

(2021) 09 BOM CK 0071
In the Bombay High Court
Case No : Writ Petition No. 5938 Of 2020

Asha Sunil Zawar

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 16-09-2021

Acts Referred:

Constitution Of India, 1950 — Article 226, 300A
Maharashtra Regional And Town Planning Act, 1966 — Section 2(2), 21, 22, 23, 25, 26, 28, 30, 31, 32, 34, 37, 38, 42, 113A, 125, 126, 126(1)(a), 126(1)(b), 126(b), 126(c), 126(1)(c), 126(2), 126(3), 126(4), 127, 127(1), 127(2)
Land Acquisition Act, 1894 — Section 6
Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation, And Resettlement, Act 2013 — Section 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 19
Unified Development Control And Promotion Regulations For Maharashtra State, 2020 — Regulation 11.1, 11.2, 11.2.1

Citation : (2021) 09 BOM CK 0071

Hon'ble Judges : Ravindra V. Ghuge, J;S. G. Mehare, J

Bench : Division Bench

Advocate : Mukul S. Kulkarni, A.R. Syed, S.R. Yadav-Lonikar, Vijay B. Patil

Final Decision : Dismissed

Judgement

S.G. Mehare, J

- 1) Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
- 2) The petitioner approached this Court under Article 226 of the Constitution, seeking the declaration of de-reservation and release of her land reserved in the Development Plan under section 127 of the Maharashtra Regional and Town Planning Act 1966 (the 1966 Act for short).
- 3) The brief facts necessary for the disposal of this petition are that the land survey no. 118/4/1 of Mauje Nimkhedi shivar, Tq and District Jalgaon (hereinafter referred to as 'reserved land'), at the time of its reservation, was

owned by Shirsale family. The petitioner purchased the reserved land by sale deeds dated 19.05.2011 and 29.04.2014 and acquired exclusive ownership. The reserved land was reserved for Town Hall and Library in the final Development Plan of the excluded part (EP) of Jalgaon (Additional Area) published on 01.10.2014. Since the respondents did not acquire the reserved land under section 126 of the 1966 Act within ten years of its reservation, the petitioner served a notice dated 29.09.2017 under section 127 of the 1966 Act on respondent no. 3. Respondent no. 3 received the said notice on 11.10.2017. Respondent no. 3, by reply dated 16.12.2017 and 12.03.2019 offered the compensation of Transferable Development Rights (TDR for short) to the petitioner. However, the petitioner declined the TDR by her letter dated 16.03.2019 and claimed monetary compensation by acquiring the land following the procedure as prescribed in the Land Acquisition Act. The respondent corporation passed a resolution no.79 in its General Meeting dated 21.02.2019 that, considering the financial condition of the Corporation, instead of monetary compensation, TDR should be offered to the petitioner. In its letter dated 16.12.2017, the Planning Authority had objected that since the final 7/12 extracts are not attached, it is impossible to confirm the purchase notice.

4) In addition to the above-admitted facts, respondents nos.2 and 3, by their affidavit in reply, have taken the stand that the petitioner was informed that if she is willing to receive compensation of TDR, she should inform them within seven days of receiving their letter. The Commissioner, Municipal Corporation Jalgaon, vide letter dated 05.04.2018, requested the District Collector that the publication of the notification under section 6 of the Land Acquisition Act within twenty-four months is necessary; hence, kindly publish a notification under section 4 of the Land Acquisition Act. The Land Acquisition Officer, Jalgaon, vide letter dated 29.07.2019, directed the Deputy Superintendent of Land Records Jalgaon to conduct the joint measurement to acquire the reserved land. It is the further contention of respondents nos. 2 and 3 that the acts and conduct of the petitioner to refuse compensation in the form of TDR itself shows that the petitioner either does not want acquisition or compensation. TDR has its value, and it is nothing but compensation. She may use it for herself or sell it to anybody. Therefore, the attitude of the petitioner is evident that she is obstructing the functioning of the Corporation. The Collector submitted the proposal for the acquisition of the reserved land in time. However, due to Covid-19, the priority was given to the extreme urgent works only. In such a situation, it cannot be said that no steps to commence the acquisition of the reserved land have been taken. Therefore the petition is devoid of merit.

5) We have heard the respective learned counsels for the respective parties at length.

6) The learned counsel for the petitioner would argue that the petitioner, the owner of the reserved land, has served a valid purchase notice on the respondents. However, the respondent failed to comply with statutory provisions

of the Act 1966. To bolster his arguments, he relied on the case of Balaji Associates through its partners V State of Maharashtra, (2019) 19 SCC 1 and Hitendra Shankar Patil and other v the State of Maharashtra, WP No. 1085/2017, decided by this Court on 16.12.2020.

7) Per contra, the learned counsel for the respondents would argue that the Planning Authority decided to acquire the reserved land, instead of monetary compensation, by granting the petitioner the compensation in the form of TDR. Hence, it cannot be said that no steps to commence to acquire the reserved land as contemplated under section 126 of the 1966 Act have been taken. The proposal for acquisition of the reserved land is also submitted to the Collector, Jalgaon, and it is in progress. The petitioner has no voice to decline the compensation of TDR, as it is equivalent to monetary compensation. Therefore granting TDR is the appropriate step to acquire the land as contemplated under section 126 of the 1966 Act. The petition is devoid of merit, and hence, is liable to be dismissed.

8) It is not in dispute that the respondents did not prefer to acquire the reserved land by following the procedure prescribed in the Land Acquisition Act as demanded by the petitioner but offered her compensation of TDR. Hence the question is whether the Planning Authority has acquired the reserved land or commenced the steps to acquire such land within twenty-four months from the receipt of the purchase notice issued by the petitioner. The period of twenty-four months to acquire or commence the steps to acquire the reserved land as contemplated in section 127 of the 1966 Act begins to run from the date of receipt of the notice by the Planning Authority. The cause of action to claim de-reservation arises on failure to acquire or commence the steps to acquire the reserved land within twenty-four months from the service of the notice on the Planning Authority. The petitioner has filed the present petition on 02.07.2020, which is after twenty-four months of the service of the last notice dated 29.09.2017.

9) Respondent nos. 2 and 3 have a specific defense that since the compensation of TDR is offered immediately to the petitioner by letter dated 16.12.2017 and 12.03.2019, it is the correct step to commence the acquisition of the reserved land. Hence, the petition is not liable to be entertained.

10) On the other hand, relying on Balaji Associates and Hitendra (supra), the learned counsel for the petitioner vehemently argued that once the purchase notice is issued, the Planning Authority is bound to acquire the land as per the procedure prescribed under the Land Acquisition Act. The Planning Authority cannot force the landowner to accept the compensation in the form of TDR. After declining the TDR by the landowner, the Planning Authority shall acquire the land only by following the procedure prescribed in the Land Acquisition Act.

11) Considering the rival contentions of both sides, the questions that would fall for consideration are:-

1) Whether the Planning Authority has the power to acquire the lands reserved under Development Plans by granting compensation of TDR in lieu of monetary compensation without the consent of the landowner?

2) Can the landowner deny the compensation of TDR?

3) Whether the option to acquire the land in given modes under clauses (b) or (c) under section 126 of the 1966 Act rests with the Planning Authority only?

4) Can the landowner insist the Acquiring Authority acquire the reserved only by following the procedure under the Land Acquisition Act?

5) Whether granting the compensation of TDR by the Planning Authority is the effective step to commence the acquisition of the reserved land as laid down in section 127 of the 1966 Act?

