

**(2023) 03 BOM CK 0108**

**In the Bombay High Court**

**Case No : Writ Petition No.2820 Of 2018, 1898 Of 2019**

Indo Nippon Chemical Co. Ltd And Others

APPELLANT

Vs

Mumbai Metropolitan Region Development Authority And  
Others

RESPONDENT

**Date of Decision : 30-03-2023**

**Acts Referred:**

Constitution Of India, 1950 — Article 226  
Development Control and Promotional Regulations, 2034 — Regulation 55  
Maharashtra Regional And Town Planning Act, 1966 — Section 37, 126  
Metro Act, 1978 — Section 2, 2(j), 3, 6, 7, 8, 9, 10., 11, 12, 13, 14, 15, 16, 17, 18,  
19, 20, 21, 22, 23, 24, 25, 26, 32, 32(1)(a)  
Monopolies And Restrictive Trade Practices Act, 1969 — Section 40  
Metro Operations Act, 2002 — Section 4  
Insolvency And Bankruptcy Code, 2016 — Section 7(5)(a)  
Land Acquisition Act, 1894 — Section 5A, 17(1), 17(4)  
Specific Relief Act, 1963 — Section 41(ha)

**Citation : (2023) 03 BOM CK 0108**

**Hon'ble Judges : S. V. Gangapurwala, J;Sandeep V. Marne, J**

**Bench : Division Bench**

**Advocate : M. M. Vashi, Aparna Deokar, M. P. Vashi, Dr. Birendra Saraf, Dr. Akshay Shinde, Pooja Kane Kshirsagar, Dushyant Kumar, Vaibhav M. Parshurami, Roma Naik,, Apoorva Thakre, Apoorva Maurya, Vikrant V. Parshurami, D. N. Mishra, Y. R. Mishra, Shilpa Redkar, Hemant Haryan**

**Final Decision : Dismissed**

## Judgement

Sandeep V. Marne, J

1. Rule. Rule made returnable forthwith. With the consent of the parties, petitions are taken up for final hearing.

THE CHALLENGE:-

2. Petitioners in these two petitions are aggrieved by alignment of Metro Railway Line No.4 since the same affects their properties. The challenge however is not

restricted to the extent of alignment affecting Petitioners' properties, but the entire execution and implementation of Metro Line No. 4 is challenged as being violative of the statutory provisions. Petitioners in Writ Petition No.2820 of 2018 have accordingly sought directions to restrain the respondents from implementing Metro Line No.4 Project and / or taking over its land. Notification dated 23rd March 2017 and Government Resolution dated 30th June 2018 approving alignment of Metro Line-4 and appointing implementing agency are challenged in Writ Petition No.2820 of 2018. By amending the petition notifications dated 25th October 2019, 27th January 2022, 16th February 2022 and corrigendum dated 7th March 2022 initiating land acquisition proceedings are also challenged. In Writ Petition No.1898 of 2019, revision in alignment of Metro Railway Line-4 effected on 27th February 2019 is challenged and direction is sought to restore the original alignment by not constructing any pier on the land or opposite the main entrance of premises of petitioner society. For convenience purpose, Petitioner in Writ Petition No.2820 of 2018 is referred in the Judgment as Petitioner-Indo Nippon and Petitioner in Writ Petition No.1898 of 2019 is referred as Petitioner-Yashwant Society.

3. Petitions challenge execution of work of construction of Metro Line No. 4 (ML-4) in city of Mumbai. ML-4 is 32.32 km elevated metro corridor from Wadala to Kasarvadavali with 30 stations offering connectivity between Mumbai and Thane.

FACTS :-

4. Brief facts of the case as captured from various pleadings filed by the parties are that in May 2004, Mumbai Metropolitan Region Development Authority (MMRDA) prepared Mumbai Metro Rail Master Plan for Mumbai Metropolitan city with 09 proposed metro corridors including ML4. The alignment of ML4 in the master plan was alongside Eastern Express Highway. On 10th October 2009, the Central Government declared that the provisions of Metro Railways (Construction of Works) Act, 1978 (Metro Act 1978) shall apply to the city of Mumbai. MMRDA entered into agreement with Delhi Metro Railway Corporation (DMRC) for modifying the earlier master plan and also for preparation of detailed project report for all metro lines to be constructed in Mumbai. In the meantime, the master plan earlier prepared by MMRDA was forwarded to respondent No.2 – Municipal Corporation of Greater Mumbai (MCGM). In the Draft Development Plan – 2034 published by MCGM vide notification dated 25th February 2015, the tentative alignment of ML4 was shown with a caveat that the alignment would be subject to finalization from various departments. However, on 29th April 2016 MMRDA requested MCGM to delete tentative alignment of ML4 shown in the draft development plan as DMRC was working on ML4 alignment. The DMRC submitted final Detailed Project Report of ML4 to MMRDA in May 2016. The property of petitioner-Indo Nippon was affected by alignment of ML4 as per the said DPR. MMRDA approved DPR prepared by DMRC on 30th June 2016.

5. The Government of Maharashtra issued Government Resolution dated 25th

October 2016 appointing MMRDA as the Project Implementing Agency inter alia for ML4. By that resolution, the alignment of ML4 was also approved by the State Government. In November 2016, MMRDA published ML4 alignment including its influence zones on its website. The alignment so published showed that the land of Petitioner-Indo Nippon was affected. On 29th December 2016, MMRDA issued public notice in local newspapers informing the interested persons to join public consultation scheduled to be held on 16th January 2017 regarding ML4 project. In the public consultation so held on 16th January 2017, Petitioner-Indo Nippon apparently did not participate. The Government of India issued Notification on 23rd March 2017 approving and adding alignment of ML4 project in the Schedule to the Metro Act 1978.

6. Petitioner-Indo Nippon raised its objection on 16th January 2018 after noticing Notification of the Central Government issued on 23rd March 2017. By further letter dated 5th February 2018, it requested for an opportunity to make representation against proposed alignment.

7. On 8th May 2018 the State Government issued Notification sanctioning Development Plan - 2034 of MCGM as well as Development Control and Promotion Regulation - 2034.

