2022 INSC 179

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 510 OF 2022

The Kolhapur Municipal Corporation & Ors. ...Appellant(s)

Versus

Vasant Mahadev Patil (Dead)
Through L.R.s & Ors. ...Respondent(s)

WITH

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J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 13.08.2018 passed by the High Court of Judicature at Bombay in Writ Petition No.5310 of 2018 by which the Division Bench of the High Court has allowed the said writ petition preferred by the private respondents herein – original writ petitioners and has issued the writ of Mandamus directing the appellants – Kolhapur Municipal Corporation

and others to acquire the land in question and to issue a declaration under Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as “Act of 2013”), Kolhapur Municipal Corporation and others have preferred the present Civil Appeal No. 510 of 2022.

1.1 In the aforesaid Writ Petition No.5310 of 2018 after the judgment was delivered on 13.08.2018, the Kolhapur Municipal Corporation preferred one further Civil Application No.2461 of 2018 in Writ Petition No. 5310 of 2018 for appropriate order directing the original writ petitioners to accept the TDR in lieu of monetary compensation, which has been rejected by the High Court by order dated 10.12.2018. The same is the subject matter of the present Civil Appeal No.511 of 2022 preferred by the Kolhapur Municipal Corporation.

2. The facts leading to the present appeal in a nutshell are as under:-

2.1 The dispute is with respect to the land bearing R. S. No. 138, ad-measuring 3 Hectors and 65 Ares, situated at E ward, Near New Palace, Kolhapur owned by the original writ petitioners. The development plan for the City of Kolhapur was sanctioned on 18.12.1999. Different portions of the land in question were reserved in the sanctioned development plan for various public purposes namely, parking, garden, extension of sewage treatment plant etc. That as the land in question was not acquired and/or used for the public purposes for

which the same was reserved under the sanctioned development plan, the original writ petitioners – landowners served a notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as the “MRTP Act”) on 02.01.2012.

2.2 By Resolution dated 18.02.2012, the General Body of the Municipal Corporation resolved to acquire the said property and accordingly on 17.04.2012, a proposal was submitted by the Municipal Corporation to the State Government for compulsory acquisition of the subject property. The District Collector passed an order dated 07/09.07.2012 directing that the proposal for acquisition be transferred to the Special Land Acquisition Officer (11), Kolhapur for necessary action. By the said order, the Corporation was directed to deposit 25% of the amount before publication of the notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as “Act of 1894”), 25% of estimated compensation amount before the publication of a declaration under Section 6 of the Act of 1894 and remaining 50% of the estimated compensation amount before the declaration of award under Section 11 of the Act of 1894.

2.3 That on enactment of the Act of 2013, the Land Acquisition Act, 1894 came to be repealed. Therefore, the land in question was subjected to the provisions of the Act of 2013. The Special Land Acquisition Officer directed the Corporation to deposit the amount of

Rs.77,65,12,000/- towards compensation vide its letter dated 06.10.2015 in order to issue necessary orders as per Section 19 of the Act of 2013. It appears that the Corporation was not in a financial position to pay such a huge compensation amount and so by letter dated 17.03.2016 requested the original writ petitioners – landowners to accept the Transferable Development Rights (TDR) in lieu of compensation amount as per the Development Control Rules of the Corporation. The original writ petitioners also at the relevant time accepted the said proposal and submitted an application dated 12.05.2017 for grant of TDR. In the meantime, the Special Land Acquisition Officer by its letter dated 22.09.2016 informed the Municipal Corporation to deposit 30% of the total amount of compensation and also informed that the land under reservation fell within the flood affected area due to its proximity to 'Jayanti Nala' and considering the valuation of the said area as per the market value of 2016-l7(A.S.R.), the amount of compensation was reduced from Rs. 77,65,12,000/- to Rs. 43,41,29,400/-.

2.4 It appears that there was some correspondence between the original writ petitioners and the Corporation with respect to the TDR proposal. According to the Corporation, the grant of TDR was always subject to the provisions of the Development Control Rules and further subject to satisfying the conditions mentioned in the said Rules. According to the Municipal Corporation as per the Development Control

Rules, any owner before the grant of TDR will have to surrender the land under reservation by carrying out necessary developments according to prevailing Byelaws at his own cost and free of encumbrances. According to the Corporation, the reserved area was coming within High Flood Line and every year for a period of fifteen days to one month, the said area gets flooded during rainy season. According to the Corporation, the reserved land/area is flood affected and a rivulet named 'Jayanti Nala' passes through the said area under reservation. Therefore, as per the Corporation, before the TDR proposal could be considered, it was necessary to carry out the required development work upon the said reserved land for making it suitable for the public purpose as per the reservation, to be carried out by the original writ petitioners – landowners. According to the Corporation, if the said developments are not done, the land under reservation will not be able to be utilized for the purpose for which it is reserved. There were various correspondences between the parties. However, thereafter the writ petitioners did not agree to avail of the TDR and the original writ petitioners – landowners filed present writ petition before the High Court and prayed for the following reliefs:-

a. Rule be issued and records and proceedings be called for;

b. That this Hon'ble Court may be pleased to issue writ of mandamus and/ or any other appropriate writ,

order or direction in the nature of writ of mandamus thereby directing the Respondent No. 1 and 2 to forthwith publish a final notification under sub section (2) and (4) of the Sec. 126 of the M.R.T.P. Act read with Sec. 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act; 2013;

c. That this Hon'ble Court may be pleased to issue writ of mandamus and/or any other appropriate writ, order or direction in the nature of writ of mandamus thereby directing the Respondent No. 3 Corporation to forthwith deposit the amount of compensation i.e. Rs. 77,64,12000/- with the Respondent No. 2 and 7 and further the Respondent No. 2 and 7 may be directed to forthwith release the said amount of compensation to the Petitioners;

d. Such further and other order be made as this Hon'ble Court may deem fit and proper in the interest of justice and in the facts and circumstances of the case.

