

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1488 OF 2016

- | | | | |
|----|---------------------------------|---|----------------|
| 1. | Avinash Dhavji Naik, |] | |
| | Age:- 54 years, |] | |
| 2. | Arun Dhavji Naik |] | |
| | Age:- 45 years, |] | |
| | Residing at Village Bamandongri |] | |
| | Post Vahal, Taluka Panvel, |] | |
| | District Raigad 410206 |] | ...Petitioners |

VERSUS

AMOL
PREMNATH
JADHAV

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- | | | | |
|----|-------------------------------------|---|--|
| 1. | The State of Maharashtra |] | |
| | Through the Secretary, |] | |
| | Revenue and Forest Department, |] | |
| | Mantralaya, Mumbai. |] | |
| 2. | The Deputy Collector |] | |
| | (Land Acquisition), |] | |
| | Metro Centre No.1, New Panvel, |] | |
| | Taluka Panvel, District Raigad. |] | |
| 3. | The Deputy Collector |] | |
| | (Land Acquisition), |] | |
| | Metro Centre No.3, New Panvel, |] | |
| | Taluka Panvel, District Raigad. |] | |
| 4. | City and Industrial Development |] | |
| | Corporation of Maharashtra Limited, |] | |
| | CIDCO Bhavan, CBD- Belapur, |] | |
| | Navi Mumbai. |] | |
| | No.4 added as party Respondent in |] | |

pursuance of Order dated 23/03/2017]
 passed by this Hon'ble Court in the]
 present matter in CAW No. 1359/16]...Respondents

WITH

WRIT PETITION NO. 1498 OF 2016

1. **Suresh Dattatrey Naik,**]
 Age:- 54 years,]
2. **Janardan Dattatrey Naik**]
 Age:- 65 years,]
3. **Murlidhar Datttarey Naik**]
 Age:- 62 years,]
4. **Girjabai Dattatrey Naik**]
 Age:- 80 years,]
5. **Dhanaji Dattatrey Naik**]
 Age:- 60 years,]
6. **Ashok Dattatrey Naik**]
 Age:- 50 years,]
7. **Mahendra Dattatrey Naik**]
 Age:- 48 years,]
 All Residing at Village Bamandongri,]
 Post Vahal, Taluka Panvel,]
 District Raigad 410206]...Petitioners

VERSUS

1. **The State of Maharashtra,**]
 Through the Secretary,]
 Revenue and Forest Department,]
 Mantralaya, Mumbai.]
2. **The Deputy Collector**]
(Land Acquisition)]

- | | | |
|----|--|-----------------|
| | Metro Centre No. 1, New Panvel, |] |
| | Taluka Panvel, District Raigad. |] |
| 3. | The Deputy Collector |] |
| | (Land Acquisition), |] |
| | Metro Centre No. 3, New Panvel, |] |
| | Taluka Panvel, District Raigad. |] |
| 4. | City and Industrial Development |] |
| | Corporation of Maharashtra Limited, |] |
| | CIDCO Bhavan, CBD – Belapur |] |
| | Navi Mumbai. |]...Respondents |

**WITH
WRIT PETITION NO. 1871 OF 2016**

Hemantkumar Gajanan Lad	]
Age:- 55 years,	]
occupation-Agriculturist	]
Residing at village Ulwe,	]
Taluka – Panvel, District – Raigad	]...Petitioner

VERSUS

- | | | |
|----|-------------------------------------|---|
| 1. | The Deputy Collector, |] |
| | Land Acquisition, |] |
| | Metro Centre No.-1, |] |
| | Panvel. |] |
| 2. | The Collector |] |
| | District Raigad, |] |
| | Having office at the District | |
| | Collectorate, Alibaug, |] |
| | District - Raigad. |] |
| 3. | The Divisional Commissioner, |] |
| | Konkan Division, |] |
| | Having office at the Konkan Bhavan, |] |
| | CBD Belapur, District – Raigad. |] |
| 4. | The Principal Secretary, |] |

Revenue and Forests Department,]
Having office at Mantralaya,]
Mumbai.]

5. The State of Maharashtra,]...Respondents

WITH
WRIT PETITION NO. 1489 OF 2016

1. Dilip Gopal Naik,]
Age:- 54 years,]

2. Pritam Gopal Naik]
Age:- 45 years,]
Residing at Village Bamandongri,]
Post Vahal, Taluka Panvel,]
District Raigad 410206]...Petitioners

VERSUS

1. The State of Maharashtra,]
Through the Secretary,]
Revenue and Forest Department,]
Mantralaya, Mumbai.]

2. The Deputy Collector]
(Land Acquisition)]
Metro Centre No. 1, New Panvel,]
Taluka Panvel, District Raigad.]

3. The Deputy Collector]
(Land Acquisition),]
Metro Centre No. 3, New Panvel,]
Taluka Panvel, District Raigad.]

4. City and Industrial Development]
Corporation of Maharashtra Limited,]
CIDCO Bhavan, CBD – Belapur]
Navi Mumbai.]...Respondents

WITH

**INTERIM APPLICATION NO. 1112 OF 2025
IN
WRIT PETITION NO. 1489 OF 2016**

M/s Devraj Builders and Developers]
Through its partners]...Applicant

VERSUS

Dililp Gopal Naik and Ors.,]...Respondents

**WITH
WRIT PETITION NO. 1490 OF 2016**

1. **Yashwant Jana Mhatre**]
(Since Deceased), through his Legal]
Representatives]
- 1/A **Ramubai Yashwant Mhatre**]
Age:- 62 Years,]
- 1/B **Alankar Yashwant Mhatre**]
Age:- 37 Years]
- 1/C **Jagruti Yashwant Mhatre**]
Age:- 32 Years]
R/at:- Chirner,]
Tal. Uran, Dist. Raigad, 410206]
- 1/D **Akash Yashwant Mhatre**]
Age:- 29 Years,]
Nos. 1, 2 & 4 R/at Bamandongri,]
Wahal, Tal. Panvel,]
Dist. Raigad 410206]
2. **Meghraj Damu Mhatre**]
Age:- 42 years,]
Residing at Village Bamandongri,]
Post Vahal, Taluka Panvel,]
District Raigad 410206]...Petitioners

VERSUS

1. **The State of Maharashtra,**]
Through the Secretary,]
Revenue and Forest Department,]
Mantralaya, Mumbai.]
2. **The Deputy Collector**]
(Land Acquisition)]
Metro Centre No. 1, New Panvel,]
Taluka Panvel, District Raigad.]
3. **The Deputy Collector**]
(Land Acquisition),]
Metro Centre No. 3, New Panvel,]
Taluka Panvel, District Raigad.]
4. **City and Industrial Development**]
Corporation of Maharashtra Limited,]
CIDCO Bhavan, CBD – Belapur]
Navi Mumbai.]...Respondents

WITH
INTERIM APPLICATION NO. 1092 OF 2025
IN
WRIT PETITION NO. 1490 OF 2016

Yashwant Jana Mhatre]
(Since Deceased), through his Legal]
Representatives]...Applicant

VERSUS

The State of Maharashtra and Ors.,]...Respondents

WITH
WRIT PETITION NO. 6531 OF 2023

1. **Nandkumar Janardan Kumar,**]
Age:- 42 years,]
Occupation – Agriculture,]

