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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL ST NO. 2061 OF 2019
WITH
CIVIL APPLICATION NO. 190 OF 2019
IN
SECOND APPEAL ST NO. 2061 OF 2019**

Ratnagiri Nagar Parishad
Thr. The Chief Officer Ratnagiri
Municipal Council Ratnagiri

.....Appellant

Vs.

Madhukar Shankar Redij and ors

.....Respondents

Mr. Rakesh Bhatkar a/w Mr. Mohan N. Devkole and Ms. Smita Samel
Advocate for the Appellant
Dr. Uday Warunjikar a/w Ms. Sakshi Inamdar and Mr. Hrishikesh
Nabar for respondent no. 1

CORAM : GAURI GODSE, J.

DATE : 30th APRIL 2025

JUDGMENT:

1. Heard learned counsel for the parties. This appeal is preferred by defendant no. 3 to challenge the concurrent judgments and decrees granting a declaration that the reservation on the suit property is deemed to have lapsed from 1st September 2012.

2. The appellant is the acquiring body for the reservation of the primary school on the property owned by the respondent no. 1 - plaintiff. Since steps were not taken to acquire the property reserved as per the sanctioned Town Planning Scheme, notice under Section 127 of The Maharashtra Regional and Town Planning Act ('the said Act') was served. There was no compliance with the requirement for acquiring the reserved land as contemplated under Section 127 of the said Act; hence, the suit was filed. Both courts concurrently held that, due to the lack of any steps taken to acquire the suit land, the reservation had lapsed; thus granted the declaration as prayed for by the plaintiff.

3. Learned counsel for the appellant submits that the town planning scheme of 1975 was approved, and the last approval to the revised scheme was granted by the State Government in 2005, which came into effect from 27th June 2005. He, therefore, submits that there was no lapsing of the reservation for the primary school in respect of the suit land. Learned counsel for the appellant submits that the Civil Court's jurisdiction is barred in view of Section 149 of the said Act. He, therefore, submits that in view of the bar of the Civil Court's jurisdiction, the suit filed for declaration and injunction could not have

been decreed by the Civil Court.

4. Learned counsel for the appellant further points out that after the notice under Section 127 was issued, immediate steps were taken by the defendant no. 3, and a letter was issued to the State Government for initiating acquisition proceedings. Learned counsel for the appellant relies upon the relevant pleadings in the written statement to support his submissions that after the receipt of notice dated 2nd September 2011, defendant no. 3 issued a letter dated 25th June 2012 requesting the State Government to initiate acquisition proceedings. He, therefore, submits that within twelve months of the issuance of notice under Section 127, proceedings are initiated by defendant no. 3 for acquisition, and thus, the reservation would not lapse.

5. To support his submissions regarding the Civil Court's jurisdiction, the learned counsel for the appellant relied upon the decisions of this Court in the case of *Babar Sher Khan and Ors Vs. Municipal Corporation of Brihanmumbai and anr*¹, *Bales Sardara Paracha Vs. Municipal Corporation of Greater Bombay and Anr*². Learned counsel for the appellant also relied upon the decision of this

¹ 2008(2) Bom. C.R. 335

² 2005(4) Bom C.R. 577

Court in the case of *Prafulla C. Dave and Ors Vs. Municipal Commissioner and Ors*³ to support his submissions that the relevant date for deciding the lapsing of the reservation would be the approval of the last part of the revised development plan. He submits that the decision of this Court is approved by the Hon'ble Apex Court. He, therefore, submits that the relevant date in the present case for considering the lapsing of the reservation would be the date of the approval of the last part of the revised plan. Learned counsel for the appellant, therefore, submits that the aforesaid grounds would raise substantial questions of law on the Civil Court's jurisdiction and the relevant date to be considered for lapsing of the reservation in view of Section 127 of the said Act.

