



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

WRIT PETITION NO.4479/2019

1. Shri Sureshchander s/o Manoharlal Suri,
aged 60 years, Occ. Business, r/o 21,
Clarke Town, Nagpur.
2. Smt. Shashi w/o Subhash Sahani,
aged 65 years, Occ. Housewife, r/o 34,
Clarke Town, Nagpur.
3. Smt. Kamlesh w/o Ravi Choudhary,
aged 59 years, Occ. Housewife,
r/o 401, Chaitanya Apartments,
Clarke Town, Nagpur.

.....PETITIONERS

...V E R S U S...

1. State of Maharashtra through Additional
Chief Secretary, Ministry of Urban
Development and Revenue and Forest
Department, Mantralaya, Mumbai – 32.
2. Nagpur Municipal Corporation,
Nagpur, through its Municipal Commissioner,
Civil Lines, Nagpur.
3. Nagpur Improvement Trust, Kingsway,
Nagpur through its Chairman.
4. The Collector, Civil Lines, Nagpur.
5. Special Land Acquisition Officer,
Nagpur Improvement Trust,
Kingsway, Nagpur.
6. Vedprakash Sangatram Arya,
aged 63 years, Occ. Business,
r/o 89, Bank Colony, Jaripatka,
Nagpur.
7. Chandu s/o Daulatram Patil,
aged 48 years, Occ. Private,
r/o Plot No. 10, Maharashtra Bank
Building, First Floor, Bhagwan Nagar,
Nagpur – 440027.

...RESPONDENTS

AND
WRIT PETITION NO.1629/2011

1. Goldtouch Real Estate Private Ltd.
a Private Limited Company established
and incorporated under the Companies
Act, 1956, through its Director Ms. Archana
Wani, aged 39 years, Occ. Business,
r/o 465, New Colony, Nagpur. **.....PETITIONER**

...V E R S U S...

1. State of Maharashtra through
its Secretary, Urban Development Department,
Mantralaya, Madam Cama Road, Mumbai – 32.
2. Nagpur Improvement Trust,
Station Road, Sadar, Nagpur, through
its Chairman. **...RESPONDENTS**

Mr. C. S. Kaptan, Senior Advocate assisted by Mr.Yash Kullarwar,
Advocate for petitioner in W.P.No.4479/2019.

Mr. A. S. Dabadghao, Advocate for petitioner in W.P.No.1629/2011.

Mr. I. J. Damle, A.G.P. for respondent Nos.1,4,5 in W.P.No.4479/2019
and respondent No.1 in W.P.No.1629/2011.

Mr. A.M. Kukday, Advocate for respondent No.2 in W.P.No.4479/2019.

Mr. K. P. Mahalle, Advocate for respondent No.3 in W.P.No.4479/2019
and respondent No.2 in W.P.No.1629/2011.

Mr. A. Parchure, Advocate for respondent No.6-intervenor.

None for respondent No.7 in W.P.No.4479/2019.

CORAM:- ANIL L. PANSARE AND RAJ. D. WAKOKE, JJ.

DATE OF RESERVING THE JUDGMENT :- 03.12.2025

DATE OF PRONOUNCING THE JUDGMENT :- 10.12.2025

JUDGMENT (Per: Anil L. Pansare, J.)

The issue involved in both the petitions is identical. Hence,
they are decided by common judgment.

2. Heard Mr. C. S. Kaptan, learned Senior Counsel assisted by
Mr. Y. Khullarwar, learned counsel for petitioners in Writ Petition
No.4479/2019 and Mr. A. S. Dabadghao, learned counsel for petitioner

in Writ Petition No.1629/2011, Mr. I. J. Damle, learned A.G.P. for respondent-State, Mr. A. M. Kukday, learned counsel for Nagpur Municipal Corporation and Mr. K. P. Mahalle, learned counsel for Nagpur Improvement Trust.

