held that sub-section (1) of Section 105-A of the LA Act of 2013 has no application to the acquisition of land under Section 126 of the MRTP Act, we do not think it necessary to consider and decide the objections raised as to the vires and validity of Section 105-A, its conditionality and its reading down appropriately so as to bring harmony between sub-sections (1) and (2) thereof and the MRTP Act in general.

53. The discussion thus far made would show that the grievances of the petitioners ultimately boil down to the questions of compensation and rehabilitation and resettlement benefits. These grievances can very well and effectively be redressed under a remedy provided in Section 64 of the LA Act of 2013, without going into the issue of constitutionality and legality of Section 105-A of the LA Act of 2013. This should remove the doubt about correctness of the conclusion reached by us earlier that Section 64 of the LA Act of 2013 provides for efficacious alternate remedy insofar as the grievances of the petitioners are concerned and the petitioners having not been availed of the same, the petitions must fail on the ground of such failure.

54. Even though, we have already found that there is substance in the preliminary objection taken on behalf of the respondents, which

would make all the petitions as not maintainable before this Court, we would like to deal with some of the issues raised on behalf of the petitioners, they being of larger importance.

55. It is the contention of the learned Senior Advocate for the petitioners that the impugned declarations are bad in law, as they do not take into account the area of resettlement for the purpose of rehabilitation and resettlement of the petitioners being interested persons by virtue of their having tenancy rights in the subject properties, which contention has been disagreed to by the learned Senior Advocate for the NMC and the learned Government Pleader for the State. We think that the contention so raised on behalf of the petitioners must not be blindly accepted as valid in view of the special scheme of compulsory acquisition of land formulated under the MRTP Act and without examining the eligibility of tenants, like the petitioners, to receive the benefits of rehabilitation and resettlement.

56. In *Girnar Traders (3)* (supra), the Constitution Bench of the Supreme Court has held that the MRTP Act as well as the LA Act of 1894 both are self-contained codes within themselves, while the MRTP Act is a special law, the LA Act of 1984 is a general law. That means, the special procedure provided for compulsory acquisition of land under the MRTP Act would prevail over the general procedure

provided under the general law, except for the modification of the special procedure prescribed for acquisition of land under the MRTTP Act by the provisions specifically inserted therein by way of legislation by incorporation. This is for the reason that the Court cannot lose sight of an important facet of the MRTTP Act, as observed in Paragraph 137 in *Girnar Traders (3)* (supra), that the MRTTP Act is an Act relating to planned development and acquisition is an incidental aspect thereof and that planned development is quite different from merely “achieving a public purpose” for which the land is acquired under the provisions of the Land Acquisition Act. It is further observed that development plan, regional plan and town planning scheme are major events in the development of a State and that they are controlled and guided by different financial, architectural and public interest for the development including macro and micro planning of the entire State. On this reasoning, the Supreme Court held that reading of Section 11-A of the LA Act of 1894 into Chapter VII of the MRTTP Act will render the substantive provisions of the State Act ineffective, unworkable and may frustrate the object of the Act materially. These observations would apply with equal force to the case in hand, as the same difference between the MRTTP Act and the LA Act of 2013 exists and reading of any provisions of the LA Act of 2013 other than those specifically included or incorporated by legislation in the MRTTP Act would frustrate the object of the MRTTP Act

materially and it would result in making the MRTP Act ineffective and unworkable. In other words, the State Act and the Central Act, i.e. the MRTP Act and the LA Act of 2013, operate on different planes and have different objects to fulfill while ensuring at the same time, protection of interest of the land-owners and other persons affected by compulsory acquisition of their lands and/or interests by bringing procedural harmony with regard to the compulsory acquisition of lands between the State Act and the Central Act. If this is so, the interest of the tenants', like the petitioners', in the affected land cannot be extended to something which is beyond the scope of Chapter VII of the MRTP Act, which is no more and no less than the question of payment of reasonable and proportionate compensation and tendering other benefits under the LA Act of 2013, if they are applicable to them. This would mean that a declaration issued under Section 126(2) or Section 126(4) of the MRTP Act, would have to comply with all the requirements of Section 19 of the LA Act of 2013, as Section 19 has been incorporated in Section 126(2) by legislation. In other words, a declaration under Section 126(2) or Section 126(4) of the MRTP Act would also have to include "resettlement area" for the purpose of rehabilitation and resettlement of the "affected family" wherever there is an "affected family" within the contemplation of the LA Act of 2013. But, if there is no "affected family", as envisaged under the LA Act of 2013, there would be no need to identify "resettlement area" in the

declaration under Section 126(2) or Section 126(4) and the declaration cannot be struck down as bad in law on this ground.

