

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

WRIT PETITION NO.3354 OF 2020

Urban Township Pvt. Ltd.,
Through its Authorized Director,
Shri Subhash S/o Chainkaran Surana,
Having registered office at Dharmapeth
Tower, West High Court Road,
Nagpur.

..Petitioner

..Versus..

1. Nagpur Municipal Corporation,
Through the Municipal Commissioner,
Civil Lines, Nagpur.
2. The Assistant Director of Town Planning,
Nagpur Municipal Corporation,
Civil Lines, Nagpur.
3. The State of Maharashtra,
through the Secretary, Urban Development
Department, Mantralaya,
Mumbai - 32.

..Respondents

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Shri Anand Jaiswal, Senior Advocate, assisted by
Shri Bharat B. Mehadia, Advocate for Petitioner.
Shri G.A. Kunte, Advocate for Respondent Nos.1 and 2.
Shri K.L. Dharmadhikari, Additional Government
Pleader for Respondent No.3.

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CORAM : SUNIL B. SHUKRE AND G.A. SANAP, JJ.

RESERVED ON : 19th SEPTEMBER, 2022

PRONOUNCED ON : 9th DECEMBER, 2022

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

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

2. The petitioner, a Company duly incorporated under the provisions of the Companies Act, 1956, has filed this petition seeking declaration that the reservation in the Development Plan for City of Nagpur for Primary School, bearing Reservation Nos.MN 92 and N 139, admeasuring about 4907 sq.mtrs. and 11037 sq.mtrs. respectively, out of Survey Nos.2-3/1 and 2-3/4 of Mouza Chikhli (Deosthan), Tahsil and District Nagpur, has lapsed under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short “MRTP Act”) and the petitioner- Company is free to develop the land belonging to it in accordance with law. It has also prayed for issuance of Notification under Section 127(2) of the MRTP Act for lapsing of the reservation under Section 127 of the MRTP Act.

3. The factual canvass of the petition, presented in its minimalist form, is as under :

(a) The petitioner claims to be the owner of two parcels of land, admeasuring 4907 sq.mtrs. and 11037 sq.mtrs., out of Survey Nos.2-3/1 and 2-3/4 of Mouza Chikhli, District Nagpur, which have been subjected to reservation for Primary School in the revised Development Plan framed for

the City of Nagpur. These parcels of land, which are the subject-matter of the petition, originally formed part of a larger piece of land, admeasuring about 45.42 acres (1,83,643 sq.mtrs.) of Survey Nos. 2-3/1 and 2-3/4 of Mouza Chikhli, District Nagpur, owned by Shri Nathuji s/o Namdeo Rokde and late Shri Jagannath s/o Namdeo Rokde, the predecessors-in-title of the petitioner insofar as the subject pieces of land are concerned. Some other portions of the said land were also subjected to reservation for various public purposes, as defined under Section 22 of the MRTP Act, way back in the year 1976. The details of all these reservations are to be found in the chart given below:-

Sr. No.	Purpose of Reservation	Area in
Sq.Mtr		
1.	18 Mtrs. Wide D.P. Road (West)	6829
2.	18 Mtrs. Wide D.P. Road (East)	4328
3.	Play Ground (MN-93)	6741
4.	36 Mtrs. Ring Road	16127
5.	Open Space (N-140)	11747
6.	Primary School (N-139)	11037
7.	Primary School (MN-92)	4907

(b) The proceedings under the provisions of the Urban Land (Ceiling Regulation) Act, 1976 (for short “ULC Act”) were initiated in respect of the said larger land and the entire land belonging to Rokde brothers was declared as vacant land in excess of ceiling limit under the ULC Act. However, the

Competent Authority also exempted the entire land admeasuring about 183646 sq.mtrs., from the provisions of the ULC Act, under Section 20 of the ULC Act, for construction of houses for weaker sections of the Society on various terms and conditions by its order dated 27-3-1986. One of the conditions thereof, condition No.5, required the owners to hand over the portions of the exempted land subject to reservation, free of cost to the Planning Authority.

(c) Following exemption of the entire land admeasuring about 183646 sq. mtrs. under Section 20 of the ULC Act, a layout plan for the entire land was submitted to the Nagpur Improvement Trust ("NIT" for short), which was the then Planning Authority, and it was sanctioned by the NIT, which sanction included the lands reserved for public purposes in the Development Plan and also the land retainable by the owners as per the provisions of the ULC Act. The NIT also entered into an agreement dated 4-7-1991 with Rokde brothers wherein clauses 9 and 9A, consistent with condition No.5 of the exemption order dated 27-3-1986 were inserted, which meant that Rokde brothers had to hand over the land reserved for public purposes in the Development Plan to the Government or the Planning Authority, as the case may be, free of cost.

(d) Rokde Brothers, the original owners, felt that there was a mistake in the exemption order dated 27-3-1986, as portions of the land reserved for public purposes could not have been declared as vacant land in excess of ceiling limit in view of definition of the expression “vacant land” given in Section 2(q) of the ULC Act, as these lands could not have been developed for providing houses to the weaker sections of the Society. They also felt that the portion of the land retainable by them was also required to be excluded from the exemption order. Therefore, they applied for issuing revised exemption order under Section 20 of the ULC Act and the revised order of exemption dated 16-1-2003 was accordingly issued by the Competent Authority. In the revised order, the portions of the land originally exempted, which were reserved for public purposes in the Development Plan, admeasuring about 43239.12 sq.mtrs., were excluded. The portion of the land retainable by the owners was also excluded from the provisions of the ULC Act. In the revised order, condition No.5 of the original order of exemption dated 27-3-1986 was re-imposed again as condition No.5.