8. Petitioner-Indo Nippon is the owner of land bearing CTS No.177 adm.7332.50 sq. mtr. of village Ghatkopar, Mumbai. It claims that land adm.2025 sq. mtr. is directly affected by the alignment of ML4, which represents 27% of its plot. Petitioner-Indo Nippon claims that it became aware of ML4 affecting its land in January 2018 when the officers from Survey Department visited its land. It claims that the alignment of ML4 would affect its commercial operations on the plot where it operates commercial building, two godowns and ready-mix cement plant. That livelihood of more than 200 employees depends on its operations. Petitioner-Indo Nippon has accordingly filed Writ Petition No.2820 of 2018 challenging the alignment of ML4. It has challenged the notification dated 23rd March 2017 issued by the Central Government adding the alignment of ML4 in the Schedule-II of Metro Act 1978. It also challenges the Government Resolution dated 25th October 2016 by which the State Government has granted approval for implementation of ML4 project. During pendency of the petition, MMRDA issued notice dated 25th October 2019 for acquisition of Petitioner-Indo Nippon's land, which notice has also been challenged by amending the petition. During pendency of the petition the Collector, Mumbai Sub-Urban District issued notifications dated 27th January 2022 and 16th February 2022 and corrigendum dated 7th March 2022 for acquisition of petitioner's property under the provisions of Section 126 of the Maharashtra Regional and Town Planning Act, 1966 (MRTP Act), which are also challenged in the present petition.

9. Writ Petition No.1898 of 2019 is filed by Petitioner-Yashwant Society, which is a cooperative housing society comprising 3 buildings and is in occupation of land bearing plot No.236A. It is stated that Metro Railway's officers visited the premises of society in April 2019 for the purpose of erecting piers of ML4 in such

a manner which would affect its property. Petitioner society accordingly wrote to MMRDA on 19th April 2019 for revocation of decision for erecting piers on the footpath adjacent to its property. Petitioner society claims that the alignment of ML4 at Goradia Nagar Junction was deliberately changed by MMRDA at the behest of one Mr. Goradia, who owns a bungalow opposite petitioner society. It has accordingly filed the present petition challenging revision of alignment of ML4 and seeks restoration of the original alignment.

#### SUBMISSIONS:-

10. Appearing for Petitioner-Indo Nippon, Mr. Vashi the learned senior advocate would submit that implementation of ML4 project is being done by respondent No.1 in gross violation of the provisions of Metro Act 1978. He would further submit that the acquisition proceedings initiated for acquiring land of petitioner is also in violation of the Metro Act 1978. He would submit that under Section 3 of Metro Act 1978, only Central Government can appoint General Manager and since MMRDA has not been appointed as a General Manager by the Central Government, MMRDA has no authority to implement or to take any steps for establishing ML4. Mr. Vashi would further submit that as ML4 project is brought within the ambit of provisions of Metro Act, 1978, MMRDA, which is not appointed under the provisions of that Act, has no right to take any steps for implementation of ML4. That appointment of MMRDA as Special Planning Authority under the provisions of Section 40 of the MRTPL Act by the State Government is inconsequential and that MMRDA cannot derive any power of land acquisition based on such notification.

11. Mr. Vashi would further contend that the alignment of ML4 is deliberately shifted from time to time as per the whims and fancies of MMRDA. That State Government and MMRDA have adopted faulty procedure in obtaining in-principle approval of the draft metro alignment and then made changes in the same during execution. Mr. Vashi would further submit that the final alignment of ML4 does not tally with the alignment shown in the DP-2034. That the alignment is being changed without amending the development plan as required under the provisions of MRTPL Act. He would contend that MMRDA has failed to obtain requisite environmental clearances and NOCs from Fire Department, Forest Department, etc. That in absence of such permissions, commencement of work by MMRDA is illegal.

12. Mr. Vashi would further submit that once the provisions of Metro Act, 1978 are invoked, the entire process of implementation of metro project, including land acquisition, must be done under that Act alone. That therefore the acquisition process initiated by the MMRDA amounts to violation of provisions of Metro Act, 1978. He would submit that right to property, though not a fundamental right, is an important constitutional right, which cannot be taken away without strict compliance with the provisions of statute providing for land acquisition. In support of his contention, he would rely upon judgment in *Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Coke & Chemicals Ltd. &*

Ors., (2007) 8 SCC 705. That even maintenance and operations of ML4 would be covered by central legislation namely The Metro Railways (Operations and Maintenance) Act, 2002 (Metro Operations Act 2002). That the notification dated 23rd March 2017 issued by the Central Government is bad in law as same is issued without following procedure laid down in Chapter III of Metro Act 1978. Mr. Vashi would therefore contend that the implementation and execution of ML4 project by MMRDA and all the impugned notifications are in gross violation of provisions of Metro Act, 1978 and deserve to be quashed and set aside.

13. Mr. Parshurami learned counsel appearing for petitioner – Yashwant Society would submit that the revision in ML4 alignment has been effected by MMRDA on 27th February 2019 bypassing the norms to favour Mr. Garodia, whose bungalow is opposite of the main entrance of the petitioner society. That such change in alignment is a case of abuse and misuse of powers on the part of MMRDA. That no notice was issued to petitioner before effecting such change in alignment. That under garb of execution of infrastructure project, MMRDA cannot be permitted to violate the provisions of Metro Act 1978. That the society will lose potential of redevelopment of its property, which cannot be compensated in terms of money. That the structure of building of petitioner society would be affected on account of pre-construction and post construction activities. That the Collector, Mumbai Sub-Urban has unilaterally taken possession of land adm. 85 sq. mtr. belonging to petitioner society by passing order dated 16th December 2022. The MMRDA immediately demolished the compound wall and commenced work of erecting piers thereby causing loss and damage to Petitioner's property. Petitioner society has accordingly filed the present petition challenging the revised alignment of ML4 and seeks restoration of previous alignment. Mr. Parshurami would rely upon the judgments of the Apex Court in Vidharbha Industries Power Limited Vs. Axis Bank Limited, (2002) 8 SCC 352 and D. B. Basnett (Dead), through Legal Representatives Vs. Collector, East District, Gangtok Sikkim and Anr., (2020) 4 SCC 572.