2.5 The said petition was vehemently opposed by the Municipal Corporation. An affidavit in reply opposing the writ petition was filed on behalf of the original respondent No.6 – Municipal Corporation and others. It was vehemently submitted that the reservation has lapsed in view of Section 127 of the MRTP Act. It was also submitted that it is not possible for the Corporation to acquire the land on payment of huge sum of Rs.43,41,29,400/-. It was submitted that it was beyond the financial capacity of the Corporation to pay such a huge compensation and it was beyond their budgetary provision and had grave financial implication. It

was also pointed out that even the TDR proposal had not been materialized as the original writ petitioners were not agreeable to fulfill their obligations for grant of TDR as per Development Control Rules. It was also specifically pointed out that unless there is development carried out at the cost of the original writ petitioners – landowners, it is not possible for the Corporation to use the land for the purpose for which it is reserved. It was specifically pointed out that the land in question is a wet land and that the area is flood affected and a rivulet named 'Jayanti Nala' passes through the said area under reservation. It was also specifically pointed out that the reserved area is coming within the High Flood Line and every year for a period of fifteen days to one month the said area gets flooded during the rainy season. Therefore, it was pointed out that it was necessary to carry out the required development work upon the said reserved area for making it suitable for the purposes as per reservation. It was also pointed out that if the said developments are not done, the land under reservation shall not be able to be utilized for the purposes it is reserved.

2.6 Before the High Court, the original writ petitioners tendered affidavits dated 01.08.2018 and 07.08.2018 recording that they do not wish to avail of TDR (as observed by the High Court in paragraph No.5). Thereafter by the impugned judgment and order, the High Court has

disposed of the writ petition and issued the following directions in exercise of powers under Article 226 of the Constitution of India:-

(i) We direct the Special Land Acquisition Officer (11), Kolhapur to communicate to the third respondent - Municipal Corporation the amount which is required to be deposited by the said Municipal Corporation as a condition precedent for issuing a declaration under Section 19 of the said Act of 2013. The communication demanding the amount shall be issued by the Special Land Acquisition Officer within one month from the date on which this judgment and order is uploaded;

(ii) We may record here that there is no dispute about the reservation of the subject land in the sanctioned development plan and therefore, in view of the proviso to Section 125 of the MRTP Act, the acquisition under the said Act of 2013 shall commence from the stage of declaration under section 19 thereof;

(iii) Within a period of two months from the demand for payment made by the Special Land Acquisition Officer as aforesaid, the third respondent shall deposit the requisite amount with the Collector/Special Land Acquisition Officer;

(iv) Within a period of one month from the date of deposit of the requisite amount by the third respondent, a declaration under Section 19 of the said Act of 2013 shall be issued/published in accordance with law;

(v) The acquisition proceedings shall be completed and compensation shall be paid as expeditiously as possible in accordance with law and in any case

within a period of one year from the date on which the declaration under Section 19 of the said Act of 2013 is published;

(vi) Writ petition is disposed of with the above directions;

(vii) For reporting compliance with the above directions by the third respondent the petition shall be listed under the caption of directions on 26th November 2018.

2.7 While issuing the aforesaid directions, the High Court has observed that as there was already a resolution passed by the General Body of the Municipal Corporation to acquire the subject lands by taking recourse to law of compulsory acquisition, therefore, there is no option for the Municipal Corporation but to acquire the said land by taking recourse to the Act of 2013.

2.8 Feeling aggrieved and dissatisfied with the impugned judgment and order dated 13.08.2018 passed by the High court of Judicature at Bombay in Writ Petition No.5310 of 2018, the Kolhapur Municipal Corporation and others have preferred the present Civil Appeal No.510 of 2022.

2.9 It appears that after the impugned judgment and order dated 13.08.2018 passed by the High Court and after the above directions were issued, the appellants – Kolhapur Municipal Corporation and others filed one Civil Application No.2461 of 2018 in Writ Petition No.5310 of

2018 for modification of the judgment and order dated 13.08.2018 and prayed for the direction to the original writ petitioners to accept the TDR in lieu of monetary compensation. It was also further prayed for directing that in the event of the failure of the Corporation to deposit the amount, the consequences under the MRTP Act, 1966 and the Act of 2013 should follow. Both the aforesaid prayers were rejected by the High Court vide order dated 10.12.2018 by observing that the original writ petitioners are not consenting to accept the TDR in lieu of monetary compensation. The order dated 10.12.2018 passed in Civil Application No.2461 of 2018 in Writ Petition No.5310 of 2018 is the subject matter of present Civil Appeal No.511 of 2022.

3. Ms. Aparajita Singh, learned Senior Advocate appearing on behalf of the Corporation has vehemently submitted that in the facts and circumstances of the case, the High Court has committed a grave error in issuing a writ of Mandamus and directing the Corporation to acquire the land in question and to pay the compensation to the original landowners by issuing a declaration under Section 19 of the Act of 2013.

3.1 It is submitted that the High Court has not at all appreciated the fact that as such in the present case, in view of the provisions of Section 126 r/w Section 127 of the MRTP Act, 1966, the reservation had lapsed. It is submitted that once by operation of law, the reservation had lapsed,

no writ of Mandamus could have been issued directing acquisition of the land for which it was reserved under the development plan.

3.2 It is submitted that in the present case, the subject land was reserved under the Development Plan in the year 2001 and different parts of the land were reserved for the purposes of garden, parking and extension of sewage treatment plant and 12 mtr DP Road. It is submitted that it is an admitted position that for more than ten years, neither the land was acquired nor the declaration in relation to it was published under Section 126(2) or (4) of the MRTP Act. It is submitted that thereafter the respondents served a notice to the Corporation under Section 127 of the MRTP Act on 02.01.2012 requesting the Corporation to acquire the land. It is submitted that however, no steps were taken to acquire the land and the acquisition proceedings did not commence even within twelve months from the date of service of such notice. It is therefore submitted that in view of Section 127 of the MRTP Act, if within ten years from the date on which the final Development Plan comes into force and the land reserved is not acquired by agreement nor a declaration under sub-section (2) or sub-section (4) of Section 126 has been published in the Official Gazette and thereafter the landowner serves a notice to the Development Authority to acquire the land, and, if within twelve months from the date of the service of such notice, neither the land is acquired nor steps are commenced for its acquisition, the

reservation shall be deemed to have lapsed. Heavy reliance is placed on the decision of this Court in the case of **Girnar Traders Vs. State of Maharashtra and Ors., (2007) 7 SCC 555**, which has been subsequently followed in the other decisions of this Court in the case of **Shrirampur Municipal Council, Shrirampur Vs. Satyabhamabai Bhimaji Dawkher and Ors., (2013) 5 SCC 627** and **Chhabildas Vs. State of Maharashtra and Ors., (2018) 2 SCC 784.**

3.3 It is therefore submitted that once the reservation is deemed to have lapsed, the original landowners cannot insist that still their land be acquired and they be paid the compensation. In such a situation, even neither a writ petition would be maintainable at the instance of the landowners nor a writ of mandamus directing the Corporation to still acquire the land and pay the compensation can be issued. This is particularly so when the reservation has lapsed.