(e) The NIT, in the meantime, ceased to be Planning Authority and its role of Planning Authority was taken over by the Nagpur Municipal Corporation, i.e. the respondent No.1, with effect from 27-2-2002. The original owners obtained sanction for revised layout plan of the entire land

vide order of the respondent No.1 dated 14-9-2006. The revised sanction of the layout plan excluded the portions of the land reserved in the Development Plan for public purposes, admeasuring 43239 sq. mtrs., from the purview of layout and made the area of land admeasuring about 100698 sq.mtrs., to be out of the total area of land admeasuring about 183646 sq.mtrs. as part of the sanctioned layout plan. The sanction was accorded, subject to the terms and conditions of the agreement dated 4-7-1991 entered into between the NIT and the original owners, thereby reiterating clauses 9 and 9A of the agreement dated 4-7-1991, which were consistent with condition No.5 of the revised exemption order.

(f) As the portions of the entire land reserved for public purposes were excluded from the purview of the exemption granted under Section 20 of the ULC Act, as per the revised exemption order, the original owners thought of developing four portions thereof, in terms of the purpose for which they were reserved. They, therefore, made an application for grant of permission to develop these portions of the land reserved for public purposes, which are as follows:-

Sr. No.	Reservation Number	Reservation	Area (Sq. Mtrs.)
1.	MN 92	Primary School	4907.00
2.	N 139	Primary School	11037.00
3.	N 138	Public Assembly	3417.00
4.	R-1	Maternity Home	4269

The State Government, by its order dated 2-3-2005 granted permission to the original owners to develop the said portions of land reserved for public purpose, which included two portions of land reserved for Primary School, subject to payment of value of land as per the Government Resolution dated 11-5-1984. The original owners paid an amount of Rs.25,762/- and an amount of Rs. 57,944/- as value of two portions of the land admeasuring 4907 sq.mtrs., and 11037 sq.mtrs., both reserved for public purpose of Primary School on 22-8-2007. Thereafter, the Competent Authority by an order passed on 30-8-2007, acknowledging the payment of value of the said two portions of the land, declared that these two portions of the land bearing Reservation Nos.MN 92 and N 139 would be out of the purview of the provisions of the ULC Act and that the original owners would be free to develop these two portions of land for public purposes for which they were reserved after obtaining due sanction from the Planning Authority.

(g) The revised Development Plan for the City of Nagpur was published and it came into force with effect from 7-1-2000 and even in this Plan, these two portions of the land reserved for public purpose of Primary School continued to be reserved for the same public purpose.

(h) The original owners through their legal representatives sold and transferred the portions of lands reserved for Primary School, bearing Reservation Nos.N 139 and MN 92, admeasuring 11037 sq.mtrs. and 4907 sq.mtrs., respectively to the petitioner vide registered sale-deed dated 23-12-2013, subject to the reservation of Primary School.

(i) The original owners interested in getting transferable rights in respect of portions of the land reserved for public purposes, applied to the Planning Authority, i.e. the respondent No.1, for grant of Development Rights Certificate under Regulation 29 of the Development Control Regulation, 2000. Seven such applications were made, but they were rejected by the respondent No.1. The original owners along with the petitioner filed Writ Petition No.4460 of 2014 challenging the rejection of the applications for grant of the Transferable Development Rights (for short, "TDRs"). The petitioner withdrew the petition with liberty to pursue other remedies, as may be permissible in law, by the High Court in terms of the order dated 3-2-2016. As regards the petition of the original owners, the High Court disposed of the petition with a direction to the respondent No.1 to reconsider the grievances of the original owners in the light of Government Resolutions dated 1-12-2015 and 28-1-2016 without being influenced by the earlier orders, if any, on 20-4-2017.

(j) The petitioner, thinking that the Planning Authority, i.e. the respondent No.1, had not taken any steps to acquire two pieces of land purchased by them from the original owners, which were reserved for Primary School in the Development Plan, sent a purchase notice to the respondent No.1 on 18-9-2015 under Section 129 of the MRTP Act. The respondent No.1, by its reply dated 28-10-2015, rejected the request of the petitioner on the grounds that the matter was *sub judice* before the High Court in Writ Petition No.4460 of 2014, that the multiple owners were staking their claims in respect of the said pieces of land, and that the portions of the land under reservation were to be transferred and handed over to the Planning Authority free of cost as per the revised exemption order and the condition imposed in clauses 9 and 9A of the agreement between the NIT and the original owners. The petitioner, by its reply dated 8-1-2016, informed the respondent No.1 that the objections did not survive, as the State Government had granted permission to the original owners to develop the reserved portions of land, which included the portions reserved for Primary School purchased by the petitioner for the same purpose for which they were reserved on payment of value of these portions of land as per order dated 2-3-2005. The petitioner also informed the respondent No.1 that the value of these portions of land

purchased by them from the original owners was already paid to the Government and the Competent Authority by its order dated 30-8-2007 released these pieces of land from the provisions of the ULC Act and thus these lands stood vested in the petitioner absolutely.