14. Dr. Saraf, the learned Advocate General appearing for MMRDA and the State Government would oppose the petitions. He would question locus standi of Petitioners to raise various issues about implementation of ML4 project. He would submit that all the statutory provisions have been followed to the hilt while finalizing alignment of ML4, for acquisition of property and for execution of the project. He would counter Petitioners' submission about nonappointment of General Manager for ML4 by Central Government by submitting that the word used under Section 3 of the Metro Act 1978 is 'may'. That the Metro Act 1978 does not cast any obligation on the Central Government to appoint a General Manager. That it is lawful for the State Government to appoint an agency for Metro Line Projects. He would then invite our attention to the provisions of Metro Operations Act 2002 which makes a distinction between Government Metro Railways and Non-Government Metro Railways. That ML4 is a non-Government Metro Railway, for which the State Government is entitled to appoint General Manager. He would submit that the Central Government has not appointed

General Manager for several Metro Lines in the country, in which Central Government has stakes. That the Central Government has not objected to MMRDA implementing ML4 and that petitioners would have no locus to question MMRDA's right to implement the project, as what is filed by petitioners is not a public interest litigation.

15. Dr. Saraf would then deal with the issue of procedure under Metro Act 1978 not being followed for land acquisition. He would submit that provisions of Metro Act 1978 offer only an option to the State Government and MMRDA to acquire land for metro line project. That the alignment of ML4 is incorporated in the development plan for city of Mumbai and that therefore lands affected by the alignment of ML4 have been reserved in the development plan. That therefore MMRDA and State Government are competent acquire lands under the provisions of MRTP Act. Dr. Saraf would then demonstrate as to how the alignment of ML4 has been incorporated in development plan 2034. He would refer to the provisions of Regulation 55 of DCPR 2034 which provides for automatic amendment of development plan upon any modification introduced in alignment of metro line by the appropriate authority and sanctioned by the State Government. He would submit that objections were invited before finalizing ML4 alignment and that petitioner-Indo Nippon failed to raise any objection during the public hearing conducted by MMRDA. In support of his contentions, Dr. Saraf would rely upon following judgments.

- i) Shanta Talwar and Another Vs. Union of India and Others, (2011) 5 SCC 287.
- ii) Rajinder Kishan Gupta & Anr. Vs. Union of India & Ors., (2010) 9 SCC 46.
- iii) Jamshed Noshir Sukhadewalla Vs. Union of India & Ors., Writ Petition No.2890 of 2018 (OS) decided on 30th November 2018, High Court of Bombay.
- iv) Godrej & Boyce Manufacturing Co. Ltd. Vs. The State of Maharashtra & Ors., Writ Petition No.3537 of 2020 (OS) decided on 9th February 2023, High Court of Bombay.
- v) N. G. Projects Ltd. Vs. Vinod Kumar Jain & Ors., (2022) 6 SCC 127.
- vi) Vidharbha Industries Power Limited Vs. Axis Bank Limited, (2002) 8 SCC 352.
- vii) Brahampal Alias Sammay & Anr. Vs. National Insurance Company, (2021) 6 SCC 512.

#### REASONS AND ANALYSIS :-

16. In both the petitions challenge is raised to the manner in which ML4 project is implemented and executed by the State Government and MMRDA. Petitioners in both the petitions have alleged violation of provisions of Metro Act, 1978 in execution of the project, particularly with regard to change in alignment and acquisition of petitioners' properties. It would therefore be necessary to refer to some of the important provisions of the Metro Act, 1978.

17. Section 2 of the Metro Act, 1978 defines 'Metro alignment', 'Metro Railway' and 'Metro Railway Administration' as under:

2.(h) "metro alignment" , in relation to any [metropolitan city, metropolitan area and the National Capital Region,] means such alignment of the metro railway as is specified in the Schedule under that city and includes the metro railway;

2.(i) "metro railway" means a metro railway or any portion thereof for the public carriage of passengers, animals or goods and includes,

(a) all land within the boundary marks indicating the limits of the land appurtenant to a metro railway,

(b) all lines of rails, sidings, yards or branches worked over for the purposes of, or in connection with, a metro railway,

(c) all stations, offices, ventilation shafts and ducts, ware-houses, workshops, manufactories, fixed plants and machineries, sheds, depots and other works constructed for the purpose of, or in connection with, a metro railway;

2. (j) "metro railway administration", in relation to any metro railway, means the General Manager of that metro railway.

18. Section 3 of the Act provides for appointment of General Manager for every metro railway and reads thus.

3. General Manager - The Central Government may, for the purpose of this Act, appoint a General manager for every metro railway.

19. Thus, provisions of Section 3 read with the definition of 'Metro Railway Administration' under Section 2(j) of the Act would show that General Manager appointed under Section 3 becomes the Metro Railway Administration. Chapter 3 of the Act deals with acquisition and confers power on the Metro Railway Administration to acquire land for implementation of Metro Railway. Sections 6 to 16 of the Act provide for procedure to be adopted by the Metro Railway Administration for acquisition of land. It is common ground that the acquisition in the present case is not effected under the provisions of Metro Act, 1978 and therefore we need not burden in this judgment by reproducing those provisions of the Act. Section 17 provides that the provisions of Land Acquisition Act 1894 would not apply to any acquisition under the provisions of Metro Act, 1978.

20. Chapter 4 of the Metro Act 1978 provides for construction of works. Section 18 and 19 deals with the functions and powers of Metro Railway Administration. Section 20 to 26 deals with regulatory functions of Metro Railway Administration in respect of buildings or construction coming up in the vicinity of Metro Railway and damages caused as a consequence of construction of Metro Railway Project.

21. Metro Act 1978 initially applied to the Metropolitan city of Kolkata and by various amendments, application of the Act has been extended to various other cities. By Notification dated 16th October 2009, the Central Government declared

that the provisions of Metro Act 1978 would apply to the city of Mumbai.

22. There is another enactment, to which reference is made by the parties namely The Metro Railways (Operations and Maintenance) Act, 2002 (Metro Operations Act 2002). This Act essentially deals with operation and maintenance of a metro railway after its construction. It is common ground that since construction of ML4 is not yet complete, the provisions of the Metro Operations Act, 2002 would have no application as of now to ML4. Therefore, it is not necessary to refer to various provisions of the Metro Operations Act, 2002. However, some of the submissions do touch upon the provisions of Metro Railways Act, 2002 and while dealing with those submissions, the relevant provisions thereof have been discussed below.