12) The first and third questions above came up for consideration before the learned Single Judge of the Bombay High Court in the case of Bhivandi Nizampur City Municipal Corporation; Bhivandi v Shri Vilas Kashinath Patil and Ors. (W.P. No. 1822 of 2009, dated 10.08.2010).

13) The facts of the said case were that the road intended to be constructed by the Corporation was affecting the land owned by the respondent. For the acquisition of the land, the Corporation and the landowner had a meeting. The landowner did not agree to TDR but was interested in monetary compensation only. Their negotiation failed. The Corporation highhandedly, without acquisition of the land of the landowner, started the road construction. The Civil Court had issued an injunction against the Corporation. Hence the matter went to the High Court. The plea of the Corporation before the High Court was that in view of section 126 of the 1966 Act, the landowner was bound to accept TDR or FSI in lieu of the monetary compensation.

14) In the set of above facts, the learned Single Judge of the Bombay High Court, in the case (supra), has observed in para 9, which reads thus:-

"9. It is true that clauses (a) and (b) of section 126 of the Act are separated by the conjunction "or". The word "or" would indicate that clauses (a) (b) and (c) are alternate to each other, that is to say, that all clauses (a) and (b) cannot be applied simultaneously. Only one of the clauses (a) or (b) or (c) can be applied. So far there is no difficulty. The question is whether this option of applying Clause (a) (b) or (c) lies with acquiring body rests with the owner. In my view, the option rests with owner. And Statute which authorises taking away of a property of a citizen must be construed strictly. If there is any ambiguity and two interpretations are reasonably possible, the interpretation which favors the citizen must be accepted".

15) Further in paragraph 10, the reasons given for accepting that the option rests with the landowner are as follows;

"10. There is yet another reason which militates against the stand of the

petitioner municipal corporation. The opening words of Clause (b) "in lieu of any such amount" refer to the amount which is agreed to under Clause (a) of Section 126(1) of the MRTTP Act. If there is no amount agreed to under Clause (a) there would be no question of applying Clause (b) at all. It is only when an amount is agreed to between the parties under Clause (a) that in lieu of such amount the parties can further agree upon the FSI or the TDR in lieu of that amount. Clause (b) would not apply when the parties do not agree upon an amount because the FSI or the TDR provided under Clause (b) is "in lieu of such (agreed) amount".

16) On the one hand, in specific words, it is observed that clauses (a), (b), and (c) of section 126 of the 1966 Act is separated by the conjunction and are alternate to each other, that is to say, the clauses (a),(b), and (c) cannot be applied simultaneously and on the other hand, it is also observed in the same paragraph that "the opening words of clause (b) "in lieu of any such amount" refer to the amount which is agreed to under Clause (a) of Section 126 of the 1966 Act. If there is no amount agreed to under Clause (a), there would be no question of applying Clause (b) at all. It is only when an amount is agreed between the parties under Clause (a) that in lieu of such amount, the parties can further agree upon FSI or the TDR in lieu of that amount. Clause (b) would apply only when the parties do not agree upon an amount because the FSI or the TDR provided under Clause (b) is "in lieu of" such (agreed) amount". Clause (c) of Section 126(1) of the MRTTP Act provides the general rule that applies where the parties do not agree upon the amount of compensation or the FSI or the TDR in lieu thereof by mutual consent. It provides for acquisition of the property in accord and with the provisions the Land Acquisition Act 1894. Ordinarily that is the usual mode of acquisition of any property. In lieu of the usual mode, two modes in addition to the usual modes are provided in clauses (a) and (b) but they are subject to an agreement between the parties. In the absence of any agreement between the parties, the only mode for the acquisition of the property is under Clause i.e. acquisition under the Land Acquisition Act,1894 with some modifications thereto has been provided under subsection (2) to (4) of section 126 of the MRTTP Act."

17) In the light of the above findings and the issues raised by the respondents, we are of the view that the correctness of the interpretation of Clause (a) and (b) of section 126 of the 1966 Act needs to be revisited.

18) To interpret the expression "in lieu of any such amount", as used in Clause (b) of section 126 of the 1966 Act correctly, it would be profitable to discuss the rules of interpretation.

19) The rule of interpretation of a statute as observed by the Hon'ble Apex court in the case of CIT v S. Tej Singh, AIR 1959 SC 352 is that "a statute or any enacting provision therein must be so construed as to make it effective and operative "on the principle expressed in the maxim: ut res magis valeat quam pereat". In the case of State of Haryana v Suresh AIR 2007 SC 2245, the Apex court observed that "the words of the statute are first understood in their

natural, ordinary, or popular sense, and phrases and sentences are construed to their grammatical meaning unless that leads to some absurdity or unless there is something in the context or in the object of the statute to suggest contrary." It is a rule of literal construction. In the case of *Nyadar Singh v Union of India*, AIR 1988 SC 1979, the Hon'ble Apex Court has observed that "ambiguity need not necessarily be a grammatical ambiguity, but one of the appropriateness of the meaning in a particular context." The Hon'ble Apex Court in *National Insurance Company Ltd v. Anjana Shyam*, AIR 2007 2870, has observed in paragraph 12 (the middle portion of the para,) that, "As early as in 1846, DR. Lushington in *Queen v. Eduljee Byramji* [(1846)3 MIA468] posited that to ascertain the true meaning of a clause in a statute the Court must look at the whole statute, at what precedes and at what succeeds and not merely at the Clause itself. This Court has accepted such approach in innumerable cases". The Court will, therefore, reject that construction which will defeat the plain intention of the Legislature even though there may be some in-exactitude in the language used. It is also the rule that the language of the statute should be read as it is. It is a settled rule of interpretation that the conclusion that the language used by the Legislature is plain or ambiguous can only be truly arrived at by studying the statute as a whole. The purposive approach is also the rule of interpretation of the law.

20) The Division Bench of the Bombay High Court at Aurangabad, in case of *Chalisgaon Municipal Council, Chalisgaon and others V*

The State of Maharashtra and others 2014 (5) AIR Bom R 24: 2015 (4) All M. R. 256, to which one of us (Hon'ble Shri Justice Ravindra V. Ghuge) was a party, has observed in paragraph 13, the rules of interpretation construing the provision of the 1966 Act which reads thus;

"13. Once again, the salutary principle of interpretation, namely, a Statute, particularly a Planning Statute, must be construed bearing in mind the object and purpose it seeks to achieve would apply. The legislative intent, therefore, cannot be lost sight of and no provisions can be seen out of context or in isolation and this principle will apply equally to the interpretation of this provision...."

21) The above observation made it clear that the 1966 Act should be interpreted keeping in view its object and purpose.

22) In view of the above rules of interpretation of the law, we find it profitable to summarize the scheme of the 1966 Act with relevant sections and regulations for the disposal of this case.

23) The object of the 1966 Act is to make provisions for planning the development and use of land in regions established for that purpose and the Constitution of Regional Planning Boards therefore; to make better provisions for the preparation of development plans with a view to ensuring that town planning schemes are made in a proper manner and their execution is made effective; to

provide for the creation of new towns by means of Development Authorities; to make provisions for the compulsory acquisition of land required for public purposes in respect of the plans; for purposes connected with the matters aforesaid.

24) Chapter III of the 1966 Act deals with the declaration of intention, preparation, submission, and sanction to the development plan.

25) Section 21 speaks of the declaration of the intention to prepare the draft development plan.

