2024:BHC-AUG:9142-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8360 OF 2023

1. Sau. Minakshi Pramod Sonar .. Petitioners
Age. 56 years, Occ. Business & Agriculture,
R/o. Plot No. 5/B, Ajintha Housing Society,
Jalgaon, Tal. & Dist. Jalgaon.

2. Mr. Ramchandra Daulat Patil
Age.58 years, Occ. Business & Agriculture,
R/o. At Post Dholi, Tal. Parola,
Dist. Jalgaon.

Versus

1. The State of Maharashtra .. Respondents
Through the Secretary
Ministry of Urban Development
Mantralaya, Mumbai – 32.

2. The Director,
Town Planning Department,
Pune.

3. The Deputy Director,
Town Planning, Nashik Division,
Nashik.

4. Municipal Corporation Jalgaon,
Through its Commissioner.

5. Town Planner,
Municipal Corporation Jalgaon
Jalgaon.

6. Assistant Director, Town Planning
Jalgaon Division
Jalgaon.

7. The District Collector,
Jalgaon.

Mr.A.P. Bhandari, Advocate for the Petitioners.
Mr.P.K. Lakhotiya, AGP for the Respondent Nos. 1 to 3 and 7.
Mr.L.V. Sangit, Advocate for Respondent Nos. 4 and 5.

CORAM : RAVINDRA V. GHUGE &
R.M. JOSHI, JJ.
DATED : 17.04.2024

ORAL JUDGMENT : [PER : RAVINDRA V. GHUGE,J.] :-

01. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

02. The Petitioners have putforth prayer clauses “B”, “C” and “D” as under :-

> “(B) By appropriate writ, order or direction it be held that, the land bearing Gut No. 114, of Village Pimprala Taluka & Dist. Jalgaon, situated within the Municipal Limits of Jalgaon to the extent of an area of 968 sq. mtrs. Stood released from Reservations no.111 for “Primary School” and the Petitioners are entitled to utilize the same as per the user permissible to the adjacent land owners i.e. Residential Use.

(C) The Honourable Court be pleased to issue writ of Mandamus or any other appropriate writ, directing the respondent no.1 to issue a notification in terms of section 127(2) of Maharashtra Regional and Town Planning Act, 1966, thereby notifying release of land bearing Gut No.114 of Village Pimprala Taluka & Dist. Jalgaon, situated within the Municipal Limits of Jalgaon to the extent of an area of 968 Sq. Mtrs. from Reservations no. 111 for “Primary School”.

(D) Pending hearing and final disposal of the present Writ Petition, the respondents be directed to release land bearing Gut no.114 of Village Pimprala Taluka & Dist. Jalgaon, situated within the Municipal Limits of Jalgaon to the extent of an area of 968 Sq. Mtrs. from Reservations no.111 for “Primary School” and permit the petitioner to develop the said lands, as if the same is not reserved.”

03. On 15.03.2024, after this matter was heard for quite some time, we had passed the following order :-

“1. A hearing in this matter has commenced. After the hearing progressed to some length, it was noticed that, an issue pertaining to the Acquiring Body offering TDR in response to the purchase notice, the land owner consenting to accept the TDR by a communication dated 02/01/2017 in the backdrop of the purchase notice dated 29/10/2016, the Acquiring Body publishing a public notice in the newspaper on 28/08/2020, calling for objections, and the delay caused compelled the Petitioner to withdraw the consent for accepting TDR by a communication dated 30/09/2020, will have to be gone into.