57. In the present case, having regard to the provisions made in Sections 19(1) and 16 of the LA Act of 2013, we find that the petitioners, when assumed for the sake of argument to be the tenants, cannot be held to be entitled to receive any rehabilitation and resettlement benefits. A careful reading of Sections 16 to 19(1) and 31 of the LA Act of 2013 shows that these benefits are available to the “affected families”. Section 3(c) of the LA Act of 2013 defines the expression “affected family”, which reads thus :

“3. Definitions.-- In this Act, unless the context otherwise requires,--

(c) “affected family” includes--

- (i) a family whose land or other immovable property has been acquired;*
- (ii) a family which does not own any land but a member or members of such family may be agricultural labourers, tenants including any form of tenancy or holding of usufruct right, share-croppers or artisans or who may be working in the affected area for three years prior to the acquisition of the land, whose primary source of livelihood stand affected by the acquisition of land;*
- (iii) the Scheduled Tribes and other traditional forest dwellers who have lost any of their forest rights recognised under the Scheduled Tribes and Other Traditional Forest*

Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007) due to acquisition of land;

(iv) family whose primary source of livelihood for three years prior to the acquisition of the land is dependent on forests or water bodies and includes gatherers of forest produce, hunters, fisher folk and boatmen and such livelihood is affected due to acquisition of land;

(v) a member of the family who has been assigned land by the State Government or the Central Government under any of its schemes and such land is under acquisition;

(vi) a family residing on any land in the urban areas for preceding three years or more prior to the acquisition of the land or whose primary source of livelihood for three years prior to the acquisition of the land is affected by the acquisition of such land.”

It would be clear from the above-referred definition that an affected family is a family whose land or other immovable property has been acquired and it includes a family which does not own any land and has a member or members, who may be agricultural labourers, tenants, share-croppers or artisans or who may be working in the affected area for three years prior to the acquisition of the land and whose primary source of livelihood stand affected by the acquisition of land. It also includes the Scheduled Tribes and other traditional forest dwellers who have lost any of their forest rights due to acquisition of land and other kinds of families mentioned in remaining clauses of Section 3(c). In none of the categories included

in the expression “affected family”, as we see, the tenants, like the petitioners, fall. Of course, “tenant” is covered in clause (c)(ii) of Section 3. But, there is a further condition which he must satisfy to qualify to be the “affected family” within the meaning of Section 3(c)(ii). He must also be a person whose primary source of livelihood stands affected by the acquisition of land. The petitioners here are the tenants in shop blocks from where they carry on their business. It is their business so carried on from the shops which is or which may be their primary source of livelihood and not the tenanted premises as such. Their tenanted premises are not their income by themselves, are rather their liability, as they have to pay rent. The income that they derive is not by working on the tenanted premises but by using the tenanted premises for their business. There is a difference between the income derived from the tenanted premises or land when worked on and the income earned from the tenanted premises or land when used for carrying on business. In the former case, the deprivation would lead to loss of income which may be primary source of livelihood; in the latter case, the deprivation would lead, not to loss of income but to the need for change of place of business. This is the reason why the Legislature has imposed in Section 3(c)(ii) additional condition of primary source of livelihood being affected by the acquisition of land in order to qualify a tenant, among others, to be covered by the definition of “affected family”. Section 3(c)(ii) puts

together in one category such persons as may be agricultural labourers, tenants, including any form of tenancy or holding of usufruct right, share-croppers or artisans or who may be working in the affected area for three years prior to the acquisition of the land, who earn income as primary means of livelihood by rendering tenanted premises or land as worked on by them or by engaging in an activity related to the tenanted premises or land itself or who are rooted in the affected premises or land and who would face prospect of loss of their livelihood when the tenanted premises or land is taken away from beneath their feet. The Section segregates the tenants who are not rooted in the tenanted premises or land and who do not earn their income by extracting it from the tenanted premises or land or engaging in any activity related to the tenanted premises or land but derive income from the business by using the tenanted premises or land and does not allow them to be the beneficiaries of rehabilitation and resettlement entitlements. This is the intention of the Legislature which is clearly discernible from the plain language of Section 3(c)(ii) of the LA Act of 2013. The intention of the Legislature is to compensate the needy and not to feed the one who is not needy. If a tenant who continues to carry on his business by changing the premises is also compensated, it would be like allowing the unjust enrichment. Of course, a tenant, who is required to change his place of business owing to acquisition of tenanted premises, may incur

expenses and for that he is required to be reasonably compensated. This aspect of the matter in fact has been well taken care of by the Legislature when it prescribed parameters to be considered by the Collector in determination of award under Section 28 of the LA Act of 2013. The fifth parameter thereof requires the Collector to take into consideration the reasonable expenses, if any, incidental to change of residence or place of business.

58. There is also an argument that loss or destruction of tenanted premises does not lead to determination of tenancy and it continues and, therefore, a tenant in his own right is entitled to receive the rehabilitation and resettlement benefits. The continuation of tenancy even after loss or destruction of tenanted premises would certainly be there but it would be so only against the landlord and, therefore, whatever compensation and benefits a tenant may claim to be entitled to receive, it would be only through his landlord. The law is clear on this point and it tells us that in compulsory acquisition of land what is acquired is, not tenancy certainly, but the land with all its benefits sans liabilities precisely.

