

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4858 OF 2016

1. Mr. Salim Naim Khan

Age: 47 years, Occupation: Business

2. Mrs. Reshma Salim Khan

Age: 40 years, Occupation: Business

Both residing at 209, Shama Plaza,

Salim Compound, Ansari Nagar,

Opp. Prince Park,

Virar Road, Nalasopara (E)

..Petitioners

..Versus..

1. State of Maharashtra

Through its Department of Urban Development

Mantralaya at Mumbai

2. Ld. Additional Commissioner

Konkan Division at Belapur

2-a. Ld. District Collector of Palghar

3. Ld. Compentent Authority, @ Sub Divisional

Officer, Vasai Division, Vasai

Having office of Old Government Auditorium

Killa Bandar Road, Malonde, Vasai Gaon,
Vasai, Dist. Plaghar

4. Bochasanvasi Shree. Akshar Purhottam
Swaminarayan Sanstha
19, Swami Narayan Chowk, Dadar (CR)
Mumbai-400014

5. Vasai Virar Municipal Corporation
Through its Commissioner
Dist. Palghar.

..Respondents

**ALONG WITH
CIVIL APPLICATION NO. 1545 OF 2019
IN
WRIT PETITION NO. 4858 OF 2016**

1. Atma Vallabh Samaj Utkarsh Trust,
a Public Trust registered with the
registrar of Public Trust under the Bombay Public
Trust Act, 1980 having the office at
Bldg. No. 7, Achole Road, Nallasopara (E)
also at Shree Atmanad Jain Sabha, 39/41,
Dhanji Street, 2nd floor, Mumbai 400003

2. Mr. Vasant Kantitlal Jain
101/102, Darshan Tower, Seth Motisha Lane,
Byculla, Mumbai-400010 Being one of the

Trustees of the above Trust, authorized
to represent on behalf of the Trust
vide a Board Resolution passed
by the Trust

..Applicants/Intervenors

..Versus..

IN THE MATTER BETWEEN

1. Mr. Salim Naim Khan

Age: 47 years, Occupation: Business

2. Mrs. Reshma Salim Khan

Age: 40 years, Occupation: Business

Both residing at 209, Shama Plaza,

Salim Compound, Ansari Nagar,

Opp. Prince Park, Virar Road, Nalasopara (E) ..Petitioners

..Versus..

1. State of Maharashtra

Through its Department of Urban Development

Mantralaya at Mumbai

2. Ld. Additional Commissioner

Konkan Division at Belapur

2-a. Ld. District Collector of Palghar

3. Ld. Compentent Authority, @ Sub Divisional

Officer, Vasai Division, Vasai

Having office of Old Government Auditorium
Killa Bandar Road, Malonde, Vasai Gaon,
Vasai, Dist. Plaghar

4. Bochasanvasi Shree. Akshar Purhottam
Swaminarayan Sanstha
19, Swami Narayan Chowk, Dadar (CR)
Mumbai-400014

5. Vasai Virar Municipal Corporation
Through its Commissioner
Dist. Palghar.

..Respondents

ALONG WITH
WRIT PETITION NO. 9712 OF 2016

1. Mates Luis Soz (since deceased)

Through his legal heirs

1(a) Johna Mathew D'souza (wife)

1(b) Wilson Mathew D'souza (son)

1(c) Johnson Mathew D'souza (son)

1(a) to 1(c) residing at "Nanani",

Behind Gas Godown, PO. Nirmal, Tal. Vasai,

Dist. Palghar, Pin code-401 304

..Petitioners

..Versus..

1. State of Maharashtra

Through its department of Urban Development

Mantralaya at Mumbai

2. Ld. Additional Commissioner

Konkan Division at Belapur

2-a. Ld. District Collector of Palghar

3. Ld. Competent Authority, @ Sub Divisional

Officer, Vasai Division, Vasai

Having office of Old Government Auditorium

Killa Bandar Road, Malonde, Vasai Gaon,

Vasai, Dist. Plaghar

4. Bochasanvasi Shree. Akshar Purhottam

Swaminarayan Sanstha

19, Swami Narayan Chowk, Dadar (CR)

Mumbai-400014

5. Vasai Virar Municipal Corporation

Through its Commissioner

Dist. Palghar.

6. Asha Mathew D'souza

Residing at "Nanani",

Behind Gas Godown, PO. Nirmal, Tal. Vasai,

7. Mabel Prakash Vaz

Residing at Darsingh. P.O. Nirmal

Taluka Vasai, Palghar - 401304.

..Respondents

**ALONG WITH
CIVIL APPLICATION NO. 1542 OF 2019
IN
WRIT PETITION NO. 9712 OF 2016**

1. Atma Vallabh Samaj Utkarsh Trust,
a Public Trust registered with the
registrar of Public Trust under the Bombay Public
Trust Act, 1980 having the office at
Bldg. No. 7, Achole Road, Nallasopara (E)
also at Shree Atmanad Jain Sabha, 39/41,
Dhanji Street, 2nd floor, Mumbai 400003.

2. Mr. Vasant Kantitlal Jain
101/102, Darshan Tower, Seth Motisha Lane,
Byculla, Mumbai-400010 Being one of the
Trustees of the above Trust, authorized
to represent on behalf of the Trust
vide a Board Resolution passed
by the Trust

..Applicants/Intervenors

IN THE MATTER BETWEEN :

1. Mats Luis Soz
@ Mathew Luis D'souza, residing
at Navale, Post Nirmal, Tal. Vasai,
Dist. Palghar.

..Petitioners

..Versus..

1. State of Maharashtra

Through its Department of Urban
Development Mantralaya at Mumbai.

2. Ld. Additional Commissioner

Konkan Division at Belapur.

2-a. Ld. District Collector of Palghar

3. Ld. Compentent Authority, @ Sub

Divisional Officer, Vasai Division, Vasai

Having office of Old Government

Auditorium Killa Bandar Road,

Malonde, Vasai Gaon, Vasai, Dist. Plaghar

4. Bochasanvasi Shree. Akshar Purhottam

Swaminarayan Sanstha

19, Swami Narayan Chowk, Dadar (CR)

Mumbai-400014

5. Vasai Virar Municipal Corporation

Through its Commissioner

Dist. Palghar.

..Respondents

Mr.R.S. Apte, Senior Advocate with Mr Datta Mane, for the Petitioner in WP No. 4858/2016.

Ms. Neeta Karnik with Ms.Rushali Kshirsagar for the Petitioner in WP No.9712/2016.

Mr.Vishal Kanade i/b Ms.Rushita Jain for the Applicants in CAW Nos. 1542 of 2019 and 1545 of 2019.