6. Learned counsel for respondent no. 1—original plaintiff points out the relevant pleadings in the written statement of defendant no. 3. He submits that, as per the dates pleaded by defendant no. 3, the reservation of primary school for an area of 22 Ares in the revised plan was approved with effect from 21st June 2000. He submits that the first reservation in respect of the suit property was of the year 1975 and the revised plan came into effect on 21st June 2000 even as per the

³ 2007(6) Bom C.R. 520

pleadings of defendant no. 3. He, therefore, submits that the notice was issued on 2nd September 2011 under Section 127 of the said Act. Learned counsel for the plaintiff submits that initially, the suit was filed for the declaration of the lapsing of the reservation. However, in view of the amended provision of Section 127, the suit was withdrawn as premature, with liberty to file a fresh suit. As per the liberty granted, the present suit was filed. He submits that the letter dated 24th June 2012 by defendant no. 3 to the State Government would not amount to sufficient compliance as contemplated under Section 127, read with sub-section (2) or (4) of Section 126 of the said Act. He, therefore, submits that in view of the admitted dates with regard to the original reservation, the approval of the revised plan and the notice issued by the plaintiff, both the Courts have concurrently held that in view of Section 127 and the notice issued by the plaintiff, the reservation has lapsed.

7. In response to the preliminary objection raised by the appellant regarding bar of the civil court's jurisdiction, learned counsel for the plaintiff submits that in view of the well-settled legal principles, the Civil Court's jurisdiction is not barred in view of Section 149. To support his submissions, learned counsel relied upon the following decisions.

Shiv Kumar Chadha Vs. Municipal Corporation of Delhi and others⁴, Nagarpalika Sawantwadi, Through The Chief Officer, Sawantwadi Nagarpalika Vs. Dinanath Rajaram Ballal and Ors⁵, Raja Bahadur Motilal Poona Mills Ltd. and Another Vs. State of Maharashtra and others⁶, Rita Mahesh Dadarkar and Others Vs. Commissioner Brihanmumbai Mahanagar Palika, Greater Bombay and ors⁷ and Kishor S/o Ramalu @ Rambhau Telang Vs. The Municipal Commissioner, Nagpur Municipal Corporation and ors⁸.

8. I have considered the submissions made by both parties. The relevant dates regarding the original reservation and the approval of the revised plan are not in dispute. The plaintiff's land was first reserved as per the Town Planning Scheme approved on 12th December 1974, which came into effect on 13th January 1975. The revised plan was approved on 27th April 2000, which came into effect from 21st June 2000. As per the revised plan that came into effect from 21st June 2000, 22 Ares land of the plaintiff's property was reserved for

4 (1993) 3 Supreme Court Cases 161

5 Second Appeal No. 426 of 2015

6 2002 SCC OnLine Bom 679

7 2017 SCC OnLine Bom 8606

8 Second Appeal No. 491 of 2012

a primary school. Hence, the arguments raised on behalf of the appellant regarding approval of the part development on 17th June 2005 would not be relevant to decide the plaintiff's contention regarding lapsing of the reservation that came into effect from 21st June 2000.

9. The relevant provision under the said Act that provides for the lapsing of the reservation is Section 127, which reads as under;

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. Thus, as per sub-section (1) of Section 127, within 10 years from the date of the development plan coming into force, if the land is not acquired by an agreement or if a declaration under sub-section (2) of (4) of Section 126 is not published in the official gazette, the owner or any interested person in the land is entitled to serve a notice to that effect along with relevant documents showing his title or interest in the land to the appropriate authority. Such notice is commonly known as “the purchase notice”. The sub-section (1) further provides that within twenty four months from the date of service of such notice, if the land is not acquired or no steps are commenced for its acquisition, the reservation shall be deemed to have lapsed and the land shall be deemed to be released from such reservation. Therefore, the proceedings required to be initiated within twenty four months from the date of service of such notice is contemplated under sub-section (2) or (4) of Section 126. Section 126 reads as under;

“126. Acquisition of land required for public purposes specified in plans:

(1) When after the publication of a draft Regional Plan, a Development or any other plan or town planning scheme, any land is required or reserved for any of the public purposes specified in any plan or scheme under this Act at any time, the Planning Authority, Development Authority, or as the case may be, any Appropriate Authority may, except as otherwise provided in section 113A acquire the land,-

(a) by an 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 (30 of 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 (30 of 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 (30 of 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 an undeveloped area; and

(iii) in any other case the market value on the date of

publication of the interim development plan, the draft development plan or the plan for the area or areas for comprehensive development, whichever is earlier, or as the case may be, the date of publication of the draft Town Planning Scheme :

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

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

(4) Notwithstanding anything contained in the proviso to sub-section (2) and sub-section (3), if a declaration,] is not made within the period referred to in sub-section (2) (or having been made, the aforesaid period expired on the commencement of the Maharashtra Regional and Town Planning (Amendment) Act, 1993, the State Government may make a fresh declaration for acquiring the land under the provisions of the Right to Fair Compensation and

Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 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.”