23. As observed above, the initial tentative alignment of ML4 in the Mumbai Metro Master Plan provided by MMRDA was to proceed alongwith Eastern Express Highway. However subsequently, MMRDA entered into agreement with DMRC, who prepared the detailed project report of all metro lines to be constructed in Mumbai. DMRC submitted its detailed project report in respect of ML4 to MMRDA in May 2016 suggesting the revised alignment of ML4. MMRDA has placed on record the revised alignment of ML4 as per DPR prepared by DMRC at Annexure AR-26 and AR-27. It is the case of MMRDA that the revised alignment of ML4 affected the property of petitioner-Indo Nippon. The DPR prepared by DMRC came to be approved by MMRDA on 3rd June 2016. MMRDA thereafter published ML4 alignment including its influence zone on its website. Thus, as early as in May 2016 the alignment of ML4 affected the property of petitioner-Indo Nippon. On 29th December 2016, MMRDA issued public notice in local newspapers informing public at large that it had undertaken implementation of ML4 and scheduled public consultation with various stakeholders and public at large to share the details of the project, to obtain their views and suggestions. Such public consultation was held on 16th January 2017. The Central Government thereafter issued notification dated 23rd March 2017 approving alignment of ML4 by adding the same under Schedule-2 of the Metro Act 1978.

24. Having set out the provisions of Metro Act 1978 and the background in which the alignment of ML4 came to be approved by the Central Government and included in the Metro Act 1978, we now proceed to examine the contentions raised by petitioner Indo-Nippon.

25. The first contention of petitioner Indo-Nippon is that in absence of the appointment of a General Manager under provisions of Section 3 of the Metro Act 1978, MMRDA has no authority to execute and implement ML4. We have already reproduced provisions of Section 3, under which the Central Government is empowered to appoint General Manager, who then becomes Metro Railway Administration within the meaning of Section 2(j). Admittedly, the Central Government has not appointed any person or entity as a General Manager in respect of ML4 under Section 3 of the Act. However, under Government Resolution dated 25th October 2016, the State Government has granted approval



for implementation of ML4 through MMRDA. It is petitioner's contention that the State Government has no authority to appoint MMRDA as the implementing agency for ML4 as State Government has not been conferred with any power to do so under the provisions of Metro Act 1978.

26. On the contrary it is the case of the State Government and MMRDA that the word used in Section 3 of Metro Act 1978 is 'may' and that it is merely an enabling provision. That the Central Government has an option of appointing a General Manager and that the Central Government has not exercised that option, not only in the present case but also in several other metro lines implemented throughout the country. Dr. Saraf has taken us through various other provisions of the Metro Act 1978 which uses words 'may' and 'shall' suggesting different connotations. He has also taken us through the provisions of Metro Operations Act, 2002 wherein again the word 'shall' is consciously used in several provisions.

27. Since the word used in Section 3 of the Metro Act 1978 is 'may', it cannot be contended that a General Manager must be appointed by the Central Government for every metro project. Under Section 4 of the Metro Operations Act, 2002, the Central Government is under obligation to appoint General Manager. Section 4 reads thus: -

"4. Appointment of General Manager - (1) The Central Government shall, by notification, appoint a person to be the General Manager of a Government metro railway.

(2) The general superintendence and control of a Government metro railway shall vest in the General Manager."

Section 3 of the Metro Act 1978, however uses the word 'may'. It reads thus:

"3. General Manager - The Central Government may, for the purpose of this Act, appoint a General manager for every metro railway.

28. Thus the word used in Section 4 of the Metro Operations Act, 2002 is 'shall'. As against this, Section 3 of the Metro Act 1978 uses the word 'may', has to be read in a different context than other provisions using the word 'shall'. Section 3 of the Metro Act 1978 does not make it imperative to appoint a General Manager for a metro line. Use of word 'may' in Section 3 of the Metro Act 1978 and 'shall' under Section 4 of the Metro Operations Act, 2002 are intended to connote different meanings. Conscious use of the word 'may' in Section 3 of the Metro Act 1978 as opposed to use of the word 'shall' in several other provisions of that Act as well as in Section 4 of the Metro Operations Act, 2002, would leave no doubt about the position that appointment of a General Manager for every Metro Railway by the Central Government is not mandatory.

29. In this regard reliance placed by Dr. Saraf on judgment in Vidarbha Industries Power Ltd. (supra) is apposite. In paragraph 63, 64 and 78 of the judgment it is held as under:

"63. The meaning and intention of Section 7(5)(a) of the IBC is to be ascertained from the phraseology of the provision in the context of the nature and design of the IBC. This Court would have to consider the effect of the provision being construed as directory or discretionary.

64. Ordinarily the word "may" is directory. The expression 'may admit' confers discretion to admit. In contrast, the use of the word "shall" postulates a mandatory requirement. The use of the word "shall" raises a presumption that a provision is imperative. However, it is well settled that the prima facie presumption about the provision being imperative may be rebutted by other considerations such as the scope of the enactment and the consequences flowing from the construction.

78. The Legislature has consciously differentiated between Financial Creditors and Operational Creditors, as there is an innate difference between Financial Creditors, in the business of investment and financing, and Operational Creditors in the business of supply of goods and services. Financial credit is usually secured and of much longer duration. Such credits, which are often long term credits, on which the operation of the Corporate Debtor depends, cannot be equated to operational debts which are usually unsecured, of a shorter duration and of lesser amount. The financial strength and nature of business of a Financial Creditor cannot be compared with that of an Operational Creditor, engaged in supply of goods and services. The impact of the non-payment of admitted dues could be far more serious on an Operational Creditor than on a financial creditor."

30. In *Bramhapal* (supra) the Supreme Court has held in paragraph 11 as under:-

11. Ordinarily, the word "may" is not a word of compulsion. It is an enabling word and it only confers capacity, power or authority and implies discretion. It is used in a statute to indicate that something may be done which prior to it could not be done.