Dr.Milind Sathe, Senior Advocate with Mr. Arun Mehta a/w Mr.Girin Pandit, Mr.Aniket Srivastav and Ms.Sanika Mehta i/b Akshar Laws for Respondent No.4 in both WPs.

Ms. Swati H. Sagvekar for Respondent No.5 in both Writ Petitions.

Mr. A. I. Patel, Addl. G.P. a/w Mr. P. V. Nelsan Rajan, AGP for the State.

**CORAM : R.D. DHANUKA &
M.M. SATHAYE , JJ.**
RESERVED ON : 17 FEBRUARY, 2023.
PRONOUNCED ON: 11 APRIL, 2023.

JUDGMENT: (Per R.D. Dhanuka, J.)

1. Rule. Dr.Sathe, learned Senior Counsel waives service for Respondent No.4 in both Petitions. Ms. Sagvekar waives service for Respondent No.5 in both Petitions. Mr. Patel waives service for the State. By consent of the parties,

Rule made returnable forthwith and heard finally.

FACTS, SUBMISSIONS, REASONS AND CONCLUSIONS
IN WRIT PETITION No. 4858 OF 2016

2. The Petitioners in Writ Petition No. 4858 have prayed for a writ of certiorari, order and/or direction for quashing and setting aside the impugned Award dated 18th February, 2016 passed by the learned Competent Authority in respect of Survey No. 84 Part (area admeasuring 723.75 sq.mtrs.), Survey No. 85 Part (area admeasuring 8850 sq.mtrs.) and Survey No. 93 (area admeasuring 540 sq.mtrs.).

3. Civil Application No.1545 of 2019 is filed by the Applicants claiming to be trustees, *inter alia*, praying for intervention in this Writ Petition on the ground that the erstwhile owners had transferred the writ property in the name of the intervenors' trust and thus, any order, if passed in favour of the Petitioners would prejudice the rights of the Applicants.

4. The Petitioners have also prayed for quashing and setting aside the impugned notification dated 11th December,

2013 issued by the learned Additional Commissioner, Konkan Bhavan, Navi Mumbai under Section 126 (4) of the Maharashtra Regional Town Planning Act, (for short “**MRTP Act**”), 1966 read with Section 6 of the Land Acquisition Act, 1894, in respect of the Petitioners’ land out of Survey No.84 Part (area admeasuring 723.75 sq.mtrs.), Survey No. 85 Part (area admeasuring 8850 sq.mtrs.) and Survey No. 93 (area admeasuring 540 sq.mtrs.)

5. It is the case of the Petitioners that the writ properties were owned by Atmavallabh Samaj Utkarsha Trust, Paydhuni, Mumbai. The names of the Trustees, namely, Mr. Suresh Devchand Shaha, Mr. Jitendra Devchand Shaha, Mr. Atul Devchand Shaha and Mr. Jayantilal R. Shaha stood recorded in the Revenue records of Gat Nos. 84 Part, 85 Part and 93 Part situated at Tulinj, Dist: Palghar. According to the Petitioners, one Harishchandra Shankar Jadhav claimed that he was having right, title, interest and possession in respect of the writ properties.

6. On 29th March, 2006, the Petitioners and the said

Harishchandra Jadhav entered into an Agreement for Sale in respect of the writ properties. Under the said Agreement for Sale, the consideration agreed between the parties was in the sum of Rs. 7,58,48,000/-. According to the Petitioners under the said Sale Deed, the Petitioners were put in possession of the entire properties.

7. It is the case of the Petitioners that the Petitioners subsequently came to know that there was a dispute between Mr. Harishchandra Jadhav and Trustees of Atmavallabh Samaj Utkarsha Trust. According to the Petitioners, the Petitioners settled the dispute with the Trustees of Atmavallabh Samaj Utkarsha Trust.

8. It is the case of the Petitioners that Mr. Harishchandra Jadhav and all the Trustees of the Atmavallabh Samaj Utkarsha Trust admitted the possession of the Petitioners about the writ properties. The possession of the Petitioners of the writ properties was alleged to have been obstructed by the third parties. The Petitioners were informed that the Trustees of Atmavallabh Samaj Utkarsha Trust,

namely, Suresh Shaha and another intended to sell those properties. The Petitioners therefore filed a Suit bearing Regular Civil Suit No. 619 of 2013 before the Civil Judge, Junior Division at Vasai *inter-alia* praying for injunction against the Trustees namely, Mr. Jayantilal R. Shaha, Mr. Suresh D. Shaha, Mr. Jitendra D. Shaha, Mr. Atul D. Shaha and Mr. Harishchandra S. Jadhav.

9. On 30th January, 2015, the learned Assistant Commissioner, Ward C, Nalasopara, Vasai Virar Municipal Corporation issued a notice under Sections 52, 53 and 54 of the MRTP Act to the Petitioner No.1 alleging that the Petitioner No.1, had carried out illegal construction over the land bearing Survey No. 84. It is alleged in the said notice that in the Development Plan of Vasai Virar Municipal Corporation, the Survey No. 84 Part, 85 Part and 93 Part had been reserved by way of Reservation No. 333 for the Community Centre. The Petitioner No.1 filed a Regular Civil Suit bearing No. 140 of 2015 *inter-alia* praying for declaration and injunction in respect of the impugned notice dated 30th January, 2015 issued by the Assistant Commissioner, Ward C,

Nalasopara, Vasai Virar Municipal Corporation.

10. On 30th April 2015, the 2nd Joint Civil Judge, Junior Division at Vasai passed Order below Exhibit-5 restraining the Defendant from demolishing the suit properties without due process of law till further orders. The Respondent No.5, in its development plan, reserved the area of Petitioners from Survey No. 84 Part, Survey Nos. 85 Part and Survey No. 93 Part for Community Centre. The development plan sanctioned by the Respondent No.1 on 15th March, 2007 is in force till date.

11. On 11th December, 2013, the State Government issued a Notification/Declaration under Section 6 of the Land Acquisition Act, 1894 read with Section 126(4) of the MRTP Act. Under the said Notification, it was declared that the writ properties were required for the public purpose. After following the procedure prescribed under the provisions of the Land Acquisition Act, 1894, an Award came to be made on 18th February, 2016 by Respondent No.3.

12. On 24th July, 2014, the Petitioners raised an objection before the Sub Divisional Officer contending that the Predecessors of the Petitioner Mr. Salim N. Khan was cultivating rice in the Survey No. 84 Hissa No. Part admeasuring 43 Gunthas and alleged that he was in possession of the writ property for very long period and requested to stop the acquisition proceedings immediately.