59. The above discussion would lead us to say that the requirement of identification of resettlement area under Section 19(1) of the LA Act of 2013 was not applicable to the impugned declarations. That would also mean that the impugned award which does not take

into consideration grant of rehabilitation and resettlement benefits to the petitioners, cannot be held to be illegal on this ground. It would further mean that for exercising power under Section 38 regarding taking of possession of the acquired land, tendering of rehabilitation and resettlement entitlements to the persons like the petitioners would not be necessary in this case. We, therefore, reject the argument that the impugned declarations are bad in law as they do not fulfill the requirements of Sections 16 to 19 and 31 read with 38 of the LA Act of 2013.

60. We must mention it here that if the petitioners contend that being the tenants of the respective landlords, who have been awarded the compensation amount, are entitled to receive compensation in terms of money proportionate to their tenancy rights in the subject-properties, the appropriate remedy for the petitioners for redressal of these grievances of theirs would be under Section 64 of the LA Act of 2013. That apart, the provisions made in Chapters IV and V of the LA Act of 2013 make it clear that the said Act contemplates only two kinds of awards between the State on the one hand and the land-owners and persons interested in the land acquired on the other. One award is of rehabilitation and resettlement for affected families under Section 31 and the other is of the determination of compensation passed under Section 23 read with

Sections 30 and 37 of the LA Act of 2013. At the cost of repetition, we would say that these awards are only between the State acquiring the land for a public purpose and the land-owners and the persons interested in the land acquired or the affected family. Therefore, it would be preposterous to say that if the objections of other interested persons, as for example, the tenants like the petitioners, are not considered individually, there would result in passing of different awards, one for land-owners, the other for the tenants or the other interested persons and the affected families. Objections of land-owners and persons interested are required to be considered together, and if they are not so considered, proper remedy would be under Section 64 of the LA Act of 2013, as the grievance underlying the objections is only about not receiving proper, reasonable, proportionate compensation and other applicable benefits.

61. It is also the contention of the learned Senior Advocate for the petitioners that the petitioners being protected tenants under the Maharashtra Rent Act, cannot be dispossessed from the properties affected by the impugned declarations and the impugned award, without due process of law and till determination of their tenancy in accordance with law. There can be no two opinions about the submission. But the protection available to a lessee or tenant till determination of his or her lease or tenancy in accordance with law is

so available only against the landlord and it cannot be used as a shield for protecting possession against State which has initiated process of compulsory acquisition of land under the provisions of Section 126 of the MRTP Act, as there is no provision anywhere in Chapter VII of the MRTP Act or Article 300-A of the Constitution of India which offers such protection to a tenant. All that is provided is protection against deprivation of property save by authority of law. This authority of law is to be found in Section 126 of the MRTP Act which provides for three modes of acquisition of land but does not provide for protection of tenant from dispossession till determination of his tenancy. In all the three modes of acquisition of land, care has been taken that the land-owner or the person having interest is afforded a reasonable compensation for the loss of his property. This is evident from the scheme of Section 126. The provisions made in Section 126(1) would show that a land can be acquired by making an agreement between the State and the land-owner under clause (a) or it can be acquired by granting Transferable Development Rights (TDR) against the area of land surrendered free of cost and free from all encumbrances by the owner or the lessee as the case may be under clause (b) or by compulsory acquisition under clause (c). Under the scheme of Section 126 of the MRTP Act, upon payment of full compensation to the land-owner or the person interested or both proportionately, the land vests in the State absolutely free from any encumbrance. That

means, liability of the State to a land-owner or person interested or both is discharged completely once compensation is paid or entitlements are paid in terms of Section 126 of the MRTP Act read with Section 38 of the LA Act of 2013 and the State takes the land without the burden of any tenancy or other interest therein. There is nothing in Section 126 of the MRTP Act read with Article 300-A of the Constitution of India which offers protection to a tenant against his dispossession till due termination of his tenancy. In fact, in law, even after his dispossession, right of tenancy continues and a tenant can assert it against the landlord, in accordance with law. But, for that matter, a tenant cannot be permitted to prevent acquisition of land made not just for “public purpose” but for larger interest of Society; the development of the City. If a tenant, whose interest in land is otherwise well taken care of in Section 126 of the MRTP Act and applicable provisions of the LA Act of 2013, comes forward and questions the validity of the declaration under Section 126(2) or Section 126(4) of the MRTP Act and also the award of compensation on the ground that he being a protected tenant cannot be dispossessed till determination of his tenancy as per law, it would be a beginning of decadence of growth and development of Society, bringing to naught planned development of a City. As held in *Girnar Traders (3)* (supra), the MRTP Act, besides being a Code in itself, has one predominant purpose, i.e. planned development and for it other matters are

incidental, and, therefore, requires a construction which would achieve that predominant object (Paragraph 84). It is further held that all the provisions of the LA Act of 2013 cannot, therefore, be applied, except and save for those specifically incorporated. Therefore, the petitioners claiming to be tenants, having remedy under the LA Act of 2013, cannot be allowed to stall a development project, like Kelibag Road Widening Scheme for which the lands have been acquired in these cases.