(k) On 20-1-2016, the respondent No.1 re-considered the grievances of the original owners in terms of the final order passed by the High Court on 20-4-2017 in Writ Petition No.4460 of 2014 and granted TDRs in respect of five pieces of land reserved in the Development Plan in favour of the original owners.

4. On the backdrop of the above-referred facts, the petitioner contends that two pieces of land, which are the subject-matter of the petition, (hereinafter collectively referred to as “the subject lands”), carrying with them the reservation of primary school, are absolutely owned by them, and these lands having been freed and released from the application of the ULC Act following the order dated 2-3-2005 passed by the State Government and order dated 30-8-2007 passed by the Competent Authority, Nagpur, under the ULC Act, condition No.5 of the revised exemption order requiring the original land owners to transfer these lands to the Government or Municipal Authority, as the case may be, without charging any

consideration, which condition has been reiterated in the agreement in clauses 9 and 9A of the agreement dated 4-7-1991 executed between the NIT and the original owners, stood relaxed and is no longer applicable. It further submits that the fact of relaxation or modification of condition No.5 and consequently clauses 9 and 9A of the agreement dated 4-7-1991 has been accepted by respondent Nos.1 and 2 when these respondents granted the TDRs to the original owners in respect of the other five pieces of land out of original land, which were reserved for public purposes in the development plan, in terms of the GR dated 20-1-2016, by order dated 11-2-2019 thereby issuing TDR Certificate No.72.

5. The petitioner further submits that the purchase notice was served by it upon respondent Nos.1 and 2 after expiry period of more than 10 years from the date on which the revised development plan came into force and a period of more than two years from the receipt of purchase notice has also passed. It further submits that it is an admitted fact that no steps for acquisition of subject lands owned and possessed by the petitioner have been taken by respondent Nos.1 and 2. Thus, it submits that it is entitled to a declaration regarding lapsing of reservation on the subject lands in terms of Section 127 of the MRTP Act.

6. The claim of the petitioner has been denied completely by the respondent Nos.1 and 2. Respondent Nos.1 and 2 have objected to this petition contending that this petition is not maintainable for the reason that the subject lands have already stood vested in the NIT and so now the respondent Nos.1 and 2, the present Planning Authority, as the subject lands were agreed to be transferred to the NIT as per the Development Agreement dated 4-7-1991 executed by the original owners in lieu of reciprocal promise of the NIT sanctioning the layout plan submitted by the original owners for the development of the exempted land and possession of the subject lands was also taken by the NIT as per the possession receipt dated 21-5-2013.

7. Respondent Nos.1 and 2 further submit that since the subject lands have been vested in the NIT, the NIT has a right to dispose of the land, which is inconsonance with the provisions made in Section 58 of the Nagpur Improvement Trust Act empowering the NIT to enter into an agreement with any person for acquisition, by purchase, lease or exchange, by the Trust from such person of any land within the area falling under any sanctioned scheme and in the present matter, as per the Development Agreement dated 4-7-1991, executed between NIT and the original owners, the transfer of the subject lands in favour of the NIT is already complete and the NIT has also taken the

possession. It is further submitted that the NIT is now free to dispose of the subject lands in terms of Rule 20 of the Land Disposal Rules, 1983.

8. It is further contended that since the original owners had agreed for transferring the subject lands and giving their possession to the NIT as per the Development Agreement dated 4-7-1991, the original owners were bound by the agreement and in fact the possession of the subject lands has also been taken over by the NIT and now the petitioner cannot contend that they have vested in it absolutely. According to respondent Nos.1 and 2, the controversy involved in the petition is squarely covered by the judgment of the Supreme Court in the case of ***Narayanrao Jagobaji Gowande Public Trust Vs. State of Maharashtra and others***, reported in ***2016 AIR (SCW) 823***, which case has been followed by coordinate bench of this Court in the case of Ujwal Cooperative Housing Society Ltd. Vs. The State of Maharashtra and others in Writ Petition No.6590/2016, decided on 10-6-2019.

9. Respondent Nos.1 and 2 further submit that now after a lapse of about 29 years, the petitioner cannot raise the dispute and the petition is liable to be dismissed also on the ground of inordinate delay and laches, apart from the grounds mentioned earlier.

10. Learned Senior Advocate for the petitioner contends that the petitioner has become absolute owner of the subject lands in view of the order passed by the State Government on 2-3-2005 thereby granting permission to the original owners to develop the subject lands for the purpose they were reserved under the revised DP Plan for city of Nagpur, which was the purpose of primary school and the order dated 30-8-2007 passed by the Competent Authority acknowledging payment of value of the subject lands bearing Rs.25,762/- and Rs.57,944/- respectively and thereby releasing the subject lands from the applicability of provisions of the ULC Act. He submits that even though there was a condition imposed in the original order dated 27-3-1986 that original owners would transfer the subject lands without charging any consideration to the Government or the Municipal Authority, as the case may be, which condition was continued even in the revised exemption order dated 16-1-2003, and also in the development agreement dated 4-7-1991 executed between the original owners and the NIT and also the revised layout plan sanctioned by the NMC, the very condition was relaxed by the State Government and the Competent Authority when the orders dated 2-3-2005 and 30-8-2007 were passed by them.