13. On 18th February, 2016, the Competent Authority made an Award. It is the case of the Petitioners that in the said impugned Award, the name of the original Petitioner Mr. Salim N. Khan was mentioned. The certain amount of compensation was also offered to him.

14. Mr. Apte, learned senior counsel for the Petitioners invited our attention to the averments made and the prayers in the Civil Suit filed by his client. He submitted that notices under Section 9(3) (a) and Section 10(1) of the Land Acquisition Act, 1894 were issued to the predecessors of the Petitioners as the person interested. He submitted that on 11th April, 2016 notices were issued to the original Petitioners

under Section 12(2) of the Land Acquisition Act, 1894 offering payment of some compensation.

15. Learned Senior Counsel invited our attention to the definition of the 'Appropriate Authority' under Section 2(3) of the MRTP Act, the definition of the 'Development Authority' under Section 2(8) and the definition of the Planning Authority under Section 2(19) of the MRTP Act. He also relied upon Section 126(1) of the MRTP Act and submitted that the acquisition of the land could be made after the publication of a draft Regional Plan, a development or any other plan or town planning scheme, only if such land is required or reserved for any of the public purposes specified in any plan or scheme under the MRTP Act at any time only by Planning Authority, Development Authority or as the case may be any Appropriate Authority may, except otherwise provided in Section 113(A) of the MRTP Act in the mode and manner prescribed in Section 126.

16. It is submitted that under Section 113A of the MRTP Act, the State Government is empowered to acquire

land for corporation or company declaring to be the New Town Development Authority. He submitted that admittedly in this case, the State Government has not invoked Section 113A of the MRTP Act. It is submitted by the learned Senior Counsel that in this case, admittedly, a plan for acquisition of the writ property was made by Respondent No.4 i.e. Bochasanvasi Shree. Akshar Purshottam Swaminarayan Sanstha is neither the Planning Authority nor the Development Authority or an Appropriate Authority within the meaning of Sections 2(19), 2(8) or 2(3) respectively.

17. It is submitted that at the first instance, no plan for acquisition could be made by a private party. It is submitted that the payment of compensation for such acquisition could have been made only by the Planning Authority or Development Authority or Appropriate Authority who could have applied for acquisition of such plot after publication of a draft Regional Plan or Development or any other plan of the Town Planning scheme and not by a private party.

18. The learned Senior Counsel invited out attention to

the averments made by Respondent No.3 i.e. Sub Divisional Officer in affidavit in reply dated 8th July, 2016 contending that it is immaterial whether the Respondent No.4 Trust falls within the ambit of the definition of 'appropriate authority' as per the provisions of Section 2(3) of the MRTP Act. He submitted that the contentions raised by Respondent No.3 is *ex-facie* and contrary to the provisions of Section 126 (1) of the MRTP Act.

19. Learned Senior Counsel for the Petitioners invited our attention to the affidavit in reply filed by the Municipal Corporation affirmed on 6th August, 2016 and contended that the Reserve Site No. 333 situated in Survey No. 84 and 85 was reserved for Community Centre and the Respondent No.1 had appointed Swami Narayan Trust to be its implementing or acquiring body which cannot be disputed. He submitted that it is admitted in the said affidavit that the Municipal Corporation was the Planning Authority of the Vasai Virar Sub Region as also the Appropriate Authority and that the Respondent No.4-Trust was the beneficiary, implementing and acquiring body of the said reservation as per DP report which is sanctioned by

the Respondent No.1. It is submitted by the learned Senior Counsel that even according to the Municipal Corporation, Respondent No.4 is not the Planning Authority or the Appropriate Authority within the meaning of Section 126(1) of the MRTP Act.

20. Learned Senior Counsel for the Petitioners invited our attention to the modified development plan of Vasai Virar Sub Region annexed at Exhibit-E to the affidavit in reply filed by the Municipal Corporation and submitted that in the said plan, the name of the implementing or acquiring body in respect Reservation Site No. 333 was Swami Narayan Trust.

21. Learned Senior Counsel placed reliance on the Judgment of the Supreme Court in case of ***Valjibhai Muljibhai Someji and Others Vs. State of Bombay and Others AIR 1963 SC 1890*** and in particular paragraph Nos. 5, 6, 9 and 15 in support of the submission that the powers exercised by the State Government in acquiring the property of the Petitioners on the application made by a private party is colourable being collusive action. He submitted that, in that

case also, the acquisition was initiated at the instance of the private company and the entire funds for payment of entire compensation came out of funds of such private company.

22. It is submitted that the Supreme Court has held that the acquisition having been made for the benefit of a private company, though for a public purpose, is bad because no part of the compensation has come out of public revenues and provisions of Part VII of the Land Acquisition Act have not been complied with. Learned Senior Counsel for the Petitioners also placed reliance on the Judgment of the Supreme Court in case of ***Amarnath Ashram Trust Society and Anr. Vs. Governor of U.P. & Ors. (1998) 1 SCC 591*** and in particular paragraph No. 6 in support of his submission that since the costs of acquisition was entirely borne by a private party, no such acquisition could have been permitted contrary to the provisions of Section 126(1) of the MRTP Act.

23. Learned Senior Counsel also placed reliance on the judgment of Supreme Court in case of ***State of Gujarat vs. Bhogilal Keshavlal & Anr. 1980(1) SCC 308*** in particular

paragraph 4 and 8 in support of his submission that since the compensation in this case was paid by a private body, such acquisition could not have been initiated at the instance of such private party by the State Government under Section 126(1) of the MRTP Act.

24. Dr. M.R. Sathe, learned Senior Counsel for the Respondent No.4 Trust on the other hand invited our attention to the averments pleaded by the Petitioners in Writ Petition No.4858/2016 and more particularly in paragraphs Nos.2 and 3 and submitted that the Petitioners are claiming through Harishchandra Shankar Jadhav. He invited our attention to the Affidavit in Reply filed by his client and submitted that under a Government Notification dated 7 December, 1988, MMRDA (formerly known as BMRDA) established under the Bombay Metropolitan Regional Development Act, 1974 was appointed as Special Planning Authority under Section 40 of the MRTP act 1966 for the Vasai Virar Sub-Region.

25. It is submitted by learned Senior Counsel that on 15 May, 1990 CIDCO was replaced by MMRDA vide

Government notification. Thereafter CIDCO became Special Planning Authority under Section 40 MRTP Act, for the Vasai Virar Sub-Region. On 13 September, 1990 CIDCO declared its intention under Section 23(1) of the MRTP Act to prepare development plan for the Vasai Virar Sub-Region and public notice to that effect was published in Maharashtra Government Gazette. On 25 June, 1992 CIDCO exercises powers under Section 32(1) of the MRTP Act and published a notice in Maharashtra Government Gazette to prepare an interim Development Plan for the Vasai Virar Sub-Region.