62. The learned Senior Advocate for the petitioners submits that in the present case, the landlords could not have agreed for more than what they possessed in terms of their interest in the acquired lands and, therefore, the acquisition of the lands by way of agreement between the State and the landlords under clause (a) was not free from all encumbrances of the tenancy rights of the petitioners. Reliance has been placed upon the decisions of the Supreme Court in *Eureka Builders and others v. Gulagbchand s/o Veljee Dand since deceased by legal representatives and others*, reported in (2018) 8 SCC 67; and *M/s. Ushodaya Publications v. Commissioner, M.C.H. & Anr.*, reported in 2001(1) A.P.L.J. 492 (AP HC FB).

63. In the case of *Eureka Builders* (supra), the deceased owner's legal heirs such as widow, two major daughters and four minor sons

had, by inheritance, stepped into the shoes of the deceased and had become joint owners of the land. The widow and two major daughters had sold the land to a co-operative society without involving the sons. The sons later on filed a suit seeking declaration that the sale made by the mother and the sisters was illegal and not binding on the plaintiffs to the extent of the plaintiffs' 5/8th share in the land. The suit was decreed and the society being aggrieved by the decree filed an appeal in the High Court and later in the Supreme Court, but they were dismissed. In was in this context, the Supreme Court observed that the appellants failed to substantiate the right, title and interest of the original holders in the suit land through whom they claim to derive interest in the suit land, and whereas the respondent-plaintiff was able to prove his subsisting right, title and interest in the suit land on the date of filing of the suit. These findings were recorded on the basis of the settled principle of law that a person can only transfer to another person a right, title or interest in any tangible property which he is possessed of, to transfer it for consideration or otherwise. The principle expressed in different words is to the effect that a person can transfer only that interest to the other person which he possesses and no other interest which he does not possess in the tangible property.

64. The contextual setting of the said case of *Eureka Builders* (supra) is different from that of the present case. The issue involved in *Eureka Builders* was as to whether or not a person having no right, title or interest in the property can transfer the same to another person for consideration and giving a negative answer, the Supreme Court held that a person can only transfer to other person right, title or interest in any tangible property which he is possessed of and no more. In the present case, the supposed landlords of the petitioners, are admittedly the land-owners and, therefore, they have a right to transfer their interest of ownership by private agreement in accordance with Section 126(1)(a) of the MRTP Act, which they have done. The only question then remains is of the supposed tenancy rights of the petitioners, for the assertion of which, the petitioners would have to take recourse to alternate remedy for getting their proportionate shares in the amount of compensation determined by the competent authority. Ultimately, the petitioners not being the owners of the land and claiming to be only tenants of the shop blocks existing on the acquired land would have a limited interest restricted to their tenancy rights protected under the Maharashtra Rent Act and the Transfer of Property Act. If the petitioners are held to be entitled to receive amount of compensation proportionate to their tenancy rights, it would be so only from the overall compensation determined by the Land Acquisition Officer under the provisions of the LA Act of

2013. In such a case, there cannot be two different awards, one for the landlords and the other for the tenants, and if it were not so, the consequences would be disastrous and chaotic or to use the words of Shri Bhangde, the learned Senior Advocate, “anarchy will set in and there will be insubordination of rule of law”. Then Section 126(1)(b) of the MRTTP Act, we would say in disagreement with Shri Bhangde, learned Senior Advocate, does not contemplate payment of compensation in terms of TDR separately to two individuals, the land-owner and the lessee. It lays down that if the acquisition of the land cannot take place by paying an amount agreed to the landlord, then in lieu of any such amount, the land can be acquired by granting TDR or Floor Space Index (FSI) either to the land-owner or the lessee. There is, however, a rider to granting of TDR or FSI to the lessee. If the TDR or FSI is to be granted to the lessee, the lessee is required to pay the lessor or deposit with the planning or development or appropriate authority, an amount equivalent to the value of the lessor’s interest to be determined by any of these authorities, which is the concerned authority, on the basis of the principles laid down in the LA Act of 2013. There is one more condition and it is of surrendering the land free of cost and free from all encumbrances. These provisions of law indicate that a lessee cannot claim his right to receive compensation in terms of the TDR or FSI independently. If he asserts his right to receive the compensation by way of TDR or FSI, he is