3. The petitioners claim to be owners of lands, which are reserved for park in the Development Plan of Nagpur city, published on 07.01.2000. The petitioners, on 30.07.2003, issued notice under Section 49 of the Maharashtra Regional and Town Planning Act, 1966 ("MRTP"), requesting the Nagpur Improvement Trust ("NIT"), the Planning Authority to purchase the interest in the land. On 23.03.2004, the State Government confirmed the notice in terms of Section 49 of the MRTP Act. On 19.01.2005, the Special Land Acquisition Officer ("SLAO") informed the Executive Engineer, NIT that the land is to be acquired by taking resort to provisions of the Land Acquisition Act, 1894 ("Act of 1894") and in turn on 24.01.2005, the NIT requested the Collector, Nagpur to acquire the land and hand over to it. On 27.01.2005, the SLAO instructed the NIT to deposit 2/3rd amount. The NIT responded saying that it has financial constraints and will generate the funds by developing the land through private operator. Thereafter, on 27.01.2005, the SLAO again instructed the NIT to deposit 2/3rd amount i.e. Rs.5.03 Crores. On 05.05.2006, the SLAO refused to acquire the land for the reason that the NIT failed to deposit the amount even after lapse of one year and three months.

4. It is worth mentioning here that the State Government, while confirming the purchase notice issued by the petitioners, directed NIT to take necessary steps for acquisition of land within one year from the date of confirmation notice. The NIT, however, failed to deposit 2/3rd amount even after lapse of one year and three months. Therefore, the SLAO refused to acquire the land. As such, the Collector, Nagpur, vide communication dated 27.01.2005 had, by referring to Government Resolution dated 14.06.2001, instructed the NIT to deposit 2/3rd amount prior to publication of notice under Section 4 and the remaining amount prior to passing award under Section 11 of the Act of 1894. The NIT, however, failed to deposit even 2/3rd amount. It appears that subsequent thereto, NIT had deposited Rs.5.03 Crores. For remaining amount, though efforts were made by NIT to generate funds by developing the park through private agency but failed. Ultimately, NIT took back the amount deposited with the Collector. The end result is that the land has been not acquired for last 25 years.

5. The counsel for petitioners proposed to continue with purchase notice if the respondents are willing to acquire the land. Upon this, we inquired with the counsel appearing for NIT as to whether NIT is in a position to deposit the market price, the counsel answered in the negative. Thus, it appears that the NIT is not in a position to pay market price. In turn, there arises no question of continuation of acquisition proceedings.

6. Mr. Kaptan, learned Senior Counsel has invited our attention to Section 49 (7), of the MRTP which provides that if within one year from the date of confirmation of notice, the appropriate authority fails to make an application to acquire the land in respect of which the purchase notice has been confirmed as required under Section 126, the reservation, designation, allotment, etc. or restriction of development of the land shall be deemed to have lapsed. He submits that since no effective steps were taken by the NIT even after confirmation notice within one year, the reservation under question stood lapsed.

7. As against, Mr. K. P. Mahalle, learned counsel for the NIT as also Mr. A. Parchure, learned counsel for the intervenor submits that the requirement under Section 49 (7) of the MRTP, is to make an application to acquire the land within one year from the date of confirmation of notice, which has been made by the NIT. It is a different matter that for want of funds, further process of acquisition could not be done. However, such status cannot be taken aid of to attract deeming fiction and to contend that the reservation will lapse.

8. Learned counsels appearing for the petitioners submit that mere making application, without taking steps as required under section 126 of the MRTP is not sufficient.

9. We have gone through the relevant provisions. Section 126(2) provides that on receipt of application for acquisition of land, if the State Government is satisfied that the land is indeed required for public purpose specified in the development plan, it may make a declaration to that effect in official gazette in the manner provided in Section 6 of the Act of 1894. This has been admittedly not done till today. Proviso to sub Section (2), however, provides that no such declaration should be made after the expiry of one year from the date of publication of draft regional plan, development plan or any other plan or scheme as the case may be. In the present case, revised development plan was sanctioned/published on 07.01.2000 and, therefore, the declaration under Section 6 of the Act of 1894 could not have been made in terms of Section 126(2) of the MRTP. Even otherwise, the purchase notice itself was given on 30.07.2003, i.e. after the expiry of one year from the date of publication of plan. Therefore, declaration under Section 126 (2) could not have been made.

10. The remedy was, therefore, under Section 126(4) which enables the State Government to make a fresh declaration for acquiring the land under provisions of the Act of 1894 in the manner provided by Sub Sections (2) and (3) of Section 126, subject to the modification that the market value of the land shall be market value on the date of declaration in official gazette made for acquiring the land afresh.