26. It is submitted by Dr. Sathe, learned Senior Counsel for Respondent No.4 that on 10 September, 1992 CIDCO published draft interim Development Plan for the Vasai Virar Sub-Region under Section 32(1)(2) r/w. Section 26(1) of the MRTP Act. On 7 September, 1995 CIDCO published a notice having prepared a draft development plan under Section 26(1) of MRTP Act for inviting suggestions/objections from public.

27. It is submitted by the learned Senior Counsel that on 31 August, 1998 CIDCO has submitted draft Development

Plan to the Government of Maharashtra for sanction under Section 30 of MRTP Act. On 19 January, 2000. Government of Maharashtra republished the said draft Development Plan submitted by CIDCO by giving notice under Section 29 of the MRTP Act, under the Maharashtra Government Gazette. On 20 January, 2000 State of Maharashtra invited suggestions/objections from the public on draft Development Plan submitted by CIDCO. The State of Maharashtra appointed three Member Committee under Chairmanship of the Metropolitan Commissioner, MMRDA for performing functions under Section 28(4), 29 and 30 of the MRTP Act in respect of the said draft Development Plan.

28. It is submitted by Dr. Sathe, learned Senior Counsel that on 29 May, 2003 the three member committee considered the suggestions and objections received by the Government and carried out the modification in the draft development Plan and published Notice under Section 29 of the MRTP Act in the Maharashtra Government Gazette inviting suggestions and objections from the public in respect of modification. The Government sanctioned the Development Control Regulations

for Vasai Virar Sub-Region on 16 February, 2004.

29. It is submitted that on 30 November, 2005 changes of substantial nature came to be sanctioned by the Government Notification. On 9 February, 2007 a development plan of Vasai Virar Sub-Region came to be sanctioned by the State Government vide the Urban Development Department Order and is in force with effect from 15 March, 2007. Learned Senior Counsel submitted that the Petitioner No.1 filed a Suit bearing No. 619/2013 on 16 December, 2013 after about six years of the publication of the final Development Plan and published by the State Government vide notification dated 9 February, 2007. Respondent Nos. 1 to 5 were not impleaded as party to the said suit. The said suit has nothing to do with final Development Plan approved and made public by the State Government.

30. It is submitted by the learned Senior Counsel that the cause of action if any in favour of the Petitioners arose in the year 2007 when the Development Plan of Vasai Virar Sub-

Region came to be sanctioned by the State Government. The present Writ Petition is filed in the year 2016. Petitioners have not explained the gross delay/laches in filing the petition after several years.

31. Learned Senior Counsel for Respondent No.4 submitted a copy of the report submitted under Section 30 of the MRTP Act, by the Committee appointed by Government of Maharashtra under Section 162 of MMRDA Act, relating to Development Plan of the Vasai Virar Sub-Region for 2001-2021. It is submitted that the said Committee accepted the report of Planning Committee and corrections as well as changes/modifications. He invited our attention to the Appendix-E appended to the said Report, providing details of the reserved site and their Implementing Bodies. It is submitted that in respect of several reserved sites, names of various Trusts were mentioned as Implementing or Acquiring Bodies including names of the Respondent No.4. Name of Respondent No.4 is mentioned at page E-11 in respect of the Site No.333 at Serial No. 337 of said Appendix-E.

32. Learned Senior Counsel placed reliance on Section 22(f) of the MRTP Act and submitted that the reservation of the land can be for Community Facilities and Services. He relied upon Section 31 of the MRTP Act and submitted that the development plan has been sanctioned having reservation for Trust. He relied upon Section 125 of the MRTP Act and submitted that once there is compulsory acquisition in respect of any land, such acquisition is deemed to be a public purpose. He submitted that the Petitioners at the most would be entitled to seek compensation if they are able to show any right, title and interest in the property under acquisition and can apply for enhancement of such compensation upon providing their entitlement.

33. Learned Senior Counsel for Respondent No.4 relied on Section 126 of the MRTP Act and submitted that admittedly in this case Site No.333 was reserved for public purposes. Entire procedure required to be followed for acquiring land for public purpose is followed in this case. He submitted that who has made an application for acquiring the land is thus in consequential. He submitted that it is not the

case of the Respondent No.4 that it is an Appropriate Authority or Public Authority according to Section 126 of the MRTP Act. He submitted that there is no challenge made by the Petitioners that after issuance of notification under Section 126(4) of the MRTP Act, any part of procedure is not complied with. He submitted that Section 126 of the MRTP Act, is equivalent to Section 4 of the Land Acquisition Act. He submitted that once Award is made, acquisition proceedings cannot be challenged.

34. Learned Senior Counsel relied upon the following Judgments:

1. **Municipal Council, Ahmednagar And Anr. Vs. Shah Hyder Beig and Others [(2000)2 SCC 48]**
2. **Northern Indian Glass Industries Vs. Jaswant Singh And Others [(2003) 1 SCC 335]**
3. **Girnar Trader (3) Vs. State of Maharashtra And Ors. [(2011) 3 SCC 1]**
4. **Mehta Laiq Ahmed Shaikh and Anr. Vs. State of Maharashtra and Ors. [(2017) SCC Online Bom 8841]**
5. **Bajirao T. Kote (Dead) By LRS. And Anr. Vs.**

State of Maharashtra And Ors. [(1995) 2 SCC 442].

35. It is submitted by the learned Senior Counsel that the Petitioner could at the most challenge the notification issued by the State Government sanctioning the final Development Plan in the year 2007 which is admittedly done by the Petitioners after 9 years of the issuance of such notification. He submitted that the second Proviso to Section 6 of the Land Acquisition Act relief upon by Shri Apte learned Senior Counsel for the Petitioners in Writ Petition No. 4858/2016 is not applicable. He submitted that the MRTP Act is self contained code.

36. It is submitted by the learned Senior Counsel that Respondent No. 4 is implementing Development Plan prepared by the State Government for Community Service. The Petitioners cannot be allowed to contend that the application was made by the Respondent No.4. The acquisition is made on behalf of the Planning Body. He submitted that the land is acquired for free Community Service which is a deemed public purpose. He invited our

attention to prayer Clause (a-1) of the Writ Petition filed by these two Petitioners. It is submitted by learned Senior Counsel that land can be acquired by private negotiation. The Petitioner in Writ Petition No. 4858/2016 have no locus to file this petition.

37. Mr. Patel, learned Additional Government Pleader for the State also challenged the locus of Petitioners in both the petitions to file these petitions. He invited our attention to the documents annexed in the Writ Petition No. 4858/2016 and submitted that the Petitioners claim title under Memorandum of Understanding to purchase which does not create any right in favour of the Petitioners. Petitioners have not filed any suit for Specific Performance.