- Address – House No. 442,]
 At Bamandongri, Post – Vahal]
 Tal. Panvel, Dist. Raigad]
 Pin – 410 206.]
2. **Radhabai Janardan Thakur.**]
 Age – 70 years, Occupation -]
 Address – House No. 442,]
 At Bamandongri, Post – Vahal,]
 Tal. Panvel, Dist. Raigad]
 Pin – 410 206]
3. **Ram Janardan Thakur.**]
 Age – 50 years, Occupation -]
 Address – House No.442,]
 At Bamandongri, Post – Vahal]
 Tal. Panvel, Dist. Raigad]
 Pin – 410 206]
4. **Subhash Janardan Thakur.**]
 Age- 48 years, Occupation -]
 Address – House No. 442,]
 At Bamandongri, Post – Vahal,]
 Tal. Panvel, Dist. Raigad]
 Pin – 410 206]
5. **Sambhaji Janardan Thakur.**]
 Age – 45 years, Occupation -]
 Address – House No.442,]
 At Bamandongri, Post – Vahal,]
 Tal. Panvel, Dist. Raigad]
 Pin – 410 206]
6. **Dhruvas Janardan Thakur.**]
 Age – 38 years, Occupation -]
 Address – House No. 442,]
 At Bamandogri, Post – Vahal,]
 Tal. Panvel, Dist. Raigad]
 Pin – 410 206]

7. **Rajeshree Somnath Mhatre**]
 Age- 35 years, Occupation -]
 Address – House No.442,]
 At Bamandongri, Post – Vahal,]
 Tal. Panvel, Dist. Raigad]
 Pin – 410 206]
- [The Petitioners no. 1 to 7 are]
 All Owners of Survey no. 356/3]
 At village Vahal, Taluka Panvel]
 District Raigad]]...Petitioners

VERSUS

1. **The Special Land Acquisition**]
Officer/ The Deputy Collector]
(Land Acquisition)]
 Metro Centre No.1, Panvel.]
2. **The Collector of District Raigad**]
 Having an office at the Collectorate]
 office Alibaug.]
3. **The Commissioner of Konkan Division**]
 Having an office at Konkan Bhavan,]
 CBD Belapur.]
4. **The Principal Secretary,**]
Revenue and Forest Department]
 State of Maharashtra,]
 Having Office at Mantralaya, Mumbai]
5. **The Principal Secretary**]
Urban Development Department]
 Having office at Mantralaya,]
 Mumbai.]
6. **The City and Industrial Development**]
Corporation (CIDCO)]
 Having office at CIDCO Bhavan]
 Represented herein through]

- | | | | |
|------------------------|--------------------------------------|---|----------------|
| The Managing Director, | CIDCO, CBD Belapur. |] | |
| | |] | |
| 7. | State of Maharashtra, |] | |
| | Represented through, |] | |
| | The Chief Secretary, |] | |
| | Having Office at Mantralaya, Mumbai. |] | ...Respondents |
-

APPEARANCES-

Mr A V Anturkar, Senior Advocate, a/w Mr Sachin Punde, Mr Kaustubh Patil, Mr Atharv Date, Ms Kashish Chelani, Mr Suraj B Jadhav, Mr Roshan Sawant, Mr Priyesh Naik, for the Petitioners in WP/1488/2016.

Mr Sachin S Punde, for the Petitioners in WP/1498/2016.

Mr Sachin S Punde, a/w Mr Kaustubh Patil, Suraj B Jadhav, for the Petitioners in WP/1489/2016 & WP/1490/2016 and for the Applicants in IA/1092/2025.

Mr Rahul Thakur, a/w Vidhi Nayar, for the Petitioner in WP/1871/2016.

Mr Rahul Thakur, for the Petitioners in WP/6531/2023.

Mr G S Hegde, Senior Advocate, a/w Mr Soham Bhalerao i/b DSK Legal, for Respondent No. 4 – CIDCO in WP/1498/2016, WP/1489/2016 and WP/1490/2016.

Mr G S Hegde, Senior Advocate, a/w Mr Rahul Sinha, Mr Sohan Bhalerao i/b DSK Legal, for the Respondent No.4 in WP/1488/2016.

Mr A I Patel – Addl. GP a/w Ms M S Bane – AGP, for the State-Respondents 1 to 3 in WP/1498/2016, for the State-Respondents 1 to 5 in WP/1871/2016 and for the State in WP/1490/2016.

Mr A I Patel – Addl. GP a/w Mr M Pable – AGP, for the State-Respondents 1 to 5 & 7 in WP/6531/2023.

Mr Sunil I Jayakar, a/w Ms Gunjan Jayakar, Mr Miheer Jayakar, for the Applicant/Intervenor in IA/1112/2025.

**CORAM : M. S. Sonak &
Jitendra Jain, JJ.**

RESERVED ON : 21 March, 2025

PRONOUNCED ON : 24 March, 2025

JUDGMENT (Per M S Sonak J):-

1. Heard learned Counsel for the parties.

PRELIMINARIES

2. Rule in each of these Petitions. The Rule is made returnable immediately at the request of and with the consent of the learned Counsel for the parties.

3. The learned Counsel for the parties' state that substantially common issues of law and fact arise in all these Petitions. Accordingly, they submit that a common judgment and order could dispose of all these Petitions by treating Writ Petition No.1488 of 2016 as the lead Petition. This would be consistent with the orders of the Co-ordinate Bench made earlier in these matters.

4. The arguments concluded on 27 February 2025, and these matters were reserved for orders. From the pleadings, there was some ambiguity about whether any of the

Petitioners in this batch had challenged the invocation of urgency provisions. So, the matters were posted for clarification on 21 March 2025. Upon the learned Counsel clarifying that there was no such challenge in this batch, the matters were again reserved for judgment and orders.

BASIC FACTS & CHALLENGES

5. In all these Petitions, the Petitioners challenge the land acquisition proceedings regarding their properties vide declaration dated 04 June 2012 and Awards dated 07 April 2015. In the alternative, the Petitioners seek a direction to the Respondents to grant them 20% of the developed lands in terms of the State Government Policy and the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (New Land Acquisition Act). The properties which are the subject matter of the compulsory acquisition and in which the Petitioners claim interest are suitably described in the respective Petitions. Therefore, such a description is not repeated in this judgment and order.

6. The properties in which the Petitioners claim interest were compulsorily acquired for setting up a new township under the provisions of The Maharashtra Regional and Town Planning Act, 1966 (MRTP Act) read with the Land Acquisition Act, 1894 (Old Land Acquisition Act) and the New Land Acquisition Act.

7. There is no dispute that the challenged land acquisition commenced under the Old Land Acquisition Act but continued and was ostensibly completed after the New Land Acquisition Act came into force on 1 January 2014. The relevant and crucial facts regarding which the Petitioners contest the challenged acquisition proceedings are briefly set out hereafter.

8. The State Government issued a Section 4 notification under the Old Land Acquisition on 12 May 2011 and published it in the two local newspapers on 27 May 2011 and 05 June 2011, about which there is no dispute. This notification was also published at the 'gaav-chawadi' on 12 August 2011, and there is some dispute about it. However, nothing much turns on this dispute.

9. Admittedly, no hearing under Section 5A of the Old Land Acquisition Act was granted to any of the Petitioners on the purported grounds the urgency provisions under Section 17 of the Old Land Acquisition Act were invoked. The Counsel for the petitioners clarified that the Petitioners were not challenging such an invocation.

10. The State Government issued a Section 6 declaration on 12 June 2012. The same was published in the local newspapers on 16 June 2012 and 17 June 2012, respectively. There is serious controversy about the publication date of this declaration at the 'gaav-chawadi'. The Petitioners contend that public notice of this declaration at the 'gaav-chawadi' was on

04 September 2012. The State Government, however, claims the date of such public notice/publication was 10 December 2012.

11. Admittedly, no Award was made based upon the Section 4 notification dated 12 May 2011 and Section 6 declaration dated 12 June 2012 until the New Land Acquisition Act came into force on 01 January 2014. There is a serious controversy about the precise award/awards date and whether the awards relied upon by the State Government are final or draft awards. The State Government has been far from candid on this issue. Contradictory affidavits have been filed, which conceal more than what they reveal.