31. Therefore, it is difficult to hold that General Manager for every Metro Railway Project must be appointed by Central Government under Section 3 of the Metro Act 1978. Petitioners have not countered the assertion of MMRDA that for several other Metro Lines, the Central Government has chosen not to appoint a General Manager, even though it has stakes in those projects. The Central Government in the present case has included alignment of ML-4 in Schedule to the Metro Railways Act 1978, but has left the implementing agency to be appointed by the State Government, which has appointed MMRDA as the implementing agency for ML4. Government of India has also issued a clarification vide letter dated 17th April 2018 that it can be inferred that competent authority of MMRDA can be considered as the competent authority for implementation of ML4. Thus, far from objecting to MMRDA acting as the implementing agency for ML4, the Central Government has in fact approved its authority to implement the project. We must also bear in mind the fact that what are filed by petitioners are not petitions in public interest. In their Writ Petitions, Petitioners are essentially

aggrieved by alignment of ML4 to the extent it affects their properties. Petitioners did not question authority of MMRDA to implement ML4 project in the year 2016 when MMRDA was appointed as the agency for execution of the project. The objections are raised by Petitioners in 2018 and 2019 only after noticing that their properties are being affected by alignment of ML4. Therefore, the scope and ambit of present petitions cannot be enlarged beyond their principal grievance to issues such as authority of MMRDA to implement the project. We therefore reject the objection raised by petitioners in this regard.

32. The second objection of petitioner Indo-Nippon is that the provisions of Chapter III of the Metro Act 1978 are not followed. As observed above, Chapter III of the Act deals with land acquisition. It is petitioner's contention that before finalizing the alignment of a metro line under Section 32(1) (a) of the Act, the Metro Railway Administration is first required to follow provisions of Chapter III of the Act, which includes publication of notification for acquisition, carrying out survey, hearing objections, declaration of acquisition, etc. Connected with this objection is the other objection about lack of authority on the part of MMRDA to resort to acquisition under the provisions of MRTP Act. We therefore proceed to deal with both the objections together.

33. It is the contention of MMRDA that the provisions of Metro Act 1978 merely enable the Metro Railway Administration to acquire lands and buildings and mere inclusion of an enabling provision does not mean that the agency is prohibited from resorting to land acquisition under provisions of other enactments.

34. In Shanta Talwar (Supra) the Apex Court dealt with the issue of existence of multiple statutes permitting land acquisition for public purposes. It was contended by the appellants therein that in view of the provisions of Metro Act 1978, the land for the purpose of construction of Metro Railway could and should be acquired afresh under the provisions of that Act and the provisions of Land Acquisition Act could not be invoked. The exact objection is captured by the Apex Court in paragraph No.7 of the judgment which reads thus:-

"7. It was further contended by the counsel appearing for the appellants that the Metro Railways Act, which is a specific law on the subject, having specifically excluded incorporation of any law in the nature of Sections 17(1) and 17(4) of the LA Act, which provides for dispensation of the enquiry as envisaged under Section 5-A of the LA Act, the respondents acted illegally and without jurisdiction in taking resort to the said urgency provisions of the LA Act for the purpose of acquisition of land of the appellants, particularly, when there is no such provision in the Metro Railways Act for dispensation of such enquiry and providing for an opportunity of raising objections by the appellants with regard to the very act of acquisition."

35. The Apex Court then proceeded to answer the issue by holding in paragraph No.11, 15, 16, 20 and 22 of the judgment as under:-

"11. It is not in dispute that in Delhi land can be acquired by the Government, for

public purpose, under the provisions of LA Act. The appellants are candid in accepting the importance of the MRTS project for the people of Delhi and also the fact that every time the machinery under the LA Act is put into motion, the provisions of Metro Railways Act have never been invoked.

15. Relying on the Statement of Objects and Reasons, the Preamble and the abovesaid provisions of the Metro Railways Act it was contended by the counsel appearing for the appellants that in view of the incorporation of the said provisions in the said Act, there was an implied repeal of the Land Acquisition Act so far as it concerns construction of Metro Railways or other works connected therewith. Similar contentions were also raised before the High Court and the two Division Benches, who heard the matters in question dismissed the said plea holding that the two Acts are two independent Acts and it is for the authority to decide as to which Act would be made applicable in a given case.

16. However, in a situation, where recourse is taken to the provisions of the LA Act for acquiring a property for construction of Metro Railways or other works connected therewith, the provisions mentioned in the LA Act could and would only be made applicable and no provision of Metro Railways Act could be taken resort to or making use of. Similarly when recourse is taken for acquiring land under the Metro Railways Act, no provision of the LA Act would or could be made applicable as both the two Acts contain separate provisions, although they are similar in some respect.

20. We are however unable to agree to and accept the aforesaid submission for the learned counsel for the appellants for we do not believe that it was intended by the legislature to do away with the applicability of the LA Act for the purpose of acquisition of land for construction of Metro Railways or other works connected therewith by enacting the Metro Railways Act. The aforesaid Metro Railways Act was enacted by the legislature, in order to provide additional provisions for construction of Metro Railways or other works connected therewith but it was not made obligatory by the legislature to invoke only the provisions of the said Metro Railways Act in case of acquisition of land for construction of Metro Railways or other works connected therewith. It was left upon to the discretion of the concerned competent authority to take recourse to any of the aforesaid provisions making it clear that if resort is taken to the provisions of LA Act, the said provisions could only be made applicable and no provision of the Metro Railways Act would then be resorted to. Similarly, if provisions of the Metro Railways Act is taken resort to, then only such provisions would apply and not the provisions of the LA Act.

22. Wherever a particular State Act incorporates the provision of the LA Act by way of reference or by way of incorporation by the legislation, the provisions of the LA Act automatically become applicable for the purpose of carrying out the object of the said particular State Act but wherever such power is not given there is no bar for taking recourse to any of the Acts which are available on the subject. There was no bar or prohibition for the authority to take recourse to the

provisions of the LA Act which is also a self-contained Code and also could be taken recourse to for the purpose of acquiring land for public purposes like construction of Metro Railways and works connected therewith. In all these cases no other provision except the provisions of the LA Act have been resorted to and, therefore, the appellants cannot have any grievance for taking recourse to the said provision.”