38. Ms. Sagvekar, learned counsel for Municipal Corporation invited our attention to the averments made in para 7 to 10 of the Affidavit in Reply filed by Municipal Corporation and submitted that Petitioners in Writ Petition No. 4858/2016 have constructed structures without permission of the Municipal Corporation. She opposed both

these petitions on the grounds raised in Affidavit in Reply.

39. Mr. Vishal Kanade, learned counsel for the Intervenor submitted that his clients have rights in the property under acquisition and thus this Court shall not adjudicate upon the claims of the Petitioners in the writ property which would affect and prejudice the rights of his clients in the writ property. He submitted that Intervenor thus shall be allowed to intervene in this petition and to oppose this petition.

40. Mr. Apte learned counsel for the Petitioners in Writ Petition No.4858/2016 fairly submitted that the "Community Purpose" is a public purpose. This proposition is not in dispute. He, however, submitted that procedure prescribed under Section 126 of MRTP Act has not been followed by the Respondents.

41. A Short question that arises for consideration of this Court is whether Respondent No.4 Trust has acted as a Planning Authority or the Appropriate Authority within the

meaning of Section 126(1) of the MRTP Act for acquiring the land in question or not?

42. Insofar as Writ Petition 4858/2016 is concerned the Petitioners had admittedly filed a suit bearing Regular Civil Suit No. 619/2013 before the Learned Civil Judge, Junior Division at Vasai, inter alia, praying for an injunction against the trustees of the Respondent No.4 Trust. The Assistant Commissioner of Vasai Municipal Corporation had issued a notice under Sections 52, 53 and 54 of the MRTP Act to Petitioner No.1, alleging that the Petitioner No.1 had carried out illegal construction over the land bearing Survey No. 84.

43. The Petitioners were further informed that in the Development Plan of Vasai Virar Municipal Corporation, the Survey No.84 Part, 85 Part and 93 Part, situated at Tulinj, Tal. Vasai, Dist. Palghar was reserved by way of Reservation No. 333 for the Community Centre. It is not in dispute that, the development plan sanctioned by Respondent No.1 on 15 March, 2007 is in force till date. The Petitioners have however, filed the Writ Petition on 25 April, 2016 i.e. after

about 7 years, inter alia praying for quashing and setting aside the Award dated 18 February, 2016, without challenging the development plan sanctioned as far as back on 15 March, 2007.

44. Learned Senior Counsel for the Petitioners, did not dispute that on 11 December, 2013, the State of Maharashtra had already issued a Notification/Declaration under Section 126(1) of the MRTP Act declaring that the writ property was required for public purpose. The Award was accordingly made on 18 February, 2016. The Petitioners raised an objection only on 24 July, 2014 before the Sub-Divisional Officer contending that predecessor of the Petitioner i.e. Salim Naim Khan was cultivating rice in Survey No.84 (Part) admeasuring 43 gunthas and that the said Mr. Salim Naim Khan was in possession of the writ property since long period.

45. The Petitioners in the said Writ Petition have been claiming through Harichandra Shankar Jadhav. It is not in dispute that on 14 May, 1999, CIDCO was replaced by MMRDA vide Government Notification. CIDCO became

Special Planning Authority under MRTP for Vasai Virar Sub-Region.

46. On 7 September, 1995, CIDCO published a notice that the draft development plan was being prepared under Section 26(1) under the MRTP Act and invited suggestions from the public and thereafter submitted a draft development plan to the State Government under Section 126 (1) of the MRTP Act. The State Government had appointed three member committee under the Chairmanship of Metropolitan Commissioner, Mumbai for performing functions under Section 28(4), 29 and 30 of the MRTP Act in respect of the said draft Development plan. After considering the suggestions and objections received by the Government the three members' committee carried out the modification in the draft Development Plan and published a notice under Section 29 of the MRTP Act for inviting suggestions and objections from the public in respect of the modifications. The Government sanctioned the Development Control Regulations for Vasai-Virar Sub-Region submitted by said Committee on 16 February, 2004.

47. It is a common ground that the said Development Plan for Vasai Virar Sub-Region which was sanctioned on 9 February, 2007, came in force with effect from 15 March, 2007. The Petitioner No.1 filed a Suit bearing No. 619/2016 on 16 December, 2016 after the final plans were sanctioned and published in the Government Gazette vide Notification dated 9 February, 2007. The Respondents No.4, however, was not impleaded as party to the suit. In our view Dr. Sathe, Learned Senior Counsel for Respondent No.4 is right in his submission that the cause of action if any, in favour of the Petitioners arose in the year 2007 when the development plan for Vasai Virar came to be sanctioned by the State Government. The Writ Petition is also filed belatedly after more than 8 years without explaining delay and laches caused in filing the petition.

48. The report submitted under Section 30 of the MRTP Act by the Committee appointed by the Government of Maharashtra, accepted the report of the Planning Committee and the corrections as well as changes / modifications.

49. A perusal of the said report clearly indicates that in respect of several reserved sites, the names of various trusts were mentioned as implementing or acquiring bodies including the name of Respondent No.4 in respect of site No.333 at Serial No. 337 at Appendix-E. It is not the case of the Petitioners that the names of other trusts or private bodies were only mentioned as implementing or acquiring bodies. None of the Petitioners have disputed that the reservations of the land can be for community facilities and services, which is a public purpose. The purposes mentioned in the development plan for reservation are public purposes.

50. It is not in dispute that the Development Plan has been sanctioned and has been reserved for the trust. Section 125 of MRTP clearly provides that once there is a compulsory acquisition of land, such acquisition is deemed to be a public purpose. Hence, the right of the Petitioners, if any, in the said land, acquired for the public purposes would be in the nature of seeking compensation. Learned Senior Counsel for the Petitioners could not demonstrate that the entire procedure

required to be followed for the acquisition of land for the public purpose was not complied with. It is not disputed by the learned counsel for the Petitioners that the Respondent No.4 is a Trust for whose benefit, the said land was acquired for the community centre.

51. We have perused the Affidavit in Reply filed by Respondent No.3 contending that the structure possessed by the Petitioners, admittedly is an unauthorized structure. Notices under sections 52 and 53 of the MRTP Act have already been issued against the Petitioners. Respondent No.3 has rightly contended in the Affidavit that it is immaterial whether the Respondent No.4 falls within the ambit of the definition of the Appropriate Authority as per provisions of Section 2 (3) of the MRTP Act or not. It is rightly contended that the said definition is clear that the public authority is one on whose behalf the land is designated for public purpose. The definition implies that the land can be designated not only for the purpose of such Public Authority but also can be for the public purpose designated by such public authority.