26) Section 22 speaks of the contents of the draft development plan for preparing the proposal for allocating the use of land for various purposes such as residential, commercial, industrial, agricultural, recreational, and for public purposes such as schools, hospitals, markets, social welfare, etc.

27) Section 23 speaks of the declaration of the intention to prepare a development plan. The Planning Authority shall, before carrying out a survey and preparing an existing land-use map of the area provided in section 21, by resolution make a declaration of intention to prepare a development plan. The Planning Authority shall publish a notice of such declaration in the Official Gazette and one or more local newspapers in the prescribed manner. A copy of such declaration is kept open for inspection at the office of the Planning Authority or Local Authority.

28) Section 25 speaks of carrying out a survey of lands within the jurisdiction of the Planning Authority and preparing an existing land-use map indicating the existing use of land therein.

29) Section 26 speaks of the preparation and publication of the notice of the draft development plan and inviting objections and suggestions by the public within a specified period.

30) Section 28 speaks of the objections to the draft development plan. The planning Authority shall consider the objections and suggestions received in time may modify or change the plan. The Planning Authority or the officer concerned shall forward the objections and suggestions to a Planning Committee. Then the Planning Committee makes such enquiry as it may consider necessary and give a reasonable opportunity of being heard to any person, including objectors and the person who has given a suggestion. Then Planning Committee submit its report to the Planning Authority and then make a list of such modifications or changes and carry out the same in the draft development plan as he may consider proper and publish it in the Official Gazette and two local newspapers, the list of modifications or changes in the draft development plan for the information of the public.

31) Section 30 speaks of submitting such draft development plan to the State Govt. within a specified time for sanction along with the list of modifications or changes made therein.

32) Section 31 speaks of the powers of the State Govt. either to accord sanction or decline the sanction either with or without modification, as it may consider proper or it may return the same to the Planning Authority or the Officer concerned with directions to prepare a fresh development plan. However, where the modifications proposed to be made by the State Govt. are substantial, the State Govt. has to publish a notice in the Official Gazette or not less than two local newspapers, inviting the objections and suggestions from any person in respect of the proposed modifications, within a specified time. After submitting the plan under section 30, the State Govt. fails to publish its decision, if any, under section 31 in the specified time, the draft development plan except the modifications of substantial nature shall be deemed to have been sanctioned. The State Govt. shall publish a notice regarding such modifications of substantial nature in the Official Gazette and two local newspapers inviting objections and suggestions. Such objections, then, shall be heard by the Officer appointed by the State Govt. He has to submit his report to the State Govt. within a specified period for consideration before according sanction. Then, the State Govt. has to take the final decision regarding such modifications within the specified period from the date of receipt of the report from the Officer appointed by it. Then, the State Govt. shall fix in the notification a date not later than the specified period from its publication on which the final development plan shall come into force.

33) Section 32 speaks of the Interim Development Plan.

34) Section 34 speaks of the preparation of a development plan for additional areas. If at any time after declaration of intention or sanction of the final development plan, the jurisdiction of the Planning Authority is extended by the inclusion of the additional area, a fresh declaration of intention to prepare a development plan for the additional area may be made by Planning Authority following the provisions of the 1966 Act. A draft plan may be prepared by such Authority and submit it to the State Govt. for its sanction. The State Govt. then follows the same procedure to sanction the final development plan. It further speaks of the effect of the withdrawal of any area from the jurisdiction of the Planning Authority.

35) Section 37 speaks of the modification of the final development plan. The Planning Authority, may, or on directions of the State Govt., exercising powers under this section by publishing the notice of such modification proposals in the Official Gazette, and by inviting the objections and suggestions from any person with respect to the proposed modifications and also serving a notice on the persons affected by such modifications and after giving hearing to any such persons, submit proposed modification with the amendments, if any, to the State Govt. within a specified period for sanction. If such modification proposal is not submitted within the specified period, the proposal for modifications shall deemed to be lapsed. If the Planning Authority fails to publish the notice as directed by the State Govt., the State Govt. shall issue the notice as provided above. If the State Govt. is satisfied that in the public interest, it is necessary to

carry out urgently a modification of any part of, any proposal made in, a final development plan, the State Govt. at its own, by publishing a notice in the Official Gazette, inviting objections from the concerned and by giving hearing to the persons affected and the Planning Authority, may publish the approved modifications with or without change. After publications of such modifications in the Official Gazette, it is deemed to have been modified accordingly. Same way, if any modifications in the Development Plan is submitted by the Authority appointed under the Maharashtra Slum Areas (Improvement, Clearance, and Redevelopment) Act 1971, for the implementation of the said Act, the State Govt. may make necessary modifications in the Development Plan following procedure of granting a hearing to the concerned persons.

36) Section 38 speaks of the revision of the development plan. Under this section, the Planning Authority may revise the development plan at least once in twenty years from the date on which the last part of the plan has come into operation. However, the State Govt. may direct the Planning Authority to revise the development plan at any time. During the revision of the development plan all relevant provisions and procedures applicable to the draft development plan shall apply.

37) Section 42 speaks of the implementation of plans. Accordingly, it imposes a duty on the Planning Authority to take the necessary steps to carry out such plan or plans.

38) Chapter V of the Act is for the making of town planning schemes. It speaks of the powers of the Planning Authority, making town planning schemes, the proposals, and sanctions of the plans after following the due procedure, the appointment of the Arbitrator, his powers, the appeals against his decisions, etc.

39) Chapter VII deals with land acquisition.

40) Section 125 speaks of the compulsory acquisition of land needed for purposes of the regional plan, development plan or town planning, etc. Any land required, reserved, or designated in any such plan for public purposes shall be deemed to be land needed for the public purpose within the meaning of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement, Act 2013 (Act 2013" for short) It has been provided therein that the provisions of sections 4 to 15 of the Act 2013, shall not be applicable in respect of such lands.

41) Section 126 speaks of the acquisition of the lands reserved in the development plan by the Planning Authority or any Appropriate Authority except as otherwise provided in section 113A of the 1966 Act. It provides three modes of land acquisition, i.e., by way of the agreement by paying an amount agreed or granting TDR or FSI in lieu of any such amount, or by following the procedure for the acquisition of land under the 2013 Act. It further provides that if the reserved land is to be acquired following the procedure prescribed in the 2013 Act, then the Planning Authority has to make an application to the State Govt., then the

Govt. on receipt of such application, if satisfied with the need of such land for the public purpose, may make a declaration to that effect in the Official Gazette in the manner provided under section 19 of the 2013 Act in respect of such land. The declaration so published shall be deemed to be a declaration duly made under the said section. It further provides 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. On the publication of the declaration under section 19 of the 2013 Act, the Collector shall proceed to take order for the acquisition of the land under the said Act. The State Govt. is empowered under sub-section (4) of the 1966 Act to make a fresh declaration for the acquisition of such lands as per the procedure prescribed under the 2013 Act but, the date of the market value of such land shall be the date of declaration in the Official Gazette and not the date as provided in sub-section (3) of the 1966 Act. In short, care has been taken that the owner shall get the just compensation of his land if no such declaration is made in the period as per the proviso clause to sub-section (2) of section 126 of the 1966 Act.