11. That being so, the appropriate remedy, that was available to the petitioners, was to approach the Court seeking direction against the respondents to take steps in terms of Section 126(4) of the MRTP.

12. In context with above, a profitable reference could be had to the recent judgment of the Supreme Court in the case of *Nirmiti Developers through its Partners and anr. .Vs. State of Maharashtra and Ors; [2025 SCC OnLine 438]*, wherein the position of law on this point has been clarified as under:

“POSITION OF LAW

27. *This Court in Chhabildas Vs. State of Maharashtra and Ors. reported in 2018 INSC 106 while explaining Sections 49 and 127 of the MRTP Act respectively observed as under:*

“9. The scheme of Section 49 of the MRTP Act is to lay down timelines within which the appropriate authority must make an application to acquire the land in respect of which a purchase notice has been confirmed. The moment any of the conditions specified in the sub-section (1) are met, the owner or person affected may serve on the State Government, within the time and manner prescribed by regulations, a purchase notice requiring the appropriate authority to purchase the interest in the land in accordance with the provisions of this Act.

10. On the receipt of the purchase notice as per sub-section (3), the State Government is to forthwith call from the planning authority or the appropriate authority such report or records as may be necessary, which the authority shall then forward to the State Government as soon as possible but not later than 30 days from the date of acquisition.

11. In sub-section (4), if the State Government is satisfied that the conditions specified in subsection (1)

are fulfilled, it may either confirm the purchase notice; refuse to confirm the purchase notice; or direct that planning permission be granted with or without conditions. Under subsection (5), if the steps contemplated after service of purchase notice leads to a situation where the State Government does not pass any orders thereon, the notice shall be deemed to have been confirmed at the expiration of that period. And finally, under sub-section (7), if within one year from the date of confirmation of purchase notice, the appropriate authority fails to make an application to acquire the land in respect of which the purchase notice has been confirmed, the reservation, designation, allotment, indication or restriction on development of the land shall be deemed to have lapsed. [Section 49\(6\)](#), which was deleted by Maharashtra Act 6 of 1976, read as follows:

“Upon confirmation of the notice, the State Government shall proceed to acquire the land or that part of any land regarding which the notice has been confirmed, within one year of the confirmation of the purchase notice, in accordance with the provisions of Chapter VII.”

It is clear that, under this provision, if within one year from the confirmation of the purchase notice, the State Government did not acquire the land, then the consequence would be that the acquisition shall be deemed to have lapsed. This was a salutary provision, but seems to have been deleted so that [Section 49](#) cases are brought on par with [Section 126](#) cases.

12. The object of [Section 49](#) is thus clear that once a purchase notice is received by the authorities, there arises, as the marginal note to the Section also indicates, an obligation to acquire land. The timelines contemplated by the section also indicate that the owner or person affected cannot be left to hang indefinitely without a decision to follow up the purchase notice by acquisition of the land in question.

13. However, it has been argued on behalf of the State

that Section 49 abruptly ends with sub-section (7), after which there are no timelines indicated as to what is to happen after the appropriate authority makes an application to acquire the land within one year from the date of confirmation of the notice. In our view, this argument must be rejected, inasmuch as Section 49 (1) itself states that the purchase notice must require the appropriate authority to purchase the interest in the land “in accordance with the provisions of this Act”. This being so, once the appropriate authority makes the necessary application to acquire the land within time under Section 49(7), we move over to Sections 126 and 127 of the Act.

14. Under Section 126(1)(c), when after the publication of a draft regional plan or development or other plan, any land is required or reserved for a public purpose, the appropriate authority may make an application to the State Government, for acquiring such land under the [Land Acquisition Act](#). Under sub-section (2) thereof, on receipt of such application, if the State Government is satisfied that the land specified in the application is needed for the public purpose specified therein, then excepting the cases falling under Section 49, the State Government may make a declaration under Section 6 of the Land Acquisition Act, to that effect. However, such declaration under Section 126(2) must be made within a period of one year from the date of publication of the plan in question.

15. A purchase notice may be served under Section 49, after the expiry of one year from the date of publication of the plan in question, in which case [Section 126 \(2\) of the Act will not apply.](#) Under Section 126(4), the State Government may make a declaration under Section 6 subject to the modification that the market value of the land shall be the market value at the date of the declaration in the official gazette made for acquiring the land. But this does not mean that the State Government has carte blanche to do as it pleases. Ordinarily, the State Government is bound to act under Section 126(4) within a reasonable time from the appropriate authority

making an application to acquire the land. This should ordinarily be within a period of one year from the date such an application is made. However, if such declaration is not made within the aforesaid period, it will be open for the aggrieved person to move the Court to direct the State Government to make the requisite declaration immediately.