3.4 It is further submitted by Ms. Singh, learned Senior Advocate appearing on behalf of the appellant Corporation that even otherwise in the facts and circumstances of the case, the High Court ought not to have directed the Corporation to acquire the land for the purpose for which it was reserved and to pay the compensation to the original landowners. It is submitted that the High Court has not at all appreciated and/or considered the financial position of the Corporation and the financial constraint faced by the Corporation, if such a huge amount of

compensation under the provisions of the Act of 2013 is to be paid by the Corporation. It is submitted that the entire budget of the Corporation for land acquisition was only Rs.21 crores as against the compensation amount of Rs.62.5 crores payable in the present case. It is submitted that therefore it is practically impossible for the Corporation to pay such a huge amount of compensation for the land which as such is unsuitable and not useable by the Corporation.

3.5 It is further submitted by the learned senior counsel on behalf of the Corporation that the High Court has therefore not at all adverted to the financial inability of the Corporation to acquire the land and the unsuitability of the land for the public purpose for which it was reserved. It is submitted that it was specifically pointed out that the land in question is not at all suitable and/or usable for the purpose for which the same has been acquired, namely parking, garden etc. It is submitted that it was specifically pointed out that the subject land is flood affected through which a rivulet named 'Jayanti Nala' passes, making it unsuitable/unusable for the public purposes for which it was reserved. It is submitted that therefore the original landowners cannot compel the Corporation to acquire the land, which as such is unsuitable/unusable and non-developed land. It is submitted that it was specifically pointed out before the High Court that the reserved area is coming within High Flood Line and every year for a period of fifteen days to one month, the

said area gets flooded during rainy season. It is submitted that it was pointed out that unless and until a major development work is carried out upon the said reserved land for making it suitable for the public purposes as per reservation, the landowners cannot still say that the land must be acquired, which otherwise is not suitable and/or usable. It is submitted that if such a request of the original landowners is accepted, in that case, every landowner, whose land is otherwise unsuitable and/or not usable will see to it that with the connivance of the party in power and/or the persons in the administration or management of the Corporation to reserve the land for public purpose and thereafter compel the Corporation to acquire the land, which otherwise is unsuitable and/or not usable. It is submitted that the aforesaid aspect has not at all been considered by the High Court though it was specifically pointed out in the counter filed on behalf of the Corporation.

3.6 It is further submitted by Ms. Singh, learned Senior Advocate appearing on behalf of the Corporation that the High Court has directed the appellant to acquire the land in question for the purposes for which it was reserved in view of the Resolution passed by the General Body. It is submitted that the aforesaid finding is just contrary to the law laid down by this Court in the case of **Shrirampur Municipal Council, Shrirampur (supra).** It is submitted that in the aforesaid decision it is specifically observed and held by this Court that by mere passing of a

resolution by the Planning Authority or sending a letter to the Collector or even to the State Government cannot be treated as commencement of the proceedings for the acquisition of the land under the 1966 Act and/or 1894 Act.

3.7 Making the above submissions and relying upon the above decisions, it is prayed to allow the present appeal and quash and set aside the impugned judgment and order passed by the High Court.

4. Present appeal is vehemently opposed by Shri C.U. Singh, learned Senior Advocate appearing on behalf of the respondents – original landowners.

4.1 It is vehemently submitted by Shri Singh, learned Senior Advocate appearing on behalf of the original landowners that the appellant Corporation deserves no relief under Article 136 of the Constitution because of its conduct in not following a consistent stand before the High Court and this Court. It is submitted that the Corporation is barred by the law of estoppel and the doctrine of election from changing its stand from first agreeing to acquire property, then offering TDR in lieu of compensation, and finally from refusing to comply with the Hon'ble High Court's judgment on incorrect grounds.

4.2 It is submitted that in the present case various parts of the land in question were reserved for the purposes of parking, playground, garden and twelve meter wide road and extension of sewage treatment plant. It

is submitted that the reservation continued for more than ten years. It is urged that for all these ten years, the landowners were deprived of developing and/or using their land. It is contended that thereafter after keeping the land in question under reservation for more than ten years thereafter it is not open for the Corporation to say that it will not acquire the land for paucity of the funds. It is submitted that when the land in question was kept under reservation for more than ten years and the land was not acquired, the respondents issued a purchase notice dated 02.01.2012 to the Corporation under Section 127 of the MRTP Act for acquisition of the land. It is submitted that in fact, the General Body of the Corporation thereafter passed a Resolution dated 18.02.2012 resolving that the land is required to be acquired and granting the consent by making provision for payment of the compensation in the budget of the Corporation. It is contended that thus it is clear that the appellant Corporation possessed sufficient funds to acquire the land and had a clear intention of acquiring it. It is submitted that even thereafter the Municipal Commissioner issued a letter dated 22.04.2012 to the officers of the State requesting initiation of acquisition proceedings under the relevant statutes. Pursuant to this, the Special Land Acquisition Officer issued a letter dated 28.10.2015 to the Municipal Commissioner calling upon him to deposit an amount of Rs.77,64,12,000/- in the PLA Account of the SLAO's office. It is submitted that it is at this point that the

appellant Corporation decided to not acquire the land considering the amount of money it was directed to pay as compensation. It is submitted that even thereafter also and despite having agreed to acquire the land in question, the Corporation issued a letter dated 17.03.2016 calling upon the landowners to submit a proposal for grant of TDR in lieu of monetary compensation. It is submitted that the landowners initially rejected the Corporation's proposal for TDR by letter dated 17.05.2016 since the TDR offered was not in accordance with the correct rates prescribed by the concerned DCR that was then in force. It is submitted that only thereafter and aggrieved by the gross inaction on the part of the Corporation, the respondents - landowners were compelled to file writ petition before the High Court being Writ Petition No. 4790 of 2018 praying for similar reliefs as the respondents had sought in the present matter with respect to the part of the land, which was reserved for playground. That the Hon'ble High Court allowed the said writ petition vide order dated 06.08.2018. It is submitted that in the said order, the High Court also took note of the Corporation's stand that it needs the respondents' land, but it is unable to purchase it only due to its financial constraints. It is submitted that by the said judgment, the High Court also directed the Corporation to take steps for issuing a declaration under the MRTP Act and to complete the entire process of acquisition. It is submitted that thereafter since the Corporation failed to implement the

High Court's aforesaid judgment and order dated 06.08.2018, the respondents – landowners filed a contempt petition and the Corporation had offered TDR in lieu of compensation, which the respondents had accepted. It is urged that by the impugned judgment, the High Court has granted similar reliefs, which were granted in Writ Petition No. 4790 of 2018 and has directed the Corporation to initiate the acquisition proceedings.