42) Section 127 speaks of the lapsing of reservation of the land. It has been provided therein that if any land reserved, designated, or allotted for any purpose specified in any plan under the 1966 Act, is not acquired by agreement within ten years from the date on which a final regional plan or final development plan comes in force or if the declaration under sub-section (2) or (4) is not published in the Official Gazette within such period, the owner or any person interested in the land may, by serving a notice on the Planning Authority concerned along with his document of title or interest, request for the purchase of the land. If the Authorities concerned fail to acquire the reserved land or no steps are commenced for its acquisition within twenty-four months from the date of service of notice by the landowner, such 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 development purpose, as otherwise permissible in the case of adjacent land under the relevant plan. It further provides that on lapsing of such reservation of any such land, the Govt. shall notify the same by an order published in the Official Gazette.

43) Clause (b) in section 126(1) of the Act is inserted and brought into force w.e.f. 25.03.1991, the concerned Authority is empowered to acquire a reserved land by granting compensation in lieu of TDR to a landowner in lieu of monetary compensation under Clause (b) of said section. Before the said insertion, there were only two modes of acquisition of the land under section 126 of the 1966 Act, the first was, by agreement by paying an amount agreed, and the second was by making an application to the State Govt. for acquisition following the procedure prescribed under the Land Acquisition Act. The purpose of inserting this Clause was to address the major issue of taking over the lands of farmers and landowners for the development of the areas, resolve complications and

controversies in the land acquisition process. Hence, the TDR concept was introduced in India for the first time.

44) The State Govt. has recently enacted the regulations, namely, the Unified Development Control and Promotion Regulations for Maharashtra State 2020 ("the Regulations 2020", for short) and brought into force with effect from 02.12.2020 and, thereby, all the development control Regulations/ Special Regulations in operation have been declared to have ceased. Accordingly, it is made applicable to the building activities and development works on lands within the jurisdiction of all Planning Authorities and regional plan areas except Municipal Corporation of Greater Mumbai, other Planning Authorities/Special Planning Authorities/Development Authorities within the limits of the Corporation of Greater Mumbai, MIDC, NAINA, Jawaharlal Nehru Port Trust, Hill Station Municipal Council, Eco-sensitive/Eco-fragile region notified by MoEF and CC and Lonavala Municipal Council in Maharashtra.

45) The Regulations 2020 are exhaustive, covering all subjects of the development of lands, including the acquisition and development of reserved sites in Development Plans in Chapter 11. Regulation 11.2 of Regulations 2020 prescribes the regulations for the grant of TDR rights. Regulation 11.2.1 specifically provides that TDR is compensation in the form of Floor Space Index (FSI) or development rights. This FSI credit shall be issued in the certificate, which is called as Development Right Certificate (DRC)

46) Summarizing the scheme with relevant sections of the 1966 Act and the Regulations 2020, quoted above, and considering the observations recorded by the Hon'ble Apex Court, in *Godrej and Boyce Manufacturing Company Limited v State of Maharashtra* Civil Appeal no. 1746 of 2007 along with other Civil Appeals, dated 06.02.2009, it is clear that the MRTP Act is a Code in itself.

47) We now turn to discuss and answer the questions that arise for consideration.

48) It is clear from section 126 of the 1966 Act that there are three modes of acquisition of reserved lands.

49) The question is why the provision is made for three options to acquire the reserved land? The Bombay High Court in *Bhivandi Nizampur Corporation (supra)* has taken a view that the acquiring Authority can apply only one option out of the three given in section 126 of the 1966 Act. Considering this view, we have to examine the correct meaning of the word "or" used after clauses (a) and (b) in that section and whether each Clause is independent. At the same time, it is also to be examined whether the expression "any such amount" is determinative or Clause (a) controls Clause (b) of the said section.

50) The Hon'ble Apex Court in the case of *Municipal Corporation of Delhi v Tek Chand Bhatiya*, AIR 1980 SC 360 has dealt with the word 'or' and 'and' and its use vice-versa, thus quoted as follows;

In Stroud's Dictionary, 3rd Edn, vol.1, it is stated at p 135:

"And" has generally a cumulative sense, requiring the fulfillment of all the conditions that it joins together, and herein it is the antithesis of OR. Sometimes, however, even in such a connection, it is, by force of context, read as "or".

While dealing with the topic 'OR' is read as 'AND' and vice-versa' Stroud Says in vol.3, at p. 2009,

"You will find it said in some cases that 'or' means 'and'; but 'or' never does mean 'and'."

Similarly, in Maxwell on Interpretation of Statutes, 11th Edn., p. 229-A 30, it has been accepted that 'to carryout the intention of the legislature, it is occasionally found necessary to read the conjunctions "or" and "and" one for the other'. The word "or" is normally disjunctive and "and" is normally conjunctive, but at times they are read vice versa. As Scrutton L.J. said in Green v Premier Glynrohonwy Slate Co.(') 'You do sometimes read 'or' as 'and' in a statute... But you do not do it unless you are obliged, because 'or' does not generally mean 'and' and 'and' does not generally mean 'or'. As Lord Halsbury L.C. observed in Marsey Docks and Harbour Board v Henderson (') the reading of 'or' as 'and' is not to be resorted to "unless some other part of the same statute or the clear intention of it requires that to be done." The substitution of conjunctions, however, has been sometimes made without reasons, and it has been doubted whether some of cases of turning 'or' into 'and' and vice versa have not gone to the extreme limit of interpretation.

51) As per Oxford Advanced Learner's dictionary new 8th Edn, the word "such" is a determiner and pronoun. It is also a predeterminer. Using it as 'determiner' means 'of the type previously mentioned', e.g., 'I have been involved in many such courses.' Using it as 'Pronoun' means 'of the type about to be mentioned', e.g., 'there is no such thing as a free lunch. When the word 'such' is used as 'predeterminer' it is followed by 'a' or 'an' and singular noun, e.g., 'It was such a pity that you couldn't be with us.'

52) The expression 'any such' is an adjective, means instance or example of (something) similar.

53) Further to interpret the expression "in lieu of any such amount", it would be profitable to reproduce section 126(1) clause (b), it is, extracted hereunder,

"126. Acquisition of land required for the public purpose specified in plans

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

2. (a)..... Or

3. (b) in lieu of any such amount, by granting the landowner 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, for payment to the lessor, an amount equivalent to the value of the lessor's interest to be determined by any of said Authorities concerned, [on the basis of principle laid down in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013], Floor Space Index [FSI] or Transferable Development Rights (TDR) against the area of the 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

54) The section is clear that there are three modes of acquisition of reserved land, however in view of the observations recorded in Bhivandi Nizampur (supra), it should be examined whether the acquisition under the Land Acquisition Act is the only mode?

55) The Division Bench of this Court, in Chalisgaon Municipal Council (supra), regarding the modes of acquisition of the reserved land has further observed in para 13, (from 8th line from top), which reads thus;

"13.....This Section falls in Chapter VII titled as Land Acquisition". That relates to compulsory acquisition of land needed for the purpose of Regional Plan, Development Plan, or Town Planning Schemes etc. If the provisions, conferring power to compulsorily acquire the land, was not coupled with the mandate to acquire it so as to fulfill the purpose or object of a development plan and the statute, then possibly a complaint could have been made that what is conferred is the only power with no corresponding responsibility or duty. Therefore acquisition of land, reserved in plan can be either by agreement by paying an amount agreed to and the owner then hands over the land for the required purpose, allocation or designation or 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 or the land owner's interest to be determined by way of any of the principles laid down in the Land Acquisition Act 1894, but in the form or shape of 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 FSI or TDR 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 acquisition of the land by resorting to the provisions of the Land Acquisition Act 1894 and to facilitate the same, make an application to the State Government for acquiring the land. Thus, it is futile to urge that because of lack of funds or lack of money, the Council or the Corporation is helpless and cannot provide to the residents or

the people at large any amenity by carrying forward or implementing the proposals designations and allocations in the Development Plan. The property or the land designated, allocated or reserved for such purpose can be acquired by an agreement with the owner, which may provide for making payment of agreed amount or in lieu of such amount granting the land owner or the lessor's the benefits in return of having proposals and designations or allocations in the development plan implemented and carried out through him. The owner, therefore, benefits by having unreserved or unallocated or un-designated portion free for other development in terms of the Planning Law and either he surrenders the balance portion for enabling the Planning Authority, Development Authority. Appropriate Authority to enforce or implement the proposals or reservations or he himself develops this amenity, facility and proposals and surrenders it free of costs and free from all encumbrances and in lieu of that gets the FSI, additional FSI or TDR. Therefore, it is not as if, the land has to be acquired by taking recourse only to the Land Acquisition Act, 1894 or that is the only mode by which proposals, designations and allocations can be implemented, enforced and carried out".