required to comply with the condition of paying such amount of compensation determined under the LA Act of 2013, as is equivalent to the value of the lessor's interest to be determined by the planning authority, development authority or appropriate authority, as the case may be. There is further condition of surrender of the land free of cost and free from all encumbrances. These conditions, we would say, at the cost of repetition, show that a lessee, who acts for himself with regard to claim of compensation in terms of TDR or FSI, has also to act for the lessor. But the converse position is not true. There is no obligation imposed upon the land-owner agreeing to receive the compensation in terms of TDR or FSI under Section 126(1)(b) of the MRTP Act to pay the lessee or deposit with the concerned authority an amount equivalent to the value of the lessee's interest to be determined by any of the concerned authorities as per the provisions of the LA Act of 2013. Such being the difference between the factual background of the case of *Eureka Builders* and the present case, in our respectful submission, the case of *Eureka Builders* would not be of any help to the case of the petitioners.

65. In the case of *M/s. Ushodaya Publications* (supra), the question was as to whether or not the petitioner could be deprived of its right to continue to possess its leasehold right without taking recourse to the provisions of the Hyderabad Municipal Corporation

Act, 1955 and/or the Land Acquisition Act, 1894. The Full Bench of High Court of Andhra Pradesh at Hyderabad held that the petitioner possessing leasehold right in the land cannot be dispossessed merely on the basis of the consent given by the landlady and for its dispossession, taking of recourse to the provisions of the Hyderabad Municipal Corporation Act, 1955 or the Land Acquisition Act, 1894, would be necessary. The principle propounded is of universal application and so it would apply here as well. In the present case, some of the shop blocks have been acquired not merely by consent of the landlord but also by paying appropriate compensation in terms of Section 126(1)(a) of the MRTP Act. In other words, by following due procedure of law that the petitioners are sought to be dispossessed and that would mean that the Land Acquisition Officer can take possession of the subject-land after ensuring full payment of compensation in terms of Section 38 of the LA Act of 2013 and if the Land Acquisition Officer does obtain possession in terms thereof, it could not be said to be an act forbidden in law, rather it would be an act in consonance with the principle laid down in the case of *M/s. Ushodaya Publications*. In the present case, it is submitted that the full amount of compensation determined by the Land Acquisition Officer has already been deposited with the Land Acquisition Officer and thus there is a compliance with the mandate of Section 38 of the LA Act of 2013, thereby making the situation ripe for obtaining

possession from the persons in occupation of the property existing on the land acquired. This is of course a different issue, but the fact remains that the principle laid down in *M/s. Ushodaya Publications* has been followed in the present case.

66. Shri Bhangde, learned Senior Advocate for the petitioners, contends that the power to take possession of the acquired land in terms of Section 38 of the LA Act of 2013 cannot be exercised in the present case, as there is no determination and tendering of rehabilitation and resettlement benefits. We do not accept the argument as we have already found that the petitioners are not eligible to receive them. Here, the petitioners not falling within the definition of “affected family”, would not have rehabilitation and resettlement entitlements coming their way.

67. The petitioners have also raised the issue that they are entitled to receive the individual notices in terms of Section 21(4) of the LA Act of 2013, because they are the persons interested in the acquisition of the subject-lands. They submit that as defined under Section 3(x) of the LA Act of 2013, they are the persons interested, although it is submitted on behalf of the respondents that they are not the persons interested, because barring the provisions of the Land Acquisition Act incorporated by legislation in the MRTP Act, no other

provisions of the Land Acquisition Act including the definition clauses thereof can be considered.

68. We do not accept the argument made on behalf of the respondents that even relevant definition clauses which only explain and clarify the words and expressions used in those Sections of the LA Act of 2013, which are applicable to the acquisition of land under the MRTP Act, cannot be read with profit. If this is not done, the procedure laid down in the applicable provisions of the LA Act of 2013 cannot be followed effectively and fairly, thereby making the whole process of acquisition and determination of compensation as arbitrary and violative of Articles 14 and 21 read with Article 300-A of the Constitution of India. We, therefore, hold that relevant definition clauses of Section 3 of the LA Act of 2013 would have relevance and purpose for determination of compensation and entitlements payable to land-owners and interested persons in terms of Section 126 of the MRTP Act and applicable provisions of the LA Act of 2013.

69. Having made ourselves clear that relevant definition clauses of the LA Act of 2013 are applicable to acquisition of land under Section 126 of the MRTP Act, let us consider the definition of the expression “person interested” given in Section 3(x) of the LA Act of 2013. Upon it’s consideration, we find that the petitioners are covered

under clause (i) as well as clause (iv) thereof. They are the persons having tenanted rights under the Maharashtra Rent Act and also the persons claiming an interest in compensation to be made, only to the extent of their tenancy rights. To what extent, they would be entitled to receive such compensation would be a question of fact to be decided appropriately. Such right of the tenants can have different shades and colours and it would have to be found out as to which hue it is made up of, such as, whether it is a right of substantive compensation owing to what they call themselves as persons having interest, or whether it is a right of compensation arising from loss or change of place of business or whether it is a right of compensation arising from stoppage of business or creation of disability to carry on business and so on. The fact, however, remains that in terms of Section 3(x) of the LA Act of 2013, the petitioners are the persons interested and, this would necessarily mean, as rightly submitted by the learned Senior Advocate for the petitioners, that the petitioners would ordinarily be entitled to receive the individual notices under Section 21(4) of the said Act.