16. But the matter does not end here. Thereafter, Section 127 kicks in. If a declaration under Section 6 the Land Acquisition Act is not made within a period of 10 years from the date on which a plan comes into force under sub-section (4) of Section 126, the owner or any person interested in the land may serve a purchase notice on the authorities, and if within one year from the date of service of such notice, the land is not acquired or no steps are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed.”

28. In [Girnar Traders v. State of Maharashtra](#), (2007) 7 SCC 555, a three-Judge Bench, by a majority judgment delivered by Naolekar, J. framed the question before the Court thus:

“19. The question that requires consideration and answer in the present case is: Whether the reservation has lapsed due to the failure of the planning authority to take steps within the period of six months from the date of service of the notice of purchase as stipulated by Section 127 of the MRTP Act; and also the question as regards applicability of new Section 11-A of the LA Act to the acquisition of land under the MRTP Act.”

29. After setting out Sections 126 and 127 respectively, this Court then laid down the scheme of Section 126, which makes it clear that the Section 6 notification under the Land Acquisition Act is to be issued, in cases where acquisition is made under Section 126(1)(c), in pursuance of an application by an appropriate authority to the State Government within one year from the publication of the plan in question, or by way of the State Government making a fresh declaration beyond a

period of one year under Section 126(4). This is stated by the Court in para 28 as follows: (*Girnar* case SCC para 28)

“28. Sub-section (2) of Section 126 provides for one year's limitation for publication of the declaration from the date of publication of the draft plan or scheme. Sub-section (4), however, empowers the State Government to make a fresh declaration under Section 6 the LA Act even if the prescribed period of one year has expired. This declaration is to be issued by the State Government for acquisition of the land without there being any application moved by the planning/local authority under clause (c) of Section 126(1).”

30. Insofar as Section 127 is concerned, the Court went on to hold: (*Girnar* case, paras 31-32)

“31. Section 127 prescribes two-time periods. First, a period of 10 years within which the acquisition of the land reserved, allotted or designated has to be completed by agreement from the date on which a regional plan or development plan comes into force, or the proceedings for acquisition of such land under the MRTP Act or under the LA Act are commenced. Secondly, if the first part of Section 127 is not complied with or no steps are taken, then the second part of Section 127 will come into operation, under which a period of six months is provided from the date on which the notice has been served by the owner within which the land has to be acquired or the steps as aforesaid are to be commenced for its acquisition. The six month period shall commence from the date the owner or any person interested in the land serves a notice on the planning authority, development authority or appropriate authority expressing his intent claiming dereservation of the land. If neither of the things is done, the reservation shall lapse. If there is no notice by the owner or any person interested, there is no question of lapsing reservation, allotment or designation of the land under the development plan. Second part of Section 127 stipulates that the reservation of the land under a development scheme

shall lapse if the land is not acquired or no steps are taken for acquisition of the land within the period of six months from the date of service of the purchase notice. The word “aforesaid” in the collocation of the words “no steps as aforesaid are commenced for its acquisition” obviously refers to the steps contemplated by Section 126 of the MRTP Act.

32. If no proceedings as provided under Section 127 are taken and as a result thereof the reservation of the land lapses, the land shall be released from reservation, allotment or designation and shall be available to the owner for the purpose of development. The availability of the land to the owner for the development would only be for the purpose which is permissible in the case of adjacent land under the relevant plan. Thus, even after the release, the owner cannot utilise the land in whatever manner he deems fit and proper, but its utilisation has to be in conformity with the relevant plan for which the adjacent lands are permitted to be utilised.”