11. Learned Senior Advocate further contends that revised layout plan sanctioned by the NMC was not for development of the areas under reservation which included subject lands, if one goes by the area statement, and that would mean that the subject lands continued to be governed by the permission granted by the State Government on 2-3-2005 to the original owners to develop these lands for the purpose for which they were reserved and also the order dated 30-8-2007 whereby the subject lands were completely released from the applicability of provisions of the ULC Act.

12. Learned Senior Advocate further submits that even otherwise ULC Act has been repealed and, therefore, the subject lands are no longer governed by the various orders passed under the ULC Act and as such, have stood absolutely vested in the petitioner after they were purchased by the petitioner vide sale deed dated 23-12-2013 from the original owners.

13. Learned Senior Advocate further submits that if respondent Nos.1 and 2 are drawing strength from the receipts of taking of the possession by the NIT, on 21-5-2013, it would be a misplaced support for the reason that the possession was taken without issuing any notice to the original owners, by keeping them in the dark and it was an *ex parte* decision which is not permissible in law.

He submits that since the subject lands were released from the applicability of the ULC Act and those were vested in the original owners and then in the petitioner who had purchased them from the original owners, it was necessary for the then Planning Authority i.e. NIT to follow the provisions of Sections 126 and 129 of the MRTP Act, which require an agreement to be entered into between the original owners and the NIT, the surrender of the subject lands free from all encumbrances and if there was no voluntary surrender of the subject lands by the original owners to the NIT, taking of the possession of the subject lands by the Collector on being authorized in that behalf by the State Government, which has not been done in the present case. Learned Senior Advocate further submits that inspite of the fact that there was a condition in the revised order requiring the original owners to transfer the subject lands without charging any consideration to the Planning Authority, the present Planning Authority considered the other five portions of land reserved for public purposes to be owned by and vested in the original owners and that was the reason why it granted TDRs against surrender of those portions of lands by the original owners to respondent Nos.1 and 2. According to him, this act on the part of respondent Nos.1 and 2, clearly indicates that relaxation of the condition No.5 and also of the same condition contained in clauses 9 and 9A of the agreement dated 4-7-1991, has been accepted and acted upon

by the State Government, the Planning Authority, when it granted said TDRs to the original owners and if it were not so, respondent Nos.1 and 2 would not have granted any TDRs against those other portions of land reserved for public purposes and would have insisted upon their transfer and handing them over free of cost to respondent Nos.1 and 2 in accordance with the condition incorporated in clauses 9 and 9A of the agreement dated 4-7-1991.

14. Learned Senior Advocate further submits that since the purchase notice has been issued in accordance with Section 127 of the MRTP Act and no step whatsoever has been taken by the present Planning Authority i.e. respondent No.1 for acquisition of the subject lands, reservation of primary school standing on the subject lands has lapsed and as such petitioner is entitled for the reliefs as claimed in the petition.

15. Learned counsel for respondent Nos.1 and 2 submits that it was necessary for the original owners to transfer the subject lands without charging any consideration to the NIT, the previous Planning Authority and that was done when agreement dated 4-7-1991 was executed between the NIT and the original owners which incorporates condition Nos.9 and 9A regarding the agreement of the original owners to transfer subject lands to the NIT. He further submits that

the possession of the subject lands was taken by the NIT on 21-5-2013, vide possession receipt Nos.853/2 and 853/3. According to him, after possession of the subject lands was taken over by the NIT, the subject lands have stood vested in the NIT free from all encumbrances and, therefore, there is no question of ownership of the petitioner and issuing a declaration of lapsing of the reservation standing on the subject lands.

16. Learned counsel for respondent Nos.1 and 2 further submits that when the original owners had executed an agreement with NIT for transferring the subject lands free of cost to the NIT, the original owners were under an obligation to abide by the terms and conditions of the agreement and as such are not entitled for any relief in this petition. Reliance is placed upon the case of *Narayanrao Jagobaji Gowande Public Trust* (supra) which has been followed by a coordinate Bench of this Court in the case of *Ujwal Cooperative Housing Society Ltd.* (supra).

17. Learned counsel for respondent Nos.1 and 2 further submits that since the possession of the subject lands has been taken in pursuance of the agreement reached in between NIT and the original owners, Section 129 of the MRTP Act, relied upon by the petitioner has no application to the facts of the case.

18. He further submits that agreement dated 4-7-1991 could be considered to be an agreement in accordance with the provisions of Section 126 of the MRTP Act, by virtue of which the lands have been vested in the NIT and the NIT is free to dispose of the subject lands in accordance with its Land Disposal Rules. Learned counsel for respondent Nos.1 and 2 further submits that grant of TDRs to the original owners in respect of other five lands subjected to reservation under the DP Plan is a matter of record.

19. Learned counsel for respondent Nos.1 and 2 further submits that as the subject lands have been vested in the NIT and now the respondent Nos.1 and 2 by virtue of the agreement dated 4-7-1991, now, after a delay of 29 years after the execution of development agreement, the issue of ownership and entitlement to a declaration for lapsing of reservation cannot be reopened.