4.3 It is submitted that even before the High Court, the Corporation filed a Civil Application No. 2461 of 2018, willing to offer TDR in lieu of compensation to be paid for the acquisition of the reserved land. Thus, it is not open for the Corporation to take a contrary stand and even oppose the TDR in lieu of compensation for acquisition of the land under reservation, which the landowners are ready to accept. It is contended that the landowners are entitled to the TDR in lieu of compensation amount as per the DCR.

4.4 It is submitted by Shri C.U. Singh, learned Senior Advocate appearing on behalf of the landowners that as the Corporation has changed its stand from time to time before the Hon'ble High Court as well as before this Court by not agreeing to acquire the land in question and not willing to offer TDR in lieu of compensation amount, the Corporation cannot be permitted to approbate and reprobate. Reliance is placed on the decisions of this Court in the case of **Mumbai**

International Airport Private Limited Vs. Golden Chariot Airport & Anr., (2010) 10 SCC 422 as well as **Joint Action Committee of Air Line Pilots' Association of India (ALPAI) and Ors. Vs. Director General of Civil Aviation and Ors., (2011) 5 SCC 435** and **Karam Kapahi and Ors. Vs. Lal Chand Public Charitable Trust and Anr., (2010) 4 SCC 753.**

4.5 It is submitted that in the aforesaid decisions, this Hon'ble Court had explained the common law doctrine of approbation and reprobation as a facet of the law of estoppel. It is contended that therefore the appellant Corporation is also bound by the same doctrine of approbation and reprobation, which acts as an estoppel against its decision to deny TDR to the respondents - landowners after having previously offered it on its own accord.

4.6 It is further submitted by Shri C.U. Singh, learned Senior Advocate appearing on behalf of the original landowners that in the facts and circumstances of the case, it cannot be said that the reservation of the land in question has lapsed. It is submitted that on lapsing of the reservation, a notification was required to be issued by an order publishing in the Official Gazette as per Section 127(2) of the MRTP Act. That in the present case since that was not done, the reservation in respect of landowners cannot be said to have lapsed. It is submitted that therefore the Corporation cannot now take the stand of lapse before

this Hon'ble Court at this stage of proceedings, especially since it did not take this stand before the High Court.

4.7 It is further submitted by Shri C.U. Singh, learned Senior Advocate appearing on behalf of the landowners that even otherwise considering the relevant provisions of the MRTP Act, more particularly, Section 22 read with Section 31(5), the Corporation is bound to make provision in the Development Plan for parking, garden, which are public purposes. It is submitted that it is the duty cast upon the Corporation to make necessary provisions for public purposes in the Development Plan. It is submitted that if the stand on behalf of the Corporation in the present case is accepted, in that case, there shall not be any garden, parking etc., which are public purposes and it can be said that the Corporation has failed to fulfill its obligations under the MRTP Act. Reliance is placed upon the decision of this Court in the case of **Municipal Corporation of Greater Mumbai and Ors. Vs. Hiraman Sitaram Deorukhar and Ors., (2019) 14 SCC 411.**

4.8 It is further submitted by Shri C.U. Singh, learned Senior Advocate appearing on behalf of the landowners that in the present case, the Corporation has already granted TDR to the present respondents in accordance with Clause 11.2.4 of the Unified DCPR, 2020 for acquiring the portion of the land reserved for the playground. It is submitted that as per Clause 11.2.4(a), the TDR for a non-congested area is 1:2.

However, the quantum of TDR is reduced to 1:1.85 in case levelling of land and construction/erection of a compound wall/fencing to the land under surrender is not desirable considering the total area of reservation. It is submitted that the respondents are unable to undertake such construction/erection work in respect of their land. It is submitted that therefore the Corporation offered TDR in the ratio of 1:1.85 instead of 1:2. It is submitted that in other words, the respondents are effectively ready and willing to accept the TDR in lieu of compensation despite suffering a higher cut. It is urged that the respondents are still ready to accept the TDR in lieu of the compensation amount for the reserved land to be acquired.

4.9 Making the above submissions, it is prayed to dismiss the present appeals and confirm the impugned judgment and order passed by the High Court.

5. Heard the learned counsel for the respective parties at length.

6. The short question which is posed for the consideration of this Court is:

> Whether a writ of Mandamus can be issued by the High Court in exercise of powers under Article 226 of the Constitution of India directing the authority/Municipal Corporation to acquire the land reserved for a particular purpose and to pay the compensation to

the original landowners despite the fact that the reservation is deemed to have lapsed in view of the statutory provisions and that the land which is directed to be acquired and for which the compensation is directed to be paid to the original landowners is unsuitable and unusable for the purposes for which it is reserved?

7. In the present case, the respondents herein – original landowners filed a writ petition before the High Court and prayed for the following reliefs:-

a. Rule be issued and records and proceedings be called for;

b. That this Hon'ble Court may be pleased to issue writ of mandamus and/ or any other appropriate writ, order or direction in the nature of writ of mandamus thereby directing the Respondent No. 1 and 2 to forthwith publish a final notification under sub section (2) and (4) of the Sec. 126 of the M.R.T.P. Act read with Sec. 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act; 2013;

c. That this Hon'ble Court may be pleased to issue writ of mandamus and/or any other appropriate writ, order or direction in the nature of writ of mandamus thereby directing the Respondent No. 3 Corporation to forthwith deposit the amount of compensation i.e. Rs. 77,64,12000/- with the Respondent No. 2 and 7 and further the Respondent No. 2 and 7 may be directed to forthwith release the said amount of compensation to the Petitioners;

d. Such further and other order be made as this Hon'ble Court may deem fit and proper in the interest of justice and in the facts and circumstances of the case.