52. The Respondent No.4 also has filed an Additional Affidavit in this Petition stating that the State of Maharashtra created the Vasai Virar Sub-Regions on 31 August, 1998 in order to provide basic amenities on account of rapid urbanization of the Vasai Taluka for planned development, which is near Mumbai, due to connectivity of Western Railway and National Highway and for planned development. The Municipal Corporation also mentioned that the State Government had appointed Committee under the Chairmanship of Principal Secretary of the Urban Development Department of State of Maharashtra, to examine the entire area and the possibility of the said entire area to be declared as a Municipal Corporation and submit its report.

53. In the said development plan, proposals were made in the form of zoning, roads, and reservation and accordingly 872 sites were reserved along with their areas and implementing or acquiring bodies as reflected in Appendix E of the sanctioned development plan. Insofar as referred site No. 333 is concerned, implementing or acquiring body, the

name of Respondent No.4 was mentioned. The Petitioners did not challenge the said schedule appended to the development plan. At no point of time, the Petitioners challenged the said reservation in respect of Site No. 333 for the community centre and that Respondent No.1 had appointed the Respondent No.4 to be its implementing or acquiring body.

54. The said notification dated 11 December, 2013 indicates that it was made clear that the Vasai Virar Municipal Corporation is the Planning Authority of the Vasai Virar Sub-Region as also the Appropriate Authority and that Respondent No.4 is the beneficiary/implementing/acquiring body of the said reservation as per DP Report sanctioned by the State of Maharashtra. It is not the case of the Petitioners that Municipal Corporation as well as Respondent No.4 were Planning Authority and Appropriate Authority.

55. In paragraph 13 of the Affidavit of Respondent No.5, the Municipal Corporation has stated that since the beneficiary implementing/acquiring body with respect to the reservation No.333 was Respondent No.4, the Municipal

Corporation granted its no objection, as done by the CIDCO for acquiring the land in question for the said public purpose. Petitioners have not disputed that the acquisition was for the benefit of the Respondent No.4 for public purpose.

56. It is not in dispute that the Respondent No.4 is a Registered Public Charitable Trust and is also designated as Non-Government Organization (NGO) by the United Nation Organization. In our view at the first instance the Petitioners have no locus to invoke an ex-ordinary jurisdiction of this Court under Article 226 of the Constitution of India for challenging the Award dated 18 February, 2016 passed by the Competent Authority.

57. The Notification dated 11 December, 2013 issued by the State Government after following the procedures in the Chapter III under the provisions of Sections 21 to 42 r/w. Section 126, sub-section 1, 2 and 4 of MRTP Act wherein it has been clearly mentioned that land which has been acquired and allotted to Respondent No.4 is for public purpose and the Respondent No.5 will act as an Appropriate

Authority. It was confirmed in the said Notification that the land allotted to the Respondent No.4 is to be used for public purpose under the provisions of the MRTP Act.

58. The Petitioners have not challenged the Notification dated 11 December, 2013 or the Notification dated 9 February, 2007 issued by the State Government. Admittedly, the Petitioners had participated in the hearing before the competent authority. The development plan having been finalized and notified, writ jurisdiction cannot be invoked by the Petitioners. The Supreme Court in the case of **Municipal Council Ahmednagar and Anr. Vs. Shah Hayder Beig and Ors. [(2000) 2 SCC 48]**, has held that after the Award is passed, no writ petition can be filed challenging the acquisition notice or against any other proceeding thereunder. In our view, the principles laid down in the case of **Municipal Council Ahmednagar (Supra)**. would apply to the facts of the case. The remedy, if any, of the Petitioner would be to claim compensation if the Petitioner succeeds in establishing their rights, if any, in the writ property.

59. The Supreme Court in the said judgment of **Municipal Council Ahmednagar and Anr. (Supra)** also adverted to the judgment of the Supreme Court in the case of **Municipal Corporation of Greater Bombay Vs. Industrial Development Investment Co. (P) Ltd. [(1996) 11 SCC 501]** in which it has been held that when there is inordinate delay in filing the Writ Petition and when all steps taken in the acquisition proceedings, have become final, the Court should be loath to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution of India to quash the notification under Section 4(1) and declaration under Section 6, but it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226.

60. Supreme Court in case of **Northern Indian Glass Industries Vs. Jaswant Singh and Ors. [(2003) 1 SCC 335]**, has held that the delay in filing the writ to challenge

notifications under Sections 4 and 6 would be relevant factor for reason to grant relief. In this case, the Petitioners neither challenged the acquisition proceedings at any stage earlier, not challenged notification issued from time to time at any stage.

61. Supreme Court in case of **Girnar Traders (3) Vs, State of Maharashtra and Ors. [(2011) 3 Supreme Court Cases 1]** has held that all the provisions under the Land Acquisition Act cannot be applied to the MRTP Act. The provisions of MRTP Act can be implemented in their own field. It is held that there can hardly be any hesitation in concluding that the MRTP is a self contained code and does not lose its colour or content of being a self-contained code merely because it makes a reference to some of the provisions of the Land Acquisition Act for acquiring the land for the purpose of MRTP Act and determination of compensation in that behalf. It is held that referring the provisions of the Land Acquisition Act may only be taken recourse to that limited extend within the extensive framework and for the purpose of MRTP Act. Thus, Court

accordingly held that MRTP Act is complete Code in itself. The principles laid down are applicable to the facts of this case. In our view, reliance placed by Mr. Apte, on some of the provisions of the MRTP Act is thus totally misplaced.

62. The Full Bench of this Court in case of **Mehtab Laiq Ahmed Shaikh and Anr. Vs. State of Maharashtra and Ors. [(2017) SCC Online Bom 8841]** has held that while carrying out the planned development, a balance has to be achieved between the individual rights and larger good of the society. The MRTP Act has its own scheme for achieving such a balance. The MRTP Act has an elaborate methodology of identification and finalization of the need for public amenities and to initiate the process for acquisition of the land for fulfilling the need so determined. In our view, the principles laid down by Full Bench of this Court in case of **Mehtab Laiq Ahmed Shaikh and Anr.** (supra) apply to the facts of this case.

63. The fact remains that the land was acquired for public purpose and for the benefit of Respondent No.4. The involvement of Respondent No.4 is even otherwise necessary

for the purpose of acquisition. The nomenclature used by the State Government or the Municipal Corporation would not make Respondent No.4 as a planning authority or acquiring body within the meaning of Section 126 of the MRTP Act or within the definition of the Appropriate Authority. The acquisition proceedings cannot be set aside on this ground. Respondent No.4 was not the stranger to the acquisition proceedings. The payment of compensation was to be made by the Respondent No.4. Admittedly, it is not the case of the Petitioners that the land was not acquired for Respondent No.4 or that the payment has been made by some other party.