2. A question that arises is, what would be the effect of the withdrawal of

the consent on the purchase notice dated 29/10/2016 and whether the above factors would amount to initiating steps towards acquisition of the land by the Acquiring Authority, in view of the law laid down in **Girnar Traders Vs. State of Maharashtra & others, AIR (2007) SC 3180** and **Shree Vinayak Builders and Developers Vs. State of Maharashtra and others, (2022) 4 Mh.L.J. 739 (Full Bench) : (2022) DGLS (Bom.) 2061.**

3. The learned Advocates for the respective sides desire to research on this aspect and look up for reported judgments.

4. By consent of the parties, this matter is treated as 'Part Heard' and is listed on 01/04/2024."

SEQUENCE OF DATES AND EVENTS

04. Going by the peculiarity of the proceedings under Section 127 of the Maharashtra Regional And Town Planning Act, 1966, the dates and sequence of events gain significance. It would be apposite to refer to such sequence of events as under :-

a) There is no dispute that the Petitioners are the owners of the Writ property.

b) Land bearing Gat No.114 of village Pimprala, Tal. & Dist. Jalgaon, situated within the Municipal limits of Jalgaon City

Municipal Corporation, admeasuring 968 sq. mtr., is a parcel of land which is affected by the reservation for a primary school.

c) On 10.08.2004, a development plan for the city of Jalgaon, was sanctioned.

d) Actually, one part of the development plan was sanctioned on 11.02.2002, which was applicable from 07.04.2002. The excluded part was sanctioned on 10.08.2004.

e) In the development plan sanctioned on 07.04.2002, the land was notified as reserved for a primary school at Sr. No.111, for an area admeasuring 948 sq. mtrs. belonging to the Petitioners.

f) Since the Petitioners could not beneficially use the land owned by them on account of reservation, a purchase notice dated 29.10.2016, was served on the Municipal Corporation.

g) On 16.12.2016, the Assistant Director, Town Planning, issued a letter, after receiving the purchase notice from the Petitioners, offering TDR to the Petitioners for the affected reservation.

h) By communication dated 02.01.2017, the Petitioners informed the Corporation that they had received their offer for

TDR and that the offer for TDR is accepted, only if the TDR is twice the offer made by the Corporation, as per the Development Control Regulations as applicable to the "D" class Municipal Corporations.

i) The affidavit-in-reply filed by Mr.Digesh Damodar Tayde, Assistant Director of Town Planning, Municipal City Municipal Corporation contains three paragraphs indicating that the Corporation called upon the Petitioners to tender a proposal for demanding TDR.

j) On 03.04.2017, the Petitioners again communicated to the Corporation that they are willing to accept the TDR, only if it is twice the offer made by the Corporation.

k) After a lapse of three years and four months, the Corporation published a notice in daily 'Tarun Bharat' on 28.08.2020, calling for objections.

l) There is no averment in the reply of the Corporation, in as much as, no document on record to indicate that the demand of the Petitioners seeking double TDR, has been accepted or approved.

m) On 23.09.2022, the Petitioners communicated to the Corporation that there has been no acceptance of their demand

and merely because a notice is published in daily ‘Tarun Bharat’, there is no concluded contract, as no letter of intent has been issued in their favour. In the said communication, the conditional willingness to accept double TDR was withdrawn by the Petitioners.

SUBMISSIONS OF THE PARTIES

05. The contention of the Corporation is that the contract is concluded, the moment it showed its willingness to grant the TDR and whether the Petitioners demanded double the TDR, is inconsequential. Since the Petitioners agreed in principle to accept the TDR, it is a concluded contract. Our attention is drawn to paragraph No.10 of the judgment delivered by the learned Full Bench of this Court in **Shree Vinayak Builders and Developers Vs. State of Maharashtra, (2022) 4 Mh.L.J.739**, which contains the submissions of the learned Advocate representing a party. Paragraph No.10 reads as under :-

> “10. Shri Puranik, learned counsel for respondent nos.2 and 3 further submits that in case of acquisition of land by grant of FSI or TDR, the contract between the parties is concluded the moment the application of the land owner or lessee, as the case may be, for grant of FSI or TDR, is approved or accepted by the acquiring authority and surrender of land by the land owner

> or lessee, as the case may be, is only a formality which must be completed by the land owner or lessee. He submits that this is because of the fact that a contract is concluded when there is an offer and its acceptance. He submits that an application made by the land owner or lessee for grant of FSI or TDR has to be considered as an offer made by the land owner or lessee and its approval or acceptance made by the acquiring authority has to be considered as acceptance of the offer, which then would conclude the contract, making it to be a step of commencement of proceeding for acquisition of land from where there cannot be any withdrawal of application for grant of FSI or TDR made by the land owner or the lessee."