(Emphasis supplied)

56) The Division Bench in the above case has unequivocally pronounced that the acquisition of the lands reserved under the Development Plan, by following the procedure in the Land Acquisition Act, is not the only mode.

57) Section 125 of the 1966 Act, as reproduced, clarifies that the acquisition of reserved lands is "compulsory acquisition" Hence we find it equally important to see the purpose of compulsory acquisition of lands and the powers of the Govt. and the rights of the owners of land proposed for compulsory acquisition.

58) Article 300A of the Constitution confers the citizen a property right and no person shall be deprived of his property save by authority of law. Such right is available against executive interference and not against legislative action. It's a constitutional right. However, acquiring the land for public purposes under the relevant law and following the due procedure prescribed in such Act is an exception to the right of property as envisaged in Article 300A of the Constitution. It is the settled law that no property of any person shall be acquired unless just compensation is paid to him/her. The right to compensation is protected under the Land Acquisition Act itself. The mode of acquisition and form of compensation, shall be understood from the provisions of law under which the land is proposed to be acquired. Land acquisition is the power of Govt. to acquire private land for public purposes, development of infrastructural facilities, or urbanization of the private land. The main object or aim of the Land Acquisition Act is to provide a law that will enable the State to acquire land of others. Therefore, the provisions of the Act relating to the land acquisition are substantive, and those relating to taking over possession and assessment and payment of compensation are subsidiaries. When a mandatory provision regarding acquisition is breached, the acquisition results in nullification or

invalidation of acquisition proceedings. The Hon'ble Apex Court in the case of *Devinder Singh v State of Punjab*, (2008) 1 S.C.C. 728, in paragraph 12 has observed thus

"12. Indisputably, the Land Acquisition Act is an ex-proprietary legislation. The State ordinarily can acquire a property in the exercise of its power of "Eminent Domain" subject to the existence of public purpose and on payment of reasonable compensation in terms of the provisions of the Act. However, the State has been empowered to acquire land also for "companies" and for the purpose other than "public purpose".

59) It is clear from the above that the landowner has a right to compensation under compulsory acquisition of property. Therefore, acquiring private land without compensation, is a nullity.

60) In the light of powers of the Planning Authority to acquire the land compulsorily, now we proceed to consider the provisions of land acquisition under the 1966 Act.

61) Section 125 of the Act is a deeming provision. When any land is reserved in the development plan, it shall be deemed to be needed for a public purpose within the meaning of the Land Acquisition Act. The said section is titled 'Compulsory acquisition of land needed for the purposes of the regional plan, development plan or town planning, etc.' The land reserved under any of the plans under the 1966 Act, may be acquired compulsorily by the planning authority. The Act confers the power on the Planning Authority either to acquire or not to acquire the land compulsorily.

62) It is a power possessed in one form or another by the Govt. Against such compulsory acquisition, the landowner has no right to bargain nor right to deny. Hence law has taken care to grant 'Solatium' to the landowner after determining the market value of the acquired land. 'Solatium' is the reward to the landowner for losing his right to bargain. It is compensation (such as money) given as solace for suffering or injured feelings. Now, it is paid 100 % of the compensation amount determined by the Land Acquisition Authority. Clause (a) of section 126(1) of the Act is an exception to the general rule of determining the value of the land. It gives the landowner and an Acquiring Authority an option to bargain and agree on the compensation amount.

63) Now, we again turn to the three modes of land acquisition, under the 1966 Act, by the Planning Authority.

64) As observed by the Bombay High Court in *Bhivandi Nizampur* (supra), Clause (a), (b) or (c) are separated by a conjunction 'or' and cannot be applied simultaneously. We do agree with this proposition. Further, the Bombay High Court reading the opening words of Clause (b) 'in lieu of any such amount' held that if no amount is agreed to under Clause (a), there would be no question to apply Clause (b). In the light of such observation, we should also answer

whether Clause (a) controls Clause (b) of section 126 of the 1966 Act.

65) As discussed above, the private lands are acquired by the Govt. under its 'Eminent Domain'. However, just compensation is a condition precedent. The mode of compensation is another issue. In the light of the aims and object of compulsory acquisition of private land for public purpose against the compensation, we are of the considered view that there is no scope to construe the said provision strictly as it is not taking away the right to property of any person.

66) The landowner shall get the just compensation is not the question. He must get it. However, the next question is: Is the compensation in the form of TDR or FSI commensurate with the value of the land?

67) Section 126(1)(b) of the 1966 Act fell for consideration before the Hon'ble Apex Court in the case of Godrej and Boyce (supra), wherein the Hon'ble Apex Court has interpreted the word 'against' used in Clause (b) of section 126(1) of the Act. The Hon'ble Apex Court in paragraphs 32 to 35 observed thus;

"32. Section 126(1)(b) of the Act uses the word 'against': it speaks of granting FSI or TDR 'against the area of the land surrendered' and further 'additional FSI or TDR against the development or construction of amenities on the surrendered land', Now one of the meanings of the word 'against' is given as "in return of something", e.g. the exchange rate against France" (CHAMBERS 21st Century Dictionary, 1st Published in India in 1997 reprinted 1999)

"33. Webster's third New International Dictionary gives one of the meanings for the words as "in exchange for, in return for as an equivalent or set-off; in lieu of, instead of."

" 34. The Concise Oxford English Dictionary gives one of the meanings of the word as "in exchange for, in return for, as an equivalent or set-off for; in lieu of, instead of."

"35. Thus, on the basis of this language used in section 126(1)(b) it could be argued that what is contemplated is to recompense the landowner proportionate to the value of the development or construction of the amenity on the surrendered land. But the matter does not stop there. As seen above in Appendix VII to the regulations paragraph, 5 uses the words 'equal to the gross area of reserved plot'. Therefore, in so far as the bare land is concerned there is no difficulty. Paragraph 6 of the Appendix, however, uses the word "equivalent to the area of the construction/development and much argument is made on the meaning of the word equivalent."

68) The title of regulation 11.1 of Regulations 2020, is "Manner of Development of Reserved Site in Development Plan" (Accommodation Reservation Principle). It has been provided therein that the use of lands situated within the limits of the Planning Authority, which have been reserved for a certain purpose in the development plan, shall be regulated concerning type and manner of

development/redevelopment according to the provisions mentioned in Table 11A. In the said table, column no.1 contains Reservation. Column no.2 contains Person/Authority who may acquire/develop, and column no. 3 contains the principle for development through Accommodation Reservation subject to which development is permissible. In the said table, serial no 8 in column no.1 mentions the lands reserved for Town Hall and Library. Such reserved lands shall be acquired by Planning Authority/Appropriate Authority/Owner. In the third column, it is mentioned that the Planning Authority/ Appropriate Authority may acquire and develop the site for the same purpose

OR

The Planning Authority/ Appropriate Authority, after acquiring the land or after acquiring and developing the same, as the case may be, lease

out as per the provisions of Authorities' Act to a registered public institution to develop and running or only for running the same.