11. In the present case, at the relevant time in the year 2011-2012, the period for taking steps to acquire the land after service of the purchase notice under Section 127 was twelve months. Except for the amendment to Section 127 for substituting the period from twelve months to twenty four months, the rest of the Section remains the same. Section 126, as reproduced in the above paragraph, is the amended section with various amendments. To better understand the unamended Section 126 at the relevant time, the same is reproduced below;

126. Acquisition of land required for public purposes specified in plans.

(1) When after the publication of a draft Regional Plan, a Development or any other plan or town planning scheme, any land is required or reserved for any of the public purposes specified in any plan or scheme under this Act at

any time the Planning Authority, Development Authority, or as the case may be, any Appropriate Authority may, except as otherwise provided in Section 113A acquire the land,-

(a) by an 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 Land Acquisition Act, 1894, 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 Land Acquisition Act, 1894,

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 Land Acquisition Act, 1894, 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 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 6 of the Land Acquisition Act, 1894, (1 of 1894) 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 6, 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 an 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 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 purposes of determining the market value of and in respect of which proceedings for acquisition commenced before the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972 (Mah.XI of 1973):

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, (Mah. XI of 1973), shall be the market value prevailing on the date of such commencement.

(4) Notwithstanding anything contained in the proviso to sub-section (2) and sub-section (3), if a declaration is not made within the period referred to in sub-section (2) or having been made, the aforesaid period expired at 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 Land Acquisition Act, 1894 (I of 1894), 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.

12. Thus, after the reservation comes into force, two contingencies are contemplated. First, acquisition of the land through private negotiation, which involves an agreement. Second, by publication of a declaration under sub-section (2) or (4) of Section 126, in the official gazette. If such action is not taken and on expiry of ten years from the date of reservation coming into force, a purchase notice as contemplated under sub-section (1) of Section 127 is served upon the Planning Authority, the Development Authority or the Appropriate Authority and within the stipulated time, if the land is not acquired and

steps are not commenced for publication of a declaration under sub-section (2) or (4) of Section 126, in the official gazette, the reservation shall lapse. Thus, after service of the purchase notice, if necessary compliance as contemplated under sub-section (1) of Section 127 is not done by the Planning Authority, the Development Authority or the Appropriate Authority, there is a deeming provision for lapsing of the reservation. Therefore, if there is non-compliance by the Planning Authority, the Development Authority or the Appropriate Authority as contemplated under sub-section (1) of Section 127 within the stipulated time, and in the manner provided for acquisition, the reservation shall automatically come to an end and the reserved land shall be available to the owner for development.

13. The steps to be taken for acquiring the land within the stipulated time are also provided in sub-section (1) of Section 127. Therefore, to continue the reservation, the language of the provision warrants acquisition by an agreement or commencement of action to publish a declaration under sub-section (2) or (4) of Section 126 to acquire the land. The commencement of steps to acquire would mean satisfaction of the State Government that the reservation is needed for the specified public purpose, and it is declared in the official gazette as

contemplated in sub-section (2) or (4) of Section 126.

14. In the present case, the service of the purchase notice is not in dispute. Except for issuing a letter dated 25th June 2012 by defendant no. 3 to the State Government, admittedly, no steps have been taken to acquire the suit property. Admittedly, the proposal of defendant no.3 for taking over the reserved area by private negotiations was never finalized. Thus, in view of the aforesaid provisions and the undisputed facts as recorded above, the reservation has lapsed and the land is available to the owner for development. Hence, no fault can be found in the findings recorded by both the Courts to declare that the reservation has lapsed.

15. With reference to the objection raised on Civil Court's jurisdiction under Section 149, it is necessary to refer to the well-settled legal principles by the Hon'ble Apex Court in the case of ***Shiv Kumar Chadha***. The legal principles settled by the Hon'ble Apex Court with reference to the Civil Court's jurisdiction are summarized in the following paragraphs;

"10. Section 9 of the CPC (hereinafter referred to as "the Code") says that Courts shall have jurisdiction to try all suits of civil nature "except suits of which their cognizance

is either expressly or impliedly barred". According to the Corporation once the jurisdiction of the Court to try a suit in which the validity of any order passed under the provisions of the Corporation Act or the notice issued thereunder has been specifically barred and an internal remedy has been provided for redressal of the grievances of the persons concerned, there is no scope for Court to entertain a suit."