06. The learned Advocate for the Corporation, therefore, canvassed that once the contract is concluded, the Petitioners' purchase notice stands extinguished and this Petition cannot be entertained. The Petitioners will have to issue a fresh purchase notice.

07. The learned AGP adopts the submissions of the learned Advocate for the Corporation and further submits that, what could be a concluded contract, would depend upon the facts and circumstances of each case. He relies upon paragraph 41 in **Shree Vinayak Builders (Supra)**, which reads as under :-

> "41. It is thus well settled that the step taken under the aforestated section should be an irreversible step, which will culminate in acquisition of land.

Hence, mere grant of approval or passing of resolution by the authorities concerned for grant of TDR in lieu of monetary compensation cannot be treated as a step for acquisition of land, but it is the conclusion of a contract regarding acquisition of land by granting FSI/TDR which constitutes a step for acquisition of land. Surrender of land with a view to obtaining FSI/TDR can be a step to commence acquisition proceedings, if it is something by which conclusion of contract occurs. There may be, however, be cases in which by acts and conduct of parties contract in terms of Section 126(1)(b) of the MRTP Act is concluded even before surrender of land and the latter act is only consequential to contract between the parties. Ultimately, it all boils down to the stage when the contract between parties concludes."

08. He, therefore, further submits that once there is a concluded contract in the light of the step taken towards the acquisition, it is an irreversible step and that would culminate into acquisition of land.

ANALYSIS AND CONCLUSIONS

09. Sections 126 and 127 of the Maharashtra Regional And Town Planning Act, 1966, read as under :-

"126. (1) When after the publication of a draft Regional plan, a Development or any other plan or town planning scheme, any land is required or reserved for any of the public purposes specified in any plan or scheme under this Act at any time, the Planning Authority, Development Authority, or as the case may be, any

Appropriate Authority may, except as otherwise provided in section 113A acquire the land,—

(a) by agreement by paying an amount agreed to, or

(b) in lieu of any such amount, by granting the land-owner or the lessee, subject, however, to the lessee paying the lessor or depositing with the Planning Authority, Development Authority or Appropriate Authority, as the case may be, for payment to the lessor, an amount equivalent to the value of the lessor's interest to be determined by any of the said Authorities concerned on the basis of the principles laid down in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, Floor Space Index (FSI) or Transferable Development Rights (TDR) against the area of land surrendered free of cost and free from all encumbrances, and also further additional Floor Space Index or Transferable Development Rights against the development or construction of the amenity on the surrendered land at his cost, as the Final Development Control Regulations prepared in this behalf provide, or

(c) by making an application to the State Government for acquiring such land under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

and the land (together with the amenity, if any so developed or constructed) so acquired by agreement or by grant of Floor Space Index or additional Floor Space Index or Transferable Development Rights under this section or under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, as the case may be, shall vest absolutely free from all encumbrances in the Planning Authority, Development Authority, or as the case may be, any Appropriate Authority.]

(2) On receipt of such application, if the State Government is satisfied that the land specified in the application is needed for the public purpose therein specified, or if the State Government (except in cases falling under section 49 and except as provided in section 113A) itself is of opinion that any land included in any such plan is needed for any public purpose, it may make a declaration to that effect in the Official Gazette, in the manner provided in section 19 of the Right to

Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, in respect of the said land. The declaration so published shall, notwithstanding anything contained in the said Act, be deemed to be a declaration duly made under the said section :

Provided that, subject to the provisions of sub-section (4), no such declaration shall be made after the expiry of one year from the date of publication of the draft Regional Plan, Development Plan or any other Plan, or Scheme, as the case may be.]