(emphasis ours)

36. The issue of interplay between multiple statutes permitting land acquisition for implementation of a metro railway project was also raised before the Apex Court in *Rajinder Kishan Gupta* (supra). The issue before the Apex Court was whether the DMRC could resort to the provisions of Land Acquisition Act in the light of existence of the specific Act viz. Metro Act 1978. It was contended before the Apex Court that in view of the provisions of Metro Act 1978, DMRC could not invoke urgency provisions under the Land Acquisition Act thereby depriving appellants right under Section 5(A). The Apex Court held in paragraph No.16 and

21 in *Rajinder Kishan Gupta* (supra) as under:-

“16. The above provisions make it clear that if any land is required/needed for the construction works relating to metro railways in the metropolitan cities, the authorities are free to apply the Metro Railways Act and acquire any land. But at the same time, there is no specific prohibition in the Metro Railways Act from applying the Land Acquisition Act to acquire any land for a public purpose, more particularly, for the construction works relating to metro railways in the metropolitan cities.

21. It is clear that in spite of the provisions of the Karnataka Industrial Areas Development Act, 1966, this Court in *S. S. Darshan* case upheld the action of the Karnataka Government in invoking the Land Acquisition Act (Central Act) for acquiring lands for a public purpose of setting up the Information Technology Park and to meet the need of additional land contiguous to the area acquired earlier. This decision is squarely applicable to the case on hand. Even though a special enactment, namely, the Metro Railways Act, 1978 is available, in view of urgency and in the absence of similar urgency clause in the Metro Railways Act as that of the Land Acquisition Act, the Lt. Governor, Delhi issued a fresh notification for acquisition under the Land Acquisition Act. Accordingly, we reject the first contention.”

(emphasis ours)

Thus, the law with regard to acquisition of land by invoking provisions of another statute, despite existence of acquisition provisions in the Metro Act 1978, is now well settled. There is no embargo on the implementing agency from acquiring land under other statutes. Therefore, the action of MMRDA in resorting to provisions of MRTP Act for acquisition of land cannot be faulted only on the ground that the Metro Act 1978 as well provides for acquisition of land.

37. Faced with the exposition of law in above judgments, Mr. Vashi would make an alternate submission relying on the observations of the Apex Court in paragraph No.20 of the judgment in Shanta Talwar (supra) that once the provisions of Metro Act 1978 are invoked, the acquisition must be conducted under the provisions of that enactment alone. That though discretion is available to the Metro Railway Administration to choose between two enactments, once a particular enactment is invoked, the acquisition must also be conducted and completed under the provisions of that enactment alone. This contention referable to the Notification of the Central Government by which ML4 alignment has been included in the Schedule-2 of the Metro Act 1978. It is contended that by doing so, the provisions of Metro Act 1978 are invoked and that therefore every action for implementation of ML4 project, including land acquisition, must be undertaken under that enactment alone. We are unable to agree. In Shanta Talwar (supra) the Apex Court has held that the Metro Railway Administration would be at a discretion to invoke provisions of another enactment for acquisition of land and buildings for execution of Metro Railway Project. Mere inclusion of ML4 in Schedule to the Metro Act 1978 would not mean that provisions of Chapter III of the Act are invoked. The Metro Line can be established only under the provisions of Metro Act 1978 and that therefore it was incumbent on the Central Government to include ML4 alignment in the Schedule 2 of the Metro Act 1978. However, mere inclusion of alignment of ML4 in the Schedule to the Act would not mean that the Metro Railway Administration has invoked provisions of Chapter III of the Act. What is held in Shanta Talwar (supra) by the Supreme Court is that if resort is taken to the provisions of Land Acquisition Act, the said provisions could only be made applicable and that provisions of Metro Act 1978 cannot be resorted to. Similarly, if acquisition is resorted to under the provisions of Metro Act 1978, then only those provisions would apply and not the provisions of Land Acquisition Act. In the present case petitioners have not placed on record any material to show that the provisions of Chapter III of Metro Act 1978 were invoked, in any manner, by MMRDA for land acquisition. On the contrary it is specific case of petitioners that the provisions of Chapter III of the Act are not followed by MMRDA. In this regard we reproduce the heading of legal submission No. II of petitioner Indo-Nippon:

“II. The provisions of Chapter III of the Metro Act 1978 are not followed.”

38. We therefore hold that for the purpose of acquisition of lands and buildings, a Metro Railway Administration is entitled to choose between provisions of Metro Act 1978 or any other enactment enabling land acquisition. In the present case MMRDA has resorted to the provisions of MRTP Act for land acquisition and we see no error on the part of MMRDA in doing so. These objections of the petitioners therefore deserve to be rejected.

39. The alignment of ML-4 has been added to the Schedule of Metro Act 1978 by Notification dated 23rd March 2017 issued by the Central Government. The Notification dated 23rd March 2017 has been issued under Section 32 of the

Metro Act 1978 which reads thus:

32. Power to alter the entries in the Schedule.—(1) The Central Government may, by notification in the Official Gazette,—

(a) add to the Schedule the metro alignment in respect of a metropolitan city, metropolitan area and the National Capital Region to which this Act is made applicable under sub-section (3) of section 1;

(b) alter any metro alignment specified in the Schedule if it is of opinion that such alteration is necessary for the construction and maintenance of the metro railway to which such alignment relates.

(2) Every notification issued under sub-section (1) shall, as soon as may be after it is issued, be laid before each House of Parliament.

The Notification dated 23rd March 2017 is challenged by Petitioner-Indo Nippon. We do not find that any valid ground is made out by Petitioner in support of its challenge to the Notification.

40. We now turn to Petitioners' objection that the alignment of ML4 does not tally with the alignment shown in the Development Plan-2034 of MCGM. It is contended by petitioners that every time the alignment of ML4 is modified, procedure under the provisions of MRTP Act is required to be followed for amendment of the development plan. That since the development plan has not been amended on every occasion of change in alignment of ML4, such change in the alignment and consequential reservation of lands affected by such modification would fall foul of provisions of Section 37 of the MRTP Act.

41. We have already discussed detailed history of finalization of alignment of ML4 while narrating facts of the case. The initial tentative alignment of ML4 prepared by MMRDA was included in the Draft Development Plan-2034 by MCGM at the request of MMRDA. However, since MMRDA subsequently appointed DMRC to prepare final DPR in respect of metro lines in Mumbai city, it requested MCGM to delete the tentative alignment of ML4 shown in the draft Development Plan. After the finalization of alignment of ML4, it was published by MMRDA on its website in November 2016 and the public consultation was held on 16th January 2017 to consider the suggestions and objections to the alignment. In the meantime, MCGM was requested by MMRDA to include the alignment of ML4 in the Draft Development Plan 2034.