31. The Court then went on to consider [Municipal Corpn. of Greater Bombay v. Dr Hakimwadi Tenants' Assn](#) reported in 1988 Supp SCC 55, and was of opinion that, the observations on the expression “no steps as aforesaid are commenced for its acquisition” stipulated under Section 127 were obiter in nature. The majority then went on to state the law under Section 127 as follows: ([Girnar](#) case paras 54-57)

“54. When we conjointly read Sections 126 and 127 of the MRTP Act, it is apparent that the legislative intent is to expeditiously acquire the land reserved under the Town Planning Scheme and, therefore, various periods have been prescribed for acquisition of the owner's property. The intent and purpose of the provisions of Sections 126 and 127 has been well explained in [Municipal Corpn. of Greater Bombay](#) case [[Municipal Corpn. of Greater Bombay v. Dr Hakimwadi Tenants' Assn.](#), 1988 Supp SCC 55]. If the acquisition is left for time immemorial in the hands of the authority concerned by

simply making an application to the State Government for acquiring such land under the LA Act, 1894, then the authority will simply move such an application and if no such notification is issued by the State Government for one year of the publication of the draft regional plan under Section 126(2) read with Section 6 of the LA Act, wait for the notification to be issued by the State Government by exercising suo motu power under sub-section (4) of Section 126; and till then no declaration could be made under Section 127 as regards lapsing of reservation and contemplated declaration of land being released and available for the landowner for his utilisation as permitted under Section 127. Section 127 permitted inaction on the part of the acquisition authorities for a period of 10 years for dereservation of the land. Not only that, it gives a further time for either to acquire the land or to take steps for acquisition of the land within a period of six months from the date of service of notice by the landowner for dereservation. The steps towards commencement of the acquisition in such a situation would necessarily be the steps for acquisition and not a step which may not result into acquisition and merely for the purpose of seeking time so that Section 127 does not come into operation.

55. Providing the period of six months after the service of notice clearly indicates the intention of the legislature of an urgency where nothing has been done in regard to the land reserved under the plan for a period of 10 years and the owner is deprived of the utilisation of his land as per the user permissible under the plan. When mandate is given in a section requiring compliance within a particular period, the strict compliance is required therewith as introduction of this section is with legislative intent to balance the power of the State of "eminent domain". The State possessed the power to take or control the property of the owner for the benefit of public cause, but when the State so acted, it was obliged to compensate the injured upon making just compensation. Compensation provided to

the owner is the release of the land for keeping the land under reservation for 10 years without taking any steps for acquisition of the same.

56. The underlying principle envisaged in Section 127 of the MRTP Act is either to utilise the land for the purpose it is reserved in the plan in a given time or let the owner utilise the land for the purpose it is permissible under the town planning scheme. The step taken under the section within the time stipulated should be towards acquisition of land. It is a step of acquisition of land and not step for acquisition of land. It is trite that failure of authorities to take steps which result in actual commencement of acquisition of land cannot be permitted to defeat the purpose and object of the scheme of acquisition under the MRTP Act by merely moving an application requesting the Government to acquire the land, which Government may or may not accept. Any step which may or may not culminate in the step for acquisition cannot be said to be a step towards acquisition.

57. It may also be noted that the legislature while enacting Section 127 has deliberately used the word "steps" (in plural and not in singular) which are required to be taken for acquisition of the land. On construction of Section 126 which provides for acquisition of the land under the MRTP Act, it is apparent that the steps for acquisition of the land would be issuance of the declaration under [Section 6](#) of the LA Act. Clause (c) of Section 126(1) merely provides for a mode by which the State Government can be requested for the acquisition of the land under [Section 6](#) of the LA Act. The making of an application to the State Government for acquisition of the land would not be a step for acquisition of the land under reservation. Sub-section (2) of Section 126 leaves it open to the State Government either to permit the acquisition or not to permit, considering the public purpose for which the acquisition is sought for by the authorities. Thus, the steps towards acquisition would really commence when the State Government permits

the acquisition and as a result thereof publishes the declaration under [Section 6](#) of the LA Act.”

32. *The scheme of Sections 126(2) and (4) was again reiterated in para 61 as follows: ([Girnar](#) case para 161)*

“61. Proviso to sub-section (2) of Section 126 prohibits publication of the declaration after the expiry of one year from the date of publication of draft regional plan, development plan or any other plan or scheme. Thus, from the date of publication of the draft regional plan, within one year an application has to be moved under clause (c) of Section 126(1) which should culminate into a declaration under [Section 6](#) of the LA Act. As per the proviso to sub-section (2) of Section 126, the maximum period permitted between the publication of a draft regional plan and declaration by the Government in the Official Gazette under Section 126(2) is one year. In other words, during one year of the publication of the draft regional plan, two steps need to be completed, namely, (i) application by the appropriate authority to the State Government under Section 126(1)(c); and (ii) declaration by the State Government on receipt of the application mentioned in clause (c) of Section 126(1) on satisfaction of the conditions specified under Section 126(2). The only exception to this provision has been given under Section 126(4).”