(3) On publication of a declaration under the said section 19, the Collector shall proceed to take order for the acquisition of the land under the said Act; and the provisions of that Act shall apply to the acquisition of the said land with the modification that the market value of the land shall be,—

(i) where the land is to be acquired for the purposes of a new town, the market value prevailing on the date of publication of the notification constituting or declaring the Development Authority for such town;

(ii) where the land is acquired for the purposes of a Special Planning Authority, the market value prevailing on the date of publication of the notification of the area as undeveloped area ; and

(iii) in any other case, the market value on the date of publication of the interim development plan, the draft development plan or the plan for the area or areas for comprehensive development, whichever is earlier, or as the case may be, the date of publication of the draft Town Planning Scheme :

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

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

(4) Notwithstanding anything contained in the proviso to sub-section (2)

and subsection (3), if a declaration, is not made, within the period referred to in sub-section (2) (or having been made, the aforesaid period expired on the commencement of the Maharashtra Regional and Town Planning [(Amendment) Act, 1993)], the State Government may make a fresh declaration for acquiring the land under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, in the manner provided by sub-sections (2) and (3) of this section, subject to the modification that the market value of the land shall be the market value at the date of declaration in the Official Gazette, made for acquiring the land afresh.]

127. (1) If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional Plan, or final Development Plan comes into force or if a declaration under sub-section (2) or (4) of section 126 is not published in the Official Gazette within such period, the owner or any person interested in the land may serve notice, alongwith the documents showing his title or interest in the said land, on the Planning Authority, the Development Authority or, as the case may be, the Appropriate Authority to that effect; and if within twenty four months] from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon, the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan.

(2) On lapsing of reservation, allocation or designation of any land under sub-section (1), the Government shall notify the same, by an order published in the Official Gazette."

10. There is no dispute as regards the steps initiated by the

Corporation in 2002, when it was a Municipal Council, for acquisition of land. The issue is as to whether steps as expected of the Acquiring Authority towards acquisition of the reserved land, have been taken after the purchase notice under section 127 was issued. The learned Advocate for the Petitioners has canvassed that an acquisition would be complete, not just by initiation of the steps as required, but a surrender of the land must also occur in furtherance of the steps initiated. As per the prevailing practice, a letter of intent has to be issued in favour of the Petitioners after the Acquiring Authority agrees to grant the TDR, and in this case, as per the demand of the Petitioners for double TDR.

11. A useful reference can be made to the judgment delivered by the Hon'ble Supreme Court in **Girnar Traders Vs. State of Maharashtra & Ors., (2007) 7 SCC 555**. It was held by a majority view that the steps for acquisition as provided under section 127, have to be taken, by keeping in mind the time-lag between the period the land is brought under reservation and the inaction on the part of the State to acquire it. Making of an application by the Municipal Authority under section 126(1)(c) to the State Government for acquisition of the land is not a requisite step. It was also held

that if moving of an application is considered to be a step towards acquisition, the Authority will simply move an application and wait for further action on the part of the State and contend that till then there could not be any lapsing of reservation under section 127. It was further held that where the plain literal interpretation were to manifestly result in absurdity or injustice that is never intended by the Legislature, the Court is entitled to modify the language used to achieve the intention of the Legislature and produce a rational result. Hardships, inconvenience, friction, uncertainty or confusion should be avoided. Hence, requisite step should be a step of acquisition of land and not a step for acquisition of land. Requisite steps towards commencement of the acquisition in such a situation would not include a step which may not result in actual commencement of acquisition and is taken merely for the purpose of seeking time so that section 127 does not come into operation, to defeat the purpose and object of the scheme of the acquisition under the MRTP Act.