12. There is one award dated 07 April 2015 (individual award). A second award placed on record bears the date 02 May 2015 and is styled as the “draft award” of all lands sought to be compulsorily acquired. This draft award was forwarded to the Collector, Raigad, under cover of a letter dated 02 May 2015. The affidavit in reply (on page 78) filed by the second Respondent stated that the correct date of award is 09 May 2015.

13. The additional affidavit (on page 253) states that the proper award in this case is dated 07 April 2015. There is a letter dated 06 May 2015 forwarding the draft award to the Divisional Commissioner and some evidence of the Divisional Commissioner receiving this draft award on 11 May 2015 (See pages 73JJ-3 to 73JJ-38). There is a document dated 27

May 2015 showing the approval of the Divisional Commissioner to the draft award coupled with a direction to the second Respondent to declare individual awards in terms of the approval granted (see pages 73JJ-39-73JJ-63).

14. Even though the New Land Acquisition Act entered force on 01 January 2014, on 24 November 2015, notices were issued under Section 12(2) of the Old Land Acquisition Act stating that an Award under Section 11 of the Old Land Acquisition Act was made on 07 April 2015 and the persons interested should come forward to accept the compensation and hand over the possession of the acquired properties.

15. At or about this stage, the Petitioners, or at least most of them, instituted these Petitions and obtained interim reliefs. The interim orders stated that if the possession of the Petitioners' properties was not already taken over, it should not be taken over until the next date. The learned Counsel for the parties agree that this interim relief was extended from time to time and continues to this day.

PETITIONERS' CONTENTIONS

16. Mr Anturkar, learned Senior Counsel for the Petitioners in the lead Petition, submitted that this was not some acquisition under the MRTP Act but an acquisition under the Old and New Land Acquisition Acts. In any event, he submitted that the provisions regarding obtaining approval under proviso to Section 11 of the Old Act before making an award or the provisions of Section 11A of the Old Act read

with Section 25 of the New Act regarding the statutory time limit within which an award is required to be made apply to the present acquisition. He submitted that these provisions had been breached, though an attempt was made to repair this breach by manipulating and fabricating documents. He submitted that the acquisition proceedings are liable to be quashed on these grounds.

17. Mr Anturkar submitted that the Hon'ble Supreme Court's decision in **Girnar Traders (3) Vs. State of Maharashtra**¹ would not apply because the subject acquisition was not under the MRTP Act but the Land Acquisition Act. In any event, he submitted that *Girnar Traders (3)* (supra) applied only to acquisition under Chapter VII of MRTP Act and not to acquisition under Chapter VI of the MRTP Act concerned with establishing new towns. He relied upon the principle that a decision is only an authority for the proposition it actually decides and not for what may logically follow from the same.

18. Without prejudice, Mr Anturkar submitted that if, for any reason, the acquisition is to be sustained, then suitable directions must be issued to the Respondents to grant the Petitioners 20 per cent developed land as contemplated in serial No.3 of column 3 of the second schedule of the New Land Acquisition Act read with Government Resolutions dated 01 March 2014 and 16 June 2014.

¹ 2011 3 SCC 1

STATE'S RESPONSE

19. Mr Patel, learned Addl. GP countered Mr Anturkar's arguments by submitting that this was an acquisition under the MRTP Act and that only the machinery under the Land Acquisition Act was employed to complete the acquisition process. Therefore, he submitted that the provisions regarding prior approval or lapsing under Sections 11 and 11A of the Old Act were inapplicable. He submitted that the Government, even though not required, adhered to Rules 18 and 19 of the Right to Fair Compensation Rules, 2014 and obtained necessary approvals wherever needed before making the award. He denied the charges of manipulation and fabrication. Mr Patel relied upon the Full bench decision in **Mehtab Laiq Ahmed Shaikh and Anr. Vs. The State of Maharashtra and Ors.**².

20. Mr Patel also filed notes of arguments, which, with respect, are neither here nor there and are transcribed below to only to give a glimpse into the kind of assistance that we got from the State Government in this matter: -

“1. Chapter V, VI, VII MRTP Act, 1966 applicable to the present case.

2. Section 88 and 89 of the MRTP Act, provides that upon preliminary scheme is declared, the property vest in planning authority/state.

3. Section 2 (19) defines planning authority including Special Planning Authority.

² 2017 SCC OnLine Bom 8841

4. *Section 2 (8) defines development authority means new town development authority constituted under Section 113.*

5. *Section 113A along with Section 17(4) of LAQ Act, notification under Section 6 was issued. However, in view of Chapter V, the notification u/s 6 is the procedural aspect. Hence, the property vested u/s 88 the same cannot be divested or withdrawn from the scheme.*

6. *Section 88 provides on or after the said preliminary scheme comes into force the property vest in the planning authority. The said vesting is absolute in view of the mandate of Chapter-V and more particularly Section 88 and 89 of the MRTP Act. Hence, the Petition of the Petitioners are contrary to the said provisions of law and liable to be dismissed.*

7. *Section 59 (Chapter-V) MRTP Act, provides for planning authority to prepare one or more town planning schemes. Planning Authority defines u/s 2(19) includes Special Planning Authority established u/s 113.*

8. *Section 88 provides the effect of the preliminary scheme.*

9. *Provision of Chapter, III to VII and other provisions of the MRTP Act is applicable to the present case as per Section 113 and 113 A of the said Act.*

10. *Once property u/s 88 vest in Government/ Planning Authority, no challenged to notification u/s 9 or its publication and declaration can be subject to challenge and/or in our respectful submission the award cannot be declared to be lapsed assuming without admitting the same is declared after a period of two years from the notification.*

11. *The only remedy available to the land owners is u/s 88 (2) of the MRTP Act to apply and get their right settled by Arbitrator.*

12. *Section 113 A empowers new town planning authority to acquire land, the said land vest in such authority for the purpose of this chapter by any order duly made in that behalf.*

13. *1976 Maharashtra Law Journal 267: AIR 1976, Bombay 129*

Provides that acquiring the land without following procedure under MLRC or Village Panchayat Act is not invalid.

14. *Effect of Section 88 is elaborately specified in AIR 1969 SC 634: 72 Bombay LR 1 State of Gujrat Vs. Shantilal Mangaldas*

Once a preliminary scheme comes into force all property vest in planning authority. All rights in the original plots are extinguished and simultaneously there with ownerships spring in the reconstituted plot if allotted and finalized by the Arbitrator.

15. *The Mandate of the Section 88 (2) is considered in the case of Municipal Corporation of Greater Bombay Vs. The Advance Builders India Ltd. 75 Bombay Law Reporter 355.*

It provides that all rights of private owners determines is the effect of finalization of the scheme (after amendment of the preliminary scheme specified u/s 88). In such a scheme if the scheme is reconstituted or final plots allotted to the land owner. They shall become final subject to the right settled by the Arbitrator.

16. *(1984) 1 BCR 468 Bom- Dinakar Ramchandra Honale Vs. Municipal Corporation, provides the property vesting with the state including power to summary eviction.*

17. *Section 89 empowers the planning authority empowers the planning authority for summary eviction of the person on the land subject matter of the scheme."*

CIDCO'S RESPONSE

21. Mr Hegde, learned Senior Advocate, who appeared on behalf of the City and Industrial Development Corporation of Maharashtra Limited (CIDCO) submitted that the subject acquisition was under the MRTP Act. Relying on *Girnar Traders (3)* (supra), he submitted that references to the Old or New Land Acquisition Act under the MRTP Act were instances

of “legislation by incorporation” and not legislation by “reference”. He, therefore, submitted that the provisions of the Old Land Acquisition Act as they stood or existed in 1971 would, at the highest, apply to the subject acquisition. He submitted that the 1984 amendments to the Old Land Acquisition Act, by which the prior approval requirement before making the award or the requirement of making the award within 2 years (vide Section 11A) were introduced, would not apply. Accordingly, he submitted that none of the grounds raised by Mr Anturkar on behalf of the Petitioners would apply or were sufficient to quash the acquisition proceedings.