8. The writ petition and the aforesaid prayers were vehemently opposed by the appellant – Corporation inter alia submitting (i) that the Corporation is not in a position to pay the compensation and it is beyond their budgetary provisions; (ii) that the reservation under the MRTP Act has lapsed in view of Section 126 r/w Section 127 of the MRTP Act; and (iii) that the land sought to be directed to be acquired and for which compensation is to be paid is unsuitable and unusable for the purposes for which the land has been reserved namely parking, garden etc. However, by the impugned judgment and order and without adverting to the relevant facts and circumstances of the case, the High Court has directed the Corporation to issue a declaration under Section 19 of the Act of 2013 and to pay the compensation to the original landowners. Virtually, the High Court has directed the Municipal Corporation to acquire the land in question for the purposes for which the same was put under reservation under the Development Plan.

8.1 From the impugned judgment and order passed by the High Court, it appears that the High Court has issued a writ of Mandamus and has directed the Corporation to acquire the land for the purposes for which it was reserved under the Development Plan mainly on the ground that the General Body of the Corporation had passed a Resolution to acquire the

land and by further observing that as the General Body of the Corporation had passed a Resolution to acquire the land as the same is required by the Corporation for public purposes namely parking, garden etc. Therefore, and as observed hereinabove, the question which is posed for the consideration of this Court is, whether the High Court was justified in issuing the writ of Mandamus directing the Corporation to acquire the land for the purposes for which it was reserved under the Development Plan.

9. While considering the issue/issues involved, the scheme of the MRTP Act, more particularly, with respect to the Development Plan is required to be referred to and considered.

9.1 Chapter III of the MRTP Act deals with Development Plan. As per Section 21 of the Act as soon as may be after the commencement of the Act, but not later than three years from such commencement, and subject to the provisions of the Act, 1966, every Planning Authority shall carry out a survey, prepare an existing land-use map and prepare a draft Development plan for the area within its jurisdiction, in accordance with the provisions of a Regional plan, where there is such a plan. As per sub-section (2) of Section 21, every Planning Authority constituted shall declare its intention to prepare a draft Development plan, prepare such plan and publish a notice of such preparation in the Official Gazette and in such other manner as may be prescribed and submit the draft

Development plan to the State Government for sanction. Therefore, it is the duty cast upon the Planning Authority to prepare a draft Development Plan; to issue a declaration of intention to prepare the Development Plan and submit the same to the State Government for sanction within the period specified or within the extended period as provided under the Act, 1966. Section 22 of the Act, 1966 provides for what should be contained in the Development plan. As per Section 22 of the Act, 1966, in the Development Plan, there shall be provisions for reservation for public purposes, which include provisions for proposals for designation of the land for various public purposes. Section 22 reads as under:-

> "22. A Development plan shall generally indicate the manner in which the use of land in the area of a Planning Authority shall be regulated, and also indicate the manner in which the development of land therein shall be carried out. In particular, it shall provide so far as may be necessary for all or any of the following matters, that is to say,—
>
> (a) proposals for allocating the use of land for purposes, such as residential, industrial, commercial, agricultural, recreational ;
>
> (b) proposals for designation of land for public purpose, such as schools, colleges and other educational institutions, medical and public health institutions, markets, social welfare and cultural institutions, theatres and places for public entertainment, or public assembly, museums, art galleries, religious buildings and government and other public buildings as may from time to time be approved by the State Government ;

(c) proposals for designation of areas for open spaces, playgrounds, stadia, zoological gardens, green belts, nature reserves, sanctuaries and dairies ;

(d) transport and communications, such as roads, high-ways, park-ways, railways, water-ways, canals and air ports, including their extension and development ;

(e) water supply, drainage, sewerage, sewage disposal, other public utilities, amenities and services including electricity and gas ;

(f) reservation of land for community facilities and services ;

(g) proposals for designation of sites for service industries, industrial estates and any other development on an extensive scale ;

(h) preservation, conservation and development of areas of natural scenary and landscape ;

(i) preservation of features, structures or places of historical, natural, architectural and scientific interest and educational value and of heritage buildings and heritage precincts ;

(j) proposals for flood control and prevention of river pollution ;

(k) proposals of the Central Government, a State Government, Planning Authority or public utility undertaking or any other authority established by law for designation of land as subject to acquisition for public purpose or as specified in a Development plan, having regard to the provisions of section 14 or for development or for securing use of the land in the manner provided by or under this Act ;

(l) the filling up or reclamation of low lying, swampy or unhealthy areas or levelling up of land ;

(m) provisions for permission to be granted for controlling and regulating the use and development of

land within the jurisdiction of a local authority including imposition of fees, charges and premium, at such rate as may be fixed by the State Government or the planning Authority, from time to time, for grant of an additional Floor Space Index or for the special permissions or for the use of discretionary powers under the relevant Development Control Regulations, and also for imposition of conditions and restrictions in regard to the open space to be maintained about buildings, the percentage of building area for a plot, the location, number, size, height, number of storeys and character of buildings and density of population allowed in a specified area, the use and purposes to which buildings or specified areas of land may or may not be appropriated, the sub-division of plots, the discontinuance of objectionable users of land in any area in reasonable periods, parking space and loading and unloading space for any building and the sizes of projections and advertisement signs and boardings and other matters as may be considered necessary for carrying out the objects of this Act."

9.2 Therefore, while preparing the draft Development Plan/Development Plan, the Corporation has to make provisions for various public purposes enumerated under Section 22 of the Act, 1966. It is to be noted that while preparing a draft Development Plan/Development Plan, every Planning Authority shall have to carry out a survey and prepare an existing land-use map. Thereafter, the Planning Authority and the State Government are required to follow the procedure as mandated under the Act, 1966. While preparing the Development Plan, the Planning Authority may also designate (popularly known as 'keep the land under reservation') any land for purposes specified in Clauses (b) and (c) of the Section 22. Sub-section (5) of

Section 31 provides that if a Development Plan contains any proposal for the designation of any land for a purpose specified in clauses (b) and (c) of section 22, and if such land does not vest in the Planning Authority, the State Government shall not include that purpose in the Development Plan, unless it is satisfied that the Planning Authority will be able to acquire such land by private agreement or compulsory acquisition not later than ten years from the date on which the Development plan comes into operation.