12. What we find from the peculiar facts of this case is that the Municipal Council apparently did not have the money to pay the Petitioners. The defence of such Corporation that it has financial difficulties, is noticed in practically every case. The Corporation offered TDR to the Petitioners. The

Petitioners' acceptance was not plain and simple. In-fact, the Petitioners demanded double TDR and put a condition on the Corporation that if the double TDR is made available, only then the Petitioners are agreeable. In order to conclude the Contract, the Corporation should have responded by intimating the Petitioners that their demand for double TDR is accepted. They could have put a condition that such acceptance may be subject to objections that may be received. However, the Corporation was totally silent. In such matters, the doctrine of '*acceptance sub silentio*' would not be applicable to the Corporation. There has to be a specific acceptance. The Corporation did not react to the demand of the Petitioners. After three years and four months, the Corporation published a notice in daily 'Tarun Bharat', which is not placed on record before us by the Corporation. It is the contention of the learned Advocate for the Corporation, on instructions, since this aspect has not been specifically dealt with in the affidavit-in-reply, that the purpose of publishing the notice was to call for objections.

13. We, thus, find from the facts before us that after the Petitioner responded by demanding TDR vide its communication dated 02.01.2017, the Corporation has not accepted the said demand. In such matters, inferences on

the basis of assumptions and presumptions cannot nullify or neutralize the issuance of purchase notice which is a decisive step on the part of the land owners.

14. In **Shree Vinayak Builders (Supra),** the learned Full Bench noted the submissions of one of the parties in paragraph No.10, which have been accepted in principle only to the extent that a contract is concluded when there is an offer and the same is accepted. It was also approved that the approval or acceptance made by the Acquiring Authority has to be considered as acceptance of the offer which could conclude the contract and that would tantamount to a step towards commencement of the proceedings of acquisition of land.

15. It has been held in paragraph Nos. 33 to 42 in **Shree Vinayak Builder (Supra)** as under :-

> "33. The above discussion thus would show that whenever a question arises as to whether or not a land owner or lessee, as the case may be, is within his right to withdraw his application made for grant of FSI or TDR after its approval by acquiring authority, it's answer would depend upon the facts and circumstances of each case. The facts and circumstances of each case would have to be examined individually and it would have to be ascertained as to whether or not there has occurred any concluded contract between the

parties. Sometimes it may happen that the application made by the land owner or lessee is only in the nature of invitation to offer or proposal from the acquiring authority and the approval given to such an application by acquiring authority subject to the condition of surrender of the land would be an offer. At other time, there may be a case when the land owner or lessee in the application itself indicates that he is offering to surrender the land having certain area and quantifies the FSI or TDR to which he is entitled to receive and such specific application is accepted in an absolute and unqualified manner. In such a case the application would be an offer and it's acceptance would be an agreement within the meaning of Section 2 (e) and would also be a contract under Section 10 of the Contract Act if all other requirements of a valid contract are fulfilled. So, the question about the right to withdraw an application made for grant of FSI or TDR can be answered in the affirmative only when there is no concluded contract between the parties.

34. We are, thus, of the view that once there is a concluded contract between the land owner or the lessee and the acquiring authority as regards grant of monetary compensation or grant of TDR/FSI in lieu of compensation, the land owner or the lessee cannot withdraw his request and thereby refuse to surrender the land. He can withdraw his such request only if there is no concluded contract between the parties. What would be considered to be a concluded contract between the parties, would be a question of fact to be determined by considering all the relevant facts and circumstances of each case.

35. Now, we will consider the issue of what constitutes a step commencing the acquisition proceeding in the context of Section 126 (1) (b) of the MRTP Act.

36. Section 127 deals with lapsing of reservation. This section provides that if any land reserved, allotted or designated for any purpose specified in any

plan under MRTP Act is not acquired by agreement or otherwise within 10 years from the date on which the final plan comes into force, the owner or any person interested can serve a purchase notice to the concerned authorities. If the Authorities do not acquire the land or take steps within 24 months from the date of service of such notice for acquisition of land, the reservation, allotment or designation shall be deemed to have lapsed and thereupon the land shall be deemed to be released from such reservation allotment or designation and shall become available to the owner for the purpose of development, as permissible in the case of adjacent land under the relevant plan.