22. Mr Hegde also submitted that the MRTTP Act under which the subject acquisition was carried out is a self-contained code. Therefore, there was no scope to read into this Act any provisions of lapsing of acquisition as may have been provided under the Old or New Land Acquisition Acts. Mr Hegde, without prejudice, submitted that the State Government invoked the provisions of Section 17 of the Old Land Acquisition Act. He submitted that once such urgency provisions are invoked, the provisions in Section 11A about lapsing stand excluded. He submitted that this was another reason why the subject acquisition was not lapsing in the present matter.

23. Learned Counsel for the parties relied upon certain decisions to be considered during this judgment.

POINTS FOR DETERMINATION

24. The rival contentions now fall our determination.

25. Based on the pleadings and the rival contentions, broadly, the following issues arise for determination in these Petitions: -

a) Whether, given the provisions of the MRTP Act and decision of the Hon'ble Supreme Court in *Girnar Traders (3)*, (supra) the provisions regarding prior approval under Section 11 or lapsing of acquisition under Section 11A of the Old Land Acquisition Act read with the corresponding provisions of the New Land Acquisition Act apply to the impugned acquisition proceedings?

b) **If so,**

(i) Are the impugned acquisition proceedings vitiated for non-compliance with the requirement of prior approval of the State Government under the proviso to Section 11 of the Old Land Acquisition Act read with the corresponding provisions of the New Land Acquisition Act?

(ii) Does the impugned acquisition stand lapsed, given the provisions of Section 11A of the Old Land Acquisition Act read with Section 25 of the New Land Acquisition Act?

c) Whether, given the provisions of Sections 31, 38 and 105 of the New Land Acquisition Act read with the entry in Serial No. 3 of Column 3 of the second schedule to the New Land Acquisition Act, Petitioners are entitled to 20% of the developed land in proportion to the area of the acquired land, and at a price equal to the cost of acquisition and the cost of development?

EVALUATION OF THE RIVAL CONTENTIONS

IS THIS AN ACQUISITION UNDER THE MRTP ACT OR THE LAND ACQUISITION LEGISLATION?

26. Regarding the first point for determination, the records show that the subject acquisition relates to Sections 113 and 113A of the MRTP Act. Section 113(3A) refers to the setting up a new town and the constitution of a development authority for the said purpose. Section 113A provides that notwithstanding anything contained in this act, or any law for the time being in force, where any corporation or company is declared to be the New Town Development authority under sub-section (3A) of section 113, *“the State Government shall acquire either by agreement or [under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013] (and such acquisition may have been commenced before the coming into force of this section) any land within the area designated under this Act, as the site of the new town, any land adjacent to that area which is required for the purposes connected with the development of the new town, and any land whether adjacent to that area or not, which is required for provisions of services or amenities for the purposes of new town; and vest such land in such Authority for the purposes of this Chapter] [by an order duly made in that behalf]”*.

27. Mr Patel and Mr Hegde relied on *Girnar Traders 3* (supra) to contend that MRTP was a complete code and, therefore, in respect of any acquisition under the MRTP Act. There was no obligation to comply with the provisions of Sections 11 or 11A of the Old Land Acquisition Act or the

corresponding provisions of the New Land Acquisition Act. They submitted that this was also the ratio of the Full bench in **Mehtab Laiq Ahmed Shaikh & Anr & Anr vs State of Maharashtra & Ors**³.

28. Mr Anturkar, however, submitted that the decisions in *Girnar Traders 3* (supra) and *Mehtab Shaikh* (supra) did not apply to Chapter VI, including Section 113A of the MRTP Act. Accordingly, He submitted that the provisions of Sections 11 and 11A of the Old Land Acquisition Act read with the Corresponding Provisions of the New Land Acquisition Act would very much apply to the impugned acquisition proceedings.

29. Mr. Anturkar pointed out that in the replies filed on behalf of the Respondents, no plea was raised about the alleged inapplicability of Sections 11 and 11A of the Old Land Acquisition Act. Instead, the Respondents claim to have complied with the requirements of these provisions. He submitted that there was ample material on record to establish that the requirements of sections 11 and 11A of the Old Land Acquisition Act were breached with impunity by the State Government. He submitted that the impugned acquisition proceedings should be declared lapsed for these reasons.

30. The crucial issue is whether the impugned acquisition is under the MRTP or the Old and New Land Acquisition Legislations. Related to this issue is whether **Girnar (3)** applies only to an acquisition under Chapter VII of the MRTP Act or would also extend to the other parts of the MRTP Act.

³ AIR 2018 Bom 1 (fb)

31. In **State of Maharashtra & Anr Vs Sant Joginder Singh Kishan Singh**⁴, a two-judge Bench of the Hon'ble Supreme Court held that Section 11A of the Old Land Acquisition Act would not apply to the land acquisition under Chapter VII, which includes Sections 125 to 127 of the MRTP Act.

32. The correctness of the above proposition was doubted in **Maharashtra State Road Transport Corporation Vs the State of Maharashtra & Ors**⁵ by a Supreme Court Bench of co-equal strength. This cleavage of opinion was noticed in **Girnar Traders (1) Vs State of Maharashtra**⁶ and a detailed referral order was made on 14 October 2004 directing the Registry to place the papers before the Hon'ble Chief Justice of India for appropriate directions to constitute a large Bench to resolve the dispute.

33. A larger Bench of five Judges decided the reference in *Girnar Traders (3)* (supra). The referral order in *Girnar Traders (1)* (supra) is transcribed in paragraph 9. Paragraph 20 of this referral order reads as follows: -

“We, therefore, see no good reason as to why the provisions introduced in the Land Acquisition Act, 1894 by Central Act 68 of 1984 should not be read into an acquisition under Chapter VII of the MRTP Act, to the extent not precluded by the MRTP Act, 1966. Section 11-A being one such section, it may have to be applied to the acquisition under Chapter VII of the MRTP Act.”

34. In paragraph 19 of *Girnar Traders (3)* (supra) the Hon'ble Supreme Court also noted the following: -

⁴ 1995 Supp (2) SCC 475

⁵ (2003 4 SCC 200)

⁶ 2004 8 SCC 505

“After expressing this view, the Bench chose to refer a restricted question for determination by the larger Bench that whether provisions of Section 11-A of the Land Acquisition Act, amongst other provisions, introduced by Central Act 68 of 1984 would apply to Chapter VII of the MRTTP Act. Before we answer this legal controversy arising in the present case, we consider it appropriate to refer to the contentions raised by the learned counsel appearing before us.”

35. Similarly, in paragraph 20 of *Girnar Traders 3 (supra)*, the Hon’ble Supreme Court noted that

“We are primarily concerned with answering the question referred to this Bench in the above order of reference”.

36. Thus, it does appear that at least prima facie, in *Girnar Traders (3) (supra)*, the Hon’ble Supreme Court was concerned with whether the provisions of Section 11-A of the Land Acquisition Act, amongst others introduced by the Central Act 68 of 1984, would apply to Chapter VII of the MRTTP Act.

37. In deciding the reference, the Hon’ble Supreme Court noted the following: -

(i) Chapter VII of the MRTTP Act did not contemplate land acquisition from the stage of issue of Section 4 notification under the Old Land Acquisition Act, 1894.

(ii) Section 126(2), which is a part of Chapter VII of the MRTTP Act, only refers to the State Government making a declaration *‘in the manner provided in Section 6 of the Land Acquisition Act’*;

(iii) For acquisition under Chapter VII of the MRTP Act, there was no requirement to comply with the provisions of Sections 4 and 5A of the Land Acquisition Act, 1894, before publication of declaration under Section 6.

(iv) Subject to the provisions of Section 126(4) of the MRTP Act, no declaration under Section 6 of the Land Acquisition Act, 1894 could 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.