42. On 8th May 2018, the State Government sanctioned Development Plan-2034 of MCGM as well as the DCPR 2034. In the Development Plan so sanctioned, the ML4 alignment was not incorporated therein. MMRDA therefore requested MCGM to modify / amend the Development Plan by including alignment of ML4 therein. However, on 4th March 2020, MCGM took a stand that under Regulation 55 of DCPR 2034, any modification introduced in Metro/Mono corridors and sanctioned by Government stands automatically amended on the Development Plan. MCGM therefore called upon MMRDA to forward alignments in respect of Metro / Mono

corridors to take cognizance thereof in the Development Plan alongwith copy of sanction order of the State Government. By another letter dated 4th March 2020, MCGM, referring to the provisions of Regulation 55 of DCPR 2034, brought to the notice of MMRDA that alignment available on MMRDA's website differed from the alignment shown in the sanctioned DP. MMRDA was therefore requested to send the alignment of Metro / Mono corridors together with its influence zones to MCGM along with copy of sanction order of the State Government. By its letter dated 14th June 2021, MCGM repeated the request. MMRDA by its letter dated 21st June 2021 forwarded the modified alignment as per master of DP sheets and notification to MCGM which included alignment of ML4. By letter dated 29th February 2021, MCGM forwarded speaking order dated 10th November 2021 of the Municipal Commissioner reflecting alignment with its influence zones in DP 2034 inter alia in respect of ML4. MMRDA has accordingly placed on record relevant extract of final DP reflecting the alignment of ML4.

43. MMRDA and MCGM thus rely on provisions of Regulation 55 of the DCPR 2034 which reads thus :-

"55. Alignment of Metro/Mono/Coastal Road /Elevated Corridors/Corridors of Mass and Rapid Transport System Any alignment modifications introduced in Metro/Mono/Coastal Road/Elevated Corridors/Corridors of Mass Rapid Transport System, including BRTS, by the Appropriate Authority and sanctioned by Government shall stand automatically amended on the Development Plan as modified. Furthermore, any new "Transport Corridor" such as Metro/Mono/Coastal Road/Elevated Corridors/Corridors of Mass Rapid Transit System, including BRTS, proposed by Appropriate Authority and sanctioned by Government, shall stand automatically added on to Development Plan.

[After finalization of site for Metro Car shed by the Competent Authority, the portion of land reserved/earmarked for the Metro Car Shed in DP, if not required by the Competent Authority subsequently, shall be deemed to be deleted from a the said reservation and included in adjoining predominant zone. In such case, the Municipal Commissioner shall issue a written, well reasoned, speaking order modifying the DP to that effect and copy of such order along with certified part plan, shall be forwarded to Govt. and Director of Town Planning, Pune for record.]

44. Thus, provisions of Regulation 55 provide for automatic amendment of Development Plan upon any modification introduced in the alignment of metro line by the appropriate authority and sanctioned by the State Government. Thus, in respect of alignment of metro line, there is no necessity of amending the Development Plan every time any modification is effected and sanctioned by the State Government. Final alignment of ML4 thus stands included in the Development Plan 2034 of MCGM. The objection of Petitioner-Indo Nippon is thus baseless and deserves rejection.

45. Since the alignment of ML4 stands included in the Development Plan 2034 by MCGM, the land of petitioners affected by alignment of ML4 would stand reserved



in the Development Plan. Since the land is reserved in the DP, it is open for the competent authority to acquire the same under provisions of Section 126 of the MRTTP Act. Thus, the process of acquisition of land of petitioners undertaken by the State Government under provisions of Section 126 of the MRTTP Act cannot be found fault with.

46. The next objection of Petitioner-Indo Nippon is that the alignment of ML4 is not fixed and finalized till today and that the same is frequently changed as per whims and fancies of officials of MMRDA. This objection requires summary rejection as alignment of ML4 has not only been finalized but also stands included in the Development Plan 2034. There is no question of the alignment being changed as per whims or fancies of officers of MMRDA. Unless the modification in the alignment is sanctioned by the State Government, MMRDA cannot implement such change in the alignment. Again we are not considering larger issues in the present petitions as the grievance of petitioners are limited to their land being affected by the alignment of ML4. There is no doubt about the position that the part of land of petitioner-Indo Nippon is affected by and reserved for implementation of ML4 project. Its land is affected right since May 2016, when DMRC submitted final Detail Project Report to MMRDA. In the publication made by MMRDA in November 2016 showing alignment of ML4 and its influence zones, land of petitioner-Indo Nippon was affected. Thus, land of petitioner has been affected by alignment of ML4 right since 2016 and therefore the contention with regard to frequent changes in the alignment are otherwise irrelevant.

47. Petitioner-Indo Nippon has also raised the issue of MMRDA not obtaining various permissions such as environmental clearance from MCZMA, NOCs from Fire Department, Forest Department, etc. for execution of ML4 project. We fail to comprehend as to how petitioner-Indo Nippon can raise these issues in a Writ Petition filed for enforcement of its private rights restricted to its property. Nonetheless MMRDA has placed on record by way of a compilation following clearances obtained for ML4 project:

- i) Clearance of the Forest Department dated 21st May 2021.
- ii) Clearance of Maharashtra Coastal Zone Management Authority (MCZMA) dated 17th and 18th January 2017.
- iii) Clearance of State Environmental Impact Assessment Authority (SEIAA) dated 27th November 2018.
- iv) Tree cutting permissions granted by MCGM and Thane Municipal Corporation.
- v) Fire NOC issued by MCGM.

The contention raised by the petitioner-Indo Nippon is thus totally misplaced and deserves rejection.

48. Last submission raised by petitioner-Indo Nippon about change in alignment

of ML4 being influenced by political interference is not seriously pressed by Mr. Vashi and therefore we need not go into the said contention.