37. In <u>Municipal Corporation of Greater Bombay Vs. Dr. Hakimwadi Tenants Association and Others, 1988 (Supp) SCC 55</u>, the Hon'ble Supreme Court held that the steps towards commencement of the acquisition would necessarily be the steps for acquisition and not a step, which may not result into acquisition and merely for the purpose of seeking time so that section 127 does not come into operation. It was held that steps for acquisition of the land would be issuance of the declaration under Section 6 of the Land Acquisition Act. The making of an application to the State Government for acquisition of the land would not be a step for acquisition of the land under reservation.

38. In <u>Girnar Traders Vs. State of Maharashtra and Others, (2007) 7 SCC 555</u>, the Hon'ble Supreme Court after considering the entire scheme of Sections 126 and 127 observed that the step taken under the section within the time stipulated should be towards acquisition of land. It is a step of acquisition and not step for acquisition of land. It is trite that failure of authorities to take steps which result in actual commencement of acquisition of land cannot be permitted to defeat the purpose and object of the scheme of acquisition under the MRTP Act by merely moving an application requesting the Government to acquire the land, which Government may or may not

accept. Any step which may or may not culminate in the step for acquisition cannot be said to be a step towards acquisition.

39. In Shrirampur Municipal Council,Shrirampur Vs. Satyabhamabai Bhimaji Dawkher, (2013) 5 SCC 627, the Hon'ble Supreme Court reiterated the finding in Girnar Traders and held that mere passing of a resolution by the Planning Authority or sending of a letter to the Collector or even the State Government cannot be treated as commencement of the proceeding for the acquisition of land. It is held that the State Legislature has prescribed the time limit to ensure that the land owners/other interested persons whose land is utilized for execution of the Development Plan/Town Planning Scheme etc are not left high and dry.

40. These principles have been reiterated in Poona Timber Merchants and Saw Mill Owners Association Vs. State of Maharashtra & Ors., (2015) 13 SCC 544, Chhabildas vs. State of Maharashtra and others (2018) 2 SCC 784 and in the recent decision of the Hon'ble Supreme Court in Kolhapur Municipal Corporation & Ors. Vs. Vasant Madadev Patil (dead) through Legal Representatives and others (2022) 5 SCC 758.

41. It is thus well settled that the step taken under the aforestated section should be an irreversible step, which will culminate in acquisition of land. Hence, mere grant of approval or passing of resolution by the authorities concerned for grant of TDR in lieu of monetary compensation cannot be treated as a step for acquisition of land, but it is the conclusion of a contract regarding acquisition of land by granting FSI/TDR which constitutes a step for acquisition of land. Surrender of land with a view to obtaining FSI/TDR can be a step to commence acquisition proceedings, if it is something by which conclusion of contract occurs. There may be, however, be cases in which by acts and conduct of parties contract in terms of Section 126(1)(b) of the MRTP Act is concluded even before surrender of land and the latter act is only consequential to contract between the parties. Ultimately, it all boils

down to the stage when the contract between parties concludes.

42. In the case of Asha Sunil Zawar (supra) the Division Bench at Aurangabad has taken a view that offering compensation of TDR within 24 months from the date of receipt of purchase notice is the step to commence the acquisition of the reserved land, that the option of TDR does not rest with the land owner, that the land owner cannot insist upon planning authority to acquire the land only by adopting clause (c) of Section 126 of the MRTP Act. We have already clarified the law in this regard and the clarification given by us as above does not permit us to endorse the view taken in Asha Sunil Zawar (supra) and, therefore, we find that the view so taken therein does not represent the correct position of law."