(v) After the publication of the declaration under Section 6 of the Land Acquisition Act, 1894, the Collector was required to proceed to take order for land acquisition under the Land Acquisition Act, 1894.

(vi) The provisions of the Land Acquisition Act 1894 were to apply to land acquisitions, with the modification that the date of the market value of the land to be acquired was to be determined with reference to Section 126(3) of the MRTP Act since the acquisition did not contemplate the issue of any Section 4 notification under the Land Acquisition Act, 1894.

38. *Girnar Traders (3)* (supra) also holds that the reference to the provisions of the Land Acquisition Act, 1894 under the MRTP Act was an instance of “*legislation by incorporation*” and not “*legislation by reference*”. Therefore, the provisions of Central Act 68 of 1984, by which Section 11A was introduced in the Land Acquisition Act 1894, would not apply to acquisitions under the MRTP Act since the 1894 amendments since they were not a part of the Land Acquisition Act, 1894

when its provisions were incorporated into the MRTP Act in 1971.

39. *Girnar Traders (3)* (supra) also holds that the MRTP Act is a self-contained Code, and the reference to some of the specific provisions of the Land Acquisition Act 1894 was to avail of the acquisition machinery under the 1984 Act. Therefore, restrictive provisions like Section 11A would not apply to acquisitions under the MRTP Act.

40. As noted earlier, the subject acquisition is not relatable to Chapter VII of the MRTP Act. Instead, it relates to Chapter VI, which includes Sections 113 and 113A of the MRTP Act. There is a marked distinction between acquisition under Chapter VII, including Sections 125 to 127 of the MRTP Act, and acquisition under Chapter VI, which includes Sections 113 and 113A of the MRTP Act.

41. For instance, firstly, the groundwork before any notification is issued under Sections 125-126 of the MRTP Act is not required before any acquisition is undertaken by reference to Section 113A of the MRTP Act.

42. Secondly, Section 113A employs the phrase that the State Government shall acquire the land “*under the Land Acquisition Act, 1894*” or that “the State Government shall acquire either by agreement or under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013....”

43. Thirdly, the acquisition under Section 113A of the MRTP Act does not dispense with the requirement of issuing a notification under Section 4 of the Land Acquisition Act, 1984

or the corresponding Section under the New Land Acquisition Act.

44. Fourthly, the acquisition under Section 113A of the MRTP Act does not dispense with the requirement of an enquiry under Section 5A of the Land Acquisition Act, 1894, or the corresponding provisions of the New Land Acquisition Act unless such enquiries are excluded by invoking the urgency provisions under Section 17 of the Old Land Acquisition Act or the corresponding provisions under the New Land Acquisition Act.

45. In contrast, the land acquisition under Chapter VII of the MRTP Act, which includes Sections 125 to 127, does not contemplate compliance with the provisions of Sections 4 and 5A of the Old Land Acquisition Act before any declaration is published under Section 6. No Section 6 notification is also contemplated, but a Section 126(2) declaration has to be made “*in the manner provided in Section 6 of the Land Acquisition Act.*” The groundwork contemplated by the MRTP Act before Section 126(2) declaration is much more rigorous and elaborate than perhaps the groundwork contemplated by notifications under Section 4 or enquiry under Section 5A of the Land Acquisition Act, 1894.

46. Based upon the above distinctions read with the specific terms of reference, it could perhaps be urged that *Girnar Traders (3)* (supra) is an authority for the proposition that the provisions of Section 11A of the Land Acquisition Act, 1894 do not apply to land acquisition under Chapter VII, including Sections 125 to 127 of the MRTP Act and that the said decision may not be an authority for the proposition that

the provisions of Sections 11 or 11A of the Land Acquisition Act, 1894, do not apply to land acquisition under Section 113A of the MRTP Act.

47. However, *Girnar Traders (3)* (supra), in its discussion, does advert to the provisions of Sections 113 and 113A of the MRTP Act. It holds that the MRTP Act is a complete Code. It is observed that the objectives of the MRTP Act and the Land Acquisition Act are distinct. Both are self-contained Codes that operate in their respective spheres. The purpose of the MRTP Act is to secure the planned development. The reference to the provisions of the Land Acquisition Act is to avail of the machinery under the Land Acquisition Act of 1894 for acquiring lands to promote land development.

48. Further, as noted earlier, *Girnar Traders (3)* (supra) also holds that the reference to the provisions of the Land Acquisition Act is an instance of “*legislation by incorporation.*” Therefore, the 1984 amendments in the Land Acquisition Act would not ipso facto apply to the provisions of the MRTP Act since such provisions were not in the Land Acquisition Act of 1894 when they were incorporated into the MRTP Act in 1971.

49. *Girnar Traders (3)* (supra) is a decision of the Constitution Bench of the Hon’ble Supreme Court concerning whether the provisions of Section 11A of the Old Land Acquisition Act regarding the lapsing of acquisition apply to acquisition proceedings initiated under Sections 125 to 127 of the MRTP Act. It is not for this Court to disregard the binding precedent. This Court also cannot lightly distinguish the binding precedent by referring to some issues that suggest the

controversy before the Constitution Bench primarily concerned the applicability of the lapsing provisions in Section 11A to land acquisitions under Chapter VII of the MRTP Act. Additional observations regarding the two enactments as complete codes or legislation by incorporation must also be considered.

50. In Mehtab Laiq Ahmed Shaikh, [supra], The Full Bench of our Court, when dealing with the issue of whether the provisions of Sections 24 and 25 of the New Land Acquisition Act would apply to acquisition proceedings initiated in terms of Sections 125 to 127 of the MRTP Act, has held that the authoritative pronouncement of the Constitution Bench declaring a position of law is final and must be followed by all Court, including the Benches of the Supreme Court of a strength smaller than five. The purpose of referring a question to the Constitution Bench is to give a quietus to the legal controversies and bring about certainty in law.

51. The Full Bench relying on South Central Railway Employees Cooperative Credit Society Employees Union Vs B Yashodabai & Ors⁷ held that when a higher Court has given a particular decision, the lawyers and litigants cannot be permitted to argue that something was correct but not argued before the higher Court and try to distinguish the judgment on that ground. The Bench cautioned that if merely on that ground, the Courts are permitted to take a different view, then the entire law regarding precedents could be in jeopardy.

52. The Full Bench then noted that even though the Counsel for the Petitioners tried to distinguish the decision in *Girnar*

⁷ 2015 2 SCC 727

Traders (3) (supra) by contending that a particular aspect was not argued, the Court must be mindful of the hierarchical system of Courts and the resultant need of judicial discipline.

53. Therefore, having regard to the decision in *Girnar Traders (3)* (supra) and by adhering to the judicial discipline of Article 141 of the Constitution, we are hesitant to hold that the provisions of Sections 11 or 11A of the Land Acquisition Act, 1894 would apply to acquisitions under the MRTP Act. This is because, in *Girnar Traders (3)* (supra), the Constitution Bench has held that the MRTP Act is a complete Code. Further, the Land Acquisition Act provisions are instances of legislation by incorporation and not legislation by reference. Therefore, only the provisions as they stood on the date of incorporation would apply and not the amendment of 1984, which includes Sections 11 and 11A. Thus, the first point for determination is answered against the Petitioners and favouring the Respondents.

IS THE ACQUISITION VOID FOR NOT OBTAINING PRIOR GOVERNMENT APPROVAL BEFORE DECLARING THE AWARD?

54. On a demurrer, however, we consider the second point for determination in these matters. This is necessary because this Court is typically expected to address all issues raised. Furthermore, no specific defence was invoked in the pleadings regarding applying Section 11 or 11A to these impugned acquisition proceedings. Instead, the pleadings aimed to demonstrate compliance. The extent to which the State has endeavoured to show such compliance also requires attention, as this involves false statements made under oath,

inconsistent positions, manipulation, and fabrication of documents.