20. Learned Additional Government Pleader submits that various orders passed under the provisions of ULC Act, development agreement dated 4-7-1991, sanctioned layout plan, revised sanctioned layout plan, and grant of TDRs by respondent Nos.1 and 2 to the original owners in respect of the other reserved portions of land all are a matter of record

and, therefore, he urges that an appropriate order in the matter be passed.

21. The rival arguments submitted on behalf of the petitioner and respondent Nos.1 and 2 basically give rise to the question as to whether or not the petitioner has become owner of the subject lands and to answer the question, we would have to go back to the genesis of the case.

22. The whole issue about the ownership of the subject lands began with the order passed under Section 20 of the ULC Act exempting the subject lands from the provisions of the ULC Act. This order was passed in the year 1986 and it granted to the original owners exemption from the provisions of the ULC Act in respect of the entire land, admeasuring about 183646 sq. Mtrs. or 45.42 acres approximately, survey Nos.2-3/1 and 2-3/4 of Mouza Chikhli, District Nagpur. Such grant of exemption was subject to various conditions and one of the conditions, an important one, was that the portions of the land, which were reserved for various public purposes in the development plan or reserved for various amenities including the internal roads in the sanctioned layout plan, would be transferred by the original owners to the Government or the Municipal Authorities, as the case may be, without charging any consideration before actually commencing any work and that no commencement

certificate was to be issued unless the portions of the land under reservation were actually handed over to the Government or the Municipal Authorities, as the case may be. Later on, on the application made by the original owners, the exemption order of the year 1986 was revised and another order of exemption dated 16-1-2003 was issued by the Competent Authority. By this order, the portions of the land reserved for public purposes in the development plan admeasuring about 43239.12 sq.mtrs. were excluded from the purview of the exemption order, meaning thereby that to these portions of the land, the purpose for which the exemption from the provisions of the ULC Act was granted would not apply. The purpose of the exemption order was to enable the original owners to construct houses for weaker sections of the Society. Since the reserved portions of the land could not have been utilized for such a purpose, the Competent Authority under the ULC Act found it fit to revise the order and exclude these portions of the land. But the Competent Authority incorporated the same condition regarding transferring of the reserved portions of the land to the Government or the Municipal Authorities, as the case may be, without charging any consideration before actually commencing any work, as condition No.5. The revised exemption order thus was a correction of the obvious mistake committed in the first exemption order of the year 1986 which exempted the entire piece of land admeasuring

183646 sq. mtrs. from the provisions of the ULC Act on the one hand and also stipulated that the reserved portions of the land admeasuring about 43239.12 sq.mtrs. would be transferred to the Government or the Municipal Authorities, as the case may be, without charging any consideration on the other. In other words, the first exemption order of the year 1986 created a sort of contradiction when it allowed the original owners to float and implement the scheme for construction of the houses for the weaker sections of the Society on the entire piece of land, including the reserved portions of land, but also required the original owners to transfer the reserved portions of the land free of cost to the Government or the Municipal Authorities, as the case may be. This contradiction, if allowed to stand as it was, would have made the exemption order of the year 1986 illusive and would have frustrated the purpose for which the land of the original owners was exempted from the provisions of the ULC Act. The other effect of the revised exemption order of the year 2003 was that the portions of the land owned and possessed by the original owners and which were reserved for various public purposes regained their status as vacant lands in excess of the ceiling limit or in other words, they became once again surplus portions of the land, as the order declaring the entire piece of land belonging to the original owners as vacant land within the meaning of the ULC Act was got modified. It also meant that the original owners were duty

bound to transfer the reserved portions of land to the Government or the Municipal Authorities, as the case may be, without charging any consideration, as per the condition imposed in the revised exemption order. But as it turned out later, they did not comply with this condition, rather sought it's relaxation, and quite successfully.

23. There was another development which needs mention, and it had taken place before revised exemption order was passed in the year 2003. Based upon the first exemption order of the year 1986, the original owners obtained sanction of the layout plan in pursuance of which an agreement dated 4-7-1991 was entered into between the NIT and the original owners, wherein same condition No.5 contained in the first exemption order and the revised exemption order was also incorporated, as clauses 9 and 9A. If the revised exemption order of the year 2003 had any impact upon the layout plan sanctioned in the year 1991 by the NIT, it was only to the extent of the net area which could be developed for constructing the houses for the poor. But, that impact could not have been seen at the ground level, as the layout plan had been sanctioned already by the NIT in the year 1991. But this correction regarding availability of the net area for the purpose of construction of the housing for the poor was ultimately carried out in the revised plan sanctioned by the respondent No.1 in the year 2006, the respondent No.1

being the new Planning Authority with effect from 27-2-2002 by excluding the reserved portions of the land from the layout plan. But, while sanctioning the revised layout plan on 14-9-2006, the respondent No.1 reiterated the condition regarding transfer of the reserved portions of the land to the Municipal Authority without charging any consideration. It appears that the original owners, at that point of time, did not bring it to the notice of the respondent No.1 about the permission that they had obtained for developing the subject lands bearing reservation Nos.MN 92 and N 139 and also two other lands reserved for public purposes of Primary School, Maternity Home and Public Assembly by themselves as per the order of the State Government dated 2-3-2005.