64. The Supreme Court in case of **Bajirao T. Kote (Dead) by Lrs. Vs. State of Maharashtra and Ors. [(1995) 2 sSCC 442]**, held that it cannot be gainsaid that providing access to the temples is not a public purpose. The exercise of power under Section 4(1) of the Act, therefore, is neither colourable nor malafide. Mr. Apte, Learned Senior Counsel for the Petitioners fairly did not dispute that the land was reserved for public purpose i.e. for community services.

65. Insofar as the judgment of the Supreme Court in

case of **Amarnath Ashram Trust Society Vs. Government of UP and Ors. [(1998) 1 SCC 591]** relied upon by Mr. Apte, Learned Senior counsel for the Petitioner in Writ Petition No. 4858/2016 is concerned, the Supreme Court had considered the situation where the entire cost of acquisition was borne by the Trust society and acquisition was for a company and not for a public purpose. Since it is an admitted position that the purpose for which land was acquired is a public purpose, the judgment cited by the Shri Apte, learned Senior Counsel for the Petitioner in case of **Amarnath Ashram Trust Society** (supra) would not apply to the facts of this case.

66. Insofar as judgment of **State of Gujarat and Anr. Vs. Bhogilal Keshavlal & Anr. [(1980) 1SCC 308]** and in case of **Valjibhai Sonji & Anr. Vs. State of Bombay & Ors. [1964 (3) SCR 686]** relied upon by the Learned Senior Counsel for the Petitioners is concerned, the said judgments do not apply even remotely to the facts of this case.

67. Insofar as the reliance placed on Section 113A of the MRTP Act by the Learned Senior Counsel for the

Petitioner is concerned, the reliance placed on the said provision is totally misplaced. It is the case of the Petitioners themselves that admittedly, in this case the State Government has not invoked Section 113 of the MRTP Act. The Respondent No.4 is not a Corporation or company, have been declared to be new Town Development Authority.

68. Insofar as the submission of the Learned Counsel regarding payment of compensation for acquisition could have been only made by Planning Authority or by Development Authority or Appropriate Authority who could have applied for acquisition of such offer is concerned, the Petitioners have not disputed that the land was acquired for a public purpose and for benefit of Respondent No.4. Even if the beneficiary of the acquisition is permitted to make payment for acquisition of the property for public purpose directly and not routed through the Planning Authority or Development Authority or through the Appropriate Authority would not vitiate the acquisition proceedings. Respondent No.4 has not claimed its status as a planning Authority or Development Authority or Appropriate Authority as sought to be canvassed by the

Petitioners.

69. Writ Petition is devoid of merits and deserves to be dismissed.

70. Insofar as the Civil Application No.1545 of 2019 for intervention in this Writ Petition is concerned, since we do not propose to pass any order in favour of the Petitioners, rights of the Applicants, if any, in the writ property are not affected and thus, we are not inclined to entertain this Civil Application for intervention and same is accordingly disposed of.

FACTS, SUBMISSIONS, REASONS AND CONCLUSIONS
IN WRIT PETITION No.9712 OF 2016.

71. Prayers in this Petition are similar to the prayers in Writ Petition No.4858 of 2016.

72. Civil Application No.1542 of 2019 is filed by the Applicants claiming to be trustees, *inter alia*, praying for

intervention in this Writ Petition on the ground that the erstwhile owners had transferred the writ property in the name of the intervenors' trust and thus, any order, if passed in favour of the Petitioners would prejudice the rights of the Applicants.

73. It is the case of the Petitioners that the predecessor of the Petitioners became owner of the writ property admeasuring 0-25-10 from Gat No. 85 part under the provisions of the Bombay Tenancy and Agricultural Land Act (for short 'BTAL Act') as he was the original tenants of the landlord Mr. Bandukwala. The said declaration was made by the Tenancy Court in 1983. It is the case of the Petitioners that the predecessor of the Petitioners was issued certificate under Section 32-M of the BTAL Act. It is the case of the Petitioners that the Respondent Trust entered into an MOU on 14 June, 1993 with the predecessor of the Petitioners, which was never acted upon.

74. According to the Petitioners, trustees of Respondent No.4 admitted the possession of the predecessor

over the said property and thus the Petitioners have right, title and interest over the said property. The Respondent No.4 filed Special Civil Suit No. 57 of 2004 in the Court of Civil Judge, Senior Division at Vasai against the Petitioners and the same is pending. The trustees of Respondent No.4 Trust filed Suit bearing RCS No. 154 of 1997 against the Petitioners which came to be dismissed. The Appeal filed by the trustees of Respondent No.4 bearing No. 208 of 1999, however, came to be allowed. The Petitioners have challenged the said order before this Court and the said proceedings are pending. The predecessor of the Petitioners had filed Tenancy Case No. 25 of 1983 wherein he came to be declared as a Tenant. The Maharashtra Revenue Tribunal passed an order recommending the matter back before the authority.

75. It is the case of the Petitioner that Respondent No.5, in its Development Plan reserved the area for the Respondent No.4 from Survey No. 84 Part, Survey No. 85 Part and Survey No. 93 Part for Community Centre i.e. Reservation No. 333. The said Development Plan is sanctioned by Respondent No.1 and it is in force since 15th March, 2007.

The Petitioners filed this Petition on 16th August, 2016, impugning the Award dated 18th February, 2016.

76. It is the case of the Petitioners that the Award made by the Competent Authority is without following the procedure prescribed under the Land Acquisition Act.

77. Respondent No. 4 filed an affidavit in reply to this Petition, opposing the Writ Petition. It is contended in the Affidavit in Reply that the Petitioners have not challenged the Notification dated 11th December, 2013. The Petitioners had participated in the hearing and had filed their objections and only after considering the objections pressed by the Petitioners, the Competent Authority has made an Award on 18th February, 2016. The other objections raised by Respondent No.4 will be dealt with in the later part of this Petition.

78. Respondent Nos.3 and 5 also filed Affidavits in this Petition, opposing this petition on various grounds.

78. Ms. Neeta Karnik, learned counsel for the

Petitioner submitted that the predecessor of the Petitioners was a protected tenant and had been issued a certificate under Section 32-M of the BTAL Act. She submitted that the predecessor of the Petitioners was the owner in respect of the writ property. She invited our attention to the Affidavit in Reply filed by Respondent No.4 Trust and submitted that Respondent No.4 has raised false contentions about their authority to acquire the writ property. She submitted that Respondent No.4 is neither an appropriate authority or public authority nor an acquiring body, who could invoke the provisions of Section 126 (4) of the MRTP Act.