55. The second point for determination relates to two aspects. The first concerns compliance with Section 11 of the Old Land Acquisition Act or the corresponding provisions under the New Land Acquisition Act, and the second concerns compliance with Section 11A of the Old Land Acquisition Act or the corresponding provisions under the New Land Acquisition Act.

56. The first proviso of Section 11 of the Old Land Acquisition Act provides that “*no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorize in this behalf*”. The second proviso provides that “*further that it shall be competent for the appropriate Government to direct the Collector to make such award without such approval in such class of cases as the appropriate Government may specify in this behalf*”.

57. There is a Maharashtra amendment, which adds another proviso that “*no award allowing compensation exceeding such amount as the State Government may by general order specify shall be made by the Collector without the previous approval of the State Government or such officer as the State Government may appoint in this behalf*.”

58. In **State of U.P and Others Vs. Rajiv Gupta and Another⁸** and **Sharadchandra Ganesh Muley Vs. State of Maharashtra**

⁸ (1994) 5 SCC 686

and Others⁹, the Hon'ble Supreme Court has held that prior approval as provided under Section 11 is mandatory, and any award made without such prior approval would be void or non-est.

59. Given this legal position, the State endeavored to create confusion regarding the appropriate awards in these matters. A distinction was attempted between individual awards and consolidated awards. This confusion was further compounded by the attempt to present draft awards as final and vice versa. Neither the affidavits nor the written submissions on behalf of the State, as cited above, were clear. They concealed far more than they revealed. What was disclosed was also confusing and contradictory. The positions in one affidavit were later abandoned upon discovery of evident conflicts, only for the new position to contradict other documents already submitted on record. There was no assistance during the arguments.

60. One of the State's affidavits refers to the award dated 07 April 2015 as the relevant award. Now, suppose the individual award dated 07 April 2015 is held to be the correct award based upon which the Petitioners' lands were acquired. In that case, it defies comprehension of how this award could be made before the Divisional Commissioner approved the comprehensive draft award dated 02 May 2015 or 09 May 2015 on 27 May 2015. In terms of the decisions of the Hon'ble Supreme Court referred to above, this award, since the same was made without the prior approval of the Divisional Commissioner, would be void or non-est.

⁹ 1995 Supp (4) SCC 702

61. Under the new Land Acquisition Act, a consolidated award is required, followed by individual awards. Mr Patel referred to Rule 18 of the New Land Acquisition Act Rules, which deals with approvals before making awards. From the scheme, approval must be obtained from the concerned official depending upon the quantum of compensation proposed to be awarded. Therefore, approval must be obtained for the consolidated award. The State Government understood the rule in this manner because otherwise, there would have been no necessity to forward the matter to the Divisional Commissioner for his approval. A stance is now taken that no such approval was necessary but was still applied.

62. In any event, based on the material on record, it is difficult to accept that the award dated 07 April 2015, which is an individual award, was prepared before the draft award (Prarup Nivada) dated 02 May 2015 or 09 May 2015 was prepared and forwarded to the Divisional Commissioner for approval. The approval was granted on 27 May 2015; therefore, it defies comprehension of how an individual award could have been made on 07 April 2015. The Section 12(2) notice was issued almost after six months, i.e. on 24 November 2014, strangely referring to the Section 11 award dated 07 April 2015. This is a case of “*no explanation*” at best and “*false explanation*” at worst.

63. Again, we must record our strong disapproval regarding the State Government’s ever-changing stances on the status and the award dates. To date, there is no clarity about the final and draft awards. There is no clarity about the dates of the final award or the draft award. There is no clarity about

the consolidated award and the individual awards. Affidavits are filed, making one set of statements and finding that such statements are not convenient; further affidavits are filed stating that the previous affidavits were incorrect. The latter affidavits only complicate the matter further. In short, the State has been far from candid with the Court in disclosing the proper and correct facts regarding the status of the draft and final awards, the dates of draft and final awards, and the issue of approvals for the draft or final awards.

64. As noted earlier, the record contains an award dated 07 April 2015 (Exhibit-I at page 68), which is an individual award. This individual award refers to a draft award (Prarup Nivada). This draft award dated 02 May 2015 on record is a consolidated draft award concerning all the lands acquired for the public purpose of the new township, including Petitioner's said properties. This award very clearly states that the same is a draft award or a Prarup Nivada (Exhibit –AD1 pages 73JJ-1 to 73 JJ -2).

65. In the affidavit filed on behalf of the State Government on page 78, the award date is 09 May 2015. In the additional affidavit, the award date is referred to as 07 April 2015. By Exhibit AD2 at pages 73 JJ-3 to 73 JJ-38, the draft award dated 02 May 2015 (Prarup Nivada) is forwarded to the Divisional Commissioner under cover of a letter dated 06 May 2015. The Divisional Commissioner received this letter on 11 May 2015.

66. There is a document at Exhibit AD3 pages 73 JJ-39 to 73 JJ-63, which is the approval of the Divisional Commissioner issued on 27 May 2015. This letter directs the

second Respondent to declare individual awards in terms of the approval now granted. Exhibit H on page 66 is the notice dated 24 November 2015 issued under Section 12 (2), which states that an award under Section 11 was passed on 07 April 2015. The Affidavits are unclear and somewhat confusing because the State Government cannot or does not say which award is correct in this case. During oral arguments, no attempt was made to explain the confusing stands, the prima facie manipulation, or the prima facie false statements made on oath by Kavita Mane.

67. If the correct date of the award is taken as 02 May 2015 or even 09 May 2015, as suggested in some of the affidavits filed on behalf of the State Government, those awards would still be void or non-est given the Divisional Commissioner's approval dated 27 May 2015. To escape such consequences, the State Government now argues that no approval from the State Government or Divisional Commissioner was necessary because the quantum of compensation payable to the Petitioners was less than Rs. 4 Crores. The correctness of this contention is an independent issue. However, that issue has nothing to do with the ever-shifting stands and the audacity of government officials to file false and confusing affidavits in court proceedings, either to cover their patent lapses or for some extraneous reasons.

68. This belated contention that no approval was necessary ignores the Government Resolution dated 16 June 2014 (Exhibit – AE at page 73 KK), which provides that the Divisional Commissioner shall have competent authority for approval of awards, and such powers cannot be delegated to any other Officer. This GR does not prescribe any quantum of

compensation limit. This GR is in terms of proviso to Section 11 of the Old Land Acquisition Act, 1894.

69. The individual award dated 07 April 2015 was in pursuance of the draft award (Prarup Nivada) dated 02 May 2015 or 09 May 2015. The individual awards are made for persons who have not consented to acquisition. Without a consolidated draft for which approval is obtained, there was no question of issuing or making individual awards. The consolidated award, which the Divisional Commissioner approved, refers to compensation of Rs.8.70 Crores. Therefore, there is merit in Mr Anturkar's contention that the award in this case was made without prior approval of the Divisional Commissioner, who was the prescribed authority.

70. The contention that no prior approval is necessary where the urgency clause is invoked cannot be accepted. Mr Anturkar relied on **Ramesh Dutta Vs. State of Punjab and Others**¹⁰ holds that even if an urgency clause under Section 17 is invoked, the proviso to Section 11 regarding obtaining prior approval will apply. Besides, in this case, it is not as if the State deposited 80% of the compensation amount and took over possession of the Petitioners' lands.

71. Therefore, based on the material on record, it is apparent that the impugned awards were made without the prior approval of the State government or the Divisional Commissioner. This is after noting the confusing, false and contradictory defenses of the State on the status of the awards and accepting on a demurer, the most favourable to the State Government.

¹⁰ (2004) 7 SCC 388

HAS THE ACQUISITION LAPSED UNDER SECTION 11A OF THE OLD ACT READ WITH SECTION 25 OF THE NEW ACT?