24. The development permission order dated 2-3-2005 is a matter of record and there is no dispute about it. By this order, the State Government had granted permission to the original owners for development of four portions of reserved lands, bearing reservation Nos. MN 92, N 139, N 138 and R-1, out of which, two portions of land bearing reservation Nos.MN 92 and N 139 are the subject lands involved in this petition. The essential condition of this order was that the original owners were to pay the value of these lands, to be determined by the Competent Authority. The development permission that it granted subject to the

said condition was for developing these lands for the purposes for which they were reserved.

25. As the subject lands were reserved for the purpose of development of Primary School, the original owners, by virtue of the said permission so granted to them, were required to develop these lands by effectuating the public purpose of Primary School. But the original owners did not themselves develop the subject lands though they had paid the value of the land determined by the Competent Authority as per rules. The Competent Authority determined the value of the subject lands at Rs.25,762/- (reservation No.MN 92) and Rs.57,944/- (reservation No.N 139), which amounts were paid by the original owners on 22-8-2007. Thereafter, the Competent Authority under the ULC Act issued another order dated 30-8-2007, whereby the Competent Authority on consideration of payment of value of the subject lands by the original owners, released the subject lands from the provisions of the ULC Act. Upon their such release, the subject lands became free hold lands with only one restriction of using them by the original owners only for the purpose for which they were reserved in public interest under the revised D.P. Plan. In other words, the owners were free to develop the subject lands for the purpose of Primary School.

26. The effect of the orders passed by the State Government on 2-3-2005 and by the Competent Authority on 30-8-2007 was that the subject lands were no longer surplus lands and to that extent, the revised exemption order declaring them to be vacant lands in excess of the ceiling limit got impliedly modified. Not only that, the condition imposed in the first exemption order passed under Section 20 of the ULC Act requiring the original owners to transfer the subject lands to the Government or the Municipal Authorities, as the case may be, without charging any consideration, was also impliedly relaxed and since this condition was re-imposed in the revised exemption order dated 16-1-2003, it too, by necessary implication, got relaxed. That meant, by virtue of the orders passed on 2-3-2005 and 30-8-2007, the original owners were no longer required to transfer the subject lands to the Government or the Municipal Authorities, as the case may be, without charging any consideration; the subject lands were freed from the shackles of the ULC Act and became freehold lands, which the original owners were entitled to dispose of at their freewill, but of course subject to the reservation of Primary School that they carried on with them.

27. The learned counsel for the respondent Nos.1 and 2 contends that the subject lands having been agreed to be transferred to the NIT as per the development agreement

dated 4-7-1991 by the original owners in lieu of reciprocal act of the NIT sanctioning the layout plan submitted by the original owners for the development of the exempted land, and that too free of cost, and the possession of the subject lands having been already taken by the NIT as per the possession receipts dated 21-5-2013, the subject lands had already stood vested in the NIT, thereby giving the NIT the right to dispose of the subject lands in accordance with its Land Disposal Rules. The contention, however, in our considered opinion, does not hold any water. The reason being that the basis of the condition of clauses 9 and 9A of the development agreement, reiterated in the revised layout plan sanctioned by the NMC in the year 2006 was the condition No.5 contained in the first exemption order and re-imposed in the revised exemption order, and this very condition having been relaxed by the orders passed by the Competent Authority on 2-3-2005 and 30-8-2007, the basis of clauses 9 and 9A was taken away. That meant that the original owners were no longer required to transfer the subject lands free of cost. After all, the subject lands had become freehold lands, of course subject to the reservation of Primary School as per the revised D.P. Plan. This condition of transferring the subject lands to the Authorities free of cost was imposed in the agreement dated 4-7-1991 with the NIT, not because there was a reciprocal promise by the NIT to sanction the layout plan, but because it formed part of the

exemption orders passed by the Competent Authority under the provisions of the ULC Act and when the original condition was done away with whatever right that had accrued to the NIT to acquire the subject lands free of cost also got extinguished. With such extinguishment of right, the NIT and its successor, i.e. the respondent No.1- NMC, could not have insisted upon the original owners to transfer to it the subject lands free of cost and consequently it could not have taken possession of the subject lands, which is claimed to be taken as per the possession receipts dated 21-5-2013. In any case, the possession that was stated to be taken by the NIT in the year 2013 was unilateral, without giving any notice to the original owners and, therefore, it was not the kind of possession taken by the NIT in accordance with law and thus was not binding upon the original owners. Then, there being right lost to take possession of the subject lands, the event of taking of unilateral possession of the subject lands by the NIT in the year 2013 would have no consequence of changing the status of the subject lands. The subject lands would nevertheless absolutely vest in the original owners and they did in fact.

28. It is the contention of the respondent Nos.1 and 2 that condition of clauses 9 and 9A of the agreement dated 4-7-1991 was in reciprocation of NIT's promise to sanction the layout plan in the year 1991. The contention is,

however, unsound. The real consideration of the sanction of the layout plan was of promise given by the original owners to develop the exempted land for benefit of weaker sections of Society, which was the object of exemption order of 1986 and also revised exemption order of 2003, and that was to be in lieu of the original owners transferring the reserved lands including subject lands free of consideration to the Government or the Planning Authority, as the case may be, and that was in the reason why condition of clauses 9 and 9A came to be inserted. The contention is, therefore, rejected.