9.3 Therefore, and as observed hereinabove while preparing a draft Development Plan, the Planning Authority and/or its officer(s) appointed shall have to carry out the survey and prepare an existing land-use map. Therefore, while preparing a Development Plan and while designating a particular land and/or reserving a particular land for public purposes mentioned in Clauses (b) and (c) of Section 22, the Planning Authority has to bear in mind and/or take into consideration whether the particular land, which is earmarked and/or reserved and/or designated for a public purpose, which will have to be acquired on payment of compensation is suitable and/or useable or not for the purposes for which it is reserved for public purposes. It should not lead to a situation where for some oblique reasons, the Planning Authority keeps a particular land under reservation and thereafter acquires it and pays the compensation for the land which is not useable and/or suitable to be used for a particular

purpose merely because the same is under reservation. If the same is permitted, it will amount to a fraud and colourable exercise of power as then the Authority will pay compensation with respect to land which otherwise is not usable and/or suitable. Therefore, while preparing the Development Plan and putting a particular private land under reservation and/or while designating the private land for a particular public purpose under the Development Plan, a duty is cast upon the Planning Authority to make a survey and come to a specific opinion by taking into consideration all relevant facts that the land which is kept under reservation and which will have to be acquired on payment of compensation is suitable and/or usable for the purpose for which it is to be reserved.

9.4 In the present case, even according to the Corporation, the land in question is not at all suitable and even usable for the purposes for which it is reserved, i.e., for public purposes like parking, garden etc., as the said land is a flood affected and a rivulet named ‘Jayanti Nala’ passes through the said area under reservation. It was also the case on behalf of the Corporation before the High Court and even before this Court that the reserved area is coming within High Flood Line and every year for a period of fifteen days to one month, the said area gets flooded during rainy season and that it will be necessary to carry out the required development work at a huge cost upon the said reserved land for making

it suitable for public purposes as per reservation. It was/is the specific case on behalf of the Corporation that if the said development is not done, the land under reservation cannot be able to be utilized for the purposes for which it is reserved. If that be so, we fail to understand what the reason was for the Planning Authority to designate such a land for a public purpose and/or to reserve the land in question in the Development Plan for a public purpose and thereafter to acquire and pay the compensation if the said land was not at all suitable and/or usable.

9.5 As observed hereinabove, at the time of preparing the Development Plan and keeping a particular land reserved for a particular public purpose, an important duty is cast upon the Planning Authority to first satisfy that the land reserved which thereafter has to be acquired on payment of compensation is very much suitable and usable for that public purpose. In the instant case, how the area, which is a flood affected area and through which a rivulet named ‘Jayanti Nala’ passes can be kept under reservation for a particular public purpose and can be used for public purposes like parking and/or for widening of the road etc.? Therefore, while preparing the Development Plan and reserving and/or designating a particular land for a particular public purpose, great care and caution is to be exercised by the Planning Authority. As per Section 125 of the Act, any land required, reserved or designated in a Development plan or Town Planning Scheme for a public purpose or

purposes including plans for any area of comprehensive development or for any new town shall be deemed to be land needed for a public purpose within the meaning of the Land Acquisition Act, 1894. Hence, all the parameters concerning the suitability of the land for the particular public purpose for which the land is to be reserved and acquired for utilization must be borne in mind as a factor of paramount importance.

10. The next relevant provisions with which we are concerned would be Sections 126 and 127 of the MRTP Act, 1966. The said provisions read as under:-

> "**126. Acquisition of land required for public purposes specified in plans.-**(1) Where after the publication of a draft Regional plan, a Development or any other plan or town planning scheme, any land is required or reserved for any of the public purposes specified in any plan or scheme under this Act at any time, the Planning Authority, Development Authority, or as the case may be, any Appropriate Authority may, except as otherwise provided in section 113A acquire the land,—
>
> (a) by agreement by paying an amount agreed to, or
>
> (b) in lieu of any such amount, by granting the land-owner or the lessee, subject, however, to the lessee paying the lessor or depositing with the Planning Authority, Development Authority or Appropriate Authority, as the case may be, for payment to the lessor, an amount equivalent to the value of the lessor's interest to be determined by any of the said Authorities concerned on the basis of the principles laid down in the Land Acquisition Act, 1894, Floor Space Index (FSI) or Transferable Development Rights (TDR) against the area of land surrendered free of cost and free from all encumbrances, and also further additional Floor

Space Index or Transferable Development Rights against the development or construction of the amenity on the surrendered land at his cost, as the Final Development Control Regulations prepared in this behalf provide, or

(c) by making an application to the State Government for acquiring such land under the Land Acquisition Act, 1894,

and the land (together with the amenity, if any so developed or constructed) so acquired by agreement or by grant of Floor Space Index or additional Floor Space Index or Transferable Development Rights under this section or under the Land Acquisition Act, 1894, as the case may be, shall vest absolutely free from all encumbrances in the Planning Authority, Development Authority, or as the case may be, any Appropriate Authority.

(2) On receipt of such application, if the State Government is satisfied that the land specified in the application is needed for the public purpose therein specified, or 3[if the State Government (except in cases falling under section 49 4[and except as provided in section 113A)] itself is of opinion] that any land included in any such plan is needed for any public purpose, it may make a declaration to that effect in the Official Gazette, in the manner provided in section 6 of the Land Acquisition Act, 1894, in respect of the said land. The declaration so published shall, notwithstanding anything contained in the said Act, be deemed to be a declaration duly made under the said section:

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

(3) On publication of a declaration under the said section 6, the Collector shall proceed to take order for the acquisition of the land under the said Act; and the

provisions of that Act shall apply to the acquisition of the said land with the modification that the market value of the land shall be,—

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

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

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

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

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

(4) Notwithstanding anything contained in the proviso to sub-section (2) and subsection (3), if a declaration,] is not made, within the period referred to in sub-section (2) (or having been made, the aforesaid period expired on the commencement of the Maharashtra Regional and Town Planning (Amendment) Act, 1993, the

State Government may make a fresh declaration for acquiring the land under the Land Acquisition Act, 1894, in the manner provided by sub-sections (2) and (3) of this section, subject to the modification that the market value of the land shall be the market value at the date of declaration in the Official Gazette, made for acquiring the land afresh.