*"25. In spite of the bar placed on the power of the court, orders passed under such statutes can be examined on "jurisdictional question". To illustrate: a special machinery has been provided for removal of the encroachments from 'public land' under different enactments in different States and the jurisdiction of the court has been barred in respect of the orders passed by such special tribunals or authorities constituted under such Acts. **Still a suit will be maintainable before a court on a plea that the land in question shall not be deemed to be a public land within the meaning of the definition of 'public land' given in the Act in question, and as such provisions thereof shall not be applicable.**"*

"28. According to us, it cannot be urged that the provisions of the Act have created any right or liability and for enforcement thereof remedy has been provided under the Act itself. The Act purports to regulate the common law right of the citizens to erect or construct buildings of their choice. This right existed since time immemorial. But with

the urbanisation and development of the concept of planned city, regulations, restrictions, on such common law right have been imposed. But as the provisions of the Act intend to regulate and restrict a common law right, and not any right or liability created under the Act itself, it cannot be said that the right and the remedy have been given uno flatu e.g. "in the same breath". Most of the cases of this Court referred to above related to statutes creating rights or liabilities and providing remedies at the same time. As such the principles enunciated therein, shall not be fully applicable in the present case. In spite of the bar prescribed under sub-sections (4) and (5) of Section 343 and Section 347-E of the Corporation Act over the power of the courts, under certain special circumstances, the court can examine, whether the dispute falls within the ambit of the Act. But once the court is satisfied that either the provisions of the Act are not applicable to the building in question or the basic procedural requirements which are vital in nature, have not been followed, it shall have jurisdiction, to enquire and investigate while protecting the common law rights of the citizens. Can a court hold a suit to be not maintainable, although along with the plaint materials are produced to show that the building in question is not within the Corporation limits, or that the constructions were made prior to coming into force of the relevant provisions of the Act? We are conscious of the fact that persons who make unauthorised constructions by

contravening and violating the building bye-laws or regulations often run to courts, with pleas mentioned above, specially that no notice was issued or served on them, before the Corporation has ordered the demolition of the construction.”

emphasis applied by me

16. The Civil Court’s jurisdiction under Section 9 of the Code of Civil Procedure, 1908, entitles the plaintiff to seek a declaration as prayed in the present case. Section 149 of the said Act reads as under:

“149. Finality of orders: Save as otherwise expressly provided in this Act, every order passed or direction issued by the State Government or order passed or notice issued by any Regional Board, Planning Authority or Development Authority under this Act shall be final and shall not be questioned in any suit or other legal proceedings.”

17. In view of the legal principles settled by the Hon’ble Apex Court as referred to herein above, there is no ouster of the Civil Court's jurisdiction under Section 149 of the said Act. The suit is filed for a declaration that, due to the inaction on the part of the defendants, the reservation has lapsed. Thus, the declaration sought by the plaintiff pertains to the automatic lapse of the reservation due to non-

compliance with the provisions of the said Act. Section 149 of the said Act provides for the finality of the orders or notices issued under the Act. In the present case, there is no challenge to the notice or order passed under the said Act. Thus, the provision of Section 149 of the said Act would not exclude the jurisdiction of the Civil Court.

18. In a case involving similar facts, this Court, in the case of ***Nagarpalika Sawantwadi, Through The Chief Officer***, held that, as per Section 149, finality is given to the orders passed or directed to be issued under the said Act. Thus, lapsing of the reservation provided under Section 127 of the said Act has taken place under the Act, and thus, the bar as contemplated under Section 149 would not apply to the case involving the declaration that the reservation has lapsed.

19. Learned counsel for the plaintiff has thus rightly relied upon the aforesaid decisions as the legal principles settled in the aforesaid decisions squarely apply to the facts of the present case. The maintainability of the suit and the bar of the Civil Court in view of Section 149 of the said Act is discussed by this Court in the decision of ***Raja Bahadur Motilal Poona Mills Ltd. and Another***. This Court held that under Section 149, what is barred is the questioning of an order

made under the Act and does not bar any suit whereby the party to it can be prevented from acting on an action or order made under the Act. Thus, this Court held that the bar spelt out under Section 149 under the said Act is, therefore, a limited bar. Another decision of this court in the case of ***Rita Mahesh Dadarkar and Others*** also dealt with the bar under Section 149. In the facts of the said case, this Court held that the issue or the challenge regarding the validity or legality of the town planning scheme in view of the bar of Section 149, the other prayers pertaining to the Civil Court's jurisdiction cannot be held to be barred by applying Section 149 of the said Act. This Court held that the individual plot owner has rights under the Act and must be allowed to seek enforcement of those rights in some Court. This Court further held that they cannot be thrown out of the Courts or left entirely to the mercy of the administrative or executive authorities. Hence, after considering the applicability of bar under Section 149, this Court held that the prayers save and except prayers regarding the challenge to the validity and legality of the town planning scheme, the Civil Court's jurisdiction would not be barred.