33. *In [Shrirampur Municipal Council v. Satyabhamabai Bhimaji Dawkher](#) reported in (2013) 5 SCC 627, this Court reiterated the findings given in [Girnar](#) (supra) majority judgment, and held that there was no conflict between the judgment in [Hakimwadi](#) (supra) and the majority judgment in [Girnar](#)(supra). This Court, thereafter, went on to hold:*

“42. We are further of the view that the majority in [Girnar Traders \[Girnar Traders v. State of Maharashtra, \(2007\) 7 SCC 555\]](#) had rightly observed that steps towards the acquisition would really commence when the State Government takes active steps for the

acquisition of the particular piece of land which leads to publication of the declaration under [Section 6](#) of the 1894 Act. Any other interpretation of the scheme of Sections 126 and 127 of the 1966 Act will make the provisions wholly unworkable and leave the landowner at the mercy of the Planning Authority and the State Government.

43. The expression “no steps as aforesaid” used in Section 127 of the 1966 Act has to be read in the context of the provisions of the 1894 Act and mere passing of a resolution by the Planning Authority or sending of a letter to the Collector or even the State Government cannot be treated as commencement of the proceedings for the acquisition of land under the 1966 Act or the 1894 Act. By enacting Sections 125 to 127 of the 1966 Act, the State Legislature has made a definite departure from the scheme of acquisition enshrined in the 1894 Act. But a holistic reading of these provisions makes it clear that while engrafting the substance of some of the provisions of the 1894 Act in the 1966 Act and leaving out other provisions, the State Legislature has ensured that the landowners/other interested persons, whose land is utilised for execution of the development plan/town planning scheme, etc., are not left high and dry. This is the reason why time-limit of ten years has been prescribed in [Section 31 \(5\)](#) and also under Sections 126 and 127 of the 1966 Act for the acquisition of land, with a stipulation that if the land is not acquired within six months of the service of notice under Section 127 or steps are not commenced for acquisition, reservation of the land will be deemed to have lapsed. Shri Naphade's interpretation of the scheme of Sections 126 and 127, if accepted, will lead to absurd results and the landowners will be deprived of their right to use the property for an indefinite period without being paid compensation. That would tantamount to depriving the citizens of their property without the sanction of law and would result in violation of [Article 300-A](#) of the Constitution.”

34. It is, thus, clear that the scheme of Sections 126 and 127

respectively would leave nobody in doubt, for the reason that if a period of 10 years has elapsed from the date of publication of the plan in question, and no steps for acquiring the land have been taken, then once a purchase notice is served under Section 127, steps to acquire the land must follow within a period of one year from the date of service of such notice, or else the land acquisition proceedings would lapse.

35. This Court in [Chhabildas](#) (supra) summed up the position in law as under:

“24.1. In all [Section 49](#) cases, where a purchase notice has been served and is confirmed within the period specified, the appropriate authority must make an application to acquire the land within one year from the date of confirmation of the notice. If it does not do so, the reservation, designation, etc. shall be deemed to have lapsed.

24.2. If within the period specified in [Section 49\(7\)](#), the appropriate authority makes the requisite application, then the State Government may acquire the land by making a declaration under [Section 6](#) of the Land Acquisition Act as set out under [Section 126\(4\)](#), wherein the market value shall be the market value of the land as on the date of [Section 6](#) declaration. Ordinarily, such declaration must be made within 1 year of the date of receipt of the requisite application. In case this is not done, it will be open to the aggrieved person to move the Court to direct the State Government to make the requisite declaration immediately.

24.3. If 10 years have passed from the date of publication of the plan in question, and a purchase notice has been served under [Section 127](#), and no steps have been taken within a period of one year from the date of service of such notice, all proceedings shall be deemed to have lapsed. Thus, even in cases covered by [Section 49](#), the drill of [Section 126\(4\)](#) and [Section 127](#) will have to be followed, subsequent to

the appropriate authority making an application to acquire the land within the period specified in [Section 49\(7\)](#).