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

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

10.1 Section 126 of the MRTP Act provides that where after the publication of a draft Regional plan, a Development or any other plan or town planning scheme, any land is required or reserved for any of the public purposes specified in any plan or scheme under MRTP Act at any

time, the Planning Authority, Development Authority, or as the case may be, any Appropriate Authority has to acquire the land as provided under Sections 126(1)(a), (b) or (c) by making an application to the State Government for acquiring such land under the Land Acquisition Act, 1894 (now it would be the Act of 2013). On receipt of such application by the Planning Authority/Development Authority to the State Government for acquiring such land under the Land Acquisition Act, 1894, the procedure as contemplated and required under Sections 126(2) to 126(4) shall have to be followed. Section 127 of the MRTP Act further provides that if any land reserved, allotted or designated for any purpose specified in any plan under MRTP Act is not acquired by agreement or otherwise within ten years from the date on which a final Regional Plan, or final Development Plan comes into force or if a declaration under sub-section (2) or (4) of Section 126 is not published in the Official Gazette within such period (ten years), the owner or any person interested in the land may serve a notice to the Planning Authority, the Development Authority or, as the case may be, the Appropriate Authority to purchase the land reserved. If within twelve months from the date of the 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***, and thereupon, the land shall be deemed to be released from such

reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan. Sub-section (2) of Section 127 further provides that on lapsing of the reservation, allocation or designation of any land under sub-section (1), the Government shall notify the same, by an order published in the Official Gazette.

10.2 What can be said to be taking "***steps***" as mentioned in Section 127 of the MRTP Act has been extensively dealt with and considered by this Court in the case of **Girnar Traders (supra), Shrirampur Municipal Council, Shrirampur (supra)** and **Chhabildas (supra).**

10.3 In the case of **Girnar Traders (supra)**, this Court had occasion to consider the entire scheme of Sections 126 and 127. Insofar as Section 127 is concerned, this Court has observed and held in paragraphs 31 and 32 as under:-

> "*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."

10.4 On emphasizing the word "***steps***" used in Section 127 of the MRTP Act, it is observed and held in paragraphs 56 and 57 as under:-

"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."

10.5 In **Shrirampur Municipal Council, Shrirampur (supra)**, it was the case on behalf of the Planning Authority that after the purchase notice as per Section 127(1) is served and the Planning Authority and/or the Corporation has passed a resolution to acquire the land and it is communicated to the State Government, it can be said to be taking "***steps***" and therefore in such a situation the reservation cannot be said to have lapsed. The aforesaid position came to be negated by this Court

in the aforesaid decision after considering the judgment of this Court in the case of **Girnar Traders (supra).** It is specifically observed and held that the expression "no steps as aforesaid" used in Section 127 of the Act, 1966 has to be read in the context of the provisions of the Act of 1894 and now the Act of 2013 and a mere passing of a Resolution by the Planning Authority or sending a letter to the Collector or even to the State Government cannot be treated as commencement of the proceedings for the acquisition of the land under the 1966 Act and/or 1894 Act or now the Act of 2013. It is observed and held that publication of a declaration under Section 6(2) of the Act of 1894 can be said to be conclusive evidence that the land is needed for a public purpose and imply taking active steps for the acquisition of the particular piece of land. In paragraphs 42 and 43 of the said judgment, it is observed and held as under:-

> "*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."

10.6 Subsequently, in the case of **Chhabildas (supra)**, it has been observed and held by this Court after considering the decisions of this Court in the cases of **Girnar Traders (supra)** and **Shrirampur Municipal Council, Shrirampur (supra)** that if a period of ten 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.

11. Thus, as per the law laid down by this Court in the aforesaid three decisions, if the land reserved under the draft Development Plan/Development Plan is not acquired within a period of ten years form the date of final Development Plan and thereafter after expiry of ten years, the landowners serve a purchase notice and thereafter within a period of one year, no steps are taken to acquire the land, the reservation/allocation is deemed to have lapsed and the land stand released from such reservation/allocation. As held above, declaration under Section 6 of the Act of 1894 can be said to be taking steps as contemplated under Section 127 of the MRTP Act. After the enactment of the Act of 2013, the declaration under Section 6 of the Act of 1894 is now to be read and/or is substituted by declaration under Section 19 of the Act of 2013. Therefore, if within a period of one year from the date of receipt of purchase notice as per Section 127, a declaration under Section 19 of the Act, 2013 is not issued and the land is not acquired, the reservation/allocation under the Development Plan is deemed to have lapsed and the land is released from such reservation/allocation.

11.1 Applying the law laid down by this Court in the aforesaid decisions to the present case, the first Development Plan under which the original writ petitioners' land was reserved for public purposes was in the year

1976. Thereafter the second amended Development Plan was published on 18.12.1999 and came to be implemented from 01.02.2000, under which also the land of the original writ petitioners was reserved for public purposes. But the same had not been acquired for ten years despite the respondents – original writ petitioners having issued a purchase notice dated 02.01.2012 under Section 127 of the MRTP Act for acquisition of the reserved area. A mere Resolution being passed by the General Body of the Corporation to acquire the land and sending a letter to the Collector to acquire the land, without any further steps being taken under the Land Acquisition Act, namely no declaration under section 6 thereof being issued within a period of one year from the receipt of the said purchase notice, would result in the reservation as deemed to have lapsed.

12. In the present case, the High Court has issued a writ of Mandamus directing the Corporation to issue a declaration under Section 19 of the Act of 2013 mainly on the ground that the General Body of the Corporation had passed a Resolution dated 18.02.2012 resolving that the land in question is required to be acquired and the same is needed for the purpose for which it has been reserved. However, in our view, mere passing of a Resolution and/or making a budgetary provision for payment of the compensation in the budget cannot be said to be taking steps as contemplated under section 127 of the MRTP Act.

Therefore, once the reservation of land under the Development Plan is deemed to have lapsed by operation of law and it is released from reservation, no writ of Mandamus could have been issued by the High Court directing the Corporation to still acquire the land and to issue a declaration under Section 19 of the Act of 2013 (as in the meantime, the Land Acquisition Act, 1894 has been repealed and Act of 2013 has been enacted). Once by operation of law, the reservation is deemed to have lapsed, it is lapsed for all purposes and for all times to come.

13. Now, so far as the observation made by the High Court that after the reservation is deemed to have lapsed, it has not been notified in the Official Gazette as required under Section 127(2) of the MRTP Act is concerned, we observe that notification in the Official Gazette is only a consequential act and it has nothing to do with the actual lapsing of reservation by operation of law as the reservation is deemed to have lapsed under Section 127(1). Thereafter issuance of the notification of lapse of the reservation of land is only a procedural act and non-issuance of such a notification in the Official Gazette with respect to lapse of the reservation, allocation or designation would not affect the lapse of the reservation under Section 127(1) of the MRTP Act.