OR

The owner may be allowed to develop the entire reservation for the intended purpose only.

OR

i. The Authority may allow the owner to develop the reservation subject to handing over to the Planning Authority independent plot along with constructed amenity of the total area mentioned in Note-1 below table and as per norms prescribed by the Authority.

ii. The owner shall be entitled to develop remaining land for the uses permissible in adjoining one with full permissible FSI of the entire plot and permissible TDR potential of the entire plot.

iii. The Authority, if required, shall allow the TDR for the un-utilized FSI, if any (after deducting in-situ FSI) to be utilized as per TDR regulations.

iv. Reservation may be allowed to be developed in parts.

69) Clause 11.2.2 of the Regulations 2020 is titled "Cases eligible for Transferable Development Rights (TDR)", it provides that, compensation in terms of TDR shall be permissible for the lands under various reservations for public purposes, which are subject to acquisition, proposed in Draft or Final Development Plan prepared under the provisions of the 1966 Act. Item, no 8 in table no.11-A provides the manner of development of the lands reserved for the Town Hall and Libraries. It indicates that the landowner gets the fullest compensation. Clause 11.2.4 of the Regulations of 2020 provides for the generation of TDR. On surrendering gross area of the land which is subject to the acquisition, the owner shall be entitled to TDR or FSI two times the area of surrendered land if it is in a non-congested area, and 3 times of the area of

surrendered land, if it is situated in a congested area. Besides this, as per clause 1 of Table no. 11-A of clause 11.1, the Planning Authority, after handing over 70% of the land of the reservation to the Planning Authority by the owner in lieu of FSI/TDR, may allow him to develop the remaining 30% of land as per adjoining use with some conditions. The same is applicable in the cases of lands reserved for the Town Hall and Libraries.

70) Clause (b) in section 126 of the 1966 Act was inserted on the 25th March 1991. Before its insertion, there were only two modes of acquisition under section 126; one by payment of an amount agreed upon by the parties and the other by following the procedure under the Land Acquisition Act. The purpose behind inserting this Clause was that the takeover of the lands of farmers and landowners for the development of the area was the major problem. There were many complications and controversies in the land acquisition process, the TDR concept was introduced in India to avoid all this. In the light of inserting Clause (b) in the section, we are of the view that the doctrine of purposive interpretation may give the correct meaning to that Clause. The purposive approach takes account not only of the words of the Act to their ordinary meaning but also the context. The context includes the subject matter, scope, purpose, and to some extent, the background of the Act. The purpose of the 1966 Act is to make better provisions for the preparation of development plans to ensure that the town planning is done in a proper manner and to make their execution effective. Given the object of the 1966 Act, there is no manner of doubt that the town planning is to be made not only on paper but must be effectively executed by acquiring the lands as provided in the 1966 Act. The predominant purpose of the 1966 Act is to have a planned development. Unless the reserved lands are acquired, the purpose of the 1966 Act cannot be achieved

71) Analysing the various provisions of the 1966 Act, the Regulations 2020 and having regard to the meaning given to the word "against" used in Clause (b) of section 126, by the Hon'ble Apex Court in the case of Godrej (supra), we hold that the compensation in the form of TDR or FSI commensurate with the value of the land.

72) The Division Bench of this Court in Chalisgaon Municipal Council (supra), held that clauses (a), (b), and (c) of section 126 of the 1966 Act are distinct and alternative modes of acquisition of the land. Bearing in mind the object of the 1966 Act, the purpose of inserting Clause (b) in section 126 of the 1996 Act, and applying the doctrine of 'purposive construction', we are of the considered view that the word "or" used after clauses (a) and (b) in the said section is disjunctive. The term 'any such amount' in Clause (b) is not a determiner, and Clause (a) does not control Clause (b). The first option under Clause

(a) is completely under the control of the landowner. The financial constraint is the common ground for no land acquisition by the Planning Authority. Hence the lands are not acquired as provided in Clause (c) of section 126. The only option that remains is under Clause (b). If the observations recorded in Bhivandi

Nizampur (supra) that if no amount is agreed to under Clause (a) there would be no question of applying Clause (b), is accepted, then the object of the 1966 Act would never be achieved. The Development Plans shall be on paper only. Hence we record our disagreement with such observations.

73) In *Godrej (supra)*, the Municipal Council had taken a stand that for the acquisition of the land, recourse to Clause (b) of sub-section (1) of section 126 of the Act could be taken only by mutual agreement of the parties concerned. It was equally open to the Municipal authorities not to accept the surrender of the land under Clause (b), as it was available to the landowner to make the offer. However, the Municipal authorities could accept the acquisition of the land in terms of Clause (b) on certain conditions to which landowners might or might not agree. In case the landowner did not agree to the conditions put by the Municipal Council authorities, he would not surrender the land, and then the acquisition of the land could take place in terms of clauses (a) or (c) of section 126 (1). The Hon'ble Apex Court discarded the above arguments of the learned senior counsel for Municipal Council. It held that the surrender of the land in terms of Clause (b) of section 126 (1) of the Act cannot be subjected to any further conditions than those already provided for in the statutory provisions.

74) The Hon'ble Apex Court in *Girnar Traders vs State of Maharashtra AIR 2007 SC 3180* (landmark pronouncement on MRTP ACT) has observed in paragraph 117, which reads thus;

"117. Under section 126(1) of the Act, the Authority under MRTP Act can only make an application to the State Government for acquiring the concerned land under the Land Acquisition Act 1894. This is clear from Section 126(1) (c). And Clause (c) applies when the acquisition cannot be made in terms of clauses (a) and (b) of Section 126 (1)"

75) Given the above, we conclude that the option to acquire the land under clauses (b) and (c) of section 126 rests with the Acquiring Authority. Consequently, the landowner cannot insist the Acquiring Authority pay compensation following the procedure under the Land Acquisition Act. Examining Clause (b) of the said section, further, we are of the considered view that clauses (a) and (b), as well as whole section 126 of the 1966 Act, are unambiguous. Therefore, there is no question to interpret section 126 of the 1996 Act, which favors the landowner.

76) The next question that falls for consideration would be whether the compensation of TDR by the Planning Authority is the effective step to commence the acquisition of the reserved land as laid down in section 127 of the Act?

77) The landowner gets a right to de-reserve his/her land by serving a purchase notice under section 127 of the 1996 Act. We have discussed section 127 of the 1916 Act above with the effect of service of notice on and non-action by the Planning Authority.

78) In *Balaji Associates (supra)*, as regards section 127 of the 1966 Act, in para 18, it is observed as under;

"18. In this context, we may refer to the case of *Shrirampur Municipal Council, Shrirampur v Satyabhamabhai Bhimji Dawkher and Ors*, 2013(5) SCC 627, wherein the three judges bench of this Court has observed that-

"42. We are further of the view that the majority in *Girnar Traders (2)* 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 the publication of the declaration land section 6 of the 1894 Act. Any other interpretation of the scheme of Section 126 and 127 of 1966 will make provision 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 the 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...."