72. The next aspect is whether the impugned acquisition lapses, given the provisions of Section 11A of the Old Land Acquisition Act, read with Section 25 of the New Land Acquisition Act. Here again, the Petitioners have established that the Awards were made beyond the periods prescribed under Section 11 A read with Section 25 of the New Land Acquisition Act.

73. Section 11A of the Old Land Acquisition Act provides that the Collector shall make an award under Section 11 within two years from the declaration's publication date. If no award is made within that period, the entire land acquisition proceedings shall lapse. The proviso or the explanation to this Section is irrelevant in this case. Thus, Section 11A of the Old Land Acquisition Act mandates that the Collector must make an award under Section 11 within two years from “*the date of publication of the declaration*”. This italicized expression is defined under Section 6(2) of the Old Land Acquisition Act.

74. Section 6(2) of the Old Land Acquisition Act provides that every declaration under Section 6 of the Old Land Acquisition Act shall be published in the Official Gazette, and in two daily newspapers circulating in the locality in which the land is situated of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the dates of such

publication and giving of such public notice, being hereinafter referred to as *the date of the publication of the declaration*). Thus, to determine whether an award is made within two years from the date of publication of the declaration under Section 6, what is crucial is the expression “date of publication”, as referred to in Section 6(2) of the Old Land Acquisition Act.

75. There is no dispute about the Section 6 declaration being dated 12 June 2012 and published in the Gazette on the same date. There is also no dispute about the publication of this declaration in the two local newspapers on 16 June 2012 and 17 June 2012. The Petitioners, based upon some documents, contend that the publication in the locality, i.e. gaav-chawadi, was on 04 September 2012. If the period of two years is counted from this date, then the award made on 07 April 2015 or 02 May 2015, or 09 May 2015 or 27 May 2015 would be barred if the provisions of Section 11A of the Old Land Acquisition Act are found to apply to the subject acquisition.

76. Therefore, the State Government claimed that the Section 6 declaration was published at the gaav-chawadi only on 10 December 2012. This claim was made before the Hon’ble Supreme Court delivered its judgment in **The Executive Engineer Gosikhurd Project Ambadi, Bhandara, Maharashtra Vidarbha Irrigation Development Corporation Vs. Mahesh and Ors.**¹¹ on 10 November 2021. The Petitioners and the State Government have produced documents and filed affidavits to support their respective claims about the last

¹¹ (2022) 2 SCC 772

publication date of Section 6 declaration being 04 September 2012 and 10 December 2012, respectively.

77. The Petitioners produced a report dated 05 September 2012 (Exhibit-N at page No. 73G) made by Talathi Saja Vahal to the third Respondent stating that the Section 6 declaration was published at the gaav-chawadi on 04 September 2012. The State Government does not dispute this document. However, the Respondents have produced an undated letter issued by the same Talathi Saja Vahal, this time to the second Respondent, stating that the Section 6 declaration was published at the gaav-chawadi on 10 December 2012 (Exhibit-P at page 73Q).

78. Kavita Mane, the Talathi Saja Vahal filed an affidavit dated 13 March 2018 (at pages 354 to 362) in which, on oath, she stated the report dated 05 September 2012 produced on record by the Petitioners was not found in her office or the office of the second or third Respondents. In this affidavit, she further claimed that because of the villagers' stiff resistance, the Section 6 declaration could not be published at the gaav-chawadi on 04 September 2012 or in September 2012. She claimed that she had only prepared "*a draft report*", but the same was never forwarded to the second or third Respondents. At least, *prima facie*, we think that Kavita Mane, either acting on the dictation or on her own, is hiding the proper and correct facts from the Court. As noted earlier, her affidavit is far from candid and conceals much more than it reveals.

79. The report dated 05 September 2012, produced on record by the Petitioners, bears Kavita Mane's signature,

which she has not denied. This report bears an outward No. i.e. 4/2012. This report is addressed to the correct Land Acquisition Officer, i.e. the third Respondent. This report references the letter under which the Section 6 declaration was published in the gaav-chawadi, i.e., letter dated 27 August 2012 (Exhibit – O at page 73H). It is by this letter dated 27 August 2012 that Talathi Saja Vahal (Kavita Mane) was directed to give the public notice of the Section 6 declaration. This report gives the area of the land acquired and corresponds to this very area stated the letter dated 27 August 2012. This report dated 05 September 2012 acknowledges the concerned official from the office of the third Respondent, who was the correct Land Acquisition Officer as of 05 September 2012. Kavita Mane has neither denied the handwriting in the report dated 05 September 2012 nor her signature. The attempt to distance from this report by belatedly styling this as some “draft report” is most unfortunate and shows that the Respondents on whose behalf such affidavit is filed have scant regard for the truth or the sanctity of judicial procedures.

80. Kavita Mane’s theory about “stiff resistance from the villagers” is neither reflected in the report dated 05 September 2012 (assuming that this was only a draft report) nor is there any contemporaneous document or correspondence supporting this theory of “stiff resistance”. This theory surfaces for the first time in Kavita Mane’s affidavit filed on 13 March 2018 i.e. almost 6 years after the event. No affidavit is filed by any official from the third Respondent’s office denying the endorsement of receipt on the report dated 05 September 2012. There is no correspondence or report about the non-

publication of the Section 6 declaration in September 2012 due to any alleged stiff resistance or other reasons. There is no indication on the report dated 05 September 2012 that it was a draft report. The vague statement that this report is not to be found in the offices of the second and third Respondents is only a self-serving statement that inspires no confidence whatsoever.

81. The undated letter (Exhibit-P at page 73Q) about Section 6 declaration being published at the gaav-chawadi on 10 December 2012, bears no date. Significantly, this undated letter/report is addressed to the second Respondent, who had no concern with the subject acquisition until March 2013. This updated report/letter does not even refer to the letter dated 27 August 2012 by which the Talathi was directed to publish the Section 6 declaration at the gaav-chawadi. The land area referred to in the undated letter/report dated 10 December 2012 does not tally with the area of the acquired land referred to in the letter dated 27 August 2012.

82. Based on the above circumstances, we are satisfied that a prima facie case of fabrication or manipulation has been made regarding the publication date of the Section 6 declaration at the gaav-chawadi. Further, this prima facie case involves Kavita Mane, the then Talathi of Saja Vahal, making false statements on the affidavits filed in this Court. Therefore, this is a fit case where the Secretary Revenue or the appropriate Disciplinary Authority must enquire into the conduct of Kavita Mane.

83. Government officials must realise that fabricating or manipulating documents or filing prima facie false affidavits is

a serious lapse. Suppose no enquiries are held into such matters. In that case, an impression will gain ground that there is nothing wrong in indulging in such activities or even filing false affidavits before the Court. The earlier this is nipped in the bud, the better it is for effective administration. Such an enquiry must be completed within six months following the rules and the principles of natural justice as may be applicable.

84. In *Executive Engineer Gosikhurd Project (supra)*, the Hon'ble Supreme Court has held that where land acquisition proceedings were initiated under the provisions of the Old Land Acquisition Act, 1894, but no award was made before 01 January 2014 i.e. the date on which the New Land Acquisition Act came into force, then, the award must be made within 1 year as provided in Section 25 of the New Land Acquisition Act. The Hon'ble Supreme Court held that this one-year period would commence from 01 January 2014. To this period, the Hon'ble Supreme Court added 79 days because for this period, a stay was granted by the Aurangabad Bench of this Court. Therefore, if the award was not made within 1 year and 79 days of 01 January 2014, such land acquisition proceedings would be deemed to have lapsed.

85. Mr Anturkar submitted that the proceedings before the Aurangabad Bench concerned notification prescribing the multiplication factor for rural areas. He pointed out that the Petitioner's said property, which was the subject matter of acquisition in these proceedings, was admittedly in an urban area. He, therefore, submitted that there was no question of excluding 79 days or adding 79 days to the one year

prescribed under Section 25 of the New Land Acquisition Act, 2013.