29. The respondents submit that the issue involved in the petition is squarely covered by the view taken by the Apex Court in the case of *Narayanrao Jagobaji Gowande Public Trust* (supra), which case has been followed by a Co-ordinate Bench of this Court in the case of *Ujwal Cooperative Housing Society Ltd.* (supra), wherein the Apex Court has held that whenever there is an agreement between the NIT on the one hand and the developer on the other, the parties must abide by the terms and conditions of the agreement and when the developer, which was the appellant-Trust in that case, had gained from the agreement, it would not be open for the appellant- Trust to avail only of the beneficial part of the said development agreement to form a layout plan and allot the developed plots to various other persons, when the appellant- Trust itself is not willing to discharge the

obligation of transferring the reserved land for public utility purpose, as agreed upon in the development agreement.

30. In our humble opinion, the cases of *Narayanrao Jagobaji Gowande Public Trust* (supra) and *Ujwal Cooperative Housing Society Ltd.* (supra) would have no application to the facts of the case, for the reason that in those cases, the condition of the appellant- Trust transferring the land as agreed in the agreement was not relaxed; it stayed very much there in the development agreement, unlike the present case. In the present case, the very basis of the condition of transferring the subject lands free of cost to the NIT was done away with, rather removed from the exemption orders and the subject lands were permitted to be developed for the public purpose of Primary School by the original owners by themselves and were even released from the applicability of the provisions of the ULC Act upon payment of consideration of the value of the subject lands, Rs.25,762/- and Rs.57,944/- respectively, by the original owners, in terms of the orders dated 2-3-2005 and 30-8-2007 passed by the State Government and the Competent Authority. This transaction between the original owners and the State Government only shows that what were to be the surplus lands as per the provisions of the ULC Act and what were considered to be vested in the State Government were restored for their ownership to the original

owners, thereby entitling them to develop the lands for public purpose or dispose them of along with the reservation at their freewill. It also shows that the original owners were under no obligation to transfer the subject lands to the authorities free of cost with the original owners having already paid the value of the land to the Government for their acquiring back by them. Against this background, if the original owners were to transfer the subject lands free of cost to the NIT, it would have amounted to compulsory acquisition of the lands without paying any compensation to the original owners, which would have been clearly in violation of the provisions contained in Section 126 of the MRTP Act. We, therefore, find that the respondent Nos.1 and 2 would get no assistance from the above-referred cases.

31. In fact, the NMC, i.e. the respondent No.1, is well aware of the legal position discussed earlier, and that was the reason why the respondent No.1 acted upon it and granted TDRs to the original owners in respect of the other portions of the lands which were reserved for such public purposes as 18 mtrs. Wide D.P. Road (West), 18 mtrs. Wide D.P. Road (East), Play Ground, 36 mtrs. Ring Road and open space on their being surrendered by the original owners to the respondent No.1. As stated earlier, the development rights certificate in respect of these five portions of land reserved for various public purposes was issued in favour of the original

owners by the respondent No.1 on 11-2-2019 and obviously it was issued under the provisions of Section 126 of the MRTP Act read with relevant Development Control Rules.

32. The act of the respondent Nos.1 and 2 in granting TDRs in respect of five other portions of the land from out of the entire land, reserved for various public purposes, only shows that the respondent Nos.1 and 2 have acknowledged and accepted the fact that condition of transferring the reserved pieces of lands to the NIT or the NMC, as the case may be, free of cost, has been relaxed, rather removed from the exemption orders by the orders passed on 2-3-2005 by the State Government and on 13-8-2007 by the Competent Authority and that by virtue of these orders, the original owners had become absolute owners of those lands. After having accepted this legal position, and having acted upon it in case of other similarly situated lands from the same layout, now the respondent Nos.1 and 2 cannot go back on their stand and say that when it comes to the case of the petitioner, it would discriminate against it, it would apply the condition of transferring the subject lands free of cost to the Authorities as contained in clauses 9 and 9A of the agreement dated 4-7-1991 with all its rigour and would ignore the status of subject lands having become freehold lands, subject, of course, to the reservation of Primary School. While there is no dispute about the grant of TDRs in respect of the other

five portions of lands reserved for public purposes, the respondent Nos.1 and 2 have given no explanation as to why they chose to treat the original owners differently when they granted TDRs to them in respect of the other reserved pieces of lands. And the respondent Nos.1 and 2 also could not have given any explanation as they had already treated those other reserved pieces of lands as owned and possessed absolutely by the original owners, which was the reason for them to proceed in respect of those other reserved pieces of lands in terms of the provisions of Section 126 of the MRTP Act read with the relevant Development Control Rules.