70. In the present case, it is a fact that the petitioners were not served with the individual notices under Section 21(4) of the LA Act of 2013. But there is a justification given by the respondent- authorities for the same. They submit that there was no material available on

record, which would have enabled them to know or entertain a reasonable belief that the petitioners were the occupiers in the property being acquired. It is also their contention that the petitioners were already knowing about the acquisition proceedings initiated under Section 126 of the MRTTP Act, which is evident from the litigation filed in this regard by the predecessors-in-title of the petitioners in the past and, therefore, when the public notice was issued by following the provisions of sub-sections (1) and (2) of Section 21, the petitioners being already aware of the acquisition proceedings, could have filed their objections, which they did not and, therefore, now they cannot take shelter under the excuse of non-compliance with Section 21(4) of the LA Act of 2013.

71. The learned Senior Advocate for the petitioners submits that although there was some previous litigation initiated by the predecessor-in-title of the petitioners, it was in respect of challenge to the road widening scheme initiated by introducing a modification to the final development plan under Section 37 of the MRTTP Act and, therefore, there was no reason for the petitioners to know about the acquisition proceedings. He also submits that the respondent- authorities, who had visited several times the Kelibag Road area, were well aware of the shop blocks being occupied by the petitioners and, therefore, it was their duty to ensure compliance with

the provisions of Section 21(4) of the LA Act of 2013. He further submits that if there was any doubt about the same, the respondent-authorities were under a further duty to elicit requisite information by enforcing upon the landlords to make necessary statements in terms of Section 22 of the LA Act of 2013. He submits that both these provisions of law have not been followed by the respondent- authorities.

72. These claims and counter-claims may be true in view of the fact that the Kelibag road widening scheme, which requires acquisition of additional land from the land-owners and occupiers, is pending for its implementation for a long period of time and has been embroiled in an internecine dispute between the respondent- authorities and the occupiers of the subject-property. To this dispute, the respondent-authorities formed one side while the predecessors-in-title of the petitioners and some of the petitioners formed the other side. The dispute has led to multiple litigations and it's continuity is maintained by the present writ petitions. Therefore, it cannot be said that either of the parties was in the dark about what the other side was about and what is it up to till date. Therefore, if the respondent-authorities failed to serve the individual notices upon the petitioners, the petitioners too on their part failed to assert their right to take objections in spite of having adequate knowledge of the initiation of

the land acquisition proceedings under Section 126 of the MRTP Act read with Section 19 and the other applicable provisions of the LA Act of 2013. Such being the position, the petitioners cannot say that there is a violation of the procedure of serving the individual notices upon the occupiers of the lands prescribed under Section 21(4) read with Section 22 of the LA Act of 2013 on the part of the respondent- authorities. After all, a notice would be served upon the one who does not have the notice of the issue and not the one who has it already.

73. The issue can also be examined from a different perspective. This different angle is provided by a question – whether the scheme of the LA Act of 2013 is such that it causes any prejudicial consequences in case the notice under Section 21(4) of the said Act is not served upon the persons interested? This very question arose in the case of *May George* (supra), although the provision under consideration was Section 9(3) of the LA Act of 1894. Section 21(4) of the LA Act of 2013, we must say, is in *pari materia* with Section 9(3) of the LA Act of 1894 and, therefore, the answer provided by the Supreme Court in *May George* case would also apply to the question posed by us in these petitions. While answering the question, the Supreme Court considered the settled legal position and found that a provision would be mandatory only when its non-compliance could render the entire

proceedings invalid or otherwise the provision would be directory.

The Supreme Court then went on to answer the question thus :

“26. The instant case is required to be examined in the light of the aforesaid settled legal provision. In fact, failure of issuance of notice under Section 9(3) would not adversely affect the subsequent proceedings including the award and title of the Government in the acquired land. So far as the person interested is concerned, he is entitled only to receive the compensation and therefore, there may be a large number of disputes regarding the apportionment of the compensation. In such an eventuality, he may approach the Collector to make a reference to the Court under Section 30 of the Act.”

It should be clear now that non-compliance with Section 21(4) of the LA Act of 2013, which is in *pari materia* with Section 9(3) of the LA Act of 1894, would not adversely affect the subsequent proceedings, including the award of compensation and title of the Government in the acquired land, for the reason that the person interested is entitled only to receive the compensation and other benefits, if available. If he has any grievance about non-receipt of compensation and other benefits, if any, he may approach the Collector to make a reference to the competent authority under Section 64 of the LA Act of 2013. Thus, we find that Section 21(4) and consequently Section 22 of the LA Act of 2013, are the provisions which could not be said to be mandatory. Rather, they are directory in

nature. Therefore, non-compliance with the provisions of Sections 21(4) and 22 of the LA Act of 2013 here, we find, has not rendered the impugned declarations and impugned award as illegal.