20. Learned counsel for the plaintiff also relied upon the decision of this Court in the case of ***Kishor S/o Ramalu @ Rambhau Telang***. This

court dealt with the applicability of the bar under Section 149 and the finality clause. This Court relied upon various decisions of the Apex Court, including the decision in the case of ***Shiv Kumar Chadha***. The relevant paragraph of the decision referring to the Apex Court's decision in paragraph 14 would be relevant to the present case, which reads as under.

“14] It is well settled that despite exclusion of jurisdiction of the Civil Court, where the grievance is in relation to failure to comply with statutory provisions, such cases can be examined by the Civil Court. In State of Kerala Vs. M/s. N. Ramaswami Iyer and Sons, AIR 1966 SC 1738 in para 8 it has been held thus:

“8. It is true that even if the jurisdiction of the civil court is excluded, where the provisions of the statute have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure, the civil courts have jurisdiction to examine those cases: Secretary of State v. Mask and Co., 67 Ind APP 222: (AIR 1940 PC 105).”

Thus, after considering all the decisions of the Hon'ble Apex Court on the issue of Civil Court's jurisdiction, this Court held that the jurisdiction of the Civil Court for the purpose of examining as to whether statutory

requirements have been duly complied or not or whether the basic procedure requirements have been followed or not can be examined by the Civil Court irrespective of the bar under Section 149.

21. The legal principles in the decision of ***Prafulla Dave***, relied upon by the learned counsel for the appellant, would not be of any assistance to the arguments of the appellants. This Court, in the said case, held that Section 127 contemplates ten years from the commencement of the final development under Section 21, not the revision of the development plan under Section 38. In the present case, the date of coming into force of the reservation as per the approval of the final revised plan is correctly considered as the relevant date. The other two decisions of this Court relied upon by the learned counsel for the appellant in the case of ***Babar Sher Khan*** and ***Bales Sardara Paracha*** pertain to a challenge to the notice issued under Section 55 of the said Act. Hence, the legal principles in the aforementioned decisions regarding the applicability of Section 149 of the Act would not be applicable to the facts of the present case.

22. Thus, in view of the facts of the present case, the well-established legal principles in the decisions relied upon by the learned

counsel for the plaintiff, as discussed in the above paragraphs, clearly support the contentions of the plaintiff. Hence, the arguments raised on behalf of the appellant-defendant no.3 would not warrant interference with the impugned judgments and decrees. The second appeal does not raise any other question of law.

23. Hence, for the reasons recorded above, the second appeal is dismissed.

24. In view of the dismissal of the second appeal, all pending applications are disposed of as infructuous.

25. At this stage, learned counsel for the appellant submits that the operative part of the impugned decree directs all the respondents to take necessary entries in the record of rights and other revenue record regarding the suit property. He, therefore, submits that this Court may clarify that defendant no. 3 is not required to take any entries in the record of rights, as it is the duty of the revenue officers to make the necessary entry in the revenue record.

26. I do not see the need to issue any such clarification. This Court has confirmed the findings of both Courts regarding the declaration

granted about the lapsing of the reservation. Hence, necessary steps must be taken as contemplated under the said Act for giving effect to the lapsing of the reservation and making the land available to the plaintiff for development. It is, therefore, always open for the appellant to make an appropriate application in the execution proceedings as permissible in law for giving effect to the declaration granted by the impugned judgments and decrees.

27. Learned counsel for the appellant seeks extension of ad-interim relief already granted by this Court vide order dated 20th August 2019 in Civil Application No. 189 of 2019. Though learned counsel for the plaintiff opposes the extension of ad interim relief, I see no reason for not extending the ad-interim relief for a limited period. At the request of learned counsel for the appellant, the ad-interim order already operating in the second appeal shall continue to operate till expiry of the period of six weeks from the date of uploading this judgment.

[GAURI GODSE, J.]

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