86. Though there is *prima facie* merit in Mr Anturkar's contention, in the facts of the present case, this addition of 79 days would make no difference. There is a serious dispute about the precise date of the award in this Petition. However, even if we ignore the State's ever-changing versions and go back to the earliest date, i.e. 07 April 2015, the award is still beyond the period of one year and 79 days from 01 January 2014.

87. We have already discussed the contradictory and confusing stand regarding the precise date of the Awards. However, even if the *prima facie* conflicting versions of the State Government are still accepted, the Awards have been made beyond the statutorily prescribed periods in Section 11A of the Old Land Acquisition Act read with Section 25 of the New Land Acquisition Act. This is after accounting for the stay granted by the Aurangabad Bench, even though this stay did not *prima facie* apply to the subject lands.

88. Thus, on both aspects, the second point for determination must be answered favouring the Petitioners in each of these Petitions. This is because we are satisfied with the provisions of the Old Land Acquisition Act and New Land Acquisition Act, which the Government has flouted almost with impunity, not to mention subterfuge, manipulation, and fabrication in a crude attempt to save the acquisition.

89. On facts, therefore, the Petitioners have succeeded in making out a case that the impugned award was made

without the prior approval as contemplated by the proviso to Section 11 of the Old Land Acquisition Act, 1894 and made beyond the prescribed period of limitation prescribed under Section 11A of the Old Land Acquisition Act, 1894 or Section 25 of the New Land Acquisition Act, 2013.

90. If the provisions of Old and New Land Acquisition Acts regarding lapsing of acquisitions as contained in Section 11A or 11A of the Old Land Acquisition Act, 1894 or Section 25 of the New Land Acquisition Act, 2013 or the proviso to Section 11 of the Old Act relating to obtaining of prior approval were to apply to the present acquisition proceedings, then surely, we would have no hesitation in striking down the acquisition for breach of these mandatory provisions. The facts borne from the records and the law on the subject would then warrant interference with the impugned acquisition.

91. Nevertheless, in light of the law established in *Girnar Traders 3* (supra), *which states* that the restrictive provisions of the Old or New Land Acquisition Act do not apply to acquisitions under the MRTP Act, we must express our inability to declare that the impugned acquisition proceedings have lapsed or are null and void due to the apparent breach of the provisions of Sections 11 and 11A of the Old Land Acquisition Act in conjunction with Section 25 of the New Land Acquisition Act.

ALTERNATE RELIEF OF ALLOTMENT OF DEVELOPED PLOT

92. The third point for determination concerns the alternate relief claimed by the Petitioners. For this, we refer to the provisions in Sections 31, 38, and 105 of the New Land

Acquisition Act, which must be read along with the second schedule.

93. Section 31 of the New Land Acquisition Act requires the Collector to pass Rehabilitation and Resettlement Awards for each affected family based on the entitlements provided in the second schedule. A Maharashtra Amendment introduces section 31A regarding lump sum payments for its linear projects, but the same was not mentioned in the pleadings or arguments.

94. Section 38 deals with the power to take possession of the acquired lands and provides timelines for fulfilling the compensation, rehabilitation, and resettlement requirements.

95. Section 105 declares that the provisions of the New Land Acquisition Act shall not apply to certain cases or shall apply only with certain modifications. A Maharashtra Amendment introduces Section 105A. But none of these provisions were invoked by either party in their pleadings or arguments.

96. The entry at Sr. No. 3 in the second schedule concerns an 'offer for developed land'. The column dealing with 'entitlement/provision' provides that in case the land is acquired for urbanisation purposes, 20 % of the developed plan will be reserved and offered to land-owning project-affected families, in proportion to the area of their land acquired and that the price equal to the cost of acquisition and the cost of development. Provided that in cases the land-owning project-affected family wishes to avail of this offer, an

equivalent amount will be deducted from the land acquisition compensation package payable to it.

97. The learned Counsel for the Petitioners submitted that they have, without prejudice, no objection to the deduction of proportionate land acquisition compensation provided they are allotted 20% of the developed land in terms of entry 3, schedule II in the New Land Acquisition Act.

98. The learned AGP never objected to considering the Petitioner's alternate plea but submitted that the verification of individual cases would be necessary. Mr Hegde did faintly urge that the provisions of the New Land Acquisition Act did not apply, but the learned AGP did not subscribe to this view. This stance also contradicted the previous submissions on the subject. Generally, in these matters, the defence first tried to show compliance, failing which, tried to confuse, failing either, tried to deny that the legal provisions cited were applicable.

99. Now that we are not quashing the land acquisition proceedings or declaring them lapsed, the Respondents will have to consider granting the Petitioners developed land in accordance with the above-referred provisions of the New Land Acquisition Act. This would involve verifying individual cases and entitlements. However, considering the Petitioners' claims towards such alternate reliefs and undertaking the prescribed exercise in that regard cannot be denied or avoided.

100. In *Kolkata Municipal Corporation v. Bimal Kumar Shah*¹², the Hon'ble Supreme Court has held that any legislation that allows compulsory property acquisition must comprehensively establish a fair, just and reasonable procedure for such acquisition. A mere provision for payment of compensation would not suffice or satisfy the scheme under Article 300A of the Constitution. The Court held that to assume that the Constitutional protection gets constricted to the mandate of fair compensation would be a disingenuous reading of the text and would also offend the egalitarian spirit of the Constitution.

101. The Court held that though property rights may not be fundamental, they are constitutional and human rights. Therefore, the focus must shift from a mere payment of compensation to restitution and rehabilitation in its broad sense. A post-colonial reading of the Constitution cannot limit itself to the twin components of public purpose and payment of compensation alone. The binary reading of the constitutional right to property must give way to more meaningful renditions, where the larger right to property is seen as comprising intersecting sub-rights, each with a distinct character but interconnected to constitute a whole.

102. The Court has identified, [not exhaustively], seven sub-rights, which include the right to restitution or fair compensation. The court explained that these seven sub-rights may be procedural, but they are integral to the authority of law, enabling the compulsory acquisition of private property.

¹² Civil Appeal No.6466 of 2024 [2024 INSC 435]

RELIEFS

103. We dispose of all these Petitions by not interfering with the impugned acquisitions but by directing the Respondents to consider the Petitioners' alternate pleas for allotment of developed lands in terms of entry 3, schedule II in the New Land Acquisition Act within a time-bound schedule.

104. Accordingly, we direct the competent Respondents to consider and decide upon the Petitioners' claim for developed land following the above-referred provisions of the New Land Acquisition Act as expeditiously as possible and, in any event, within three months of uploading this order. Such allotment will no doubt be subject to verification of the entitlement and compliance with the provisions of law. The Petitioners must be heard before any decision is taken in this regard. A compliance report must be filed in this Court within 3 months after giving advance copies to the learned counsel for the petitioners.

105. Further, we direct the Secretary of Revenue or the appropriate Disciplinary Authority to inquire into Kavita Mane's conduct, given, inter alia, the observations in paragraphs 77 to 84 of this judgment and order. Principles of natural justice must be followed, and such inquiry must be completed within six months. A compliance report must be filed in this Court within a month thereafter.

106. The Interim order restraining the Respondents from taking over the possession of the Petitioners' properties has been in operation since 2016. We extend this interim order by ten weeks from today should the Petitioners wish to challenge

our judgment and order before the Hon'ble Supreme Court and persuade the Hon'ble Supreme Court to accept their contentions on the lapsing of the impugned acquisition proceedings.

107. The rule is made partly absolute in each of these Petitions to the above extent without any order for costs. Interim Application No. 1112 of 2025 is disposed of by hearing the learned Counsel for the Intervenor in the main Petition. Remaining Interim Applications, if any, are also disposed of.

108. All concerned are to act on the authenticated copy of this order.

(Jitendra Jain, J)

(M. S. Sonak, J)