(Emphasis now)

13. Thus, the Hon'ble Supreme Court took note of its earlier judgment, which were also relied upon by the petitioners during the course of hearing and, therefore, are not being separately dealt with by us, wherein the Court referred to *Chhabildas'* case, which held that even in cases covered by Section 49, the drill of Section 126(4) and Section 127 will have to be followed, subsequent to the appropriate authority making an application to acquire the land within the period specified in Section 49(7).

14. In *Chhabildas'* case the land owner had issued notice under Section 49(1)(e) of the relevant Act. The purchase notice was confirmed by the State Government and acquisition proceedings initiated within one year from the date of confirmation. The appropriate authority submitted proposal for acquiring the land and steps were taken towards initiating the acquisition process. Despite steps, no final action or completion of acquisition occurred. The land owners later on claimed that the acquisition process had lapsed due to inaction. The authorities responded by asserting that the acquisition proceedings were in process and, therefore, under Section 49 (7), the reservation is protected. The land owners approached the High Court. The petition was dismissed. Accordingly, the land owners approached the Hon'ble

Supreme Court. The Supreme Court then summed up the position of law in paragraph 35, which is referred to supra.

15. Thereafter, the Supreme Court, in the above mentioned case, noted all the facts before it and found that the subject matter of land was reserved for almost 33 years and the owner was deprived of its legitimate benefits. It took note of the identical facts in *Chhabildas'* case, where the Supreme Court invoked powers under Section 142 of the Constitutions of India to do complete justice having regard to the long and inordinate delay in acquiring the land. The Supreme Court also took note of the fact that right of property is now considered to be not only Constitutional right but also a human right. The Court then underlined the principles envisaged in Section 127 of the MRTP Act saying that it is either to utilise the land for the purpose for which it is reserved in the timeline given or the let the owner utilise the land for the purpose it is permissible under the town planning scheme. The Court then held that the reservation shall be deemed to have lapsed if no steps are taken for acquisition of the land within prescribed period. The Supreme Court then took note of the fact that in the case before it, the respondents therein did not take any step to issue notification after receipt of notice. Accordingly, the Court declared that the reservation of the plot stood lapsed by efflux of time in view of the provisions of Sections 126 and 127 of the MRTP respectively.

16. Thus the law as is settled by the Supreme Court is that if within the period specified in Section 49 (7), the appropriate authority makes a request application then the State Government may acquire the land by making declaration under Section 6 of the Act of 1894 as set out under Section 126 (4) of the MRTP. Such a declaration ordinarily must be made within one year of the date of receipt of request application and in case it is not done, it is open to the aggrieved person to move the Court to direct the State Government to make the requisite declaration immediate.

17. The question, however, is whether, in the peculiar facts and circumstances of the case, should the petitioner be asked to approach the Court to seek such a direction or should we permit the petitioner to issue fresh purchase notice in terms of Section 127 of the MRTP.

18. Here, we may go back to the judgment of the Supreme Court referred to above where, in identical set of facts, the Supreme Court, considering the fact that land therein was reserved for 33 years and owner was deprived of legitimate benefit, declared that the reservation stood lapsed by efflux of time.

19. In the present case, the land is reserved for 25 years. The NIT is not in a position to deposit the market price of the lands under question. In such circumstances, to permit the the petitioners to issue fresh notice under Section 127 of the Act is nothing but a futile exercise

to compel the petitioner to undergo a procedure which otherwise appears to us to be a technical formality, whose result is already sealed viz. the petitioner's land will be not purchased.

20. That being so and considering that the petitioner's land is under reservation for last 25 years and since notification was not issued by State Government in terms of Section 126(4) of the MRTP, we hereby declare that the reservation of the land bearing Patwari Halka No. 11, Survey Nos. 202/203/1, 164/165/211-1, 164/165/211/2, 168, 169, 170, 171/1, 172/1 and 175/1 of mouza Nara, Tahsil and District Nagpur, in the revised development plan of the year 2000, is lapsed and stands released from the said reservation and is available to the petitioners for being used and developed, in accordance with law, i.e. for the purpose which is permissible in the cases of adjacent land under the development plan.

21. The writ petitions are disposed of in the above terms. No order as to costs.

(Raj D. Wakode, J.)

(Anil L. Pansare, J.)