74. There is also an objection that public notice issued here is not in full compliance with sub-sections (1) and (2) of Section 21 of the LA Act of 2013. However, on a careful consideration of the material placed on record by the respondent-authorities, we are satisfied that there is substantial compliance with sub-sections (1) and (2) of Section 21 and as such, we find no substance in the objection.

75. Having answered the above-referred issues raised by the petitioners in the manner discussed in the earlier paragraphs, we find that it is not possible to accept the contentions that the impugned declarations are illegal and bad in law, that the impugned award is not binding upon the petitioners, that the petitioners cannot be dispossessed from the shop blocks under their occupation, and that the respondent- authorities are required to be restrained from dispossessing the petitioners. Similarly, for the reasons stated earlier, no direction can be issued to the respondent- authorities to also determine rehabilitation and resettlement entitlements of the petitioners.

76. The petitioner and the NMC have further relied upon some more cases, which are enlisted as below :

(A) Additional cases relied upon by the petitioners :

1. **ILR 1950 Bom 366**
Laxmanrao Krishtrao Jahagirdar
Versus
The Provincial Government of Bombay and another
2. **AIR 1958 BOM 228**
Yeshwant Gvardhan
Versus
Totaram Avasu
3. **AIR 1960 SC 100**
Narayan Gosavi
Versus
Gopal Gosavi
4. **(1977) 4 SCC 337**
Chintapalli Agency Taluk Arrack Sales
Cooperative Society Ltd. and others
Versus
Secretary (Food and Agriculture),
Government of Andhra Pradesh and others
5. **(1985) 3 SCC 545**
Olga Tellis
Versus
Bombay Municipal Corporation
6. **(1988) 1 SCC 145**
State of UP
Versus
Malik Zarid Khan
7. **1992 Supp (1) SCC 5**
Jaswantsingh Mathurasingh and another
Versus
Ahmedabad Municipal Corporation

8. **(1993) 1 SCC 78**
C.B. Gautam
Versus
Union of India and others
9. **1995 Supp (3) SCC 681**
State of West Bengal and others
Versus
Ajoy Kumar Das and others
10. **(1996) 4 SCC 453**
Union of India and another
Versus
Kirloskar Pneumatic Co. Ltd.
11. **(1997) 1 SCC 134**
Ramniklal Bhutta
Versus
State of Maharashtra
12. **(1997) 4 SCC 511**
Rajendra Kumar Gupta and another
Versus
State of U.P. and others
13. **(2000) 7 SCC 521**
Council for Indian School Certificate Examination
Versus
Isha Mittal and others
14. **(2001) 4 SCC 362**
Mohan Wahi
Versus
Commissioner, Income Tax, Varanasi and others
15. **(2005) 1 SCC 705**
Atma Ram Properties Ltd.
Versus
Federal Motors Ltd.
16. **(2006) 5 SCC 167**
State of Haryana
Versus
Ranbir Alias Rana

17. **(2007) 5 SCC 428**
Oriental Insurance Co. Ltd.
Versus
Meena Variyal and others
18. **(2007) 13 SCC 583**
Dadan Ram and others
Versus
State of Bihar
19. **(2011) 2 SCC 705**
Rajendra Prasad Gupta
Versus
Prakash Chandra Mishra
20. **(2011) 10 SCC 714**
J & K Housing Board and another
Versus
Kunwar Sanjay Krishan Kaul and others
21. **(2011) 13 SCC 190**
Lalrinvega
Versus
State of Mizoram
22. **(2012) 8 SCC 516**
Ahmed Saheb
Versus
Syed Ismail
23. **(2013) 4 SCC 280**
State of Uttar Pradesh
Versus
Hari Ram
24. **(2013) 9 SCC 338**
V.K.M. Kattha Industries Ltd.
Versus
State of Haryana and others
25. **(2014) 6 SCC 1**
Harshad Govardhan Sondagar
Versus
International Assets Reconstruction Company Ltd.