14. Therefore, as such once the reservation with respect to the land in question was deemed to have lapsed as observed hereinabove, no further writ of mandamus could have been issued by the High Court to

acquire the land and thereafter pay the compensation to the landowners, as on the lapse of the reservation, the land in question is free from reservation and the landowners can use it as if there is no reservation, however, subject to provisions of the MRTP Act.

15. Even otherwise, in the facts and circumstances of the case, the High Court had erred and/or the High Court was not justified in directing the Municipal Corporation to acquire the land in question and to issue a declaration under Section 19 of the Act of 2013 and to pay compensation under the Act of 2013. It is to be noted that right from the very beginning it was stated in the counter before the High Court that the land in question was not suitable and/or usable for the purposes for which it has been reserved. It was specifically pointed out that the subject land is flood affected through which a rivulet named 'Jayanti Nala' passes, making it unsuitable for the public purposes for which it was reserved. It was also specifically pointed out that unless and until the substantial development is carried out, the land in question is not usable at all. It was also specifically pointed out that the reserved area is coming within High Flood Line and every year for a period of fifteen days to one month, the said area gets flooded during rainy season. In that view of the matter, the High Court ought not to have directed the Corporation to still acquire the land and pay the compensation to the original landowners though the land in question is unsuitable and

unusable for the public purposes for which it has been reserved. As observed hereinabove, as such at the time when the planning was made and the land in question was put under reservation for public purposes, a duty was cast upon the Planning Officer to consider whether the land, which will have to be acquired and for which the compensation is to be paid is really suitable and/or usable for the public purposes for which it is reserved. Otherwise, every landowner will see to it that though his land is not suitable and/or not very valuable, is put under reservation and the same is acquired by the Corporation and/or the Planning Authority and thereafter he is paid the compensation. No Corporation and/or the Planning Authority and/or the Appropriate Authority can be compelled to acquire the land which according to the Corporation/Planning Authority is not suitable and/or usable for the purposes for which it is reserved. Any other interpretation would lead to colourable and fraudulent exercise of power and cause financial burden on the public exchequer.

16. At this stage, it is required to be noted that in fact there was a valid reason for the Corporation not to go ahead with the acquisition. Under the Act of 2013, the Corporation was required to pay a huge sum of Rs. 77,65,12,000/- by way of compensation under the Act of 2013. According to the Corporation, when the entire annual budget for acquisition was Rs.21 crores, it was beyond their financial position and/or budgetary provision to pay such a huge compensation, that too,

for the land which is not suitable and/or useable for the purposes for which it has been reserved. It may be true that under the MRTP Act, in the Development Plan, the Planning Authority and/or the Appropriate Authority has to make the provisions for the public purposes mentioned in Clauses (b) and (c) of Section 22 and sub-section (5) of Section 31 of the MRTP Act and that is also desired for an appropriate planning of a city and therefore the financial constraint cannot be the sole consideration to acquire the land for the purposes for which it has been reserved namely public purposes. However, at the same time, when such a huge amount of compensation is to be paid and there would be a heavy financial burden, which as such is beyond the financial capacity of the Corporation, such a financial constraint can be said to be one of the relevant considerations, though not the sole consideration before embarking upon reservation of a particular extent of land for development. Even otherwise, in the facts and circumstances of this case, when land is found to be unsuitable and unusable for the purposes for which it has been reserved, Corporation cannot be compelled to pay a huge compensation for such a useless and unsuitable land.

17. Now, the submission on behalf of the original landowners that if the Corporation is not in a position to pay the compensation, in that case, they are ready to accept the TDR in lieu of the amount of compensation shall be considered. At one point of time, the aforesaid proposal was

under consideration by the Corporation and the Corporation even moved a Civil Application before the High Court to direct the landowners to accept the TDR. Therefore, on the principle of approbate and reprobate, it is contended by the landowners that the Corporation cannot now be permitted to deny TDR to the original landowners, we observe that first of all, it is required to be noted that the said principle of approbate and reprobate would be equally appliable to the landowners also. Before the High Court, the original landowners specifically filed the affidavits dated 01.08.2018 and 07.08.2018, as observed and noted by the High Court in the impugned judgment and order in paragraph 5 that they do not wish to avail of TDR and their only prayer before the High Court was to acquire the land and to pay them the compensation. Therefore, now it is not open for the respondents -original landowners to pray for the TDR in respect of the land in question.

17.1 Even otherwise, a landowner is entitled to TDR in lieu of compensation with respect to the land reserved provided the land to be acquired is suitable and/or usable by the Corporation. Once it is found that the land is not usable and/or suitable for the purposes for which it has been reserved, the Corporation cannot still be compelled and directed to acquire the land and grant TDR in lieu of amount of compensation. Even as per Clause 11.2.2 of the Unified Development Control and Promotion Regulations, 2020 (UDCPR, 2020) for

Maharashtra State under which the TDR is claimed, the compensation in terms of TDR shall be permissible for:-

"xxxxxxxxxxxx

ii) lands under any deemed reservations according to any regulations prepared as per the provisions of Maharashtra Regional & Town Planning Act,1966;

xxxxxxxxxxxx

v) development or construction of the amenity on the reserved or deemed reserved land;

xxxxxxxxxxxx"

Therefore, it can be argued that there cannot be any TDR in lieu of compensation to be paid for the reserved land which reservation is deemed to have lapsed as in the instant case.

17.2 Even Clause 11.2.3 of the above Regulations states that it shall not be permissible to grant TDR for existing nallah, river, natural stream, natural pond, tank, water bodies etc. and reservations which are not developable under the provisions of UDCPR, 2020.

Therefore, for the reasons stated hereinabove, the prayer of the respondents to grant them TDR deserves rejection and is hereby rejected.

18. In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order passed by the High Court directing the appellant Corporation to issue a declaration under Section 19 of the Act of 2013 and consequently to acquire the

land in question and to pay the compensation to the respondents – original landowners as per the provisions of Act of 2013 is hereby quashed and set aside. Consequently, the original Writ Petition (Writ Petition No.5310 of 2018) before the High Court filed on behalf of the original landowners stand dismissed.

Present appeal is allowed accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.

Civil Appeal No.511 of 2022

19. In view of the judgment and order passed by this Court in Civil Appeal No.510 of 2022, the Civil Appeal No. 511 of 2022 stands partly allowed to the extent of declaring that reservation of the land for the public purposes for which it was reserved is deemed to have lapsed.

No costs.

……J.
[M.R. SHAH]

NEW DELHI; ……J.
FEBRUARY 14, 2022. **[B.V. NAGARATHNA]**