49. So far as Writ Petition No.1898 of 2019 filed by Yashwant Society is concern, some of the contentions are similar to the ones raised by Indo Nippon, which have already been dealt with above. The main contention of Yashwant Society is that the alignment of ML-4 is deliberately changed to favour Mr.Garodia, whose bungalow is located opposite the society. Petitioner thus alleges malice in altering the alignment of ML-4, which deserves summary rejection for variety of reasons. Firstly Mr. Garodia, against whom allegations are leveled, is not impleaded as a party respondent to the present petition. Also not impleaded any particular officer(s) of MMRDA who allegedly effected such a change. We therefore cannot test merits of this contention. Secondly, no material is produced by petitioner Yashwant Society in support of its allegation. Thirdly, serious allegation of diversion of alignment of metro railway cannot be permitted to be raised in such a casual manner. Lastly, MMRDA has filed Affidavit-in-Reply pointing out that in the original alignment, buildings of petitioner society were affected. That the alignment was changed by shifting the location of pier to the footpath to save the structure of the petitioner's buildings. We reproduce paragraph 6 and 7 of the affidavit filed by MMRDA.

"6. I say that the Petitioner has alleged that the Petitioner is aggrieved by the "sudden change in the alignment of the Metro Line 4 route from the original route which was from Eastern Express Highway". However, it is denied that the alignment of Metro Line 4 (ML 4) was changed suddenly from original route of Eastern Express Highway (EEH) to Garodia Nagar without any prior information to the public at large. In this regard I say that various alternative routes were explored and analyzed for technoeconomical feasibility. Thereafter the present route-which-is best possible route was finalized at the MMRDA and State Government Level. Thereafter the public hearing took place on 16th January, 2017. Ultimately after considering all the suggestions, the best possible route has been notified in Government Gazette dated 23rd March, 2017.

7. First and foremost, the Portioners have contended that the Original Route of the ML-4 as depicted in the Draft Development Plan of 2034 (E.P.) Part published in 2015, 2016 and 2018 respectively is different from the route published in the impugned notification dated 23rd March, 2017. In this regard it is submitted that so far as Metro projects are concerned, MMRDA has been appointed as the Special Planning Authority by the State Government. For ML-4 Project MMRDA has been appointed as the Special Planning Authority vide Govt. Resolution dated

30 th June, 2018. The Corporation is not the planning authority for Metro Projects. Even otherwise the Draft D.P.2034 published by the MCGM tentatively shows the Metro Alignment. A specific note is mentioned in the draft as well as sanctioned D.P. wherein it is clarified that the Metro alignment displayed in the DP is provisional and is subject to finalization from the respective departments/agencies with the approval of State Govt. The specific note mentioned in DP is

reproduced for ease in perusal as follows:

"The proposed alignment of GMLR, Coastal Road, Metro Rail, Mono Rail and Eastern Freeway is provisional shall be subject to finalization from the respective departments/agencies with the approval of State Govt".

We therefore proceed to reject the allegations of malice raised by Petitioner Yashwant Society.

50. We are concerned with execution of project of public importance. Section 41(ha) of the Specific Relief Act, 1963 prohibits grant of any injunction if it would impede or delay progress or completion of any infrastructure project. The provisions of Section 41(ha) reads thus:-

"41.(ha) if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject-matter or such project."

51. In N G Projects Ltd. (Supra) the Apex Court has held in paragraph 14 and 21 as under:-

"14. In National High Speed Rail Corpn. Lid. vi Montecarlo Ltd., this Court sounded a word of caution while entertaining the writ petition and/or granting stay which ultimately may delay the execution of the mega projects. It was held as under: (SCC para 48)

"48. Even while entertaining the writ petition and/or granting the stay which ultimately may delay the execution of the Mega projects, it must be remembered that it may seriously impede the execution of the projects of public importance and disables the State and/or its agencies/ instrumentalities from discharging the constitutional and legal obligation towards the citizens. Therefore, the High Courts should be extremely careful and circumspect in exercise of its discretion while entertaining such petitions and/or while granting stay in such matters. Even in a case where the High Court is of the prima facie opinion that the decision is as such perverse and/or arbitrary and/or suffers from mala fides and/or favouritism, while entertaining such writ petition and/or pass any appropriate interim order, High Court may put to the writ petitioner's notice that in case the petitioner loses and there is a delay in execution of the project due to such proceedings initiated by him/it, he/they may be saddled with the damages caused for delay in execution of such projects, which may be due to such frivolous litigations initiated by him/it. With these words of caution and advise, we rest the matter there and leave it to the wisdom of the Court(s) concerned, which ultimately may look to the larger public interest and the national interest involved."

21. Since the construction of road is an infrastructure project and keeping in view the intent of the Legislature that infrastructure projects should not be stay, the High Court would have been well advised to hold its hand to stay the construction of the infrastructure project. Such provision should be kept in view

even by the writ court while exercising its jurisdiction under Article 226 of the Constitution of India.

52. Petitioners have filed the petitions essentially to protect their private rights to properties. Though the authority of MMRDA and State Government to acquire properties for ML-4 project is upheld, it is needless to say that petitioners shall be entitled to lawful compensation admissible in law in respect of acquisition of their properties. All contentions in that regard are left open.

53. We therefore do not find any error in the action of MMRDA and State Government in finalizing the alignment of ML4, acquisition proceedings and implementation of ML4 project. Writ Petitions filed by petitioners are devoid of merits and deserve to be dismissed. Not only most of the contentions raised by Petitioners are totally baseless, they have unnecessarily made MMRDA and State Government to justify each and every action relating to execution of the project right from legality of authority to MMRDA to implement the project. Rather than restricting the petitions to enforce their private rights, Petitioners have unnecessarily raised larger issues questioning authority of Respondents to implement ML-4 project. Under the garb of protecting and enforcing private rights of their properties, they have made attempts to stall and delay public project of immense importance. Such conduct of Petitioners actually deserves imposition of costs, while dismissing the petitions. However, by way of indulgence, we refrain ourselves from imposing costs.

54. Writ Petitions are accordingly dismissed with no order as to costs. Rule is discharged.

SANDEEP V. MARNE, J.

S. V. GANGAPURWALA, ACJ

55. At this stage, the learned Advocate for the petitioner in Writ Petition No.2820 of 2018 requests for continuation of the statement made by the learned Advocate General.

56. We have not passed any order granting stay. Moreover, the work is of public nature. Considering the observations made by us in the judgment, the request is rejected.