79) The facts of the *Balaji Associates(supra)* are that the landowner had served a purchase notice on the Municipality. Respondent no.2 directed respondent no. 3 to initiate the procedure required for the acquisition of the disputed land. Then, in the General Body Meeting of Municipal Council/ Nagar Parishad, it was decided that the disputed land is required for the development of Garden/Park and necessary acquisition needs to be taken. Then based on the resolution of the Municipal Council, respondent no.3 had submitted a proposal for acquisition of the disputed land. In the light of this fact, it is held that the purchase notice served by the landowner was complied with, and the Planning Authority had not acquired the land, nor the steps to acquire the land were commenced. The issue of TDR/FSI was not involved in the said case.

80) The facts of this case, relevant to the right of landowner under Section 127(1) of the Act are discussed above, which indicates that the compensation of TDR was offered twice by the Planning Authority within twenty-four months from the date of receiving the purchase notice, but it is the petitioner who declined the compensation of TDR.

81) The Planning Authority, by two communications, made its intention clear that the reserved land is needed for the public purpose and wish to execute the Development Plan. We have held above that the TDR option rests with the acquiring Authority. So, if the Planning Authority making his intention clear to acquire the reserved land for its use for the purpose, it is reserved in the Development Plan and choose the mode of acquisition as contemplated in Clause (b) of sub-section (1) of section 126 of the 1996 Act and intimates its intention to the landowner within the prescribed period. The landowner is incumbent to approach the Planning Authority for Development Right Certificate Registration

(DRC). As per Regulation of 2020, such certificate shall be issued by the Authority under his signature by endorsing thereon in writing in figures and words, the FSI credit in square meters of the built-up area to which the owner or lessee is entitled, the place from which it is generated, and the rate of that plot as prescribed in the Annual Statements of Rates by the Registration Department for the concerned year. The Regulations 2020, indicates that once the compensation in terms of TDR is offered, the landowner has to surrender the reserved land and get the DRC from the Authority.

82) In *Girnar Traders (2)*, which is referred to in the case of *Balaji (supra)*, in paragraph 43, it is observed thus;

"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 the resolution by the Planning Authority or sending of a letter to the Collector or the 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..."

83) In the light of the pronouncement in *Girnar Traders (2)* reproduced above, we are of the considered view that, once the compensation of TDR is offered to the landowner, the Planning Authority need not follow the procedure laid in subsection (2) of section 126 of the 1966 Act. We further hold that offering compensation of TDR within twenty-four months from the date of receipt of purchase notice is the step to commence the acquisition and the acquisition of the reserved land. Since the option of TDR does not rest with the landowner and he fails to approach the Planning Authority for TDR and DRC, we express our opinion that the landowner cannot insist the Planning Authority to acquire the land only by adopting Clause (c) of section 126 of the 1966 Act.

84) The scarcity of finance or financial constraint to acquire the land is a common ground of the Municipal Councils or Corporations. In clear terms, the Bombay High Court, in *Chalisgaon Municipal Council (supra)*, has laid down the law that paucity of the fund or lack of resources can never be said to be the reasons for not taking steps to implement the proposals, allocations, and designation in the development plan. Taking into account the number of purchase notices served on Amravati Municipal Corporation in the case of *Ravikant Laxminarayan Zawar vs State of Maharashtra and others 2012 (5) Mh.L.J. 623*, it is further observed in the middle of para no.18(9) that "If there are financial constraints as stated, then, in passing a resolution, copy of which is annexed to the affidavit and expressing helplessness, the Corporation which is a Planning Authority, has failed to provide the amenities to the residents within the municipal limits in terms of its obligatory duties under the Bombay Municipal Corporations Act, 1949. The Corporation will have to make necessary arrangements of funds. There are several reservations which can be implemented with participation from the public. Presently, in days of liberalization and globalization, innovative projects are underway in several Municipal Corporation areas. Playgrounds and other amenities are developed by matching

grants from the State and other agencies. We do not see how the Municipal Corporation pleads lack of funds while providing such amenities. In deserving projects, there must be financial participation of the State Government".

85) In paragraph 146 of the said pronouncement, it is observed thus;

"146. The idea is that once the plan is formulated, one has to implement it as it is, and it is only in rarest of the rare cases that you can depart therefrom. There is no exclusive power given to the State Government, or the planning authority, or to the Chief Minister to bring about any modification, deletion or de-reservation, and certainly not by a resort to any of the D.C. Rules. All these constituents of the planning process have to follow the mandate under Section 37 or 22A as the case be if any modification becomes necessary. That is why this observed in paragraph 45 of *Chairman Indore Vikas Pradhikaran v Pure Industrial Coke and Chemicals Ltd. And ors.*, reported in 2007 (8) SCC 705 as follows:

"45. Town and country planning involving land development of the cities which are sought to be achieved through the process of land use, zoning plan and regulating building activities must receive due attention of all concerned. We are furthermore not oblivious of the fact that such planning involving highly complex cities depends upon scientific research, study and experience and, thus, deserves due reverence," (emphasis supplied)

86) Even after the clear verdict of the High Court, we are surprised that there is a flood of such cases in the High Court from various Municipal Corporations. The Corporations still take a stand that they cannot purchase the reserved land due to financial constraints. The mandate of the law as pronounced by the Bombay High Court in *Chalisgaon Municipal Council (supra)*, is that, once the plan is formulated, one has to implement it as, it is. In only the rarest cases, one can depart, which appears ignored conveniently.

87) Para 151 of the above pronouncement is also relevant to the importance of town planning; it reads thus;

"151. As we have seen, the MRTTP Act gives a place of prominence to the space meant for public amenities. An appropriately planned city requires good road, park, playgrounds, market, primary and secondary schools, clinic, dispensaries and hospitals and sewerage facilities among other public amenities which are essential for a good civic life. If all the spaces in the cities are covered only by construction for residential houses, the cities will become concrete jungle which is what they have started becoming. The is how there is need to protect the spaces meant for public amenities, which cannot be sacrificed for the greed of a few landowners and builders to make more money on the ground of creating large number of houses. The MRTTP Act does give importance to the spaces reserved for public amenities and makes the deletion thereof difficult after the planning process is gone through and the plan is finalized. Similar are the provisions in different State Acts yet, as we have seen from the earlier judgments concerning the public amenities in Bangalore (*Bangalore Medical Trust*

(supra) and Lucknow (M. I. Builders Pvt Ltd.(supra), and now as is seen in this in Pune, the spaces for the public amenities are under a systematic attack and are shrinking all over the cities in India, only for the benefit of the landowners and the builders. Time has therefore come to take a serious stock of the situation. Undoubtedly, the competing interest of the landowner is also to be taken into account, but that is already done when the plan is finalized, and the landowner is compensated as per the law. Ultimately when the land is reserved for a public purpose after following the due process of law, the interest of the individual must yield to the public interest."

88) According to Wikipedia, urban planning is a technical and political process unconcerned with the development and use of land, protection, and use of the environment, public welfare, and the design of an urban environment, including air, water, and the infrastructural passing into and out of the urban areas such as transportation, communications, and distribution networks.