79. Learned counsel for the Petitioners invited our attention to the Affidavit in Reply filed by Respondent No.5 and more particularly, paragraph 10 and submitted that there was mentioning of the acquiring body or implementing body under the provisions of the MRTP Act. She submitted that Respondent No.4 cannot be described as Acquiring Body or Implementing Body.

80. Learned counsel for the Petitioner relied upon the

Judgments which were also relied upon by Mr.Apte learned Senior Counsel for the Petitioner in Writ Petition No.4858/2016 and submitted that Section 126 of the MRTP Act has to be read with Section 2(2), 2(8) and 2(9) and accordingly all the three authorities described in those provisions would fall under Section 126 of the MRTP Act and such authority can apply for acquisition of land under Section 126 of the MRTP Act, and not a private party as per the procedure prescribed by law.

81. Learned counsel for the Petitioners placed reliance on the Judgments of this Court in case of **Lakhichand Marotrao Dhoble & Anr. Vs. Joint Charity Commissioner and Others, 2020 (6) Bom.C.R.414 (Nagpur Bench)** and in particular para 9,11,12 in support of the submission that the activities of the Trust are purely voluntary in nature. He submitted that Respondent No.4 is not amenable to writ jurisdiction under Article 226 of the Constitution of India on the ground, that it was not an authority within the meaning of Article 12 of the Constitution of India.

82. Learned Counsel for the Petitioners placed reliance on the Judgment of Punjab & Haryana Court in case of **DAV College Trust and Management Society and others Vs. Director of Public Instructions and Others, AIR 2008 Punjab And Haryana 117**, in particular para 5 in support of the submissions that the definition of 'public authority' itself shows that the 'public authority' would include any organization/body owned, controlled or substantially financed directly or indirectly by funds provided by the Government or even the non-Government Organization which is substantially financed.

83. It is submitted that the Respondent No.4 Trust, who is a party Respondent to the Petition filed by her clients, does not get any grant in Aid or finance from the State Government or is not directly or indirectly controlled or is substantially financed by the Government or even the Non Government Organization. She submitted that the Respondent No.4 has not relied upon any other provision to show that Respondent No.4 is any of the Authority who has been permitted to make an application for the acquisition of the

property.

84. Learned Counsel relied upon the following judgments:

- 1. Amarnath Ashram Trust Society Vs. Government of UP & Ors. (1998) 1 SCC 591.**
- 2. State of Gujrat & Anr Vs. Bhogilal Keshavlal & Anr. (1980) 1 SCC 208**
- 3. Vajibhai Sonji & Anr Vs. State of Bombay & Ors. (1964(3) SCR 686)**

85. Insofar as Petitioners in Writ Petition No.9712/2016 filed by the clients of Ms.Karnik is concerned, Dr. Sathe submitted that the Petitioners have agreed to sell the land and thus have no locus to file said petition. Petitioners are not even in possession of the land acquired. Acquisition is done by the State Government and not by Respondent No.4.

86. Mr. Patel, learned Additional Government Pleader and Ms. Sagvikar reiterated the submissions made in Writ

Petition No.4856 of 2016.

87. Insofar as the submission made by Ms. Karnik in Writ Petition No. 9712 of 2016 is concerned, the Petitioners claim to be the owners under the provisions of Maharashtra Tenancy and Agricultural Lands Act on the ground that their predecessor was the original tenant of the landlord Mr. Bandukwalla and was issued certificate under Section 32N of the said Act. Admittedly, City Civil Suit No. 57/2004 in the Court of Civil Judge, Senior Division filed by the Respondent No.4 is pending against the Petitioners. The proceedings filed by the Petitioners arising out of the suit bearing RCS No. 154 of 1997 is pending. In our view, even if the predecessor of the Petitioners was a tenant or as deemed to have become owner of the property in question, the right of the Petitioners, if any, is only to claim compensation. The Petitioners have not raised or demonstrated any ground for interference with the acquisition proceedings, even if there are alleged irregularities in acquiring the property for a public purpose. Such alleged irregularities cannot vitiate the acquisition proceedings, terminating the impugned Award.

88. Insofar as the judgment of this Court of Nagpur Bench in case of **Lakhichand M. Dhoble & Anr. Vs. Joint Charity Commissioner and Anr.[2020(6) Bom C.R. 414]** relied upon by Ms. Karnik, learned counsel for the Petitioners in Writ Petition No. 9712/2016 is concerned, the said judgment would not advance the case of the Petitioners over the issue of maintainability of the petition against the trust. The Petitioners have not demonstrated as to whether Respondent No.4 Trust has received any financial assistance from the State Government.

89. Insofar as judgment in the case of **D.A.V. College Trust and Management Society And Ors. Vs. Director of Public Instructions and Ors. [AIR 2008 Punjab and Haryana 117]** is concerned, it is alleged that once a body is substantially financed by the Government, the functions of such body partake the character of 'public authority'. The Petitioners have not produced any documents in this Court as to what financial assistance is given to the Respondent No.4 by the State Government. The said judgment in the case of **D.A.V. College Trust and Management Society And Ors.**

(supra) thus, would not advance the case of the Petitioner.

90. Insofar as the submissions made by Ms. Karni adopting the submissions made by Mr. Apte, learned Senior Counsel for the Petitioners in Writ Petition No. 4858 of 2016 are concerned, the same are already dealt with in the earlier paras of the judgment in Writ Petition No.4858 of 2016.

91. Insofar as the Civil Application for intervention in this Writ Petition is concerned, since we do not propose to pass any order in favour of the Petitioners, rights of the Applicants, if any, in the writ property are not affected and thus, we are not inclined to entertain this Civil Application for intervention and same is accordingly disposed of.

92. We accordingly, pass the following order:

- (i) Writ Petition Nos. 4858 of 2016 and 9712 of 2016 are dismissed.
- (ii) Rule is discharged.

(iii) Civil Applications filed therein by the Applicants/Intervenors are accordingly disposed of.

(iv) No order as to costs.

(M.M. SATHAYE. J.)

(R. D. DHANUKA, J.)

93. Mr. Apte, learned Senior counsel for the Petitioner in Writ Petition No. 4858 of 2016 and Ms. Neeta Karnik, learned counsel for the Petitioner in Writ Petition No.9712 of 2016 pray for continuation of ad-interim order passed by this Court for sometime. The application for continuation of ad-interim order is vehemently opposed by the learned counsel for the Respondent Nos.3 and 4.

94. The application for continuation of ad-interim order passed by this Court is rejected.

(M.M. SATHAYE, J.)

(R.D. DHANUKA, J.)