[Emphasis supplied]

16. As regards the issue of withdrawal of the offer or application, it was held in **Shree Vinayak Builders (Supra),** that the owner or lessee, as the case may be, is within his rights to withdraw his application made for grant of FSI or TDR, provided the facts and circumstances of each case would lead to such a conclusion on ascertation as to whether or not there has occurred any concluded contract between the parties. By way of an illustration, it is held that sometime it may happen that the application made by the land owner or the lessee is only in the nature of an invitation, offer or proposal to the Acquiring Authority and approval given to such application by the Acquiring Authority, subject to the condition of surrender of the land, would be an offer

and at other times, there may be a case when the land owner or lessee in the application itself indicates that he is offering to surrender the land having certain area and quantifies FSI and TDR to which he is entitled to receive and such application is accepted in an absolute and unqualified manner. In such a case, the application would be an offer and its acceptance would be an agreement within the meaning of section 2(e) and would amount to a contract under Section 10 of the Contract Act. The issue was answered by concluding that a right to withdraw an application made for grant of FSI or TDR is permissible, only when there is no concluded contract between the parties.

17. In the above backdrop, we once again advert to the factual matrix in this case. The Corporation had offered TDR vide its communication dated 02.11.2016. On 02.01.2017, the Petitioners informed the Corporation that they would agree to accept TDR only if it is twice the offer that has been made by the Corporation. In our view, this would not amount to a concluded contract between the parties, since the offer of the Corporation was of a single TDR and the demand of the Petitioners was twice the said TDR. There was no meeting of minds. Nevertheless, the response of the Petitioners gave an

opportunity to the Corporation to respond by either accepting the demand or rejecting it. It is nobody's case that there could be a deemed acceptance of the demand by maintaining silence over a period of three years and four months. In such matters, there is no scope for presumption that the silence of the Corporation would tantamount to acceptance of the demand of the Petitioners. The Corporation went into deep slumber for three years and four months and claims to have published a notice on 28.08.2020 in daily 'Tarun Bharat', calling for objections. This is meaningless, until the contract is concluded.

18. This issue is squarely covered by the view taken by the Hon'ble Supreme Court in **Girnar Traders (Supra),** wherein it has been concluded that a rational result is expected in pursuance to the purchase notice under section 127. Hardships, inconvenience, friction, uncertainty or confusion, should be avoided. The requisite step should be a step of acquisition of land and not a step for acquisition of land. The requisite step towards commencement of the acquisition would not include a step which may not result in actual commencement of acquisition and is taken merely for the purpose of seeking time in order to neutralize the purchase notice under section 127. This is

exactly what has happened in the case before us. The Corporation, to refer to the often repeated idiom, has shown a carrot to the Petitioner. The Petitioners made a specific demand. This demand was not accepted by the Corporation even within two years from the date of the demand by the Petitioners, though the law mandates that a contract must be concluded between the parties within the two years, in order to result into a step taken towards acquisition. There has been no response from the Corporation for three years and four months, which convinces us that the law laid down in **Girnar Graders (Supra)** on this count would squarely be applicable.

19. In view of the above, this **Writ Petition is allowed**. The land bearing Gat No.114, admeasuring 968 sq. mtrs. stands released from reservation No. 111 for primary school. The Corporation shall communicate to Respondent No.1 within 30 days, that the said land is withdrawn from reservation. Respondent No.1 shall issue a Notification under section 127(2) of the Maharashtra Regional And Town Planning Act, 1966, thereby releasing the land from the reservation, within 90 days.

20. **Rule is made absolute in above terms.**

[PER : R.M. JOSHI, J] :-

21. I am in complete agreement with the view taken by Brother Justice Ghuge. I wish to only add that, in view of the provisions of the Contract Act, in order to contemplate a contract as concluded contract, there has to be an offer by one party and acceptance thereof by another. The condition for such acceptance is that it should be absolute and unqualified. In the present case, the offer made by the Respondents for TDR is not accepted by the Petitioners. In-fact, there was counter-offer for double the TDR proposed by the Respondents. In order to term it as a concluded contract between the parties, there ought to have been acceptance of that offer of the Petitioners by the Respondents. We find no evidence on record in order to indicate that the offer made by the Petitioners has been accepted by the Respondents. As a result of which, it would not be a contract within the meaning of Section 2(e) r/w section 10 of the Contract Act.

[R.M. JOSHI,J.] **[RAVINDRA V. GHUGE,J.]**