89) Sound town planning generates revenue, creates employment and helps the rulers maintain economic equality. It is always a great challenge for every ruler. To have a sound environment, transportation, communication, distribution system, and pure air and water is the legitimate expectation of the honest taxpayer. No doubt, public participation in land development is equally important. However, it is experienced that every landowner endeavors to save his land from such reservation for public purpose. Hence, to overcome such unwillingness, the provision for compulsory land acquisition is made. The laws are to guard the rights of the ordinary citizen. Usually, the taxpayers are unorganized. So to protect their rights, provisions like section 42 of the Act to implement the plans have been incorporated. The said section casts a duty on the Planning Authority to take steps to carry out the provisions of the 1966 Act. Reading this section with the observations recorded by the Bombay High Court in Chalisgaon Municipal Council (supra), we are of the opinion that the de-reservation of the reserved land shall be avoided in each case, and the Planning Authority shall be held responsible for not implementing the development plans. Strict implementation of the development may help maintain the environmental and ecological balance, which is the burning issue of the day. It is high time to be serious in implementing the development plans and make the amenities available to the honest taxpayers. It appears that the Planning Authority sleeps over for ten years from the final development plan and again for twenty-four months from the date of receiving purchase notice. The local Government's utter reluctance also shows no interest in the public. The greedy landowners know the financial constraints of the Corporation, which may be due to the failure of prompt recovery of various taxes, compromise the right of amenities of the honest taxpayers and get the reserved spaces de-reserved very casually. The development plans may be implemented with a public-private partnership. The overall conduct of the responsible officers and the Government is a systematic attempt to frustrate the very object of the 1966 Act.

90) The idea behind reservations of the lands for Libraries and Town Halls in Development Plans has its importance and significance. It is essential and helpful to the community and society. In India, free and compulsory education of all children aged six to fourteen is a fundamental right. Education is the first step for social and individual upliftment. We have a history of the education revolution made by social reformers. The house is the 'first place', the workplace is a 'second place,' and the Library has acquired a 'third place' in human life. It is the place that maintains the equity of access to information to the low-income community. The State Government allocates the particular funds to run the libraries. So, the libraries occupied their position and importance in the community. Library gives people the opportunity to experience new ideas, to explore research in various subjects, etc., while at the same time providing a sense of place for gathering. It creates opportunities for learning, support literacy, and education and helps to shape the new ideas and perspectives that are central to a creative and innovative society. It also grants access to knowledge.

91) Normally, the Town Halls are used for recreation. Recreation is an activity done for enjoyment when one is not working. It refers to all those activities people choose to do, to refresh their bodies and minds and make their leisure time more exciting and enjoyable. To reduce stress is the need of the day. A Town Hall is a place where people from all corners of society gather for various recreational activities, which may help them to reduce mental stress. The lands must have been reserved for Libraries and Town Halls in the Development Plans for such essential needs. In the light of its importance in community and society, it cannot be said that it is not an essential amenity. Such an important amenity shall be made available by the Local Govt. as its duty. Looking to the passive and insensitive approach of the Government and Planning Authority in not implementing the plans in its letter and spirit, the Courts cannot close their eyes seeing the violation of unorganized citizen's right to have all such amenities in each town. However, the ordinary citizen's legitimate right to have amenities appears violated systematically.

92) For the reasons stated above, once again, we disapprove large and casual de-reservation of the lands reserved for public purposes in any plan under the 1966 Act for the reasons of financial constraints.

93) Now, we turn to the reliefs claimed by the petitioner under Article 226 of the Constitution of India. Article 226 of the Constitution confers wide powers to issue orders and writs against any person or Authority. However, for issuance of the writ or order, the party approaching the Court must establish that his right is illegally invaded, threatened, or denied by the Authority. The party seeking relief must also establish the cause of action to approach the High Court under Article 226 of the Constitution. Cause of action is essentially the reason to put the law into motion. Unless there is a violation or infringement of the right, there is no right to file the claim petition.

94) Herein, the petitioner has prayed to issue a writ of mandamus or any order or directions to hold and declare that the reserved land is de-reserved. She further prayed to issue appropriate writ, order, or directions to respondents to de-reserve, release the reserved land from reservation, and permit to develop the same. The claim of the petitioner is based on the purchase notice. She submitted that the purchase notice sent by her to the respondents is not confirmed. We have discussed the effect of her purchase notice in pursuance of the compensation of TDR to her, which she has declined. We have held that the landowner has no voice to deny or decline the compensation of TDR. Besides, we are also assessing whether the petitioner has any cause of action or her legal rights are infringed or violated.

Section 127 of the Act is relevant to arrive at the proper conclusion in that regard. It has been provided therein that inaction of the Planning Authority to acquire the reserved land or to take effective steps commencing the acquisition within twenty-four months from the date of service of the purchase notice, the reservation of the land is deemed to have lapsed and thereupon, the reserved land shall be deemed to be released from such reservation. Such land becomes available to the owner for the purpose of development. By such legal fiction, the land reservation gets lapsed, the reserved land shall get released from such reservation, and the land is available to the landowner for the purpose of the development. As soon as the land is reserved under the development plan, the right of the owner to develop the land ceases for the first ten years and again for twenty-four months from the service of the purchase notice. But it gets restored due to the inaction of the Planning Authority, as discussed above.

95) Given this deeming provision that has definite consequences, we are of the view that, unless the Planning Authority denies the development of such land after lapsing of the reservation, the landowner has no cause of action to knock the doors of the Court of law. In the case at hand, the petitioner has no case of denial of the permission to develop the reserved land on her request by the respondents. Secondly, we have held that offering compensation of TDR to the petitioner is a step to commence for the acquisition and the acquisition of the reserved land. So far as notification of the lapsing of the reserved land in Official Gazette by the Government, as provided in subsection (2) of section 127 of the 1966 Act is concerned, we are of the view that it is the consequence of non-action of the Planning Authority. Hence, it is the implied duty of the Planning Authority to get it lapsed by notifying in the Official Gazette of the Government. No landowner shall be forced to run pillar to post to get de-reservation notified in the Official Gazette. Hence, we are of the considered view that the petition is bad for want of cause of action to the petitioner.

96) True advice may prevent the unwanted flood of litigation and help relieve the litigants from the hanging sword of the uncertainty of litigation. The Court's verdicts on the subject are delivered to avoid the confusion in the minds of the authorities, which has to make the appropriate decision. However, it is harrowing

to know that even after having catena of judgments of the High Court on the relevant sections of the 1966 Act, the executives and local bodies are stuck to the same stand and do not prefer to follow the judicial pronouncements and drag the people in litigation. It may be stated that the judicial pronouncements are either deliberately neglected or misinterpreted conveniently. The convenient interpretation by the executive is one of the most significant causes for compelling the people into unwanted litigation. Everyone must save the Courts' precious time, which is for genuine and substantial disputes. The various pronouncements that settled the law on the provisions of the 1996 Act, are expected to be followed by concerned, particularly the executives. Such an utter disregard to the judicial pronouncements is also the reason for the mounting the cases in the Court. We hope, the State, Local Government, as well as the responsible Authorities, will care for the legitimate rights of the honest taxpayers, ordinary citizens, implementing the Development Plans in letter and spirit and granting them the amenities as defined in section 2 (2) of the 1966 Act. It may also help the people avoiding the litigation. They shall follow the mandates issued by this Court, particularly in Chalisgaon Municipal Council (supra), henceforth.

97) For the aforesaid reasons, we conclude that the Planning Authority has taken steps to commence the acquisition of the reserved land and acquired the reserved land in time from the service of the purchase notice by offering her compensation of TDR, and the petitioner has no right to refuse the compensation of TDR offered by the respondents. Lastly, even the case of the petitioner is accepted as it is, she has no cause of action to seek relief under Article 226 of the Constitution of India. Hence, the petition stands dismissed.

98) Rule stands discharged. No orders as to costs.