26. **2018 SCC Online 2825**
Chandrakant Mahadev Patil
Versus
State of Maharashtra
27. **(2018) 6 SCC 162**
Bharati Reddy
Versus
State of Karnataka
28. **(2019) 20 SCC 781**
Municipal Corporation of Greater Mumbai and others
Versus
Sunbeam High Tech Developers Pvt. Ltd.
29. **(2020) 8 SCC 129**
Indore Development Authority
Versus
Manoharlal and others
30. **(2002) 2 SCC 560**
Karnataka Road Transport Corporation
Versus
Ashrafulla Khan
31. **(2002) 3 SCC 586**
K. Shekhar
Versus
Indiramma
32. **(2002) 4 SCC 134**
State of W.B. and others
Versus
Vishnuarayan & Associates (P) Ltd. and another
33. **(2004) 1 SCC 769**
Rame Gowda (Dead) By LRS.
Versus
M. Varadappa Naidu (Dead) By LRS. and another
34. **(2004) 6 SCC 800**
State of Uttaranchal
Versus
Ajit Singh Bhola

35. **(2011) 9 SCC 1**
K.T. Plantation Pvt. Ltd.
Versus
State of Karnataka
36. **(2012) 12 SCC 395**
State of Bihar and another
Versus
Arvind Kumar
37. **(2013) 1 SCC 353**
Tukaram Kana Joshi and others
Versus
MIDC
38. **(2014) 14 SCC 1**
Shaha Ratansi Khimji and Sons
Versus
Kumbhar Sons Hotel Private Limited and others
39. **(2015) 10 SCC 241**
Laxmidevi
Versus
State of Bihar and others
40. **(2018) 12 SCC 279**
Union of India
Versus
Concord Fortune Minerals India Pvt. Ltd.
41. **(2020) 2 SCC 569**
Vidya Devi
Versus
State of Himachal Pradesh and others
42. **(2020) 4 SCC 572**
D.B. Basnetee
Versus
Collector
43. **2020 (9) SCALE 642**
Harikrishana Mandir Trust
Versus
State of Maharashtra and others.

44. **2020(13) SCALE 476**
B.K. Ravichandra and others
Versus
Union of India and others

(B) Additional cases relied upon by the respondent- NMC :

1. **(1986) 1 SCC 581**
Prakash Amichand Shah
Versus
State of Gujarat and others
2. **(1992) 4 SCC 742**
Rambai Manjanath Nayak
Versus
Union of India
3. **1995(2) Mh.L.J. 692**
Shashikant Sadashiv Bagwe
Versus
State of Maharashtra
4. **(1997) 1 SCC 124**
Ramniklal N. Bhutta
Versus
State of Maharashtra and others
5. **(1997) 4 SCC 199**
Nashik Municipal Corporation
Versus
Harbanslal Laikwant Rajpal
6. **(1997) 6 SCC 50**
Union of India
Versus
A. Ajit Singh
7. **(2004) 7 SCC 362**
Meher Rusi Dalal
Versus
Union of India
8. **(2007) 13 SCC 186**
Talsan Real Estate (P) Ltd.
Versus
State of Maharashtra and others

9. **2008(1) Mh.L.J. 603**
Gram Panchayat, Bamni
Versus
State of Maharashtra and others
10. **(2010) 4 SCC 532**
Sawaran Lata and others
Versus
State of Haryana and others
11. **(2011) 1 SCC 330**
Special Deputy Collector, Land Acquisition
Versus
J. Sivaprakasam
12. **2012 AIR SCW 3088**
Girish Vyas
Versus
State of Maharashtra
13. **2013 SCC Online AP 268**
Dr. M. Srinivas Rao
Versus
Madhura Centre/Tiffin
14. **2015(6) Mh.L.J. 127**
Hanumanrao Morbaji Gudadhe
Versus
State of Maharashtra
15. **Writ Petition No.9895 of 2015**
Decided by the Division Bench of
High Court of Bombay at Mumbai
on 13th April, 2017
[Shri Pratik Balavant Shirke and others
Versus
The State of Maharashtra and others]
16. **(2017) 1 SCC 667**
Ravindra Waghmare
Versus
Indore Municipal Corporation

17. **2019(5) Mh.L.J. 899 (FB)**
Pune Municipal Corporation
Versus
Rajeev L. Sangtani
18. **2019(6) Mh.L.J. 244**
Reliance Natural Resources Ltd.
Versus
State of Maharashtra
19. **(2020) 2 Mh.L.J. 210**
Sahebrao Kalate
Versus
State of Maharashtra
20. **(2020) 9 SCC 356**
Harikrishna Mandir Trust
Versus
State of Maharashtra

77. We have recorded our findings and reached our conclusions as above bearing in mind the principles stated in the above-referred cases.

78. In view of above, we are of the view that all the petitions are liable to be dismissed.

79. All the petitions are dismissed. No costs.

80. After pronouncement of the judgment, learned Senior Advocate Shri M.G. Bhangde for the petitioners prays for continuation of the interim relief(s) granted in all the petitions for a further period of ten weeks.

Shri J.B. Kasat, learned counsel for the NMC, and
Shri I.J. Damle, learned Assistant Government Pleader for the
respondent- State, take an exception to the request so made.

81. Considering the nature of the issues involved in the petitions,
the request is partially granted and it is directed that the interim
relief(s) granted in all the petitions shall continue for a period of eight
weeks from today.

(ANIL S. KILOR, J.)

(SUNIL B. SHUKRE, J.)