33. We, therefore, find that the respondent Nos.1 and 2 cannot adopt two different stands, one of admission of absolute ownership of one set of persons and the other of denial of absolute ownership of another, when both these sets are identically situated. If respondent Nos.1 and 2 are permitted to take such two contradictory stands here, it would amount to making of impermissible discrimination against the petitioner, thereby upsetting the rule of law, in violation of Articles 14 and 21 of the Constitution. We, therefore, hold respondent Nos.1 and 2 bound to their previous stand in respect of other reserved lands so as to apply it to the subject lands, which have become freehold lands, just as the other reserved lands, by applying the rule of law and fair play in State action, which rule is the life, the

essence of Article 14 of the Constitution. In *Union of India and another Vs. International Trading Co. and another* reported in (2003) 5 SCC 437, the Apex Court held that basic requirement of Article 14 is fairness in action by the State and non-arbitrariness in essence. It further held (Para 15) that State action would be justifiable only when the State has acted validly for a discernible reason, not whimsically for any ulterior purpose. It observed that the meaning and true import of concept of arbitrariness is more easily visualized than precisely defined. It emphasised that the basic and obvious test to apply is to see whether there is any discernible principle emerging from the impugned action, and if so, does it really satisfy the test of reasonableness or not. In the present case, there is neither any tangible principle behind denial of ownership of petitioner of the subject lands by the respondent Nos.1 and 2 nor is there any reasonableness in their selective obstinacy towards the petitioner while it is their chosen acquiescence towards the identically placed original owners. This is not reasonableness; nor fair play but arbitrariness, whimsy in State action.

34. Insofar as the title of the petitioner in respect of the subject lands is concerned, there is no dispute about the fact that those lands were purchased by the petitioner from the original owners, vide sale-deed dated 23-12-2013, along with

the reservation of Primary School that they carried on with them. As regards the purchase notice issued by the petitioner to the respondent Nos.1 and 2 in terms of Section 127 of the MRTP Act, there is no dispute as well. Similarly, there is no dispute about fulfilment by the petitioner of all the requirements of Section 127 of the MRTP Act in terms of the period stated therein and no step for acquisition of the subject lands having been taken for a period of more than two years after the receipt of the purchase notice by the respondent Nos.1 and 2. That would mean that the petitioner, being absolute owner of the subject lands, has become entitled for a declaration regarding lapsing of reservation and further consequential reliefs, in terms of Section 127 of the MRTP Act.

35. Of course, it is the contention of the respondent Nos.1 and 2 that after lapse of long period of time of about 22 years after the development agreement was executed between the NIT and the petitioner on 4-7-1991, the reliefs sought for by the petitioner cannot be granted. The argument is fallacious for more than one reason. The petitioner had become the owner of the subject lands only in December 2013 and not in the year 1991 and thereafter the petitioner along with the original owners had filed a writ petition, being Writ Petition No.4460 of 2014, against the respondent Nos.1 and 2 seeking relief of grant of TDRs to them by the NIT and the

petitioner had withdrawn its petition with liberty to prosecute its own remedy only in 2016 in terms of the order dated 3-2-2016. As regards the original owners, the petition was also disposed of by this Court on 20-4-2017 with a direction to the respondent Nos.1 and 2 to re-consider the grievances of the petitioner in the light of the Government Resolutions dated 1-12-2015 and 28-1-2016 and thereafter, the original owners were granted TDRs as per the development right certificate dated 11-2-2019 by the respondent Nos.1 and 2. Meanwhile, the petitioner had also issued a purchase notice to the respondent No.1 on 18-9-2015, which was rejected by the respondent No.1 by sending a communication dated 28-10-2015. Later on, as stated earlier, the respondent Nos.1 and 2 granted TDRs to the original owners in respect of other five reserved portions of the lands on 11-2-2019. These events would show that there are no laches on the part of the petitioner. There is another aspect of the case. For granting TDRs to the original owners, the respondent Nos.1 and 2 did not face any issue about laches, inordinate delay and so on, but they have this very difficulty with the petitioner. Here again, the respondent Nos.1 and 2 are acting in an unreasonable and discriminatory manner inasmuch as, various turns of events narrated earlier would show that there is no delay as such on the part of the petitioner. The argument is, therefore, rejected.

36. In view of above, we find merit in the submission of the learned Senior Advocate for the petitioner and find that the petitioner has become absolute owner of the subject lands, which carry with them the reservation of Primary School and being the absolute owners of the subject lands by virtue of the orders of the year 2005 and the year 2007, the petitioner is entitled, on the principles of reasonableness and fair play in State action, to similar treatment as the original owners and, therefore, has a right to be proceeded with in respect of the subject lands in terms of the provisions contained in Sections 126 and 127 of the MRTP Act, which not having been done by the respondent Nos.1 and 2, the petitioner is further entitled to the reliefs claimed herein. The petition thus deserves to be allowed.

37. The petition is allowed in terms of prayer clauses (i) and (ii).

38. Rule is made absolute in above terms. No order as to costs.

(G.A. SANAP, J.)

(SUNIL B. SHUKRE, J.)

39. After pronouncing the judgment, the learned counsel for the respondent Nos.1 and 2 makes a prayer for staying the effect and operation of the Judgment, as he submits that the respondent No.1 is proposing to challenge this Judgment before the Apex Court. The prayer is opposed by the learned counsel for the petitioner. We are not inclined to grant the prayer so made on behalf of the respondent Nos.1 and 2, for the reason that this Court has not stipulated a particular period of time within which the notification under Section 127 (2) of the Maharashtra Regional and Town Planning Act, 1966 may be issued and also for the reason that the respondent Nos.1 and 2 have openly discriminated against the petitioner when they denied the same benefit to the petitioner which they granted to the original owners, who were situated similarly as the petitioner.

40. The request so made on behalf of the respondent Nos.1 and 2 is rejected.